

2021 FOIA LEGISLATIVE UPDATE

STATUS OF FREEDOM OF INFORMATION BILLS AND OTHER ACCESS RELATED LEGISLATION

I. Introduction

The General Assembly passed a total of 11 bills amending the Virginia Freedom of Information Act (FOIA) during the 2021 Session¹. Three bills passed the General Assembly that were recommended by the FOIA Council:

- HB 1931 (Levine) (i) authorizes a public body to conduct through electronic communication means a meeting for which, on or before the day of the meeting, a member of the public body holding the meeting notifies the chair that such member is unable to attend the meeting due to a family member's medical condition that requires the member to provide care for such family member, thereby preventing the member's physical attendance, and (ii) clarifies that participation in an electronic meeting by a member of a public body due to the inability to attend because of a personal matter is limited each calendar year to two such meetings or 25 percent of the meetings held that calendar year rounded up to the next whole number, whichever is greater.
- HB 2004² (Hurst) (i) adds criminal investigative files relating to a criminal investigation or proceeding that is not ongoing to the types of law-enforcement and criminal records required to be released in accordance with the provisions of FOIA, (ii) provides that the mandatory release of criminal incident information relating to felony offenses and criminal investigative files shall not be required if the release of such information would likely effect certain results, and (iii) extends the amount of additional time a public body has to respond, in the case of a request for certain criminal investigative files, from an additional seven work days to an additional 60 work days as long as the public body has communicated to the requester within the initial allowable five-work-day response period that it is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period.
- HB 2025 (Gooditis) provides that personal contact information provided to a public body or any of its members for the purpose of receiving electronic communications from the public body or any of its members is excluded from the mandatory disclosure provisions of FOIA, unless the recipient of such electronic communications indicates his approval for the public body to disclose such information.

Seven bills clarify two existing records exemptions and add three new records exemptions in FOIA as follows:

- HB 2007 (Sickles) exempts from the mandatory disclosure provisions of FOIA information of a proprietary or confidential nature disclosed by a health carrier or pharmacy benefits

¹ References to the 2021 Session of the General Assembly include the 2021 Special Session I.

² As introduced, HB 2004 was a recommendation of the FOIA Council.

manager pursuant to § 38.2-3407.15:6, a wholesale distributor pursuant to § 54.1-3436.1, or a manufacturer pursuant to § 54.1-3442.02. (adding an exemption in § 2.2-3705.6)

- HB 2025 (Gooditis) clarifies that personal contact information provided to a public body or any of its members for the purpose of receiving electronic communications from the public body or any of its members is excluded from the mandatory disclosure provisions of FOIA, unless the recipient of such electronic communications indicates his approval for the public body to disclose such information. (amending § 2.2-3705.1)
- HB 2263 (Mullin) and SB 1165 (Surovell) amend the current exemption for information held by the Department of Corrections to clarify that such information is exempt from the mandatory disclosure provisions of FOIA if it was made confidential by the former § 53.1-233, which will be repealed as of July 1, 2021. (amending § 2.2-3705.7)
- HB 2312 (Herring) and SB 1406 (Ebbin) add the Virginia Cannabis Control Authority to the list of public bodies in the current exemption for information relating to investigations of applicants for licenses and permits, and of all licensees and permittees made by or submitted to certain public bodies. (amending § 2.2-3705.3)
- SB 1343 (Vogel) exempts from the mandatory disclosure provisions of FOIA proprietary information, voluntarily provided by a private business pursuant to a promise of confidentiality from a public body, used by the public body for a carbon sequestration agreement, where disclosure of such information would (i) reveal (a) trade secrets of the private business; (b) financial information of the private business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) other information submitted by the private business and (ii) adversely affect the financial interest or bargaining position of the public body or private business. (amending a current exemption in § 2.2-3705.6)

Five bills clarify three existing meetings exemptions and add one new meetings exemption in FOIA as follows:

- HB 1812 (Krizek) amends the current exemption from the open meeting requirements of FOIA for deliberations of the Virginia Lottery Board to add that deliberations regarding the refusal to issue, suspension of, or revocation of any license or permit related to casino gaming may also be held in a closed meeting. (amending § 2.2-3711)
- HB 1931 (Levine) clarifies the exemption for meetings held by electronic communication means by (i) authorizing a public body to conduct through electronic communication means a meeting for which, on or before the day of the meeting, a member of the public body holding the meeting notifies the chair that such member is unable to attend the meeting due to a family member's medical condition that requires the member to provide care for such family member, thereby preventing the member's physical attendance, and (ii) providing that participation in an electronic meeting by a member of a public body due to the inability to attend because of a personal matter is limited each calendar year to two

such meetings or 25 percent of the meetings held that calendar year rounded up to the next whole number, whichever is greater. (amending § 2.2-3708.2)

- SB 1271 (McPike) amends the current provisions regarding meetings held through electronic communication means during a state of emergency to (i) allow a public body, or a joint meeting thereof, to meet by electronic communication means without a quorum of the public body physically assembled at one location when a locality in which the public body is located has declared a local state of emergency, provided that (a) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (b) the purpose of the meeting is to provide for the continuity of operations of the public body or the discharge of its lawful purposes, duties, and responsibilities, and (ii) require public bodies meeting through electronic communication means during a local or state declaration of a state of emergency to (a) make arrangements for public access to such meeting through electronic communication means, including videoconferencing if already used by the public body, and (b) provide the public with the opportunity to comment at such meetings when public comment is customarily received. (amending § 2.2-3708.2)
- HB 2312 (Herring) and SB 1406 (Ebbin) add an exemption for discussion or consideration by the Board of Directors of the Virginia Cannabis Control Authority of information subject to the exclusion in subdivision 1 of § 2.2-3705.3 related to investigations of applicants for licenses and permits and of licensees and permittees. (amending § 2.2-3711)

One bill adds a new provision to FOIA and amends existing provisions as follows:

- HB 2004 (Hurst) amends the provisions of FOIA regarding criminal incident information and certain criminal investigative files and creates a new provision of FOIA which provides that the mandatory release of criminal incident information relating to felony offenses and criminal investigative files shall not be required if the release of such information would likely effect certain results. The bill also clarifies that, in the case of a request for certain criminal investigative files, a public body has an additional 60 work days to respond to the request so long as the public body has communicated to the requester within the initial allowable five-work-day response period that it is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period, and provides that in a proceeding commenced against any officer, employee, or member of a public body under § 2.2-3713 for a violation of § 2.2-3706.1, the court, if it finds that a violation was willfully and knowingly made, shall impose upon such officer, employee, or member in his individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, certain civil penalties. (amending §§ 2.2-3704, 2.2-3706, and 2.2-3714 and adding § 2.2-3706.1)

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 2021 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 be effective as of July 1, 2021.

II. Amendments to the Virginia Freedom of Information Act

§ 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.

HB 2004 (Hurst) Virginia Freedom of Information Act; law-enforcement criminal incident information; criminal investigative files. Adds criminal investigative files, defined in the bill, relating to a criminal investigation or proceeding that is not ongoing, also defined in the bill, to the types of law-enforcement and criminal records required to be released in accordance with the provisions of the Virginia Freedom of Information Act. Under current law, the release of criminal investigative files is discretionary. The bill provides that the mandatory release of criminal incident information relating to felony offenses and criminal investigative files shall not be required if the release of such information would likely effect certain results, outlined in the bill. The bill also extends the amount of additional time a public body has to respond, in the case of a request for certain criminal investigative files, from an additional seven work days to an additional 60 work days as long as the public body has communicated to the requester within the initial allowable five-work-day response period that it is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. The bill contains technical amendments. As introduced, this bill was a recommendation of the Virginia Freedom of Information Advisory Council. (2021 Acts of Assembly, Special Session I, c. 483).

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

HB 2025 (Gooditis) Virginia Freedom of Information Act; record exclusion for personal contact information provided to a public body. Provides that personal contact information provided to a public body or any of its members for the purpose of receiving electronic communications from the public body or any of its members is excluded from the mandatory disclosure provisions of FOIA, unless the recipient of such electronic communications indicates his approval for the public body to disclose such information. Currently, the law provides protections for personal contact information provided to a public body, not to its members; only applies to electronic mail; and requires the electronic mail recipient to request the public body not to disclose his personal contact information in order for the information to be exempt from mandatory disclosure. This bill is a recommendation of the Virginia Freedom of Information Advisory Council. (2021 Acts of Assembly, Special Session I, c. 484).

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

HB 2312 (Herring) (incorporating HB 1815) and SB 1406 (Ebbin) (incorporating SB 1243) Marijuana; legalization; retail sales; penalties. Eliminates criminal penalties for simple possession of up to one ounce of marijuana by persons 21 years of age or older, modifies several other criminal penalties related to marijuana, and imposes limits on dissemination of criminal history record information related to certain marijuana offenses. The bill creates the Virginia Cannabis Control Authority (the Authority), the Cannabis Oversight Commission, the Cannabis Public Health Advisory Council, the Cannabis Equity Reinvestment Board and Fund, and the Virginia Cannabis Equity Business Loan Program and Fund and establishes a regulatory and licensing structure for the cultivation, manufacture, wholesale, and retail sale of retail marijuana and retail marijuana products, to be administered by the Authority. The bill contains social equity provisions that, among other things, provide support and resources to persons and communities that have been historically and disproportionately affected by drug enforcement. The bill has staggered effective dates, and numerous provisions of the bill are subject to reenactment by the 2022 Session of the General Assembly. (2021 Acts of Assembly, Special Session I, cc. 551 and 550).

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

HB 1855 (Sullivan) Department of Mines, Minerals and Energy. Renames the Department of Mines, Minerals and Energy as the Department of Energy. Within the Department, the bill renames the Division of Mined Land Reclamation as the Division of Mined Land Repurposing and renames the Division of Energy as the Division of Renewable Energy and Energy Efficiency.

The bill makes substantive changes, removing the requirement that the Chief of the Division of Mines be appointed by the Governor and authorizing an employee other than the Virginia Gas and Oil Inspector to serve as the principal executive of the staff of the Virginia Gas and Oil Board. The bill also provides that the Chief Clean Energy Policy Advisor shall be appointed by the Governor. The bill removes or updates outdated language. The bill has a delayed effective date of October 1, 2021. (2021 Acts of Assembly, Special Session I, c. 532).

HB 2007 (Sickles) Prescription drug price transparency. Directs the Department of Health to enter into a contract or an agreement with a nonprofit data services organization to collect, compile, and make available on its website information about prescription drug pricing and requires every health carrier, pharmacy benefits manager, and drug manufacturer to report information about prescription drug prices to the nonprofit data services organization with which the Department of Health has entered into a contract for such purpose. The bill provides that in any case in which the Department determines that the data reported by health carriers, pharmacy benefit managers, and drug manufacturers is insufficient, the Department may require wholesale distributors to report certain data about prescription drug costs. The bill has a delayed effective date of January 1, 2022, and directs the Department of Health to adopt emergency regulations to implement the provisions of the bill. (2021 Acts of Assembly, Special Session I, c. 304).

SB 1343 (Vogel) Virginia Freedom of Information Act; proprietary records and trade secrets; carbon sequestration agreements. Excludes from the mandatory disclosure provisions of the Virginia Freedom of Information Act proprietary information, voluntarily provided by a private business under a promise of confidentiality from a public body, used by the public body

for a carbon sequestration agreement. The bill requires the private business to specify the records for which protection is sought before submitting them to the public body and to state the reasons why protection is necessary. (2021 Acts of Assembly, Special Session I, c. 298).

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

HB 2263 (Mullin) (incorporating HB 1779) and SB 1165 (Surovell) Abolition of the death penalty. Abolishes the death penalty, including for those persons currently under a death sentence. The bill provides that no person may be sentenced to death or put to death on or after its effective date for any violation of law. (2021 Acts of Assembly, Special Session I, cc. 344 and 345).

§ 2.2-3706 Disclosure of law-enforcement and criminal records; limitations.

HB 2004 (Hurst) Virginia Freedom of Information Act; law-enforcement criminal incident information; criminal investigative files. *See summary under § 2.2-3704, supra* (2021 Acts of Assembly, Special Session I, c. 483).

§ 2.2-3706.1 Disclosure of law-enforcement records; criminal incident information and certain criminal investigative files; limitations.

HB 2004 (Hurst) Virginia Freedom of Information Act; law-enforcement criminal incident information; criminal investigative files. *See summary under § 2.2-3704, supra* (2021 Acts of Assembly, Special Session I, c. 483).

§ 2.2-3708.2 Meetings held through electronic communication means.

HB 1931 (Levine) Virginia Freedom of Information Act; electronic meetings. Authorizes a public body to conduct through electronic communication means a meeting for which, on or before the day of the meeting, a member of the public body holding the meeting notifies the chair that such member is unable to attend the meeting due to a family member's medical condition that requires the member to provide care for such family member, thereby preventing the member's physical attendance. The bill also clarifies that participation in an electronic meeting by a member of a public body due to the inability to attend because of a personal matter is limited each calendar year to two such meetings, which is current law, or 25 percent of the meetings held that calendar year rounded up to the next whole number, whichever is greater. This bill is a recommendation of the Virginia Freedom of Information Advisory Council. (2021 Acts of Assembly, Special Session I, c. 33).

SB 1271 (McPike) Virginia Freedom of Information Act; meetings held through electronic communication means during a state of emergency. Allows a public body, or a joint meeting thereof, to meet by electronic communication means without a quorum of the public body physically assembled at one location when a locality in which the public body is located has declared a local state of emergency, provided that (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to provide for the continuity of operations of the public body or the discharge of its lawful purposes, duties, and responsibilities. Under current law, public bodies may

only meet in such manner when the Governor has declared a state of emergency and only for the purpose of addressing the emergency. Finally, the bill requires public bodies meeting through electronic communication means during a local or state declaration of a state of emergency to (a) make arrangements for public access to such meeting through electronic communication means, including videoconferencing if already used by the public body, and (b) provide the public with the opportunity to comment at such meetings when public comment is customarily received. (2021 Acts of Assembly, Special Session I, c. 490).

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

HB 1812 (Krizek) Casino gaming; technical amendments. Makes technical amendments to the casino gaming law related to its interaction with sports betting law, the capital investment required of an applicant for a license, authorized closed meetings under the Virginia Freedom of Information Act, and the frequency of the distribution of tax revenues to cities. The bill also requires applicants for operator's licenses to submit (i) a minority investment plan disclosing any equity interest owed by a minority individual or minority-owned business or the applicant's efforts to seek equity investment from minority individuals or minority-owned businesses and (ii) a plan for the participation of minority individuals or minority-owned businesses in the applicant's purchase of goods and services related to the casino gaming establishment. (2021 Acts of Assembly, Special Session I, c. 7).

HB 2004 (Hurst) Virginia Freedom of Information Act; law-enforcement criminal incident information; criminal investigative files. *See summary under § 2.2-3704, supra* (2021 Acts of Assembly, Special Session I, c. 483).

HB 2312 (Herring) (incorporating HB 1815) and SB 1406 (Ebbin) (incorporating SB 1243) Marijuana; legalization; retail sales; penalties. *See summary under § 2.2-3705.3, supra* (2021 Acts of Assembly, Special Session I, cc. 551 and 550).

§ 2.2-3714 Violations and penalties.

HB 2004 (Hurst) Virginia Freedom of Information Act; law-enforcement criminal incident information; criminal investigative files. *See summary under § 2.2-3704, supra* (2021 Acts of Assembly, Special Session I, c. 483).

III. Other Access-Related Legislation

Title 2.2 Administration of Government

HB 1876 (Subramanyam) Workforce development; data sharing. Expands the type of workforce development data that state agencies may share with the Virginia Workforce System to support workforce program evaluation and policy analysis. The bill removes the requirement that all personal identifying information be removed before being shared among other state agencies and with the Workforce Development System and instead requires the identifying attribute information necessary to match entities across programs, support the coordination of services, and

evaluate outcomes to be shared among agencies that enter into the memorandum of understanding supporting the Virginia Workforce Data Trust. (2021 Acts of Assembly, Special Session I, c. 438).

HB 2110 (Herring) (incorporating HB 1945) and SB 1391 (Lucas) Pretrial data collection. Requires the Virginia Criminal Sentencing Commission to collect and disseminate, on an annual basis, statewide and locality-level data related to adults charged with criminal offenses punishable by confinement in jail or a term of imprisonment. The bill provides that any personal or case identifying information within the data shall not be subject to the Virginia Freedom of Information Act and shall not be made publicly available. The bill does not require that the Virginia Criminal Sentencing Commission submit such annual report prior to December 1, 2022. Additionally, the bill requires the Virginia State Crime Commission to provide the Virginia Criminal Sentencing Commission with the final dataset of all adults charged with a criminal offense punishable by confinement in jail or a term of imprisonment in October 2017 and that the Virginia Criminal Sentencing Commission make such statewide and locality-level data publicly available on a website established and maintained by the Virginia Criminal Sentencing Commission as an electronic dataset, excluding any personal and case identifying information, by October 1, 2021, and on an electronic interactive data dashboard tool that displays aggregated data based on characteristics or indicators selected by the user by December 1, 2022. As introduced, this bill was a recommendation of the Virginia State Crime Commission. (2021 Acts of Assembly, Special Session I, cc. 111 and 112).

HB 2174 (Torian) State-facilitated IRA savings program; establishment. Directs the governing board of the Virginia College Savings Plan (the Board) to establish a state-facilitated individual retirement account (IRA) savings program (the Program). The Board shall administer the Program and develop requirements, procedures, and guidelines for the Program, including default contribution rates, procedures for enrollment and withdrawal, and procedures for noncompliance. Moneys in the Program shall be invested in a manner deemed appropriate by the Board.

Eligible employers shall enroll their eligible employees in the Program. Eligible employers are defined in the bill as any nongovernmental employer that employs 25 or more eligible employees and does not offer a qualified retirement plan to their employees. Eligible employees are limited to individuals who are employed at least 30 hours per week. Each eligible employee shall be enrolled in the Program unless the employee elects not to participate in the Program.

Any employer that is not an eligible employer may facilitate the participation of its eligible employees in the program. Self-employed individuals and eligible employees whose employers do not enroll in the program may participate in the program in accordance with terms and conditions prescribed by the Board.

The bill contains provisions limiting the liability of the Board, the Plan, and the Commonwealth or any of its political subdivisions for obligations associated with the Program. The Commonwealth shall have no duty or liability to any party for the payment of any retirement savings benefits accrued by any individual under the Program. Participating employers shall not (i) have any liability for an employee's decision to participate in or opt out of the Plan, (ii) be a fiduciary over the Program, or (iii) have any liability or responsibility related to the operation of

the Program. The bill also adds a requirement that at least one member of the Board have expertise in the management and administration of private defined contribution retirement plans.

The Program shall be established, and enrollment shall begin, on July 1, 2023, or as soon thereafter as practicable. Finally, the bill directs the Board to establish a group of stakeholders to identify and make recommendations as to other amendments necessary and prudent to effectuate the provisions of the bill. (2021 Acts of Assembly, Special Session I, c. 556).

Title 3.2 Agriculture, Animal Care, and Food

HB 2078 (Marshall) Industrial hemp; federal hemp producer license; emergency. Updates Virginia's industrial hemp laws to address the new hemp producer license issued by the U.S. Department of Agriculture. The bill changes drug laws to exclude the industrial hemp possessed by a federally licensed hemp producer from the definition of "marijuana" and to exclude certain amounts of tetrahydrocannabinol (THC) in such industrial hemp from the prohibition on THC. The bill exempts federally licensed hemp producers from state industrial hemp registration requirements and adds such producers to the list of those eligible to receive funds from the Tobacco Indemnification and Community Revitalization Fund.

The bill provides that no grower, agent of such grower, or federally licensed producer shall be prosecuted for possession of industrial hemp or Cannabis sativa with a THC concentration that does not exceed the concentration established in certain federal regulations and prohibits the Commissioner of Agriculture and Consumer Services from deeming a grower negligent if the grower makes reasonable efforts to grow industrial hemp but grows Cannabis sativa with a THC concentration that does not exceed the concentration established in federal regulations.

The bill makes other changes to industrial hemp laws, including (i) limiting the application fee for registration of growers, dealers, and producers to \$250; (ii) excluding from the definition of "dealer" any retail establishment that sells a completed product containing industrial hemp; (iii) making optional the monitoring and random testing of industrial hemp by the Commissioner and authorizing the random sampling of such hemp; (iv) removing the requirement that the Attorney General of the United States be notified when a Virginia grower, dealer, or processor exceeds the federal THC limit; and (v) directing the Commissioner to adopt regulations establishing a fee structure for registration.

Finally, the bill exempts employees of the Virginia Department of Agriculture and Consumer Services from prosecution for possession or distribution of industrial hemp when possession is necessary in the performance of their duties. The bill contains an emergency clause. (2021 Acts of Assembly, Special Session I, c. 110).

Title 9.1 Commonwealth Public Safety

HB 2113 (Herring) and SB 1339 (incorporating SB 1283 and SB 1372) (Surovell) Sealing of criminal records; penalties. Establishes a process for the automatic sealing of police and court records, defined in the bill, for certain convictions, deferred dispositions, and acquittals and for offenses that have been nolle prossed or otherwise dismissed. The bill also allows a person to petition for the sealing of police and court records relating to certain convictions. The bill has

staggered delayed effective dates in order to develop systems for implementing the provisions of the bill. As introduced, this bill was a recommendation of the Virginia State Crime Commission. (2021 Acts of Assembly, Special Session I, cc. 542 and 524).

Title 10.1 Conservation

SB 1282 (Morrissey) Greenhouse gas emissions inventory; regulations. Directs the Department of Environmental Quality to conduct a statewide baseline and projection inventory of all greenhouse gas emissions and to update such inventory every four years. The bill requires that the inventory be published and included in the annual report of the State Air Pollution Control Board. The bill also authorizes the Board to adopt regulations necessary to collect data needed to conduct, update, and maintain the inventory. The bill exempts proprietary information collected by the Department from the mandatory disclosure requirements of the Virginia Freedom of Information Act. (2021 Acts of Assembly, Special Session I, c. 98).

Title 19.2 Criminal Procedure

HB 2258 (Simonds) Substantial Risk Order Registry; maintenance and access. Authorizes the Department of State Police to release Substantial Risk Order Registry information upon request to institutions of higher education and other research organizations or institutions for the purpose of monitoring and evaluating the impact of substantial risk orders on public safety. The bill requires the Department of State Police to remove the names and other personal identifying information from the data before it releases such information. (2021 Acts of Assembly, Special Session I, c. 461).

Title 23.1 Institutions of Higher Education; Other Educational and Cultural Institutions

HB 1986 (Bulova) and SB 1204 (Barker) George Mason University; management agreement. Provides a management agreement between the Commonwealth and George Mason University pursuant to the Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq.). (2021 Acts of Assembly, Special Session I, cc. 76 and 77).

HB 2120 (Keam) Public institutions of higher education; governing boards; meetings, input, and disclosures. Requires the governing board of each public institution of higher education to establish and maintain on the institution's website (i) a listing of all board members, including the name of the Governor who made each appointment and the date of each appointment; (ii) a listing of all committees created by the board and the membership of each committee; (iii) a schedule of all upcoming meetings of the full board and its committees and instructions for the public to access such meetings; (iv) an archive of agendas and supporting materials for each meeting of the governing board and its committees that was held; and (v) an email address or email addresses that allow board members to receive public communications pertaining to board business. The bill requires such boards to solicit the input of representatives of the institution's faculty senate or its equivalent (a) at least twice per academic year on topics of general interest to the faculty and (b) in advance of decisions to be made on the search for the institution's new chief executive officer. The bill also requires the State Council of Higher Education for Virginia, in consultation with the Virginia Freedom of Information Advisory Council, to work with each public institution of higher

education and with technology experts to develop a minimal uniform standard, to the extent practicable, for providing the public with real-time electronic access to meetings of the governing boards of public institutions of higher education. (2021 Acts of Assembly, Special Session I, c. 447).

Title 24.2 Elections

HB 2125 (Lopez) Voter registration; preregistration for persons 16 years of age or older. Permits a person who is otherwise qualified to register to vote and is 16 years of age or older, but who will not be 18 years of age on or before the day of the next general election, to preregister to vote. The preregistration does not entitle such person to vote in any election except as already permitted by law. The bill requires the Department of Elections to maintain a record of all preregistered voters in the Virginia voter registration system, which shall automatically register a person who is preregistered upon that person reaching 18 years of age or becoming eligible for advance registration as already permitted by law, whichever comes first. The bill requires the Department to provide to the general registrars voter confirmation documents for such voters. The bill has a delayed effective date of October 1, 2022. (2021 Acts of Assembly, Special Session I, c. 217).

Title 45.2 Mines, Minerals, and Energy

SB 1453 (Edwards) Revision of Titles 45.1 and 67. Creates proposed Title 45.2 (Mines, Minerals, and Energy) as a revision of existing Title 45.1 (Mines and Mining) and existing Title 67 (Virginia Energy Plan). Proposed Title 45.2 consists of 21 chapters divided into five subtitles: Subtitle I (Administration), Subtitle II (Coal Mining), Subtitle III (Mineral Mines), Subtitle IV (Gas and Oil), and Subtitle V (Other Sources of Energy; Energy Policy). 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 the administration of the Department of Mines, Minerals and Energy, underground and surface coal mining, underground and surface mineral mines, the Virginia Gas and Oil Act, energy from wind, solar, geothermal, and nuclear sources, and energy policy. The bill moves the remaining provisions of Title 67 that are not appropriate for inclusion in proposed Title 45.2 into other existing titles of the Code. The bill has a delayed effective date of October 1, 2021, and is a recommendation of the Virginia Code Commission. (2021 Acts of Assembly, Special Session I, c. 387).

Title 46.2 Motor Vehicles

SB 1122 (Stanley) Habitual offenders; repeal. Repeals the remaining provisions of the Habitual Offender Act. The bill also requires that the Commissioner of the Department of Motor Vehicles reinstate a person's privilege to drive a motor vehicle that was suspended or revoked solely on the basis that such person was determined to be or adjudicated a habitual offender pursuant to the Habitual Offender Act. The bill also authorizes the Virginia Alcohol and Safety Action Program to continue to administer intervention for individuals who were ordered to attend an intervention interview on or before June 30, 2021. (2021 Acts of Assembly, Special Session I, c. 463).

HB 2138 (Guzman) Identification privilege cards; fee; confidentiality; penalties. Authorizes the Department of Motor Vehicles to issue identification privilege cards to applicants who hold a

citizenship or legal presence status that is eligible for a special identification card or a limited-duration special identification card and have reported income from Virginia sources or been claimed as a dependent on an individual tax return filed with the Commonwealth in the preceding 12 months. The bill provides that identification privilege cards shall be treated as special identification cards unless otherwise provided in the Code of Virginia. The bill limits the release of certain information stored by the Department. The bill has a delayed effective date of January 1, 2022. (2021 Acts of Assembly, Special Session I, c. 544).

HB 2163 (Tran) Department of Motor Vehicles; privileged information. Limits the release of Department of Motor Vehicles (DMV) privileged information to government entities and law-enforcement agencies for the purpose of civil immigration enforcement unless (i) the subject of the information provides consent or (ii) the requesting agency presents a lawful judicial order, judicial subpoena, or judicial warrant. The bill requires the DMV to notify the subject of the request that such a request was made and the identity of the entity that made the request. The bill requires any entity receiving privileged information from the DMV to enter into a written agreement with the DMV prior to such release of such information and prohibits any entity from rereleasing any such DMV information to any third party unless explicitly permitted to do so in the entity's agreement with the DMV. The bill contains requirements for any such written agreement between the DMV and the Department of State Police. (2021 Acts of Assembly, Special Session I, c. 421).

Title 55.1 Property and Conveyances

HB 1816 (Bulova) and SB 1183 (Dunnavant) Property Owners' Association Act; Condominium Act; use of electronic means for meetings and voting. Allows meetings of property owners' associations, boards of directors, unit owners' associations, executive boards, and committees to be held entirely or partially by electronic means, provided that the board of directors or executive board, as applicable, has adopted guidelines for the use of electronic means for such meetings. The bill requires that such guidelines ensure that persons accessing such meetings are authorized to do so and that persons entitled to participate in such meetings have an opportunity to do so. The bill grants authority for determining whether any such meeting may be held entirely or partially by electronic means to the board of directors or executive board, as applicable. Under current law, if a meeting of a board of directors or executive board is conducted by telephone conference or video conference, at least two members of the board of directors or executive board, as applicable, are required to be physically present at the meeting place included in the meeting notice. The bill amends the definition of "electronic means" to provide that a meeting conducted by electronic means includes a meeting conducted via teleconference, videoconference, Internet exchange, or other electronic methods. The bill allows members of property owners' associations or unit owners' associations to vote at meetings of such associations by absentee ballot, and allows such members to vote in person, by proxy, or by absentee ballot by electronic means, provided that the board of directors or executive board, as applicable, has adopted guidelines for such voting. Finally, the bill provides that if a vote, consent, or approval required to be obtained by secret ballot is accomplished through electronic means, the electronic means shall protect the identity of the voter, and provides that if the electronic means cannot protect the identity of the voter, another means of voting shall be used. (2021 Acts of Assembly, Special Session I, cc. 9 and 494).

HB 2249 (McQuinn) Virginia Residential Landlord and Tenant Act; landlord charges for security deposits, insurance premiums for damage insurance, and insurance premiums for

renter's insurance; filing of information regarding resident agent appointed by nonresident property owner. Prohibits a landlord from requiring a tenant to pay a security deposit, insurance premiums for damage insurance, and insurance premiums for renter's insurance prior to the commencement of the tenancy that exceed the amount of two months' periodic rent. The bill permits a landlord, however, to add a monthly amount as additional rent to recover additional costs of such renter's insurance premiums. Finally, the bill requires nonresident property owners to file the name and office address of the agent appointed by such nonresident property owner in the office of the clerk of the State Corporation Commission. Under current law, such information must be filed in the office of the clerk of the court in which deeds are recorded in the county or city in which the property lies. (2021 Acts of Assembly, Special Session I, c. 427).

HB 2320 (Convirs-Fowler) and SB 1389 (Lewis) Virginia Residential Property Disclosure Act; required disclosures; repetitive risk loss structure; flood risk information form. Requires the Real Estate Board to make available on its website a flood risk information form, the details of which are outlined in the bill. The bill also provides that an owner of residential real property located in the Commonwealth who has actual knowledge that the dwelling unit is a repetitive risk loss structure, as defined in the bill, shall disclose such fact to the purchaser on a form provided by the Real Estate Board on its website. The bill has a delayed effective date of January 1, 2022. (2021 Acts of Assembly, Special Session I, cc. 322 and 323).

Title 59.1 Trade and Commerce

HB 2250 (Kory) and SB 1379 (Boysko) Humane Cosmetics Act; civil penalties. Prohibits a cosmetics manufacturer from: (i) conducting or contracting for cosmetic animal testing that occurs in the Commonwealth on or after January 1, 2022; (ii) manufacturing or importing for profit into the Commonwealth any cosmetic or ingredient thereof, if the cosmetics manufacturer knew or reasonably should have known that the cosmetic or any component thereof was developed or manufactured using cosmetic animal testing that was conducted on or after January 1, 2022; or (iii) beginning July 1, 2022, selling or offering for sale within the Commonwealth any cosmetic, if the cosmetics manufacturer knows or reasonably should know that the cosmetic or any component thereof was developed or manufactured using cosmetic animal testing that was conducted on or after January 1, 2022. Violations are subject to a civil penalty of up to \$5,000 and an additional \$1,000 for each day the violation continues. The bill preempts any local regulation on cosmetic animal testing. (2021 Acts of Assembly, Special Session I, cc. 113 and 114).

HB 2307 (Hayes) and SB 1392 (Marsden) Consumer Data Protection Act. Establishes a framework for controlling and processing personal data in the Commonwealth. The bill applies to all persons that conduct business in the Commonwealth and either (i) control or process personal data of at least 100,000 consumers or (ii) derive over 50 percent of gross revenue from the sale of personal data and control or process personal data of at least 25,000 consumers. The bill outlines responsibilities and privacy protection standards for data controllers and processors. The bill does not apply to state or local governmental entities and contains exceptions for certain types of data and information governed by federal law. The bill grants consumer rights to access, correct, delete, and obtain a copy of personal data and to opt out of the processing of personal data for purposes of targeted advertising, the sale of personal data, or profiling of the consumer. The bill provides that the Attorney General has exclusive authority to enforce violations of the law, and the Consumer Privacy Fund is created to support this effort. The bill directs the Joint Commission on

Technology and Science to establish a work group to review the provisions of this act and issues related to its implementation, and to report on its findings by November 1, 2021. The bill has a delayed effective date of January 1, 2023. (2021 Acts of Assembly, Special Session I, cc. 35 and 36).

HB 5001 (Torian) Shipping and Logistics Headquarters Grant Program. Establishes the Shipping and Logistics Headquarters Grant Program to provide grants to a qualified shipping and logistics company that retains its North American headquarters in the City of Norfolk, makes a capital investment of at least \$36 million, creates and maintains at least 415 new jobs, and establishes and operates a research and development center. The qualified company would be eligible for an aggregate of \$9.5 million in grants, payable in installments and contingent upon the qualified company's meeting performance parameters. (2021 Acts of Assembly, Special Session I, c. 434).