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HOUSE BILL NO. 787

Offered January 8, 2014

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A BILL to amend and reenact §§ 2.2-3701, 2.2-3705.7, 2.2-3711, and 2.2-3713 of the Code of Virginia, relating to the Virginia Freedom of Information Act; applicability to the State Corporation Commission; certain exemptions for the State Corporation Commission; proceedings for enforcement.

Patrons—LeMunyon, Surovell and Kory

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3701, 2.2-3705.7, 2.2-3711, and 2.2-3713 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3701. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Closed meeting" means a meeting from which the public is excluded.

"Electronic communication" means any audio or combined audio and visual communication method.

"Emergency" means an unforeseen circumstance rendering the notice required by this chapter impossible or impracticable and which circumstance requires immediate action.

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. The gathering of employees of a public body shall not be deemed a "meeting" subject to the provisions of this chapter.

"Open meeting" or "public meeting" means a meeting at which the public may be present.

"Public body" means any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth, *including the State Corporation Commission*, or of any political subdivision of the Commonwealth, including cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of public institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee or entity because it has private sector or citizen members. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

For the purposes of the provisions of this chapter applicable to access to public records, constitutional officers shall be considered public bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose public records as other custodians of public records.

"Public records" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostatting, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. Records that are not prepared for or used in the transaction of public business are not public records.

"Regional public body" means a unit of government organized as provided by law within defined boundaries, as determined by the General Assembly, whose members are appointed by the participating local governing bodies, and such unit includes two or more counties or cities.

"Scholastic records" means those records containing information directly related to a student or an applicant for admission and maintained by a public body that is an educational agency or institution or by a person acting for such agency or institution.

§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain other limited exemptions.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § 58.1-3.

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59 2. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the
60 Attorney General; the members of the General Assembly, the Division of Legislative Services, or the
61 Clerks of the House of Delegates and the Senate of Virginia; the mayor or chief executive officer of any
62 political subdivision of the Commonwealth; or the president or other chief executive officer of any
63 public institution of higher education in Virginia. However, no record, which is otherwise open to
64 inspection under this chapter, shall be deemed exempt by virtue of the fact that it has been attached to
65 or incorporated within any working paper or correspondence.

66 As used in this subdivision:

67 "Members of the General Assembly" means each member of the Senate of Virginia and the House of
68 Delegates and their legislative aides when working on behalf of such member.

69 "Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet
70 Secretaries, and the Assistant to the Governor for Intergovernmental Affairs; and those individuals to
71 whom the Governor has delegated his authority pursuant to § 2.2-104.

72 "Working papers" means those records prepared by or for an above-named public official for his
73 personal or deliberative use.

74 3. Library records that can be used to identify both (i) any library patron who has borrowed material
75 from a library and (ii) the material such patron borrowed.

76 4. Contract cost estimates prepared for the confidential use of the Department of Transportation in
77 awarding contracts for construction or the purchase of goods or services, and records and automated
78 systems prepared for the Department's Bid Analysis and Monitoring Program.

79 5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth,
80 whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by
81 the political subdivision.

82 6. Records and writings furnished by a member of the General Assembly to a meeting of a standing
83 committee, special committee or subcommittee of his house established solely for the purpose of
84 reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of
85 formulating advisory opinions to members on standards of conduct, or both.

86 7. Customer account information of a public utility affiliated with a political subdivision of the
87 Commonwealth, including the customer's name and service address, but excluding the amount of utility
88 service provided and the amount of money paid for such utility service.

89 8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development
90 Authority concerning individuals who have applied for or received loans or other housing assistance or
91 who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by
92 the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the
93 waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and
94 housing authority created pursuant to § 36-4 concerning persons participating in or persons on the
95 waiting list for housing assistance programs funded by local governments or by any such authority; or
96 (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other
97 local government agency concerning persons who have applied for occupancy or who have occupied
98 affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access to one's
99 own information shall not be denied.

100 9. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if
101 disclosure of them would have a detrimental effect upon the negotiating position of a governing body or
102 on the establishment of the terms, conditions and provisions of the siting agreement.

103 10. Records containing information on the site specific location of rare, threatened, endangered or
104 otherwise imperiled plant and animal species, natural communities, caves, and significant historic and
105 archaeological sites if, in the opinion of the public body that has the responsibility for such information,
106 disclosure of the information would jeopardize the continued existence or the integrity of the resource.
107 This exemption shall not apply to requests from the owner of the land upon which the resource is
108 located.

109 11. Records, memoranda, working papers, graphics, video or audio tapes, production models, data
110 and information of a proprietary nature produced by or for or collected by or for the State Lottery
111 Department relating to matters of a specific lottery game design, development, production, operation,
112 ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to
113 holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning,
114 advertising, or marketing, where such official records have not been publicly released, published,
115 copyrighted or patented. Whether released, published or copyrighted, all game-related information shall
116 be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game
117 to which it pertains.

118 12. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local
119 retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of
120 Virginia, acting pursuant to § 23-76.1, or of the Virginia College Savings Plan, acting pursuant to

§ 23-38.77, relating to the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or the Virginia College Savings Plan, or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity; and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of records relating to the identity of any investment held, the amount invested, or the present value of such investment.

13. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information.

14. Financial, medical, rehabilitative and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

15. Records of the Virginia Commonwealth University Health System Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; data, records or information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and data, records or information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body or a private concern, when such data, records or information have not been publicly released, published, copyrighted or patented.

16. Records of the Department of Environmental Quality, the State Water Control Board, State Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.

17. As it pertains to any person, records related to the operation of toll facilities that identify an individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

18. Records of the State Lottery Department pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations; and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed.

19. Records of the Board for Branch Pilots relating to the chemical or drug testing of a person regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary action by the Board for a positive test result.

20. Records, investigative notes, correspondence, and information pertaining to the planning, scheduling and performance of examinations of holder records pursuant to the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer, his agents, employees or persons employed to perform an audit or examination of holder records.

21. Records of the Virginia Department of Emergency Management or a local governing body relating to citizen emergency response teams established pursuant to an ordinance of a local governing body, to the extent that such records reveal the name, address, including e-mail address, telephone or

182 pager numbers, or operating schedule of an individual participant in the program.

183 22. Records of state or local park and recreation departments and local and regional park authorities
184 to the extent such records contain information identifying a person under the age of 18 years. However,
185 nothing in this subdivision shall operate to prohibit the disclosure of information defined as directory
186 information under regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C.
187 § 1232g, unless the public body has undertaken the parental notification and opt-out requirements
188 provided by such regulations. Access shall not be denied to the parent, including a noncustodial parent,
189 or guardian of such person, unless the parent's parental rights have been terminated or a court of
190 competent jurisdiction has restricted or denied such access. For records of such persons who are
191 emancipated, the right of access may be asserted by the subject thereof. Any parent or emancipated
192 person who is the subject of the record may waive, in writing, the protections afforded by this
193 subdivision. If the protections are so waived, the public body shall open such records for inspection and
194 copying.

195 23. Records submitted for inclusion in the Statewide Alert Network administered by the Department
196 of Emergency Management, to the extent that they reveal names, physical addresses, email addresses,
197 computer or internet protocol information, telephone numbers, pager numbers, other wireless or portable
198 communications device information, or operating schedules of individuals or agencies, where the release
199 of such information would compromise the security of the Statewide Alert Network or individuals
200 participating in the Statewide Alert Network.

201 24. Records of the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

202 25. Records of the Virginia Retirement System acting pursuant to § 51.1-124.30, of a local retirement
203 system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement system), or of
204 the Virginia College Savings Plan, acting pursuant to § 23-38.77 relating to:

205 a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings
206 Plan on the pursuit of particular investment strategies, or the selection or termination of investment
207 managers, prior to the execution of such investment strategies or the selection or termination of such
208 managers, to the extent that disclosure of such records would have an adverse impact on the financial
209 interest of the retirement system or the Virginia College Savings Plan; and

210 b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a
211 private entity to the retirement system or the Virginia College Savings Plan, to the extent disclosure of
212 such records would have an adverse impact on the financial interest of the retirement system or the
213 Virginia College Savings Plan.

214 For the records specified in subdivision b to be excluded from the provisions of this chapter, the
215 entity shall make a written request to the retirement system or the Virginia College Savings Plan:

216 (1) Invoking such exclusion prior to or upon submission of the data or other materials for which
217 protection from disclosure is sought;

218 (2) Identifying with specificity the data or other materials for which protection is sought; and

219 (3) Stating the reasons why protection is necessary.

220 The retirement system or the Virginia College Savings Plan shall determine whether the requested
221 exclusion from disclosure meets the requirements set forth in subdivision b.

222 Nothing in this subdivision shall be construed to authorize the withholding of the identity or amount
223 of any investment held or the present value and performance of all asset classes and subclasses.

224 26. Records of the Department of Corrections made confidential by § 53.1-233.

225 27. Records maintained by the Department of the Treasury or participants in the Local Government
226 Investment Pool (§ 2.2-4600 et seq.), to the extent such records relate to information required to be
227 provided by such participants to the Department to establish accounts in accordance with § 2.2-4602.

228 28. Personal information, as defined in § 2.2-3801, contained in the Veterans Care Center Resident
229 Trust Funds concerning residents or patients of the Department of Veterans Services Care Centers,
230 except that access shall not be denied to the person who is the subject of the record.

231 29. Records maintained in connection with fundraising activities by the Veterans Services Foundation
232 pursuant to § 2.2-2716 to the extent that such records reveal the address, electronic mail address,
233 facsimile or telephone number, social security number or other identification number appearing on a
234 driver's license, or credit card or bank account data of identifiable donors, except that access shall not be
235 denied to the person who is the subject of the record. Nothing in this subdivision, however, shall be
236 construed to authorize the withholding of records relating to the amount, date, purpose, and terms of the
237 pledge or donation or the identity of the donor. The exclusion provided by this subdivision shall not
238 apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the
239 foundation for the performance of services or other work or (ii) the terms and conditions of such grants
240 or contracts.

241 30. Names, physical addresses, telephone numbers, and email addresses contained in correspondence
242 between an individual and a member of the governing body, school board, or other public body of the
243 locality in which the individual is a resident, unless the correspondence relates to the transaction of

public business. However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any such correspondence.

31. Records of the Commonwealth's Attorneys' Services Council, to the extent such records are prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state prosecutors or law-enforcement personnel, where such records are not otherwise available to the public and the release of such records would reveal confidential strategies, methods or procedures to be employed in law-enforcement activities, or materials created for the investigation and prosecution of a criminal case.

32. Records provided to the Department of Aviation by other entities of the Commonwealth in connection with the operation of aircraft, where the records would not be subject to disclosure by the entity providing the records. The entity providing the records to the Department of Aviation shall identify the specific portion of the records to be protected and the applicable provision of this chapter that exempts the record or portions thereof from mandatory disclosure.

33. *Records of the State Corporation Commission (Commission) to the extent such records relate to activities of the Commission other than administrative activities. However, disclosure of records related to the Commission's administrative activities shall not be required if (i) such records are otherwise covered by applicable legal privileges, (ii) disclosure of such records could threaten the safety or security of the Commission's employees, physical plant, or information technology assets or data, or (iii) such records are not publicly available from other public bodies under the laws of the Commonwealth, including §§ 2.2-3705.1 and 2.2-4342. Records held by the clerk of the Commission related to business entities shall be held confidential in accordance with laws and regulations applicable specifically to such records.*

For the purposes of this subdivision, "administrative activities" means matters related to the Commission's operational responsibilities and operational functions, including its revenues, expenditures, financial management and budgetary practices, personnel policies and practices, and procurement policies and practices. "Administrative activities" does not include the Commission's formal or informal regulatory or legal proceedings or activities, records related to which shall be governed, inter alia, by laws and regulations applicable specifically to such regulatory and legal proceedings or activities or in accordance with applicable legal privileges.

§ 2.2-3711. Closed meetings authorized for certain limited purposes.

A. Public bodies may hold closed meetings only for the following purposes:

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.

2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any Virginia public institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents, or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.

4. The protection of the privacy of individuals in personal matters not related to public business.

5. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.

6. Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.

7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such

305 counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been
306 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe
307 will be commenced by or against a known party. Nothing in this subdivision shall be construed to
308 permit the closure of a meeting merely because an attorney representing the public body is in attendance
309 or is consulted on a matter.

310 8. In the case of boards of visitors of public institutions of higher education, discussion or
311 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts
312 for services or work to be performed by such institution. However, the terms and conditions of any such
313 gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign
314 person and accepted by a public institution of higher education in Virginia shall be subject to public
315 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
316 (i) "foreign government" means any government other than the United States government or the
317 government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity
318 created under the laws of the United States or of any state thereof if a majority of the ownership of the
319 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
320 membership of any such entity is composed of foreign persons or foreign legal entities, or any legal
321 entity created under the laws of a foreign government; and (iii) "foreign person" means any individual
322 who is not a citizen or national of the United States or a trust territory or protectorate thereof.

323 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum
324 of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of Virginia,
325 discussion or consideration of matters relating to specific gifts, bequests, and grants.

326 10. Discussion or consideration of honorary degrees or special awards.

327 11. Discussion or consideration of tests, examinations, or other records excluded from this chapter
328 pursuant to subdivision 4 of § 2.2-3705.1.

329 12. Discussion, consideration, or review by the appropriate House or Senate committees of possible
330 disciplinary action against a member arising out of the possible inadequacy of the disclosure statement
331 filed by the member, provided the member may request in writing that the committee meeting not be
332 conducted in a closed meeting.

333 13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to
334 consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing
335 body in open meeting finds that an open meeting will have an adverse effect upon the negotiating
336 position of the governing body or the establishment of the terms, conditions and provisions of the siting
337 agreement, or both. All discussions with the applicant or its representatives may be conducted in a
338 closed meeting.

339 14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic
340 activity and estimating general and nongeneral fund revenues.

341 15. Discussion or consideration of medical and mental health records excluded from this chapter
342 pursuant to subdivision 1 of § 2.2-3705.5.

343 16. Deliberations of the State Lottery Board in a licensing appeal action conducted pursuant to
344 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
345 discussion, consideration or review of State Lottery Department matters related to proprietary lottery
346 game information and studies or investigations exempted from disclosure under subdivision 6 of
347 § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

348 17. Those portions of meetings by local government crime commissions where the identity of, or
349 information tending to identify, individuals providing information about crimes or criminal activities
350 under a promise of anonymity is discussed or disclosed.

351 18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity
352 of, or information tending to identify, any prisoner who (i) provides information about crimes or
353 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the
354 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders
355 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

356 19. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by staff
357 members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to
358 respond to such activity or a related threat to public safety; or discussion of reports or plans related to
359 the security of any governmental facility, building or structure, or the safety of persons using such
360 facility, building or structure.

361 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or
362 of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the
363 University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings
364 Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or
365 other ownership interest in an entity, where such security or ownership interest is not traded on a
366 governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential

analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review team established pursuant to § 32.1-283.1, and those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § 32.1-283.2, and those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3.

22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, have been delegated, in which there is discussed proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

23. In the case of the Virginia Commonwealth University Health System Authority, discussion or consideration of any of the following: the acquisition or disposition of real or personal property where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; operational plans that could affect the value of such property, real or personal, owned or desirable for ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies where disclosure of such strategies would adversely affect the competitive position of the Authority; members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other employees.

24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within the Department of Health Professions to the extent such discussions identify any practitioner who may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23 is discussed.

26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of wireless E-911 service.

27. Those portions of disciplinary proceedings by any regulatory board within the Department of Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach a decision or meetings of health regulatory boards or conference committees of such boards to consider settlement proposals in pending disciplinary actions or modifications to previously issued board orders as requested by either of the parties.

28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected local jurisdiction, as those terms are defined in § 56-557, or any independent review panel appointed to review information and advise the responsible public entity concerning such records.

29. Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.

30. Discussion or consideration of grant or loan application records excluded from this chapter pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the

428 Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment
429 Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

430 31. Discussion or consideration by the Commitment Review Committee of records excluded from
431 this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to commitment as
432 sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

433 32. [Expired.]

434 33. Discussion or consideration of confidential proprietary records and trade secrets excluded from
435 this chapter pursuant to subdivision 18 of § 2.2-3705.6.

436 34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless
437 Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade secrets
438 excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

439 35. Discussion or consideration by the State Board of Elections or local electoral boards of voting
440 security matters made confidential pursuant to § 24.2-625.1.

441 36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee
442 created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from
443 this chapter pursuant to subdivision A 2 a of § 2.2-3706.

444 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards
445 Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of
446 § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship
447 award, review and consider scholarship applications and requests for scholarship award renewal, and
448 cancel, rescind, or recover scholarship awards.

449 38. Discussion or consideration by the Virginia Port Authority of records excluded from this chapter
450 pursuant to subdivision 1 of § 2.2-3705.6.

451 39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting
452 pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26,
453 by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College
454 Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's Investment
455 Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this chapter pursuant
456 to subdivision 25 of § 2.2-3705.7.

457 40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of
458 § 2.2-3705.6.

459 41. Discussion or consideration by the Board of Education of records relating to the denial,
460 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of
461 § 2.2-3705.3.

462 42. Those portions of meetings of the Virginia Military Advisory Council or any commission created
463 by executive order for the purpose of studying and making recommendations regarding preventing
464 closure or realignment of federal military and national security installations and facilities located in
465 Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization
466 appointed by a local governing body, during which there is discussion of records excluded from this
467 chapter pursuant to subdivision 12 of § 2.2-3705.2.

468 43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
469 records excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.

470 44. Discussion or consideration by the Virginia Tobacco Indemnification and Community
471 Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of
472 § 2.2-3705.6.

473 45. Discussion or consideration by the board of directors of the Commercial Space Flight Authority
474 of records excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6.

475 46. *Deliberations and hearings of the State Corporation Commission and discussion or consideration*
476 *by the State Corporation Commission of records excluded from this chapter pursuant to subdivision 33*
477 *of § 2.2-3705.7.*

478 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a
479 closed meeting shall become effective unless the public body, following the meeting, reconvenes in open
480 meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or
481 motion that shall have its substance reasonably identified in the open meeting.

482 C. Public officers improperly selected due to the failure of the public body to comply with the other
483 provisions of this section shall be de facto officers and, as such, their official actions are valid until they
484 obtain notice of the legal defect in their election.

485 D. Nothing in this section shall be construed to prevent the holding of conferences between two or
486 more public bodies, or their representatives, but these conferences shall be subject to the same
487 procedures for holding closed meetings as are applicable to any other public body.

488 E. This section shall not be construed to (i) require the disclosure of any contract between the
489 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1

(§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

§ 2.2-3713. Proceedings for enforcement of chapter.

A. Any person, including the attorney for the Commonwealth acting in his official or individual capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause. Such petition may be brought in the name of the person notwithstanding that a request for public records was made by the person's attorney in his representative capacity. Venue for the petition shall be addressed as follows:

1. In a case involving a local public body, to the general district court or circuit court of the county or city from which the public body has been elected or appointed to serve and in which such rights and privileges were so denied;

2. In a case involving a regional public body, to the general district or circuit court of the county or city where the principal business office of such body is located; ~~and~~

3. ~~In~~ *Except as provided in subdivision 4*, in a case involving a board, bureau, commission, authority, district, institution, or agency of the state government, including a public institution of higher education, or a standing or other committee of the General Assembly, to the general district court or the circuit court of the residence of the aggrieved party or of the City of Richmond; *and*

4. *In a case involving the State Corporation Commission, to the Supreme Court in accordance with Article IX, Section 4 of the Constitution of Virginia.*

B. In any action brought before a general district court, a corporate petitioner may appear through its officer, director or managing agent without the assistance of counsel, notwithstanding any provision of law or Rule of the Supreme Court of Virginia to the contrary.

C. Notwithstanding the provisions of § 8.01-644, the petition for mandamus or injunction shall be heard within seven days of the date when the same is made, provided the party against whom the petition is brought has received a copy of the petition at least three working days prior to filing. The hearing on any petition made outside of the regular terms of the circuit court of a locality that is included in a judicial circuit with another locality or localities shall be given precedence on the docket of such court over all cases that are not otherwise given precedence by law.

D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and ~~attorneys'~~ *attorney* fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust. In making this determination, a court may consider, among other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially supports the public body's position.

E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of proof to establish an exemption by a preponderance of the evidence. Any failure by a public body to follow the procedures established by this chapter shall be presumed to be a violation of this chapter.

F. Failure by any person to request and receive notice of the time and place of meetings as provided in § 2.2-3707 shall not preclude any person from enforcing his rights and privileges conferred by this chapter.