



# VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

## COMMONWEALTH OF VIRGINIA

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## **2016 FOIA LEGISLATIVE UPDATE**

*NOTE: Unless otherwise stated, the changes in the law described herein will take effect July 1, 2016.*

### **I. Introduction**

The General Assembly passed a total of 16 bills amending the Virginia Freedom of Information Act (FOIA) during the 2016 Session. Note that while the Virginia Freedom of Information Advisory Council (the Council) heard several proposals in 2015 as part of its annual Legislative Preview, the Council did not vote to recommend any specific legislation this year. The Council in 2015 completed the second year of the three-year study of FOIA directed by House Joint Resolution No. 96 (2014). As part of that study the Council has stated that it will recommend omnibus legislation to the 2017 Session of the General Assembly incorporating all of its recommend changes, rather than recommending individual pieces of legislation each year.

Three bills create two new sections in FOIA and amend existing provisions as follows:

- Reverses the holding of the Virginia Supreme Court in the case of *Department of Corrections v. Surovell*, by setting out the general rule of redaction, which provides that no provision of FOIA is intended, nor shall it be construed or applied, to authorize a public body to withhold a public record in its entirety on the grounds that some portion of the public record is excluded from disclosure by FOIA or by any other provision of law. Further, the bill states that a public record may be withheld from disclosure in its entirety only to the extent that an exclusion from disclosure under FOIA or other provision of law applies to the entire content of the public record. Otherwise, only those portions of the public record containing information subject to an exclusion under FOIA or other provision of law may be withheld, and all portions of the public record that are not so excluded shall be disclosed. The bill defines the term "information" and provides that it is declaratory of the law as it existed prior to the September 17, 2015, decision of the Supreme Court of Virginia in the case of the *Department of Corrections v. Surovell*. The bill also reverses that part of the holding of the Virginia Supreme Court in the case of *Department of Corrections v. Surovell* by providing that in a

FOIA enforcement action, no court shall be required to accord any weight to the determination of a public body as to whether an exclusion applies. The bill contains technical amendments. HB 817 and SB 494, adding new § 2.2-3704.01 and amending §§ 2.2-3701, 2.2-3704, 2.2-3705.1 through 2.2-3705.7, 2.2-3711, and 2.2-3713;

- Requires certain local public bodies to post a FOIA rights and responsibilities document on their respective public government website. The bill also requires all state public bodies and all local public bodies that are subject to FOIA to designate and publicly identify one or more FOIA officers whose responsibility is to serve as a point of contact for members of the public in requesting public records and to coordinate the public body's compliance with the provisions of FOIA. The bill sets out where contact information for the designated FOIA officer is to be posted. The bill requires that any such FOIA officer shall possess specific knowledge of the provisions of FOIA and be trained at least annually by legal counsel for the public body or the Virginia Freedom of Information Advisory Council. HB 818 adding new § 2.2-3704.2 and amending § 2.2-3704.1.

Three bills add three new records exemptions in FOIA as follows:

- Excludes from the Virginia Freedom of Information Act any records received by the Department of Criminal Justice Services pursuant to the operation of or for the purposes of evaluating threat assessment teams and oversight committees, school safety audits, and school crisis, emergency management, and medical emergency response plans of public schools and threat assessment teams of public institutions of higher education, to the extent that such records reveal security plans, walk-through checklists, or vulnerability and threat assessment components. The bill allows criminal record, juvenile record, and health record information to be disseminated to members of a threat assessment team established by a local school board. Current law allows only threat assessment teams established by an institution of higher education to access such information. The bill provides that no member of a threat assessment team shall redisclose any such information or use the information beyond the purpose for which the disclosure was made. HB 1013 adding a new exemption in § 2.2-3705.2 and amending existing provisions of § 2.2-3705.4;
- Excludes records reflecting the substance of meetings in which individual sexual assault cases are discussed by a sexual assault response team from mandatory disclosure under the Virginia Freedom of Information Act. The findings of a sexual assault response team may be disclosed or published in statistical or other aggregated form that does not disclose the identity of specific individuals. HB 1016 adding a new exemption in § 2.2-3705.7;
- Establishes the Virginia Research Investment Committee (the Committee) to administer grants and loans from the Virginia Research Investment Fund (the Fund), created by this bill, to promote research, development, and

commercialization in the Commonwealth. The bill provides that the State Council of Higher Education for Virginia (SCHEV) will establish guidelines related to administration and award of grants from the Fund, in consultation with the Committee. Upon receipt of completed grant applications, SCHEV will forward them to an entity with recognized science and technology expertise to review and rank the applications. Applications will then be forwarded to the Committee to make a final decision about the award of grants and funds. The bill contains corresponding exemptions for certain grant or loan application records and for the discussion or consideration of such records in closed meetings. HB 1343 adding new exemptions in §§ 2.2-3705.6 and 2.2-3711.

Three bills add two new meetings exemptions in FOIA as follows:

- Establishes the Virginia Growth and Opportunity Board to administer grants from the Virginia Growth and Opportunity Fund for regional economic and workforce development projects. The bill provides that regional councils will be established across the Commonwealth, consisting of representatives of government and the business and education communities, and councils may submit applications for collaborative projects in their regions that enhance private-sector growth, competitiveness, and workforce development. The bill creates a corresponding meeting exemption for the discussion or development of such grant proposals by a regional council. HB 834 and SB 449 amending 2.2-3711;
- Establishes the Virginia Research Investment Committee (the Committee) to administer grants and loans from the Virginia Research Investment Fund (the Fund), created by this bill, to promote research, development, and commercialization in the Commonwealth. The bill provides that the State Council of Higher Education for Virginia (SCHEV) will establish guidelines related to administration and award of grants from the Fund, in consultation with the Committee. Upon receipt of completed grant applications, SCHEV will forward them to an entity with recognized science and technology expertise to review and rank the applications. Applications will then be forwarded to the Committee to make a final decision about the award of grants and funds. The bill contains corresponding exemptions for certain grant or loan application records and for the discussion or consideration of such records in closed meetings. HB 1343 adding new exemptions in §§ 2.2-3705.6 and 2.2-3711.

Eight bills amend existing provisions of FOIA as follows:

- Provides that the personnel, working papers, and correspondence record exemption shall not be construed to authorize the withholding of any resumes or applications submitted by persons who are appointed by the Governor. The bill further provides that the resumes and applications for appointment submitted by persons who are appointed by the Governor shall be available to the public upon request. The bill provides that its provisions apply to persons appointed by the

Governor on or after July 1, 2016. The bill contains technical amendments. HB 220 amending §§ 2.2-3705.1 and 2.2-3705.7;

- Makes various changes to the Board of Directors (the Board) of the BVU Authority (the Authority) and alters the methods of their appointment and their powers and duties. The bill also amends the powers and duties of the Authority. Among other changes, the bill eliminates several Authority-related records and open meeting exemptions from the Freedom of Information Act. The bill also contains an emergency clause. HB 1255 and SB 329 amending §§ 2.2-3705.6 and 2.2-3711. [**NOTE:** *Due to the emergency clause, both bills were enacted effective April 8, 2016.*]
- Clarifies that the FOIA exclusion for noncriminal incidents and reports applies to any public body that engages in criminal law-enforcement activities and does not rely on the definition of "noncriminal incidents records" in § 15.2-1722 of the Code of Virginia. The bill addresses a decision of the Virginia Supreme Court in *Fitzgerald v. Loudoun County Sheriff's Office*, which held that a noncriminal record must be a compilation in order for the exemption for noncriminal records to apply. The bill was also the subject of a Virginia Freedom of Information Advisory Council opinion (AO-08-15) concerning this exemption, which highlighted the need for clarification of this exemption based on the Fitzgerald holding. HB 1318 amending § 2.2-3706;
- Clarifies that nothing in the personnel exemption in the open meetings law of FOIA shall be construed to authorize a closed meeting by a local governing body or an elected school board to discuss compensation matters that affect the membership of such body or board collectively. SB 493 amending § 2.2-3711;
- Amends an existing exemption to exclude from mandatory disclosure records of an application for licensure or renewal of a license for teachers and other school personnel, including transcripts or other documents submitted in support of an application. SB 564 amending § 2.2-3705.3;
- Defines the term "critical infrastructure information" for purposes of FOIA. The bill also provides that any public body receiving a request for such records shall notify the Secretary of Public Safety and Homeland Security or his designee of the request and the response made by the public body. The bill contains an emergency clause. SB 645 amending § 2.2-3705.2. [**NOTE:** *Due to the emergency clause, this bill was enacted effective April 6, 2016.*];
- Clarifies public access to noncriminal records maintained by public bodies engaged in criminal law-enforcement activities. The bill reverses an April 2015 Virginia Supreme Court decision in *Fitzgerald v. Loudoun County Sheriff's Office*, which held that a noncriminal record must be a compilation in order for the exemption for noncriminal records to apply. The bill was also the subject of a Virginia Freedom of Information Advisory Council opinion (AO-08-15)

concerning this exemption, which highlighted the need for clarification of this exemption based on the *Fitzgerald* holding. SB 727 amending § 2.2-3706.

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 2016 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, 2016.

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

### **§ 2.2-3701 Definitions.**

**Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination.** Reverses the holding of the Virginia Supreme Court in the case of *Department of Corrections v. Surovell*, by setting out the general rule of redaction, which provides that no provision of FOIA is intended, nor shall it be construed or applied, to authorize a public body to withhold a public record in its entirety on the grounds that some portion of the public record is excluded from disclosure by FOIA or by any other provision of law. Further, the bill states that a public record may be withheld from disclosure in its entirety only to the extent that an exclusion from disclosure under FOIA or other provision of law applies to the entire content of the public record. Otherwise, only those portions of the public record containing information subject to an exclusion under FOIA or other provision of law may be withheld, and all portions of the public record that are not so excluded shall be disclosed. The bill defines the term "information" and provides that it is declaratory of the law as is it existed prior to the September 17, 2015, decision of the Supreme Court of Virginia in the case of the *Department of Corrections v. Surovell*. The bill also reverses that part of the holding of the Virginia Supreme Court in the case of *Department of Corrections v. Surovell* by providing that in a FOIA enforcement action, no court shall be required to accord any weight to the determination of a public body as to whether an exclusion applies. The bill contains technical amendments. HB 817 (2016 Acts of Assembly, c. 620) and SB 494 (2016 Acts of Assembly, c. 716).

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

**Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination.** See summary under § 2.2-3701, *supra*. HB 817 (2016 Acts of Assembly, c. 620) and SB 494 (2016 Acts of Assembly, c. 716).

**§ 2.2-3704.01. Records containing both excluded and nonexcluded information; duty to redact.**

**Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination.** *See summary under § 2.2-3701, supra.* HB 817 (2016 Acts of Assembly, c. 620) and SB 494 (2016 Acts of Assembly, c. 716). [NOTE: Section 2.2-3704.01 is a new section added by HB 817 and SB 494.]

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

**Virginia Freedom of Information Act (FOIA); designation of FOIA officer; posting of FOIA rights and responsibilities.** Requires certain local public bodies to post a FOIA rights and responsibilities document on their respective public government website. The bill also requires all state public bodies and all local public bodies that are subject to FOIA to designate and publicly identify one or more FOIA officers whose responsibility is to serve as a point of contact for members of the public in requesting public records and to coordinate the public body's compliance with the provisions of FOIA. The bill sets out where contact information for the designated FOIA officer is to be posted. The bill requires that any such FOIA officer shall possess specific knowledge of the provisions of FOIA and be trained at least annually by legal counsel for the public body or the Virginia Freedom of Information Advisory Council. HB 818 (2016 Acts of Assembly, c. 748).

**§ 2.2-3704.2. Public bodies to designate FOIA officer.**

**Virginia Freedom of Information Act (FOIA); designation of FOIA officer; posting of FOIA rights and responsibilities.** *See summary under § 2.2-3704.1, supra.* HB 818 (2016 Acts of Assembly, c. 748). [NOTE: Section 2.2-3704.2 is a new section added by HB 818.]

**§ 2.2-3705.1. Exclusions to application of chapter; exclusions of general application to public bodies.**

**Virginia Freedom of Information Act; public access to resumes and other information related to gubernatorial appointees.** Provides that the personnel, working papers, and correspondence record exemption shall not be construed to authorize the withholding of any resumes or applications submitted by persons who are appointed by the Governor. The bill further provides that the resumes and applications for appointment submitted by persons who are appointed by the Governor shall be available to the public upon request. The bill provides that its provisions apply to persons appointed by the Governor on or after July 1, 2016. The bill contains technical amendments. HB 220 (2016 Acts of Assembly, c. 729).

**Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination.** *See summary under § 2.2-3701, supra.* HB 817 (2016 Acts of Assembly, c. 620) and SB 494 (2016 Acts of Assembly, c. 716).

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

**Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination.** *See summary under § 2.2-3701, supra.* HB 817 (2016 Acts of Assembly, c. 620) and SB 494 (2016 Acts of Assembly, c. 716).

**Threat assessment teams; local school boards.** Excludes from the Virginia Freedom of Information Act any records received by the Department of Criminal Justice Services pursuant to the operation of or for the purposes of evaluating threat assessment teams and oversight committees, school safety audits, and school crisis, emergency management, and medical emergency response plans of public schools and threat assessment teams of public institutions of higher education, to the extent that such records reveal security plans, walk-through checklists, or vulnerability and threat assessment components. The bill allows criminal record, juvenile record, and health record information to be disseminated to members of a threat assessment team established by a local school board. Current law allows only threat assessment teams established by an institution of higher education to access such information. The bill provides that no member of a threat assessment team shall redisclose any such information or use the information beyond the purpose for which the disclosure was made. HB 1013 (2016 Acts of Assembly, c. 554).

**Virginia Freedom of Information Act (FOIA); exempt records concerning critical infrastructure information.** Defines the term "critical infrastructure information" for purposes of FOIA. The bill also provides that any public body receiving a request for such records shall notify the Secretary of Public Safety and Homeland Security or his designee of the request and the response made by the public body. The bill contains an emergency clause. SB 645 (2016 Acts of Assembly, c. 717). [NOTE: *Due to the emergency clause, this bill was enacted effective April 6, 2016.*]

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

**Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination.** *See summary under § 2.2-3701, supra.* HB 817 (2016 Acts of Assembly, c. 620) and SB 494 (2016 Acts of Assembly, c. 716).

**Freedom of Information Act; exclusions for school personnel licensure applications.** Excludes records of an application for licensure or renewal of a license for teachers and other school personnel, including transcripts or other documents submitted in support of

an application, from the provisions of the Freedom of Information Act. SB 564 (2016 Acts of Assembly, c. 272).

**§ 2.2-3705.4. Exclusions to application of chapter; educational records and certain records of educational institutions.**

**Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination.** *See summary under § 2.2-3701, supra.* HB 817 (2016 Acts of Assembly, c. 620) and SB 494 (2016 Acts of Assembly, c. 716).

**Threat assessment teams; local school boards.** *See summary under § 2.2-3705.2, supra.* HB 1013 (2016 Acts of Assembly, c. 554).

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

**Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination.** *See summary under § 2.2-3701, supra.* HB 817 (2016 Acts of Assembly, c. 620) and SB 494 (2016 Acts of Assembly, c. 716).

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

**Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination.** *See summary under § 2.2-3701, supra.* HB 817 (2016 Acts of Assembly, c. 620) and SB 494 (2016 Acts of Assembly, c. 716).

**Virginia Research Investment Committee and Fund established; report.** Establishes the Virginia Research Investment Committee (the Committee) to administer grants and loans from the Virginia Research Investment Fund (the Fund), created by this bill, to promote research, development, and commercialization in the Commonwealth. The bill provides that the State Council of Higher Education for Virginia (SCHEV) will establish guidelines related to administration and award of grants from the Fund, in consultation with the Committee. Upon receipt of completed grant applications, SCHEV will forward them to an entity with recognized science and technology expertise to review and rank the applications. Applications will then be forwarded to the Committee to make a final decision about the award of grants and funds. The Committee will be comprised of the Director of SCHEV, who will also serve as chairman, the Secretary of Finance, the staff directors of the House Appropriations and Senate Finance Committees, and three citizen members. The Speaker of the House of Delegates, the Senate Committee on Rules, and the Governor would each appoint one citizen member, to be selected from the nonlegislative citizen members of the Go Virginia Board if such Board is created by the



2016 Session of the General Assembly and becomes law. Of the moneys appropriated to the Fund, the General Assembly may specifically designate a portion of the moneys to be invested by the Board of the Virginia Retirement System. Only \$4 million of such invested funds may be awarded in any given year, and if the Committee decides to award a loan, such loan must come out of this \$4 million. HB 1343 (2016 Acts of Assembly, c. 775).

**BVU Authority; Board powers, officers; broadband; FOIA.** Makes various changes to the Board of Directors (the Board) of the BVU Authority (the Authority) and alters the methods of their appointment and their powers and duties. The bill also amends the powers and duties of the Authority. Among other changes, the bill eliminates several Authority-related records and open meeting exemptions from the Freedom of Information Act. The bill also contains an emergency clause. HB 1255 (2016 Acts of Assembly, c. 725) and SB 329 (2016 Acts of Assembly, c. 724). [NOTE: *Due to the emergency clause, both bills were enacted effective April 8, 2016.*]

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

**Virginia Freedom of Information Act; public access to resumes and other information related to gubernatorial appointees.** See summary under § 2.2-3705.1, *supra*. HB 220 (2016 Acts of Assembly, c. 729).

**Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination.** See summary under § 2.2-3701, *supra*. HB 817 (2016 Acts of Assembly, c. 620) and SB 494 (2016 Acts of Assembly, c. 716).

**Sexual assault response teams; participants; FOIA exclusion.** Adds the Title IX coordinator; representatives from the office of student affairs, human resources, and counseling services; and a representative of campus security of any institution of higher education in the jurisdiction to the list of persons invited to participate in the annual meeting of a sexual assault response team. The bill also excludes records reflecting the substance of meetings in which individual sexual assault cases are discussed by a sexual assault response team from mandatory disclosure under the Virginia Freedom of Information Act. The findings of a sexual assault response team may be disclosed or published in statistical or other aggregated form that does not disclose the identity of specific individuals. HB 1016 (2016 Acts of Assembly, c.550).

### **§ 2.2-3706. Disclosure of criminal records; limitations.**

**Virginia Freedom of Information Act (FOIA); noncriminal incidents and reports.** Clarifies that the FOIA exclusion for noncriminal incidents and reports applies to any public body that engages in criminal law-enforcement activities and does not rely on the definition of "noncriminal incidents records" in § 15.2-1722 of the Code of Virginia. The bill addresses a decision of the Virginia Supreme Court in *Fitzgerald v. Loudoun County*

*Sheriff's Office*, which held that a noncriminal record must be a compilation in order for the exemption for noncriminal records to apply. The bill was also the subject of a Virginia Freedom of Information Advisory Council opinion (AO-08-15) concerning this exemption, which highlighted the need for clarification of this exemption based on the Fitzgerald holding. HB 1318 (2016 Acts of Assembly, c. 546).

**Virginia Freedom of Information Act; public access to noncriminal records.** Clarifies public access to noncriminal records maintained by public bodies engaged in criminal law-enforcement activities. The bill reverses an April 2015 Virginia Supreme Court decision in *Fitzgerald v. Loudoun County Sheriff's Office*, which held that a noncriminal record must be a compilation in order for the exemption for noncriminal records to apply. The bill was also the subject of a Virginia Freedom of Information Advisory Council opinion (AO-08-15) concerning this exemption, which highlighted the need for clarification of this exemption based on the *Fitzgerald* holding. SB 727 (2016 Acts of Assembly, c. 184).

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

**Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination.** *See summary under § 2.2-3701, supra.* HB 817 (2016 Acts of Assembly, c. 620) and SB 494 (2016 Acts of Assembly, c. 716).

**Virginia Growth and Opportunity Act; report.** Establishes the Virginia Growth and Opportunity Board to administer grants from the Virginia Growth and Opportunity Fund for regional economic and workforce development projects. The bill provides that regional councils will be established across the Commonwealth, consisting of representatives of government and the business and education communities, and councils may submit applications for collaborative projects in their regions that enhance private-sector growth, competitiveness, and workforce development. A portion of the grant funds will be awarded on a population basis and a portion on a competitive basis. HB 834 (2016 Acts of Assembly, c. 779) and SB 449 (2016 Acts of Assembly, c. 778).

**BVU Authority; Board powers, officers; broadband; FOIA.** *See summary under § 2.2-3705.6, supra.* HB 1255 (2016 Acts of Assembly, c. 725) and SB 329 (2016 Acts of Assembly, c. 724). [NOTE: Both bills were enacted and took effect on April 8, 2016.]

**Virginia Research Investment Committee and Fund established; report.** *See summary under § 2.2-3705.6, supra.* HB 1343 (2016 Acts of Assembly, c. 775).

**Virginia Freedom of Information Act (FOIA); closed meeting not authorized for discussion of compensation matters for local governing bodies and elected school boards.** Clarifies that nothing in the personnel exemption in the open meetings law of FOIA shall be construed to authorize a closed meeting by a local governing body or an elected school board to discuss compensation matters that affect the membership of such body or board collectively. SB 493 (2016 Acts of Assembly, c. 544).

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

**Virginia Freedom of Information Act (FOIA); record exclusions; rule of redaction; no weight accorded to public body's determination.** *See summary under § 2.2-3701, supra.* HB 817 (2016 Acts of Assembly, c. 620) and SB 494 (2016 Acts of Assembly, c. 716).

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

### **Resolutions**

**Commending the Virginia Coalition for Open Government. House Joint Resolution 91.**

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

**Duties and responsibilities of the Virginia Information Technologies Agency; reorganization and recodification.** Makes numerous technical or organizational changes to Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2 related to the establishment and operation of the Virginia Information Technologies Agency (VITA). The bill does not make substantive changes to VITA's powers and duties. The bill was developed by a staff workgroup led by the Division of Legislative Services pursuant to § 1-6 of the 2015 Appropriation Act to address concerns identified in the Joint Legislative Audit and Review Commission's 2014 Report on Virginia's Information Technology Governance Structure. HB 1064 (2016 Acts of Assembly, c. 296). [NOTE: The bill includes several FOIA-related provisions.]

**Lobbyist reporting, the State and Local Government Conflict of Interests Act, and the General Assembly Conflicts of Interests Act; annual filing of required disclosures; definition of gift; separate report of gifts; definition of procurement transaction; technical amendments.** Requires the disclosure forms filed by lobbyists and persons subject to the conflict of interests acts to be filed annually. Lobbyists are required to file by July 1 for the preceding 12-month period complete through the last day of April, and persons subject to the conflict of interests acts are required to file on or before January 15. The bill also requires the Governor, Lieutenant Governor, and Attorney General, members of the Governor's Cabinet, and members of the General Assembly to file on or before May 1 a separate report of gifts received during the period beginning January 1 through adjournment sine die of the regular session of the General Assembly. Effective January 1, 2017, the bill removes from the Code the disclosure forms filed by lobbyists and persons subject to the conflict of interests acts and requires the Virginia Conflict of Interest and Ethics Advisory Council (Council) to prescribe the forms to be used to comply with disclosure requirements.

The bill also makes numerous other changes related to lobbyist reporting and the conflict of interests acts, including (i) exempting from the definition of a gift any gift with a value

of less than \$20; (ii) providing that the filing of a single disclosure form by a person subject to the conflict of interests acts satisfies the filing requirement for all positions or offices held or sought by such person; (iii) clarifying that lobbying disclosure forms are filed with the Council and are open to public inspection and copying in the office of the Council, and not the Secretary of the Commonwealth; (iv) clarifying that candidates for statewide office, the General Assembly, and constitutional office are required to file a statement of economic interests with the Council; (v) authorizing travel provided to facilitate attendance by a legislator at certain meetings where attendance is approved by the Chairman of the House or Senate Committee on Rules in addition to approval by either committee; (vi) clarifying that gifts to certain members of a lobbyist's family are not considered gifts; (vii) providing that the definition of procurement transaction for purposes of the laws governing lobbyists is limited to those transactions in which the stated or expected value of the contract is \$5 million or more; (viii) providing that records relating to formal advisory opinions or informal advice of the Council shall be confidential and excluded from the mandatory disclosure provisions of the Virginia Freedom of Information Act; (ix) providing that a lobbyist's principal is not required to disclose the name of a legislative or executive official, or a member of his immediate family, who attends a reportable entertainment event if that legislative or executive official reimburses the principal for, or otherwise pays for, his attendance or the attendance of a member of his immediate family at the entertainment event; and (x) authorizes the Council to grant an extension from a filing deadline for good cause. The bill contains an emergency clause that applies to the changes described in clauses (vii) through (x).

Finally, the bill requires that the Supreme Court of Virginia report to the Council by October 1, 2016, on the application of the conflict of interests acts on members of the judiciary and evaluate the feasibility of creating separate provisions that would apply to such member. HB 1362 (2016 Acts of Assembly, c. 773) and SB 692 (2016 Acts of Assembly, c. 774).

## **Title 8.01 Civil remedies and procedure.**

**Immunity of persons at public hearing; attorney fees and costs.** Allows the award of reasonable attorney fees and costs to any person who has a suit against him dismissed pursuant to immunity provided to him when appearing at a public hearing before the governing body of a locality or other local governmental entity. HB 1117 (2016 Acts of Assembly, c. 239).

## **Title 12.1 State Corporation Commission**

**Regulation of water and sewer utilities.** Makes water and sewer companies subject to the rules of the State Corporation Commission (SCC) regarding meetings and communications between SCC commissioners and any party, or between commissioners and staff, concerning any fact or issue arising out of a proceeding involving the regulation of rates, charges, services, or facilities of a utility. The bill requires a public utility to send notice of a proposed rate increase electronically to customers who receive

bills electronically. Every public utility providing water or sewer service is required to publish notice of changes in rates, tolls, charges, rules, and regulations at least once in one or more newspapers in circulation in its franchise area. The measure bars the SCC from dispensing with notice requirements applicable to water and sewer companies. HB 611 (2016 Acts of Assembly, c. 283) and SB 85 (2016 Acts of Assembly, c. 191).

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

**Sexual assault response teams; participants; FOIA exclusion.** *See summary under § 2.2-3705.7, supra.* HB 1016 (2016 Acts of Assembly, c.550).

**BVU Authority; Board powers, officers; broadband; FOIA.** *See summary under § 2.2-3705.6, supra.* HB 1255 (2016 Acts of Assembly, c. 725) and SB 329 (2016 Acts of Assembly, c. 724). [NOTE: Both bills were enacted and took effect on April 8, 2016.]

## **Title 16.1 Courts Not of Records.**

**Law-enforcement records concerning juveniles; disclosure.** Allows the disclosure of law-enforcement records concerning a juvenile who is referred to a court services unit-authorized diversion program. The bill prohibits further disclosure of such records by the diversion program or participants in the program. Law-enforcement officers may prohibit disclosure to protect a criminal investigation or intelligence information. HB 541 (2016 Acts of Assembly, c. 234).

## **Title 17.1 Courts of Record.**

**Retention of court records; violent felonies and acts of violence.** Requires that the circuit court case files involving a conviction on crimes that are considered to be violent felonies or acts of violence be retained for 50 years or until the sentence term ends, whichever comes later. HB 624 (2016 Acts of Assembly, c. 180).

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

**Cannabidiol oil and THC-A oil; permitting of pharmaceutical processors to manufacture and provide.** Authorizes a pharmaceutical processor, after obtaining a permit from the Board of Pharmacy (the Board) and under the supervision of a licensed pharmacist, to manufacture and provide cannabidiol oil and THC-A oil to be used for the treatment of intractable epilepsy. The bill sets limits on the number of permits that the Board may issue and requires that the Board adopt regulations establishing health, safety, and security requirements for permitted processors. The bill provides that only a licensed practitioner of medicine or osteopathy who is a neurologist or who specializes in the treatment of epilepsy may issue a written certification to a patient for the use of cannabidiol oil or THC-A oil. The bill also requires that a practitioner who issues a written certification for cannabidiol oil or THC-A oil, the patient issued such certification, and, if the patient is a minor or incapacitated, the patient's parent or legal guardian register with the Board. The bill requires further that a pharmaceutical processor

shall not provide cannabidiol oil or THC-A oil to a patient or a patient's parent or legal guardian without first verifying that the patient, the patient's parent or legal guardian if the patient is a minor or incapacitated, and the practitioner who issued the written certification have registered with the Board. Finally, the bill provides an affirmative defense for agents and employees of pharmaceutical processors in a prosecution for the manufacture, possession, or distribution of marijuana. An enactment clause provides that except for provisions requiring the Board to promulgate regulations, the provisions of the bill do not become effective unless reenacted by the 2017 Session of the General Assembly. SB 701 (2016 Acts of Assembly, c. 577). [NOTE: Exempts registration information from FOIA while providing access to certain persons.]

## **Title 19.2 Criminal Procedure.**

**Threat assessment teams; local school boards.** *See summary under § 2.2-3705.2, supra.* HB 1013 (2016 Acts of Assembly, c. 554).

## **Title 22.1 Education.**

**Data on teacher performance and quality; confidentiality.** Requires data collected by or for the Department of Education or the local school board or made available to and able to be used by the local school board to judge the performance or quality of a teacher, maintained in a teacher's personnel file or otherwise, to be confidential in most instances. Current law requires such data to be confidential only if it is used by a local school board to make such a judgment. The bill provides that if such data is disclosed pursuant to court order, for the purposes of a grievance proceeding involving the teacher, or as otherwise required by state or federal law, such disclosure shall be made in a form that does not personally identify any student or other teacher. HB 524 (2016 Acts of Assembly, c. 390).

**Threat assessment teams; local school boards.** *See summary under § 2.2-3705.2, supra.* HB 1013 (2016 Acts of Assembly, c. 554).

**Public charter schools.** Makes several changes to the provisions for the establishment and operation of public charter schools, including making changes and providing greater specificity regarding (i) the applicability of various laws, regulations, policies, and procedures to public charter schools; (ii) the contents of charter applications; and (iii) the procedure for executing charter contracts and the contents of such contracts. SB 734 (2016 Acts of Assembly, c. 770). [NOTE: States explicitly that management committees of public charter schools are subject to FOIA.]

## **Title 23 Educational Institutions.**

**Revision of Title 23, Educational Institutions.** Creates proposed Title 23.1 (Institutions of Higher Education; Other Educational and Cultural Institutions) as a revision of existing Title 23 (Educational Institutions). Proposed Title 23.1 consists of 32 chapters divided into five subtitles: Subtitle I (General Provisions); Subtitle II (Students and

Campus); Subtitle III (Management and Financing); Subtitle IV (Public Institutions of Higher Education); and Subtitle V (Other Educational and Cultural Institutions). The bill organizes the laws in a more logical manner, removes obsolete and duplicative provisions, and improves the structure and clarity of statutes pertaining to institutions of higher education and other educational and cultural institutions in the Commonwealth. The bill is a recommendation of the Virginia Code Commission and has a delayed effective date of October 1, 2016. HB 209 (2016 Acts of Assembly, c. 588). [NOTE: The bill contains numerous access-related provisions.]

**Public institutions of higher education; personal social media accounts.** Prohibits a public or private institution of higher education from requiring a student to disclose the username or password to any of such student's personal social media accounts, as defined in the bill. The bill further provides that such a prohibition shall not prevent a campus police officer appointed by a public or private institution of higher education from performing his official duties. SB 438 (2016 Acts of Assembly, c. 597).

## **Title 24.2 Elections.**

**Lobbyist reporting, the State and Local Government Conflict of Interests Act, and the General Assembly Conflicts of Interests Act; annual filing of required disclosures; definition of gift; separate report of gifts; definition of procurement transaction; technical amendments.** *See summary under Title 2.2, supra.* HB 1362 (2016 Acts of Assembly, c. 773) and SB 692 (2016 Acts of Assembly, c. 774).

**Local electoral boards; meeting minutes.** Requires the posting of minutes of the local electoral boards' meetings on the local electoral board's website or the official website of the county or city when such means are available. Minutes of meetings are required to be posted as soon as possible but no later than one week prior to the following meeting of the electoral board. SB 89 (2016 Acts of Assembly, c. 403).

## **Title 30 General Assembly.**

**Commission on Employee Retirement Security and Pension Reform established.** Creates the Commission on Employee Retirement Security and Pension Reform (the Commission) in the legislative branch to study and make recommendations relating to the financial soundness of retirement plans covering state and local government employees; the suitability of retirement plans offered or maintained for current state and local government employees and the attributes of retirement plans that will be suitable for future employees; the impact on state and local governments of the anticipated retirement of experienced employees between 2016 and 2026 and strategies for replacing such employees; and the elements of compensation and benefits packages that are essential to attracting and retaining a highly productive state and local government workforce. HB 665 (2016 Acts of Assembly, c. 683.) [NOTE: Among other provisions, contains an exemption from FOIA for certain proprietary records of the Virginia Retirement System or its subsidiary corporations provided to the Commission.]

**Lobbyist reporting, the State and Local Government Conflict of Interests Act, and the General Assembly Conflicts of Interests Act; annual filing of required disclosures; definition of gift; separate report of gifts; definition of procurement transaction; technical amendments.** *See summary under Title 2.2, supra.* HB 1362 (2016 Acts of Assembly, c. 773) and SB 692 (2016 Acts of Assembly, c. 774).

### **Title 32.1 Health.**

**Threat assessment teams; local school boards.** *See summary under § 2.2-3705.2, supra.* HB 1013 (2016 Acts of Assembly, c. 554).

### **Title 53.1 Prisons and Other Methods of Correction.**

**Method of execution.** Authorizes the Director of the Department of Corrections to enter into contracts with a pharmacy or outsourcing facility for the compounding of drugs necessary to carry out an execution by lethal injection and provides that the compounding of such drugs (i) does not constitute the practice of pharmacy; (ii) is not subject to the jurisdiction of the Board of Pharmacy, the Board of Medicine, or the Department of Health Professions; and (iii) is exempt from the laws governing pharmacies and the Drug Control Act (§ 54.1-3400 et seq.). The bill also provides that the identities of any pharmacy or outsourcing facilities that enters into such a contract with the Department of Corrections, any officer or employee of such pharmacy or outsourcing facility, and any person or entity used by such pharmacy or outsourcing facility to facilitate the compounding of such drugs shall be confidential and exempt from the Freedom of Information Act (§ 2.2-3700 et seq.) and shall not be subject to discovery or introduction as evidence in any civil proceeding unless good cause is shown. The bill also sets forth labeling requirements for any drug compounded pursuant to such a contract. HB 815 (2016 Acts of Assembly, c. 747).

### **Title 54.1 Professions and Occupations.**

**Confidentiality of certain information obtained by health regulatory boards in disciplinary proceedings.** Provides that in disciplinary actions involving allegations that a practitioner is or may be unable to practice with reasonable skill and safety to patients and the public because of a mental or physical disability, a health regulatory board shall consider whether to disclose and may decide not to disclose in its notice or order the practitioner's health records or his health services, although such information may be considered by the board in a closed hearing and included in a confidential exhibit to a notice or order. The bill provides that the public notice or order shall identify, if known, the practitioner's mental or physical disability that is the basis of its determination. HB 586 (2016 Acts of Assembly, c. 222).

**Prescribers of covered substances; continuing education.** Authorizes the Director of the Department of Health Professions to disclose information to the Board of Medicine about prescribers who meet a certain threshold for prescribing covered substances for the purpose of requiring relevant continuing education. The threshold shall be determined by



the Board of Medicine in consultation with the Prescription Monitoring Program. The bill also directs the Board of Medicine to require prescribers identified by the Director of the Department of Health Professions to complete two hours of continuing education in each biennium on topics related to pain management, the responsible prescribing of covered substances, and the diagnosis and management of addiction. Prescribers required to complete continuing education shall be notified of such requirement no later than January 1 of each odd-numbered year. The provisions of the bill will expire on July 1, 2022. HB 829 (2016 Acts of Assembly, c. 447).

**Prescription Monitoring Program; disclosures.** Provides that the Director of the Department of Health Professions may disclose information in the possession of the Prescription Monitoring Program about a specific recipient who is a member of a Virginia Medicaid managed care program to a physician or pharmacist licensed in the Commonwealth and employed by the Virginia Medicaid managed care program to determine eligibility for and to manage the care of the specific recipient in a Patient Utilization Management Safety or similar program. The bill also requires the Prescription Monitoring Program advisory committee to provide guidance to the Director regarding such disclosures. HB 1044 (2016 Acts of Assembly, c. 410) and SB 491 (2016 Acts of Assembly, c. 568).

**Prescription Monitoring Program.** Provides that, beginning January 1, 2017, reports by dispensers to the Prescription Monitoring Program (the Program) shall be made within 24 hours or the dispenser's next business day, whichever comes later. The bill also allows the Director of the Department of Health Professions to disclose information about a specific recipient to a prescriber for the purpose of establishing the treatment history of the specific recipient when the prescriber is consulting on the treatment of such recipient; allows the Director to disclose information on a specific recipient to a dispenser for the purpose of establishing a prescription history to assist the dispenser in providing clinical consultation on the care and treatment of the recipient; removes the requirement that information disclosed to a dispenser for the purpose of determining the validity of a prescription be disclosed only when the recipient is seeking a covered substance from the dispenser or the facility in which the dispenser practices; and provides that a prescriber may include information obtained from the Program for the purpose of establishing the treatment history of a specific recipient in the recipient's medical record. SB 287 (2016 Acts of Assembly, c. 309).

**Cannabidiol oil and THC-A oil; permitting of pharmaceutical processors to manufacture and provide.** *See summary under Title 18.2, supra.* SB 701 (2016 Acts of Assembly, c. 577). [NOTE: Exempts registration information from FOIA while providing access to certain persons.]

## **Title 55 Property and Conveyances.**

**Landlord and tenant laws.** Provides under the landlord and tenant law and the Virginia Residential Landlord and Tenant Act (VRLTA) that unless a tenant is at fault in cases of mold needing remediation, the landlord is obliged to pay all costs associated with the

tenant's temporary relocation as well as the costs of mold remediation. Among other things, the bill (i) provides that, except for applicable lawful householder's exemptions, nothing affects the right of a landlord with respect to an inchoate or perfected lien of a landlord on the personal property of a tenant of any leased or rented commercial or residential premises or the right of such landlord to distress, levy, and seize such personal property as otherwise provided by law; (ii) clarifies that residential provisions under the landlord and tenant law do not apply to dwelling units under the VRLTA; (iii) provides that a landlord's collection agency and a third party providing background screening or credit reporting services to the landlord or his managing agent may have access to tenant records; (iv) allows the landlord to charge a tenant for his records, if the rental agreement so provides; (v) clarifies that a landlord is not obligated to make repairs to address damages identified in the move-in inspection report unless otherwise required to do so under the VRLTA; (vi) requires a tenant to maintain carbon monoxide detectors to the standards established in the Uniform Statewide Building Code; and (vii) provides that if, upon inspection of the dwelling unit, the landlord determines that repairs are necessary, the landlord may make such repairs and send the tenant an invoice for payment. If, upon inspection of the dwelling unit, the landlord discovers a violation of the rental agreement, the VRLTA, or other applicable law, the landlord may send a written notice of termination. If a tenant declines to permit the landlord or managing agent to exhibit the dwelling unit for sale or lease, the landlord may recover damages, costs, and reasonable attorney fees against such tenant. The bill contains technical amendments. HB 735 (2016 Acts of Assembly, c. 744).

**Limited Residential Lodging Act; penalty.** Establishes the Limited Residential Lodging Act (the Act), which allows persons to rent out their primary residences or portions thereof for charge for periods of less than 30 consecutive days or do so through a hosting platform. Localities are preempted from adopting ordinances or zoning restriction prohibiting such short-term rentals, but authorized to adopt ordinances requiring persons renting their primary residences to have a minimum of \$500,000 of liability insurance, prohibiting persons from renting their primary residences if they fail to pay applicable taxes, and requiring persons renting their primary residences to register with the locality. A hosting platform must register with the Department of Taxation to collect and remit all applicable taxes on behalf of the property owner using the hosting platform. The bill defines "limited residential lodging," "booking transaction," and "hosting platform" and provides for penalties for violations of the Act. The bill contains a reenactment clause and directs the Virginia Housing Commission to convene a work group to further study the issues presented in the bill and make recommendations for consideration by the 2017 Session of the General Assembly. SB 416 (2016 Acts of Assembly, c. 674). [NOTE: The bill provides that certain agreements between hosting platforms and the Department of Taxation are not confidential tax information and are subject to disclosure under FOIA.]

## **Title 56 Public Service Companies.**

**BVU Authority; Board powers, officers; broadband; FOIA.** *See summary under § 2.2-3705.6, supra.* HB 1255 (2016 Acts of Assembly, c. 725) and SB 329 (2016 Acts of Assembly, c. 724). [NOTE: Both bills were enacted and took effect on April 8, 2016.]

**Regulation of water and sewer utilities.** *See summary under Title 12.1, supra.* HB 611 (2016 Acts of Assembly, c. 283) and SB 85 (2016 Acts of Assembly, c. 191).

## **Title 58.1 Taxation.**

**Department of Taxation; disclosure of certain tax information.** Permits the Department of Taxation (the Department) to disclose to a taxpayer whether the taxpayer's employer submitted withholding records to the Department as required. The bill also requires the Department to maintain a list of licensed cigarette stamping agents and make it available upon request to any federal, state, or local law-enforcement agency. HB 951 (2016 Acts of Assembly, c. 344) and SB 325 (2016 Acts of Assembly, c. 227).

## **Title 59.1 Trade and Commerce.**

**Fantasy Contests Act; registration required; conditions of registration; civil penalty.** Creates the Fantasy Contests Act (the Act), which applies to fantasy contests with an entry fee offered in Virginia. The bill defines "fantasy contest" as any online fantasy or simulated game or contest in which (i) the value of all prizes and awards offered to winning participants is established and made known to the participants in advance of the contest; (ii) all winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals, including athletes in the case of sports events; and (iii) no winning outcome is based on the score, the point spread, or any performance of any single actual team or combination of teams or solely on any single performance of an individual athlete or player in any single actual event. The bill requires operators of fantasy contests to register annually with the Department of Agriculture and Consumer Services. The bill sets forth the conditions for registration and penalties for violation of the Act. The bill provides that such contests are not illegal gambling. HB 775 (2016 Acts of Assembly, c. 703). [NOTE: Among other provisions, the bill contains an exemption for certain records submitted to the Department pursuant to the audit requirements of § 59.1-559 and records submitted to the Department as part of an application for registration or renewal that contain information about the character or financial responsibility of the operator or its principal stockholders.]

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winning outcome is based on the score, the point spread, or any performance of any single actual team or combination of teams or solely on any single performance of an individual athlete or player in any single actual event. The bill requires a fantasy contest operator, as a condition for registration, to establish procedures that include ensuring that players who are the subject of a fantasy contest are restricted from entering a fantasy contest that is determined, in whole or part, on the accumulated statistical results of a team of individuals in which such players are participants. The bill requires operators of fantasy contests to register annually with the Department of Agriculture and Consumer Services and to contract with a testing laboratory to verify the procedures for fantasy contests. The bill sets forth penalties for violation of the Act. The bill provides that fantasy contests conducted in accordance with these measures are not illegal gambling. SB 646 (2016 Acts of Assembly, c. 318). [NOTE: Among other provisions, the bill contains an exemption for certain records submitted to the Department pursuant to the audit requirements of § 59.1-559 and records submitted to the Department as part of an application for registration or renewal that contain information about the character or financial responsibility of the operator or its principal stockholders.]

### **Title 63.2 Welfare (Social Services).**

**Confidentiality of information about victims of certain crimes.** Provides that, in order to ensure the safety of any adult or child victim of a violation of § 18.2-48, 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1 and their families, programs and individuals providing services to such victims shall protect the confidentiality and privacy of persons receiving services by limiting the disclosure of information about such victims, including by prohibiting the release of individual client information without the informed consent of the minor and his parent or legal guardian, in cases in which the client is an unemancipated minor. The bill also clarifies that a person is a victim for purposes of such confidentiality and privacy protections regardless of whether any person has been charged with or convicted of any offense. The bill also provides that an alleged abuser of a minor or incapacitated person or of the minor's other parent may not consent to the release of confidential information. HB 373 (2016 Acts of Assembly, c. 670) and SB 253 (2016 Acts of Assembly, c. 666).

### **Title 65.2. Worker's Compensation.**

**Workers' compensation; fee schedules for medical services.** Directs the Workers' Compensation Commission (the Commission) to adopt regulations establishing fee schedules setting the maximum pecuniary liability of the employer for medical services provided to an injured person pursuant to the Virginia Workers' Compensation Act, in the absence of a contract under which the provider has agreed to accept a specified amount for the medical service. Among other provisions, contains a FOIA exemption for certain records and information relating to payments or reimbursements to providers used in development of the fee schedules. The bill contains an emergency clause, as well as other enactment clauses. HB 378 (2016 Acts of Assembly, c. 279) and SB 631 (2016 Acts of Assembly, c. 290). [NOTE: *Due to the emergency clause, both bills were enacted effective March 7, 2016.*]

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