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HOUSE BILL NO. 2013

Offered January 14, 2015

Prefiled January 14, 2015

A BILL to amend and reenact § 12.1-19 of the Code of Virginia, relating to the disclosure of records related to administrative activities of the State Corporation Commission.

Patron—Surovell

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That § 12.1-19 of the Code of Virginia is amended and reenacted as follows:****§ 12.1-19. Duties of clerk; records; copies; personal identifiable information; records related to the administrative activities of the Commission; unauthorized filings.****A. The clerk of the Commission shall:**

1. Keep a record of all the proceedings, orders, findings, and judgments of the public sessions of the Commission, and the minutes of the proceedings of each day's public session shall be read and approved by the Commission and signed by its chairman, or acting chairman;

2. Subject to the supervision and control of the Commission, have custody of and preserve all of the records, documents, papers, and files of the Commission, or which may be filed before it in any complaint, proceeding, contest, or controversy, and such records, documents, papers, and files shall be open to public examination in the office of the clerk to the same extent as the records and files of the courts of this Commonwealth;

3. When requested, make and certify copies from any record, document, paper, or file in the clerk's office, and if required, affix the seal of the Commission (or a facsimile thereof) thereto, and otherwise furnish and certify information from the Commission records by any means the Commission may deem suitable; and, except when made at the instance of the Commission or on behalf of the Commonwealth, a political subdivision of the Commonwealth, or the government of the United States, the clerk shall charge and collect the fees fixed by §§ 12.1-21.1 and 12.1-21.2; and any such copy or information, so certified, shall have the same faith, credit, and legal effect as copies made and certified by the clerks of the courts of this Commonwealth from the records and files thereof;

4. Certify all allowances made by the Commission to be paid out of the public treasury for witness fees, service of process, or other expenses;

5. Issue all notices, writs, processes, or orders awarded by the Commission, or authorized by law, or by the rules of the Commission;

6. Receive all fines and penalties imposed by the Commission, all moneys collected on judgments, all registration fees required by law to be paid by corporations, limited liability companies, and other types of business entities, including delinquencies thereof, and all other fees collected by the Commission, and shall keep an accurate account of the same and the disposition of such receipts and shall, at least once in every 30 days during the clerk's term of office, render a statement of all such receipts and collections to the Comptroller, and pay the same into the treasury of the Commonwealth, and shall keep all such other accounts of such collections and disbursements, and shall make all such other reports thereof as may be required by law or by the regulations prescribed by the Comptroller; and

7. Generally have the powers, discharge the functions, and perform the duties of a clerk of a court of record in all matters within the jurisdiction of the Commission. The Commission may designate one or more deputies or assistants of the clerk who may discharge any of the clerk's official duties during the clerk's continuance in office.

B. A person who prepares or submits to the office of the clerk of the Commission a document or any information for filing with the Commission pursuant to Title 8.9A, Title 13.1, or Title 50 is responsible for ensuring that the document or information does not contain any personal identifiable information, unless such information is otherwise publicly available or is required or authorized by law to be included in the document or information provided. For purposes of this subsection, "personal identifiable information" means (i) a social security number or any other numbers appearing on driver's licenses; (ii) information on credit cards, debit cards, bank accounts, or other electronic billing and payment systems; (iii) a date of birth identified with a particular individual; (iv) the maiden name of an individual's parent; or (v) any financial account number. Any person who prepares or submits to the office of the clerk a document for filing that contains personal identifiable information shall be deemed to have authorized the clerk or any member of the clerk's staff to remove, delete, or obliterate, without prior notice, such information prior or subsequent to recording or filing the document in the office of

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59 the clerk. Nothing in this subsection shall be deemed to require the clerk to alter any document
60 submitted for filing. The clerk may refuse to accept for filing any document that includes personal
61 identifiable information and return it for modification or explanation. The Commission, its members, the
62 clerk of the Commission, and any member of the clerk's staff are immune from liability in any
63 proceeding arising from any acts or omissions in the implementation of this subsection. This subsection
64 shall not be construed to limit, withdraw, or overturn any defense or immunity that exists under
65 statutory or common law.

66 C. 1. The Commission shall make available for public inspection records related to the administrative
67 activities of the Commission.

68 2. Disclosure of such records shall not be required, however, if (i) such records are otherwise
69 covered by applicable legal privileges, (ii) disclosure of such records could threaten the safety or
70 security of the Commission's employees, physical plant, or information technology assets or data, or (iii)
71 such records are not publicly available from other public entities under the laws of the Commonwealth,
72 including §§ 2.2-3705.1 and 2.2-4342.

73 3. Records held by the clerk of the Commission related to business entities shall be made public or
74 held confidential in accordance with laws and regulations applicable specifically to such records.

75 4. The Commission shall respond within five business days of receiving requests for administrative
76 records. If it is impracticable to provide the records requested within such time period, the Commission
77 shall notify the requester that an additional seven business days will be required, unless due to the scope
78 of the records requested or length of search necessary to locate them the Commission requires additional
79 time, which shall not be unreasonable in length. When any such requested records are not provided, the
80 Commission shall notify the requester of the basis of the denial.

81 5. As used in this subsection, "administrative activities" means matters related to the Commission's
82 operational responsibilities and operational functions, including its revenues, expenditures, financial
83 management and budgetary practices, personnel policies and practices, ~~and~~ procurement policies and
84 practices, *and comments filed by the Commission or its staff with federal or state agencies or other*
85 *governmental bodies that relate to federal or state policy proposals, rules, orders, or regulations*
86 *exclusive of any such comments filed in a regulatory or legal proceeding docketed by the Commission.*
87 "Administrative activities" shall not include the Commission's formal or informal regulatory or legal
88 proceedings or activities, records related to which shall be governed, inter alia, by laws and regulations
89 applicable specifically to such regulatory and legal proceedings or activities, or in accordance with
90 applicable legal privileges.

91 D. Notwithstanding any other provision of law, the clerk may review the circumstances surrounding
92 the execution or delivery of any document associated with any business entity of record in the office of
93 the clerk that was submitted for filing under a business entity statute administered by the Commission
94 pursuant to Title 13.1 or Title 50. If the clerk determines that the person who executed or delivered the
95 document was without authority to act on behalf of the business entity, the clerk is authorized (i) to
96 refuse to accept the document for filing or (ii) if the document has been filed, to summarily remove the
97 document and any documents and data related to the filing from the records in the office of the clerk,
98 correct such records, and provide notice to any business entity affected by the filing. The Commission,
99 its members, the clerk of the Commission, and any member of the clerk's staff are immune from
100 liability in any proceeding arising from any acts or omissions in the implementation of this subsection.
101 This subsection shall not be construed to limit, withdraw, or overturn any defense or immunity that
102 exists under statutory or common law.