

**Department of Planning and Budget
2015 Fiscal Impact Statement**

1. Bill Number: HB1633

House of Origin	<input checked="" type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Enrolled

2. Patron: Gilbert

3. Committee: General Laws

4. Title: Virginia Freedom of Information Act; record exemption for certain health records.

5. Summary: The proposed legislation clarifies that records of certain health care committees and entities, to the extent that they reveal information that may be withheld from discovery as privileged communications, are exempt from disclosure under the Freedom of Information Act.

6. Budget Amendment Necessary: No.

7. No Fiscal Impact: Preliminary. See Line 8.

8. Fiscal Implications: The Freedom of Information Act (FOIA) includes exemptions for various health and social services records, but may not include an exemption for communications and information that are classified as privileged and exempt from discovery under § 8.01-581.17 of the Code of Virginia. This potential gap in the current law places state-owned medical centers, along with other state-owned health facilities, at risk of greater exposure in sensitive areas of patient safety, quality improvement, peer review, and credentialing communications and information.

The current protection exists so that individuals will be forthcoming regarding patient safety, quality of care, and peer review issues and so that hospitals can and will make improvements in providing healthcare. The Virginia Supreme Court has recognized the importance of this privilege and noted that it “encourages physicians to participate candidly in the peer review process of other physicians, with the expectation that the information submitted will remain confidential and shielded from public disclosure.”

Creating a specific exemption in the FOIA for this already privileged information will close a potential gap in the law and will ensure that these records will not be disclosed to third parties. Further the clarification will save limited state resources by avoiding unnecessary hearings involving the state-owned medical centers and other state-owned facilities regarding what the law already provides.

9. Specific Agency or Political Subdivisions Affected:

State-owned medical centers and other state-owned facilities

10. Technical Amendment Necessary: No.

11. Other Comments: Senate Bill 968 is identical to House Bill 1633.

It is unclear whether House Bill 1633 and Senate Bill 968 conflict with House Bill 1722 and Senate Bill 893.