



# VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

## COMMONWEALTH OF VIRGINIA

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## **2009 FOIA LEGISLATIVE UPDATE**

NOTE: *Unless otherwise stated, the changes in the law described herein will take effect July 1, 2009.*

### **I. Introduction**

The General Assembly passed a total of 19 bills amending the Virginia Freedom of Information Act (FOIA) during the 2009 Session. Two bills amending FOIA were passed as recommendations of the Freedom of Information Advisory Council (FOIA Council): SB 1316 (Houck), which strikes the requirement that state agencies publish annually an index of computer databases and amends the requirement to publish a statement of rights and responsibilities to ensure that the public can find out generally what types of public records a public body has and what exemptions may apply to those records, and SB 1319 (Houck), which clarifies the existing requirement that meeting minutes be in writing. Additionally, SB 1317 (Houck), concerning certain electronic meetings held by the Air Pollution Control Board and the State Water Control Board, also passed as a recommendation of the FOIA Council. The General Assembly also passed SB 1318 (Houck) and HB 2426 (May), extending the implementation date of the prohibition against collecting an individual's social security number and other changes under the Government Data Collection and Dissemination Practices Act (GDCDPA), as a recommendation of the FOIA Council and the Joint Commission on Technology and Science (JCOTS). Finally, the General Assembly also passed HB 2144 (Nutter), concerning access to concealed carry handgun permits. The language of HB 2144 is identical to SB 529 (Houck), which was introduced as a recommendation of the FOIA Council in the 2008 Regular Session. SB 529 did not pass at that time, but was referred back to the FOIA Council for further study, after which the substance of the bill was again recommended by the FOIA Council for 2009.

Of the 19 bills, two bills created three new record exemptions to FOIA as follows:

- Exempts certain records relating to internal controls of the Commonwealth's financial systems. (HB 2181 amending § 2.2-3705.2);
- Exempts from mandatory disclosure (1) personal information in certain records concerning residents or patients of the Department of Veterans Services care

centers, and (2) certain records related to fundraising activities of the Veterans Services Foundation containing certain information about identifiable donors. Note that the bill creates two separate records exemptions, as well as two corresponding closed meetings exemptions. (HB 2639 amending §§ 2.2-3705.7 and 2.2-3711).

One bill adds two new closed meeting exemptions to § 2.2-3711:

- Allows (1) the advisory committee for veterans care centers established by the Commissioner of the Virginia Department of Veterans Services to discuss in closed meetings personal information in certain records concerning residents or patients of the Department of Veterans Services care centers, and (2) the Board of Trustees of the Veterans Services Foundation to discuss in closed meeting certain records related to fundraising activities of the Veterans Services Foundation containing certain information about identifiable donors. (HB 2639 amending §§ 2.2-3705.7 and 2.2-3711).

Sixteen bills amend existing provisions of FOIA as follows:

- Establishes the Fraud and Abuse Whistle Blower Protection Act; amends an existing exemption for certain records of audit investigations to exempt certain records with respect to an allegation of wrongdoing or abuse under the new Act (HB 1799 amending § 2.2-3705.3);
- Merges the Innovative Technology Authority (ITA), and the Virginia Research and Technology Advisory Commission into a single entity, named the Innovation and Entrepreneurship Investment Authority (IEIA), making corresponding technical amendments to existing records and meetings exemptions to reflect the name change. (HB 2201 and SB 1456 amending §§ 2.2-3705.6 and 2.2-3711);
- Expands the current record exemption for the names, addresses, and telephone numbers of complainants relating to zoning enforcement complaints made to a local governing body to also include complaints relating to the Uniform Statewide Building Code or the Statewide Fire Prevention Code. (HB 2266 and SB 1478 amending § 2.2-3705.3);
- Changes the name of the Department, Board, Inspector General, and Commissioner of Mental Health, Mental Retardation and Substance Abuse Services to the Department, Board, Inspector General, and Commissioner of Behavioral Health and Developmental Services, making a corresponding technical amendment to an existing records exemption to reflect the name change. (HB 2300 and SB 1117 amending § 2.2-3705.5).
- Changes the name of the Health Practitioners' Intervention Program to the Health Practitioners' Monitoring Program, and makes corresponding technical amendments to existing records and meetings exemptions to reflect the name change. (HB 2407 amending §§ 2.2-3705.5 and 2.2-3711);
- Amends existing records and meetings exemptions to allow the exclusion of certain financial records of the Virginia College Savings Plan from the Freedom of Information Act and the authorization for closed meetings of the Board of the Virginia College Savings Plan in certain circumstances. (HB 2549 and SB 1251 amending §§ 2.2-3705.7 and 2.2-3711);

- Establishes the MEI Project Approval Commission and adds it to the list of entities that may use an existing exemption for certain economic development records. (HB 2550 and SB 1119 amending § 2.2-3705.6);
- Makes technical amendments to an existing records exemption used by the Department of Minority Business Enterprise. (HB 2672 amending § 2.2-3705.6);
- Strikes the requirement to publish an index of computer databases and amends the requirement to publish a statement of rights and responsibilities to ensure that the public can find out generally what types of public records a public body has and what exemptions may apply to those records. (SB 1316 amending §§ 2.2-3704 and 2.2-3704.1);
- Clarifies that minutes of public meetings must be in writing. The bill also contains a technical amendment. (SB 1319 amending § 2.2-3707);
- Amends an existing records exemption for economic development records to include records related to the retention of existing business, and to allow the exemption to be used by all public bodies subject to FOIA. The bill makes corresponding amendments to an existing meetings exemption. (SB 1344 amending §§ 2.2-3705.6 and 2.2-3711);
- Clarifies that enforcement actions under the Freedom of Information Act take precedence over other general provisions of law relating to writs of mandamus or injunction. (SB 1505 amending §§ 2.2-3713 and 8.01-644).

Section II of this update presents a brief overview of amendments to FOIA section by section in order to provide context and organization to the numerous bills. Section III presents a brief overview of other access-related legislation passed during the 2008 Session of the General Assembly.

For more specific information on the particulars of each bill, please see the bill itself. Unless otherwise indicated, the changes will become effective July 1, 2009.

## **II. Amendments to the Freedom of Information Act**

### **§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to request; charges.**

**Freedom of Information Act; requirements to publish a database index and a statement of rights and responsibilities.** Strikes the requirement to publish an index of computer databases and amends the requirement to publish a statement of rights and responsibilities to ensure that the public can find out generally what types of public records a public body has and what exemptions may apply to those records. This bill is a recommendation of the Freedom of Information Advisory Council. SB 1316 (2009 Acts of Assembly, c. 626).

**§ 2.2-3704.1. Posting of notice of rights and responsibilities by state public bodies; assistance by the Freedom of Information Advisory Council.**

**Freedom of Information Act; requirements to publish a database index and a statement of rights and responsibilities.** Strikes the requirement to publish an index of computer databases and amends the requirement to publish a statement of rights and responsibilities to ensure that the public can find out generally what types of public records a public body has and what exemptions may apply to those records. This bill is a recommendation of the Freedom of Information Advisory Council. SB 1316 (2009 Acts of Assembly, c. 626).

**§ 2.2-3705.2. Exclusions to application of chapter; records relating to public safety.**

**Freedom of Information Act; protection of internal controls of the Commonwealth's financial systems.** Exempts from the mandatory disclosure requirements of FOIA documentation or other information as determined by the State Comptroller that describes the design, function, operation, or implementation of internal controls over the Commonwealth's financial processes and systems, and the assessment of risks and vulnerabilities of those controls, including the annual assessment of internal controls mandated by the Comptroller, the disclosure of which would jeopardize the security of the Commonwealth's financial assets. However, summary reports relating to the soundness of any fiscal process shall be disclosed in a form that does not compromise the internal controls. The bill provides that nothing contained in its provisions shall be construed to prohibit the Auditor of Public Accounts or the Joint Legislative Audit and Review Commission from reporting internal control deficiencies discovered during the course of an audit. HB 2181 (2009 Acts of Assembly, c. 418).

**§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations.**

**Fraud and Abuse Whistle Blower Protection Act.** Establishes the Fraud and Abuse Whistle Blower Protection Act to protect whistle blowers from certain adverse employment actions. Makes a corresponding amendment to an existing exemption for certain audit investigation records. HB 1799 (2009 Acts of Assembly, c. 340).

**Freedom of Information Act; building and fire code complaints.** Expands the current record exemption for the names, addresses, and telephone numbers of complainants relating to zoning enforcement complaints made to a local governing body to also include complaints relating to the Uniform Statewide Building Code or the Statewide Fire Prevention Code. HB 2266 (2009 Acts of Assembly, c. 237), SB 1478 (2009 Acts of Assembly, c. 326).

**§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.**

**Health Practitioners' Intervention Program; revisions.** Changes the name of the Health Practitioners' Intervention Program to the Health Practitioners' Monitoring Program. Among other provisions, the act makes technical changes to existing records and meetings exemptions to reflect the name change. HB 2407 (2009 Acts of Assembly, c. 472).

**Department of Mental Health, Mental Retardation and Substance Abuse Services; name change.** Changes the name of the Department, Board, Inspector General, and Commissioner of Mental Health, Mental Retardation and Substance Abuse Services to the Department, Board, Inspector General, and Commissioner of Behavioral Health and Developmental Services. The act makes technical amendments to an existing exemption to reflect the name change. HB 2300 (2009 Acts of Assembly, c. 812), SB 1117 (2009 Acts of Assembly, c. 839).

**§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.**

**Economic development; incentive financing for major employment and investment projects.** Among other things, establishes the MEI Project Approval Commission to review financing for individual incentive packages for major employment and investment projects (MEI projects) to be financed by the Virginia Public Building Authority. Adds the MEI Project Approval Commission to the list of entities that may use an existing exemption for certain economic development records. HB 2550 (2009 Acts of Assembly, c. 246), SB 1119 (2009 Acts of Assembly, c. 311).

**Oversight of research and development in the Commonwealth.** Merges the Innovative Technology Authority (ITA), and the Virginia Research and Technology Advisory Commission into a single entity, named the Innovation and Entrepreneurship Investment Authority (IEIA). Makes technical amendments to existing records and meetings exemptions to reflect the name change. HB 2201 (2009 Acts of Assembly, c. 809), SB 1456 (2009 Acts of Assembly, c. 325).

**Department of Minority Business Enterprise.** Clarifies that small, women-owned, and minority-owned businesses must be comprised of individuals who are U.S. citizens or legal resident aliens, and that both the management and daily business operations are conducted by such individuals. The bill contains corresponding technical amendments to an existing records exemption. HB 2672 (2009 Acts of Assembly, c. 869).

**Freedom of Information Act; economic development records.** Amends an existing records exemption for economic development records to include records related to the retention of existing business, and to allow the exemption to be used by all public bodies subject to FOIA. The bill makes corresponding amendments to the existing meetings

exemption that allows discussion of such records in closed meetings. SB 1344 (2009 Acts of Assembly, c. 765).

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

**Virginia College Savings Plan.** Provides for: (i) the exclusion of certain financial records of the Virginia College Savings Plan from the Freedom of Information Act; (ii) the authorization for closed meetings of the Board of the Virginia College Savings Plan in certain circumstances; (iii) the expansion of the Virginia College Savings Plan Board from eight to 11 members; (iv) the creation of two advisory committees to the Board; and (v) the authority for the Virginia College Savings Plan Board to establish scholarships or matching grant programs for qualified students. The bill also renames the individual hired by the Virginia College Savings Plan Board to direct, manage, and administer the Plan as the "chief executive officer," rather than the current designation of "executive director." HB 2549 (2009 Acts of Assembly, c. 826), SB 1251 (2009 Acts of Assembly, c. 844).

**Freedom of Information Act; certain records of the Department of Veterans Services and the Veterans Services Foundation.** Exempts from the mandatory disclosure provisions of the Freedom of Information Act (i) personal information contained in the Veterans Care Center Resident Trust Funds concerning residents or patients of the Department of Veterans Services care centers and (ii) records maintained in connection with fundraising activities by the Veterans Services Foundation to the extent that such records reveal the address, electronic mail address, facsimile or telephone number, social security number or other identification number appearing on driver's license, or credit card or bank account data of identifiable donors, except that access shall not be denied to the person who is the subject of the record. The bill provides, however, that it shall not be construed to authorize the withholding of records relating to the amount, date, purpose, and terms of the pledge or donation, or the identity of the donor. Nor does the exclusion provided by the bill apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the foundation for the performance of services or other work or (ii) the terms and conditions of such grants or contracts. Adds corresponding closed meetings exemptions. HB 2639 (2009 Acts of Assembly, c. 223).

**§ 2.2-3707. Meetings to be public; notice of meetings; recordings; minutes.**

**Freedom of Information Act; meeting minutes.** Clarifies that minutes of public meetings must be in writing. The bill also contains a technical amendment. The terms "include" and "in writing" that appear in the bill are defined in Title 1 to mean, respectively, "include, but are not limited to," and "any representation of words, letters, symbols, numbers, or figures, whether (i) printed or inscribed on a tangible medium or (ii) stored in an electronic or other medium and retrievable in a perceivable form and whether an electronic signature authorized by Chapter 42.1 (§ 59.1-479 et seq.) of Title

59.1 is or is not affixed." This bill is a recommendation of the Freedom of Information Advisory Council. SB 1319 (2009 Acts of Assembly, c. 628).

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

**Oversight of research and development in the Commonwealth.** Merges the Innovative Technology Authority (ITA), and the Virginia Research and Technology Advisory Commission into a single entity, named the Innovation and Entrepreneurship Investment Authority (IEIA). Makes technical amendments to existing records and meetings exemptions to reflect the name change. HB 2201 (2009 Acts of Assembly, c. 809), SB 1456 (2009 Acts of Assembly, c. 325).

**Health Practitioners' Intervention Program; revisions.** Changes the name of the Health Practitioners' Intervention Program to the Health Practitioners' Monitoring Program. Among other provisions, the act makes technical changes to existing records and meetings exemptions to reflect the name change. HB 2407 (2009 Acts of Assembly, c. 472).

**Virginia College Savings Plan.** Provides for: (i) the exclusion of certain financial records of the Virginia College Savings Plan from the Freedom of Information Act; (ii) the authorization for closed meetings of the Board of the Virginia College Savings Plan in certain circumstances; (iii) the expansion of the Virginia College Savings Plan Board from eight to 11 members; (iv) the creation of two advisory committees to the Board; and (v) the authority for the Virginia College Savings Plan Board to establish scholarships or matching grant programs for qualified students. The bill also renames the individual hired by the Virginia College Savings Plan Board to direct, manage, and administer the Plan as the "chief executive officer," rather than the current designation of "executive director." HB 2549 (2009 Acts of Assembly, c. 826), SB 1251 (2009 Acts of Assembly, c. 844).

**Freedom of Information Act; certain records of the Department of Veterans Services and the Veterans Services Foundation.** Exempts from the mandatory disclosure provisions of the Freedom of Information Act (i) personal information contained in the Veterans Care Center Resident Trust Funds concerning residents or patients of the Department of Veterans Services care centers and (ii) records maintained in connection with fundraising activities by the Veterans Services Foundation to the extent that such records reveal the address, electronic mail address, facsimile or telephone number, social security number or other identification number appearing on driver's license, or credit card or bank account data of identifiable donors, except that access shall not be denied to the person who is the subject of the record. The bill provides, however, that it shall not be construed to authorize the withholding of records relating to the amount, date, purpose, and terms of the pledge or donation, or the identity of the donor. Nor does the exclusion provided by the bill apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the foundation for the performance of services or other work or (ii) the terms and conditions of such grants or contracts. Adds corresponding closed meetings exemptions. HB 2639 (2009 Acts of Assembly, c. 223).

**Freedom of Information Act; economic development records.** Amends an existing records exemption for economic development records to include records related to the retention of existing business, and to allow the exemption to be used by all public bodies subject to FOIA. The bill makes corresponding amendments to the existing meetings exemption that allows discussion of such records in closed meetings. SB 1344 (2009 Acts of Assembly, c. 765).

### **§ 2.2-3713. Proceedings for enforcement of chapter.**

**Freedom of Information Act; proceedings for enforcement.** Clarifies that enforcement actions under the Freedom of Information Act take precedence over other general provisions of law relating to writs of mandamus or injunction. SB 1505 (2009 Acts of Assembly, c. 634).

## **III. Other Access-Related Legislation**

### **Uncodified Acts**

**REAL ID Act; Commonwealth's participation.** Provides that, with the exception of identification cards issued to employees of the Department of State Police and certain other law enforcement officers, the Commonwealth will not comply with any provision of the federal REAL ID Act that it determines would compromise the economic privacy, biometric data, or biometric samples of any resident of the Commonwealth. HB 1587 (2009 Acts of Assembly, c. 733), SB 1431 (2009 Acts of Assembly, c. 769).

**Administrative Process Act; required review of the feasibility of electronic submission of certain information.** Requires every agency promulgating a regulation that requires the submission of documents or payments to examine the regulation to determine whether the submission of the required documents or payments may be accomplished by electronic means, and if so, consider amending the regulation to offer the alternative of electronic submission. HB 1969 (2009 Acts of Assembly, c. 85).

### **Title 2.2 Administration of Government**

**Patent and copyright policies of the Commonwealth.** Among other things, requires the Secretary of Administration, in consultation with the Secretary of Technology, to establish policies, subject to the approval of the Governor, regarding the use of patents and copyrights owned by the Commonwealth. HB 1941 (2009 Acts of Assembly, c. 791), SB 1174 (2009 Acts of Assembly, c. 841).

**Powers of VITA.** Authorizes Virginia Information Technologies Agency (VITA), subject to approval by the Secretary of Technology and any other affected Secretariat, to delegate to an agency within the executive branch the power to provide for the centralized marketing, provision, leasing, and executing of license agreements for electronic access to public information and government services through the Internet,

wireless devices, personal digital assistants, kiosks, or other such related media. The delegated agency would be authorized to fix and collect fees and charges for such services. HB 2023 (2009 Acts of Assembly, c. 87).

**Health information technology; adoption of standards.** Allows the Information Technology Investment Board to establish an advisory committee, consisting of persons with expertise in health care and information technology, to advise it on the adoption of nationally recognized health information technology technical and data standards. HB 2044 (2009 Acts of Assembly, c. 134).

**Auditor of Public Accounts; searchable database website of state budget expenditures and revenues.** Requires the Office of the Auditor of Public Accounts to include on its existing searchable database information regarding state audits or reports relating to public entities, capital outlay payments, and annual bonded indebtedness. The bill also provides for the searchable database to include the following additional elements as they become available through improved enterprise or other systems: (i) commodities, (ii) Virginia Performs data that directly relates to funding actions or expenditures, (iii) descriptive purposes for funding actions or expenditures, (iv) laws authorizing the issuance of bonds, and (v) copies of actual grants and contracts. In addition, the bill requires the Department of General Services, the Virginia Information Technologies Agency, and the State Comptroller to develop and maintain standard accounting information for use by all agencies and institutions for payments and purchases. HB 2285 (2009 Acts of Assembly, c. 812), SB 936 (2009 Acts of Assembly, c. 758).

**Government Data Collection and Dissemination Practices Act; collection of social security numbers.** Extends from July 1, 2009, to July 1, 2010, the implementation of the prohibition against collecting an individual's social security number unless collection of such number is (i) authorized or required by state or federal law and (ii) essential for the performance of that agency's duties. This bill is a recommendation of the Freedom of Information Advisory Council. See the enactment clauses of the bill for the effective dates of each provision. SB 1318 (2009 Acts of Assembly, c. 849). HB 2426 (2009 Acts of Assembly, c. 867). **Note:** *SB 1318 and HB 2426 were identical as introduced, however, the Senate accepted a Governor's recommendation amending SB 1318, while the House rejected the same recommendation regarding HB 2426.*

**Protection of Social Security Numbers Act; penalties.** Provides that the first five digits of a social security number contained in a public record shall be confidential and exempt from disclosure under the Freedom of Information Act. The bill does allow release of a social security number under certain limited circumstances, including proper judicial order; to federal, state or local law-enforcement or correctional personnel; by one agency to another agency in Virginia or to an agency in another state, district, or territory of the United States; and to any data subject exercising his rights under the Government Data Collection and Dissemination Practices Act. The bill provides for penalties for violation. HB 2427 (2009 Acts of Assembly, c. 213).

**Government Data Collection and Dissemination Practices Act; Department of Social Services; exemption.** Exempts from the Government Data Collection and Dissemination

Practices Act public assistance fraud investigations conducted by the Department of Social Services and local social service departments. SB 1305 (2009 Acts of Assembly, c. 573).

### **Title 3.2 Agriculture, Animal Care, and Food**

**Dangerous Dog Registry.** Authorizes the use of copies of all records, documents, and papers associated with the Dangerous Dog Registry in Virginia courts if the documents have been certified and authenticated by the State Veterinarian or the Dangerous Dog Registry administrator as true copies of the original documents. HB 1951 (2009 Acts of Assembly, c. 354).

### **Title 8.01 Civil Remedies and Procedure**

**Copies of medical bills and charges; no cost.** Provides that a patient's account balance or itemized listing of charges maintained by a health care provider shall be supplied at no cost, upon request, up to three times every twelve months to either the patient or the patient's attorney. SB 1154 (2009 Acts of Assembly, c. 270).

### **Title 10.1 Conservation**

**Solid waste disclosure statements.** Eliminates the requirement that applicants for permits issued under the Virginia Waste Management Act provide the social security numbers of their key personnel in disclosure statements that are submitted to the Department of Environmental Quality. HB 2255 (2009 Acts of Assembly, c. 27).

**Notice of election of district directors.** Requires that notice of the date for filing nominating petitions and the date of the election for soil and water conservation district directors shall be posted in a prominent location at each district office 30 days before the filing date. Districts may use additional means to provide notice to the public of the election of district directors. Currently, such notice has to be published in a newspaper of general circulation in the district. The bill also requires the Virginia Soil and Water Conservation Board to notify each district that it's the district's responsibility to post such notice. HB 2218 (2009 Acts of Assembly, c. 370), SB 1324 (2009 Acts of Assembly, c. 629).

**Electronic meetings by the Air Pollution Control Board and the State Water Control Board.** Requires that any electronic communication meetings (teleconference) shall be held in compliance with the provisions the Freedom of Information Act, except that a quorum of the Board is not required to be physically assembled at one primary or central meeting location. The bill also requires that discussions of the Air Pollution Control Board or the State Water Control Board held via such electronic communication means shall be specifically limited to a (i) review of certain decisions of the Director, (ii) determination of the Air Pollution Control Board or the State Water Control Board whether or not to grant a public hearing or Board consideration, or (iii) delegation of the permit to the Director for his decision. No other matter of public business shall be

discussed or transacted by the Air Pollution Control Board or the State Water Control Board during any such meeting held via electronic communication. The bill also clarifies when certain public hearings may be held and who may preside over the public hearings. This bill is a recommendation of the Freedom of Information Advisory Council. SB 1317 (2009 Acts of Assembly, c. 627).

## **Title 15.2 Counties, Cities, and Towns**

**Hampton Roads area refuse collection and disposal system authority.** Sets forth the requirements that shall be followed by any authority created to collect and dispose of refuse with member localities consisting of the Cities of Norfolk, Virginia Beach, Portsmouth, Chesapeake, and Franklin, and the Counties of Isle of Wight, Southampton, and Suffolk. The list of requirements sets forth rules for selecting a board of directors, maintaining a strategic plan, setting fees and operating costs, tracking costs, revenues, and capital projects, maintaining a financing plan, and voting. Explicitly requires the authority to adhere strictly to the requirements of FOIA. Note that certain provisions of this act (other than the FOIA-related provision) have delayed effective dates, and the act expires upon dissolution of the authority. HB 1872 (2009 Acts of Assembly, c. 742).

**Publication of annual school budget.** Requires local governing bodies and local school divisions to publish the estimated required local match in the publication of the annual school budget. Local governing bodies and school divisions must, by law, publish the annual school budget for public inspection and comment. SB 1285 (2009 Acts of Assembly, c. 280).

## **Title 16.1 Courts Not of Record**

**Civil commitment of sexually violent predators; penalties.** Makes a number of changes, including requiring that the court records for certain sexual misdemeanors be retained for 50 years rather than 10 years; allowing access to records of juvenile court and the Department of Juvenile Justice; addressing challenges to filing defects, including defendants under the Commitment Review Committee; allowing access to sealed records; extending from 60 to 90 days the time for a probable cause hearing and allowing the respondent to waive his right to such hearing; setting a standard for the court to find probable cause; and extending from 90 to 120 the number of days after the probable cause hearing for conduct of the trial. HB 1843 (2009 Acts of Assembly, c. 740).

**Confidentiality of court records.** Provides that any person, agency, or institution that may inspect juvenile case files shall be authorized to have copies made of such records, subject to any restrictions, conditions, or prohibitions that the court may impose. This bill is a recommendation of the Committee on District Courts. HB 2310 (2009 Acts of Assembly, c. 138), SB 928 (2009 Acts of Assembly, c. 308).

## **Title 17.1 Courts of Record**

**Occasional remote access to land records; pilot program; fee.** Allows the clerk of the Circuit Court of Prince William County to establish a pilot program under which a daily fee is assessed for occasional remote access to land records by the general public. The clerk shall also assess a separate fee per image downloaded in an amount not to exceed the usual copying fee. The clerk shall make a report on the pilot program to the House and Senate Committees for Courts of Justice on or before September 30, 2012. The bill expires September 30, 2012. HB 1845 (2009 Acts of Assembly, c.76), SB 935 (2009 Acts of Assembly, c. 723).

**Statewide case and financial management systems; interface with circuit courts.** Gives the Executive Secretary of the Supreme Court the responsibility for the operation and maintenance of a case management system and financial management system, for related technology improvements, and requires that he permit an interface for the purpose of providing electronic information to state agencies, upon request of any circuit court that uses automation or technology improvements provided by a private vendor or the locality. The costs of designing, implementing, and maintaining any such interface shall be the responsibility of the circuit court clerk. Any expenses incurred by the office of the Executive Secretary, not to exceed \$104,280, related to this system shall be reimbursed through the Technology Trust Fund. HB 1946 (2009 Acts of Assembly, c. 793), SB 1442 (2009 Acts of Assembly, c. 857).

**Land records; social security numbers.** Requires, beginning July 1, 2012, that land records posted via secure remote access to the Internet may contain only the last four digits of the social security number of any party. SB 1277 (2009 Acts of Assembly, c. 312).

## **Title 18.2 Crimes and Offenses Generally**

**Concealed handgun permits; access to permittee information.** Protects from public disclosure permittee names and descriptive information held by the Department of State Police for purposes of entry into the Virginia Criminal Information Network. However, the information would still be available to law-enforcement agencies, officers, and agents in the course of law-enforcement duties, and nonidentifying statistical information would be available to the general public. HB 2144 (2009 Acts of Assembly, c. 235).

## **Title 19.2 Criminal Procedure**

**Search warrants executed upon electronic communication service providers or remote computing service providers.** Provides that a search warrant for records or other information pertaining to a subscriber to, or customer of, an electronic communication service or remote computing service that is transacting or has transacted any business in the Commonwealth, including the contents of electronic communications, may be served upon such a provider within or without the Commonwealth by mail, facsimile, or other electronic means. Currently, there is no provision for service of such a warrant outside the Commonwealth nor is there a specific provision allowing for mail, fax or electronic

service. Additionally, under current law, electronic communications are expressly excluded from the coverage of the warrant. SB 1009 (2009 Acts of Assembly, c. 725).

## **Title 22.1 Education**

**Annual report of expenditures; local school boards.** Requires the annual report of expenditures provided by the school board to the appropriate governing body to also be made available to the public on a template prescribed by the Board of Education. HB 2269 (2009 Acts of Assembly, c. 104).

**Publication of annual school budget.** Requires local governing bodies and local school divisions to publish the estimated required local match in the publication of the annual school budget. Local governing bodies and school divisions must, by law, publish the annual school budget for public inspection and comment. SB 1285 (2009 Acts of Assembly, c. 280).

## **Title 32.1 Health**

**Patient level data system; reporting requirement.** Adds patient street address and city or county to and removes patient relationship to insured from the list of information that must be reported by hospitals, facilities, physicians, and oral and maxillofacial surgeons. HB 2462 (2009 Acts of Assembly, c. 652).

**Notification of family member of person involved in commitment process.** Authorizes disclosure to a family member or personal representative of a person who is involved in the commitment process of information that is directly relevant to such person's involvement with the individual's health care, which may include the individual's location and general condition. SB 1077 (2009 Acts of Assembly, c. 606).

**Death certificates; disclosure to grandchildren and great-grandchildren.** Requires the State Registrar or the city or county registrar to issue a certified copy of a death certificate to the grandchild or great-grandchild of a decedent in accordance with procedures prescribed by the Board of Health in regulation. SB 927 (2009 Acts of Assembly, c. 505).

## **Title 37.2 Mental Health, Mental Retardation and Substance Abuse Services**

**Notification of family member of person involved in commitment process.** Authorizes disclosure to a family member or personal representative of a person who is involved in the commitment process of information that is directly relevant to such person's involvement with the individual's health care, which may include the individual's location and general condition. SB 1077 (2009 Acts of Assembly, c. 606).

## **Title 38.2 Insurance**

**Confidentiality of insurance information.** Provides for the confidentiality of company licensing applications and supporting documentation received by the State Corporation Commission. The requirement for confidential treatment extends to information obtained by the Commission or any other person in the course of an investigation or a review of a licensing application. HB 1935 (2009 Acts of Assembly, c. 352).

## **Title 46.2 Motor Vehicles**

**Electronic filings; Department of Motor Vehicles.** Provides that DMV may require certain filings or submissions be made electronically, including any required monthly updates from insurance companies and requests for refunds of certain fuel. HB 2233 (2009 Acts of Assembly, c. 419).

**Obtaining licenses and identification cards; federal REAL ID Act.** Amends provisions for obtaining licenses to comply with federal REAL ID Act requirements. SB 1046 (2009 Acts of Assembly, c. 872).

## **Title 54.1 Professions and Occupations**

**Prescription Monitoring Program; disclosure of information.** Removes requirement that a prescriber obtain written consent from the recipient of a prescription before requesting information on that recipient for the purpose of establishing his treatment history, and allows prescribers to delegate authority to access information in the Program to up to two licensed health care professionals. Also allows the Director of the Department of Health Professions to enter into agreements for mutual exchange of information among prescription monitoring programs in other jurisdictions. HB 2211 (2009 Acts of Assembly, c. 158), SB 1195 (2009 Acts of Assembly, c.162).

**Department of Health Professions; investigations.** Provides that, when a complaint or report has been filed about a person licensed, certified, or registered by a health regulatory board, a copy of the complaint or report shall be provided to the person who is the subject of the complaint or report prior to any interview of the person who is the subject of the complaint or report or at the time the person who is the subject of the complaint or report is notified of the complaint or report, whichever shall occur first, unless provision of the complaint or report to the person would materially obstruct a criminal or regulatory investigation. This bill clarifies that requirements related to confidentiality of information obtained during an investigation or disciplinary proceeding shall not prohibit investigative staff from interviewing fact witnesses, disclosing to fact witnesses the identity of the subject of the complaint or report, or reviewing with fact witnesses a copy of records or other supporting documentation necessary to refresh the fact witness's recollection. HB 1852 (2009 Acts of Assembly, c. 342).

**Department of Health Professions; information concerning health professionals.** Provides that the Department of Health Professions shall collect an official address of record from each health professional licensed, registered or certified by each health regulatory board within the Department, to be used by the Department and relevant health

regulatory boards for agency purposes, and that such address shall remain confidential. This bill also requires that the Department provide an opportunity for health professionals to provide a second address for purposes of public dissemination, which may include a work address, post office address, or home address, and that where no alternative address is provided, the address of record shall be made public. This bill further requires the Department to develop a procedure for health professionals to update their address information at regular intervals, and authorizes the Department to collect a fee sufficient to cover the costs of such updates. SB 1282 (2009 Acts of Assembly, c. 687).

## **Title 55 Property and Conveyances**

**Property Owners' Association Act; access to books and records.** Provides that actual salary information of the six highest paid employees of a property owners' association making over \$75,000 shall be available for examination and copying by association members. Currently, only aggregate salary information is required to be open. The bill also specifies that all books and records of the association, including individual salary information for all employees and payments to independent contractors, are available for examination by a member of the board of directors. HB 2305 (2009 Acts of Assembly, c. 665).

## **Title 56 Public Service Companies**

**Public-Private Education Facilities and Infrastructure Act of 2002; definitions; review of proposals.** Amends the definition of "qualifying project" to include any services designed to increase the productivity and efficiency of a responsible public entity. Currently such services require the direct or indirect use of technology. In addition the bill (i) requires that a public hearing be held by the responsible public entity on a proposal at least 30 days prior to entering into an interim or comprehensive agreement, and (ii) provides for the Auditor of Public Accounts to post copies of interim and comprehensive agreements that have been periodically reviewed by that office in an online database. The bill also establishes a working group convened by the Chairmen of the Senate Committee on General Laws and Technology and the House Committee on General Laws to annually review model guidelines used by responsible public entities and to consider best practices recommendations. SB 1153 (2009 Acts of Assembly, c. 762).

## **Title 62.1 Waters of the State, Ports and Harbors**

**Electronic meetings by the Air Pollution Control Board and the State Water Control Board.** Requires that any electronic communication meetings (teleconference) shall be held in compliance with the provisions the Freedom of Information Act, except that a quorum of the Board is not required to be physically assembled at one primary or central meeting location. The bill also requires that discussions of the Air Pollution Control Board or the State Water Control Board held via such electronic communication means shall be specifically limited to a (i) review of certain decisions of the Director, (ii) determination of the Air Pollution Control Board or the State Water Control Board

whether or not to grant a public hearing or Board consideration, or (iii) delegation of the permit to the Director for his decision. No other matter of public business shall be discussed or transacted by the Air Pollution Control Board or the State Water Control Board during any such meeting held via electronic communication. The bill also clarifies when certain public hearings may be held and who may preside over the public hearings. This bill is a recommendation of the Freedom of Information Advisory Council. SB 1317 (2009 Acts of Assembly, c. 627).

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