

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3701, 2.2-3705.7, 2.2-3711, and 2.2-3713 of the Code of Virginia,
2 relating to the Virginia Freedom of Information Act; applicability to the State Corporation
3 Commission; certain exemption for the State Corporation Commission; proceedings for
4 enforcement.

5 **Be it enacted by the General Assembly of Virginia:**

6 **1. That §§ 2.2-3701, 2.2-3705.7, 2.2-3711, and 2.2-3713 of the Code of Virginia are amended and**
7 **reenacted as follows:**

8 **§ 2.2-3701. Definitions.**

9 As used in this chapter, unless the context requires a different meaning:

10 "Closed meeting" means a meeting from which the public is excluded.

11 "Electronic communication" means any audio or combined audio and visual communication
12 method.

13 "Emergency" means an unforeseen circumstance rendering the notice required by this chapter
14 impossible or impracticable and which circumstance requires immediate action.

15 "Meeting" or "meetings" means the meetings including work sessions, when sitting physically,
16 or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as
17 an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the
18 constituent membership, wherever held, with or without minutes being taken, whether or not votes are
19 cast, of any public body. The gathering of employees of a public body shall not be deemed a "meeting"
20 subject to the provisions of this chapter.

21 "Open meeting" or "public meeting" means a meeting at which the public may be present.

22 "Public body" means any legislative body, authority, board, bureau, commission, district or
23 agency of the Commonwealth, including the State Corporation Commission, or of any political
24 subdivision of the Commonwealth, including cities, towns and counties, municipal councils, governing
25 bodies of counties, school boards and planning commissions; boards of visitors of public institutions of

26 higher education; and other organizations, corporations or agencies in the Commonwealth supported
27 wholly or principally by public funds. It shall include (i) the Virginia Birth-Related Neurological Injury
28 Compensation Program and its board of directors established pursuant to Chapter 50 (§ 38.2-5000 et
29 seq.) of Title 38.2 and (ii) any committee, subcommittee, or other entity however designated, of the
30 public body created to perform delegated functions of the public body or to advise the public body. It
31 shall not exclude any such committee, subcommittee or entity because it has private sector or citizen
32 members. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of
33 this chapter.

34 For the purposes of the provisions of this chapter applicable to access to public records,
35 constitutional officers shall be considered public bodies and, except as otherwise expressly provided by
36 law, shall have the same obligations to disclose public records as other custodians of public records.

37 "Public records" means all writings and recordings that consist of letters, words or numbers, or
38 their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic
39 impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data
40 compilation, however stored, and regardless of physical form or characteristics, prepared or owned by,
41 or in the possession of a public body or its officers, employees or agents in the transaction of public
42 business. Records that are not prepared for or used in the transaction of public business are not public
43 records.

44 "Regional public body" means a unit of government organized as provided by law within defined
45 boundaries, as determined by the General Assembly, whose members are appointed by the participating
46 local governing bodies, and such unit includes two or more counties or cities.

47 "Scholastic records" means those records containing information directly related to a student or
48 an applicant for admission and maintained by a public body that is an educational agency or institution
49 or by a person acting for such agency or institution.

50 **§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and**
51 **certain other limited exemptions.**

52 The following records are excluded from the provisions of this chapter but may be disclosed by
53 the custodian in his discretion, except where such disclosure is prohibited by law:

54 1. State income, business, and estate tax returns, personal property tax returns, scholastic and
55 confidential records held pursuant to § 58.1-3.

56 2. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the
57 Attorney General; the members of the General Assembly, the Division of Legislative Services, or the
58 Clerks of the House of Delegates and the Senate of Virginia; the mayor or chief executive officer of any
59 political subdivision of the Commonwealth; or the president or other chief executive officer of any
60 public institution of higher education in Virginia. However, no record, which is otherwise open to
61 inspection under this chapter, shall be deemed exempt by virtue of the fact that it has been attached to or
62 incorporated within any working paper or correspondence.

63 As used in this subdivision:

64 "Members of the General Assembly" means each member of the Senate of Virginia and the
65 House of Delegates and their legislative aides when working on behalf of such member.

66 "Office of the Governor" means the Governor; his chief of staff, counsel, director of policy,
67 Cabinet Secretaries, and the Assistant to the Governor for Intergovernmental Affairs; and those
68 individuals to whom the Governor has delegated his authority pursuant to § 2.2-104.

69 "Working papers" means those records prepared by or for an above-named public official for his
70 personal or deliberative use.

71 3. Library records that can be used to identify both (i) any library patron who has borrowed
72 material from a library and (ii) the material such patron borrowed.

73 4. Contract cost estimates prepared for the confidential use of the Department of Transportation
74 in awarding contracts for construction or the purchase of goods or services, and records and automated
75 systems prepared for the Department's Bid Analysis and Monitoring Program.

76 5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth,
77 whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by
78 the political subdivision.

79 6. Records and writings furnished by a member of the General Assembly to a meeting of a
80 standing committee, special committee or subcommittee of his house established solely for the purpose
81 of reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of
82 formulating advisory opinions to members on standards of conduct, or both.

83 7. Customer account information of a public utility affiliated with a political subdivision of the
84 Commonwealth, including the customer's name and service address, but excluding the amount of utility
85 service provided and the amount of money paid for such utility service.

86 8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing
87 Development Authority concerning individuals who have applied for or received loans or other housing
88 assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise
89 assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or
90 persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local
91 redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or
92 persons on the waiting list for housing assistance programs funded by local governments or by any such
93 authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or
94 any other local government agency concerning persons who have applied for occupancy or who have
95 occupied affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access
96 to one's own information shall not be denied.

97 9. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441,
98 if disclosure of them would have a detrimental effect upon the negotiating position of a governing body
99 or on the establishment of the terms, conditions and provisions of the siting agreement.

100 10. Records containing information on the site specific location of rare, threatened, endangered
101 or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and
102 archaeological sites if, in the opinion of the public body that has the responsibility for such information,
103 disclosure of the information would jeopardize the continued existence or the integrity of the resource.
104 This exemption shall not apply to requests from the owner of the land upon which the resource is
105 located.

106 11. Records, memoranda, working papers, graphics, video or audio tapes, production models,
107 data and information of a proprietary nature produced by or for or collected by or for the State Lottery
108 Department relating to matters of a specific lottery game design, development, production, operation,
109 ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to
110 holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning,
111 advertising, or marketing, where such official records have not been publicly released, published,
112 copyrighted or patented. Whether released, published or copyrighted, all game-related information shall
113 be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game
114 to which it pertains.

115 12. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local
116 retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of
117 Virginia, acting pursuant to § 23-76.1, or of the Virginia College Savings Plan, acting pursuant to § 23-
118 38.77, relating to the acquisition, holding or disposition of a security or other ownership interest in an
119 entity, where such security or ownership interest is not traded on a governmentally regulated securities
120 exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and
121 Visitors of the University of Virginia, prepared by the retirement system or the Virginia College Savings
122 Plan, or provided to the retirement system or the Virginia College Savings Plan under a promise of
123 confidentiality, of the future value of such ownership interest or the future financial performance of the
124 entity; and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the
125 investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the
126 University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be
127 construed to prevent the disclosure of records relating to the identity of any investment held, the amount
128 invested, or the present value of such investment.

129 13. Names and addresses of subscribers to Virginia Wildlife magazine, published by the
130 Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing
131 that the Department not release such information.

132 14. Financial, medical, rehabilitative and other personal information concerning applicants for or
133 recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority
134 under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

135 15. Records of the Virginia Commonwealth University Health System Authority pertaining to
136 any of the following: an individual's qualifications for or continued membership on its medical or
137 teaching staffs; proprietary information gathered by or in the possession of the Authority from third
138 parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in
139 awarding contracts for construction or the purchase of goods or services; data, records or information of
140 a proprietary nature produced or collected by or for the Authority or members of its medical or teaching
141 staffs; financial statements not publicly available that may be filed with the Authority from third parties;
142 the identity, accounts or account status of any customer of the Authority; consulting or other reports paid
143 for by the Authority to assist the Authority in connection with its strategic planning and goals; the
144 determination of marketing and operational strategies where disclosure of such strategies would be
145 harmful to the competitive position of the Authority; and data, records or information of a proprietary
146 nature produced or collected by or for employees of the Authority, other than the Authority's financial or
147 administrative records, in the conduct of or as a result of study or research on medical, scientific,
148 technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a
149 governmental body or a private concern, when such data, records or information have not been publicly
150 released, published, copyrighted or patented.

151 16. Records of the Department of Environmental Quality, the State Water Control Board, State
152 Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal
153 environmental enforcement actions that are considered confidential under federal law and (ii)
154 enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such
155 records shall be disclosed after a proposed sanction resulting from the investigation has been proposed
156 to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records
157 related to inspection reports, notices of violation, and documents detailing the nature of any
158 environmental contamination that may have occurred or similar documents.

159 17. As it pertains to any person, records related to the operation of toll facilities that identify an
160 individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle
161 enforcement system information; video or photographic images; Social Security or other identification
162 numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone
163 numbers; or records of the date or time of toll facility use.

164 18. Records of the State Lottery Department pertaining to (i) the social security number, tax
165 identification number, state sales tax number, home address and telephone number, personal and lottery
166 banking account and transit numbers of a retailer, and financial information regarding the nonlottery
167 operations of specific retail locations; and (ii) individual lottery winners, except that a winner's name,
168 hometown, and amount won shall be disclosed.

169 19. Records of the Board for Branch Pilots relating to the chemical or drug testing of a person
170 regulated by the Board, where such person has tested negative or has not been the subject of a
171 disciplinary action by the Board for a positive test result.

172 20. Records, investigative notes, correspondence, and information pertaining to the planning,
173 scheduling and performance of examinations of holder records pursuant to the Uniform Disposition of
174 Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer, his agents,
175 employees or persons employed to perform an audit or examination of holder records.

176 21. Records of the Virginia Department of Emergency Management or a local governing body
177 relating to citizen emergency response teams established pursuant to an ordinance of a local governing
178 body, to the extent that such records reveal the name, address, including e-mail address, telephone or
179 pager numbers, or operating schedule of an individual participant in the program.

180 22. Records of state or local park and recreation departments and local and regional park
181 authorities to the extent such records contain information identifying a person under the age of 18 years.
182 However, nothing in this subdivision shall operate to prohibit the disclosure of information defined as
183 directory information under regulations implementing the Family Educational Rights and Privacy Act,
184 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out
185 requirements provided by such regulations. Access shall not be denied to the parent, including a

186 noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated
187 or a court of competent jurisdiction has restricted or denied such access. For records of such persons
188 who are emancipated, the right of access may be asserted by the subject thereof. Any parent or
189 emancipated person who is the subject of the record may waive, in writing, the protections afforded by
190 this subdivision. If the protections are so waived, the public body shall open such records for inspection
191 and copying.

192 23. Records submitted for inclusion in the Statewide Alert Network administered by the
193 Department of Emergency Management, to the extent that they reveal names, physical addresses, email
194 addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless
195 or portable communications device information, or operating schedules of individuals or agencies,
196 where the release of such information would compromise the security of the Statewide Alert Network or
197 individuals participating in the Statewide Alert Network.

198 24. Records of the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

199 25. Records of the Virginia Retirement System acting pursuant to § 51.1-124.30, of a local
200 retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement
201 system), or of the Virginia College Savings Plan, acting pursuant to § 23-38.77 relating to:

202 a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings
203 Plan on the pursuit of particular investment strategies, or the selection or termination of investment
204 managers, prior to the execution of such investment strategies or the selection or termination of such
205 managers, to the extent that disclosure of such records would have an adverse impact on the financial
206 interest of the retirement system or the Virginia College Savings Plan; and

207 b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a
208 private entity to the retirement system or the Virginia College Savings Plan, to the extent disclosure of
209 such records would have an adverse impact on the financial interest of the retirement system or the
210 Virginia College Savings Plan.

211 For the records specified in subdivision b to be excluded from the provisions of this chapter, the
212 entity shall make a written request to the retirement system or the Virginia College Savings Plan:

213 (1) Invoking such exclusion prior to or upon submission of the data or other materials for which
214 protection from disclosure is sought;

215 (2) Identifying with specificity the data or other materials for which protection is sought; and

216 (3) Stating the reasons why protection is necessary.

217 The retirement system or the Virginia College Savings Plan shall determine whether the
218 requested exclusion from disclosure meets the requirements set forth in subdivision b.

219 Nothing in this subdivision shall be construed to authorize the withholding of the identity or
220 amount of any investment held or the present value and performance of all asset classes and subclasses.

221 26. Records of the Department of Corrections made confidential by § 53.1-233.

222 27. Records maintained by the Department of the Treasury or participants in the Local
223 Government Investment Pool (§ 2.2-4600 et seq.), to the extent such records relate to information
224 required to be provided by such participants to the Department to establish accounts in accordance with
225 § 2.2-4602.

226 28. Personal information, as defined in § 2.2-3801, contained in the Veterans Care Center
227 Resident Trust Funds concerning residents or patients of the Department of Veterans Services Care
228 Centers, except that access shall not be denied to the person who is the subject of the record.

229 29. Records maintained in connection with fundraising activities by the Veterans Services
230 Foundation pursuant to § 2.2-2716 to the extent that such records reveal the address, electronic mail
231 address, facsimile or telephone number, social security number or other identification number appearing
232 on a driver's license, or credit card or bank account data of identifiable donors, except that access shall
233 not be denied to the person who is the subject of the record. Nothing in this subdivision, however, shall
234 be construed to authorize the withholding of records relating to the amount, date, purpose, and terms of
235 the pledge or donation or the identity of the donor. The exclusion provided by this subdivision shall not
236 apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the
237 foundation for the performance of services or other work or (ii) the terms and conditions of such grants
238 or contracts.

239 30. Names, physical addresses, telephone numbers, and email addresses contained in
240 correspondence between an individual and a member of the governing body, school board, or other
241 public body of the locality in which the individual is a resident, unless the correspondence relates to the
242 transaction of public business. However, no record that is otherwise open to inspection under this
243 chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within
244 any such correspondence.

245 31. Records of the Commonwealth's Attorneys' Services Council, to the extent such records are
246 prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state
247 prosecutors or law-enforcement personnel, where such records are not otherwise available to the public
248 and the release of such records would reveal confidential strategies, methods or procedures to be
249 employed in law-enforcement activities, or materials created for the investigation and prosecution of a
250 criminal case.

251 32. Records provided to the Department of Aviation by other entities of the Commonwealth in
252 connection with the operation of aircraft, where the records would not be subject to disclosure by the
253 entity providing the records. The entity providing the records to the Department of Aviation shall
254 identify the specific portion of the records to be protected and the applicable provision of this chapter
255 that exempts the record or portions thereof from mandatory disclosure.

256 33. Records of the State Corporation Commission (Commission) to the extent such records relate
257 to (i) the Commission's exercise of the powers and duties prescribed to it by the Constitution of Virginia
258 or by any law relating to the regulation or control of persons engaged in any activity or conduct that is
259 subject to the jurisdiction of the Commission under any provision of Title 6.2, 13.1, 38.2, or 56; (ii) any
260 person subject to licensure or regulation by the Commission; (iii) the Commission's exercise of the
261 powers and duties prescribed to it by Chapter 26 (§ 58.1-2600 et seq.) of Title 58.1 that are not matters
262 required by law to be entered on any public assessment roll or book or are not generally available to the
263 public through regulatory disclosure or otherwise; (iv) portions of drawings, plans, or maps that reveal
264 critical structural components, interconnectivity, security equipment and systems, network monitoring,
265 network operation center, and other equipment and systems related to public utility infrastructure; (v)

266 confidential proprietary records, including balance sheets and financial statements, voluntarily provided
267 by a private business pursuant to a promise of confidentiality from the Commission; (vi) trade secrets, as
268 defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of a private business that are not generally
269 available to the public through regulatory disclosure or otherwise; (vii) other information submitted by a
270 private business, where, if the records were made public, the financial interest of the Commission or
271 private business would be adversely affected; or (viii) any records otherwise exempted from public
272 disclosure.

273 In order for the records specified in clauses (v), (vi), and (vii) of this subdivision to be excluded
274 from the provisions of this chapter, the private business shall make a written request to the Commission:

275 1. Invoking such exclusion upon submission of the records for which protection from disclosure
276 is sought;

277 2. Identifying with specificity the records for which protection is sought; and

278 3. Stating the reasons why protection is necessary.

279 The Commission shall determine whether the requested exclusion from disclosure is necessary to
280 the records for which protection is sought and shall make a written determination of the nature and
281 scope of the protection to be afforded by it under this subdivision.

282 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

283 A. Public bodies may hold closed meetings only for the following purposes:

284 1. Discussion, consideration, or interviews of prospective candidates for employment;
285 assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of
286 specific public officers, appointees, or employees of any public body; and evaluation of performance of
287 departments or schools of public institutions of higher education where such evaluation will necessarily
288 involve discussion of the performance of specific individuals. Any teacher shall be permitted to be
289 present during a closed meeting in which there is a discussion or consideration of a disciplinary matter
290 that involves the teacher and some student and the student involved in the matter is present, provided the
291 teacher makes a written request to be present to the presiding officer of the appropriate board.

292 2. Discussion or consideration of admission or disciplinary matters or any other matters that
293 would involve the disclosure of information contained in a scholastic record concerning any student of
294 any Virginia public institution of higher education or any state school system. However, any such
295 student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be
296 permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if
297 such student, parents, or guardians so request in writing and such request is submitted to the presiding
298 officer of the appropriate board.

299 3. Discussion or consideration of the acquisition of real property for a public purpose, or of the
300 disposition of publicly held real property, where discussion in an open meeting would adversely affect
301 the bargaining position or negotiating strategy of the public body.

302 4. The protection of the privacy of individuals in personal matters not related to public business.

303 5. Discussion concerning a prospective business or industry or the expansion of an existing
304 business or industry where no previous announcement has been made of the business' or industry's
305 interest in locating or expanding its facilities in the community.

306 6. Discussion or consideration of the investment of public funds where competition or bargaining
307 is involved, where, if made public initially, the financial interest of the governmental unit would be
308 adversely affected.

309 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to
310 actual or probable litigation, where such consultation or briefing in open meeting would adversely affect
311 the negotiating or litigating posture of the public body; and consultation with legal counsel employed or
312 retained by a public body regarding specific legal matters requiring the provision of legal advice by such
313 counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been
314 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe
315 will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit
316 the closure of a meeting merely because an attorney representing the public body is in attendance or is
317 consulted on a matter.

318 8. In the case of boards of visitors of public institutions of higher education, discussion or
319 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts
320 for services or work to be performed by such institution. However, the terms and conditions of any such
321 gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign
322 person and accepted by a public institution of higher education in Virginia shall be subject to public
323 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
324 (i) "foreign government" means any government other than the United States government or the
325 government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity
326 created under the laws of the United States or of any state thereof if a majority of the ownership of the
327 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
328 membership of any such entity is composed of foreign persons or foreign legal entities, or any legal
329 entity created under the laws of a foreign government; and (iii) "foreign person" means any individual
330 who is not a citizen or national of the United States or a trust territory or protectorate thereof.

331 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia
332 Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of
333 Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

334 10. Discussion or consideration of honorary degrees or special awards.

335 11. Discussion or consideration of tests, examinations, or other records excluded from this
336 chapter pursuant to subdivision 4 of § 2.2-3705.1.

337 12. Discussion, consideration, or review by the appropriate House or Senate committees of
338 possible disciplinary action against a member arising out of the possible inadequacy of the disclosure
339 statement filed by the member, provided the member may request in writing that the committee meeting
340 not be conducted in a closed meeting.

341 13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement
342 or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the
343 governing body in open meeting finds that an open meeting will have an adverse effect upon the
344 negotiating position of the governing body or the establishment of the terms, conditions and provisions

345 of the siting agreement, or both. All discussions with the applicant or its representatives may be
346 conducted in a closed meeting.

347 14. Discussion by the Governor and any economic advisory board reviewing forecasts of
348 economic activity and estimating general and nongeneral fund revenues.

349 15. Discussion or consideration of medical and mental health records excluded from this chapter
350 pursuant to subdivision 1 of § 2.2-3705.5.

351 16. Deliberations of the State Lottery Board in a licensing appeal action conducted pursuant to
352 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
353 discussion, consideration or review of State Lottery Department matters related to proprietary lottery
354 game information and studies or investigations exempted from disclosure under subdivision 6 of § 2.2-
355 3705.3 and subdivision 11 of § 2.2-3705.7.

356 17. Those portions of meetings by local government crime commissions where the identity of, or
357 information tending to identify, individuals providing information about crimes or criminal activities
358 under a promise of anonymity is discussed or disclosed.

359 18. Those portions of meetings in which the Board of Corrections discusses or discloses the
360 identity of, or information tending to identify, any prisoner who (i) provides information about crimes or
361 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the
362 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders
363 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

364 19. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by
365 staff members, legal counsel, or law-enforcement or emergency service officials concerning actions
366 taken to respond to such activity or a related threat to public safety; or discussion of reports or plans
367 related to the security of any governmental facility, building or structure, or the safety of persons using
368 such facility, building or structure.

369 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-
370 124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of
371 the University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings

372 Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or
373 other ownership interest in an entity, where such security or ownership interest is not traded on a
374 governmentally regulated securities exchange, to the extent that such discussion (i) concerns
375 confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the
376 retirement system or by the Virginia College Savings Plan or provided to the retirement system or the
377 Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership
378 interest or the future financial performance of the entity, and (ii) would have an adverse effect on the
379 value of the investment to be acquired, held or disposed of by the retirement system, the Rector and
380 Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision
381 shall be construed to prevent the disclosure of information relating to the identity of any investment
382 held, the amount invested or the present value of such investment.

383 21. Those portions of meetings in which individual child death cases are discussed by the State
384 Child Fatality Review team established pursuant to § 32.1-283.1, and those portions of meetings in
385 which individual child death cases are discussed by a regional or local child fatality review team
386 established pursuant to § 32.1-283.2, and those portions of meetings in which individual death cases are
387 discussed by family violence fatality review teams established pursuant to § 32.1-283.3.

388 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern
389 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
390 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
391 Virginia Medical School, as the case may be, have been delegated, in which there is discussed
392 proprietary, business-related information pertaining to the operations of the University of Virginia
393 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
394 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
395 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
396 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
397 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
398 Medical School, as the case may be.

399 23. In the case of the Virginia Commonwealth University Health System Authority, discussion
400 or consideration of any of the following: the acquisition or disposition of real or personal property where
401 disclosure would adversely affect the bargaining position or negotiating strategy of the Authority;
402 operational plans that could affect the value of such property, real or personal, owned or desirable for
403 ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and
404 contracts for services or work to be performed by the Authority; marketing or operational strategies
405 where disclosure of such strategies would adversely affect the competitive position of the Authority;
406 members of its medical and teaching staffs and qualifications for appointments thereto; and
407 qualifications or evaluations of other employees.

408 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee
409 within the Department of Health Professions to the extent such discussions identify any practitioner who
410 may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

411 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
412 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees
413 by or on behalf of individuals who have requested information about, applied for, or entered into prepaid
414 tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title
415 23 is discussed.

416 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee
417 created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-
418 336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of
419 wireless E-911 service.

420 27. Those portions of disciplinary proceedings by any regulatory board within the Department of
421 Professional and Occupational Regulation, Department of Health Professions, or the Board of
422 Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach
423 a decision or meetings of health regulatory boards or conference committees of such boards to consider
424 settlement proposals in pending disciplinary actions or modifications to previously issued board orders
425 as requested by either of the parties.

426 28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11
427 of § 2.2-3705.6 by a responsible public entity or an affected local jurisdiction, as those terms are defined
428 in § 56-557, or any independent review panel appointed to review information and advise the
429 responsible public entity concerning such records.

430 29. Discussion of the award of a public contract involving the expenditure of public funds,
431 including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where
432 discussion in an open session would adversely affect the bargaining position or negotiating strategy of
433 the public body.

434 30. Discussion or consideration of grant or loan application records excluded from this chapter
435 pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the
436 Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment
437 Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

438 31. Discussion or consideration by the Commitment Review Committee of records excluded
439 from this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to
440 commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

441 32. [Expired.]

442 33. Discussion or consideration of confidential proprietary records and trade secrets excluded
443 from this chapter pursuant to subdivision 18 of § 2.2-3705.6.

444 34. Discussion or consideration by a local authority created in accordance with the Virginia
445 Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade
446 secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

447 35. Discussion or consideration by the State Board of Elections or local electoral boards of
448 voting security matters made confidential pursuant to § 24.2-625.1.

449 36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory
450 Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records
451 excluded from this chapter pursuant to subdivision A 2 a of § 2.2-3706.

452 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program
453 Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision
454 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum
455 scholarship award, review and consider scholarship applications and requests for scholarship award
456 renewal, and cancel, rescind, or recover scholarship awards.

457 38. Discussion or consideration by the Virginia Port Authority of records excluded from this
458 chapter pursuant to subdivision 1 of § 2.2-3705.6.

459 39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System
460 acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-
461 124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia
462 College Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's
463 Investment Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this
464 chapter pursuant to subdivision 25 of § 2.2-3705.7.

465 40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3
466 of § 2.2-3705.6.

467 41. Discussion or consideration by the Board of Education of records relating to the denial,
468 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of §
469 2.2-3705.3.

470 42. Those portions of meetings of the Virginia Military Advisory Council or any commission
471 created by executive order for the purpose of studying and making recommendations regarding
472 preventing closure or realignment of federal military and national security installations and facilities
473 located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs
474 organization appointed by a local governing body, during which there is discussion of records excluded
475 from this chapter pursuant to subdivision 12 of § 2.2-3705.2.

476 43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
477 records excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.

478 44. Discussion or consideration by the Virginia Tobacco Indemnification and Community
479 Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of § 2.2-
480 3705.6.

481 45. Discussion or consideration by the board of directors of the Commercial Space Flight
482 Authority of records excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6.

483 47. Deliberations and hearings of the State Corporation Commission, and the discussion or
484 consideration by the State Corporation Commission of records excluded from this chapter pursuant to
485 subdivision 33 of § 2.2-3705.7.

486 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a
487 closed meeting shall become effective unless the public body, following the meeting, reconvenes in
488 open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract,
489 regulation, or motion that shall have its substance reasonably identified in the open meeting.

490 C. Public officers improperly selected due to the failure of the public body to comply with the
491 other provisions of this section shall be de facto officers and, as such, their official actions are valid until
492 they obtain notice of the legal defect in their election.

493 D. Nothing in this section shall be construed to prevent the holding of conferences between two
494 or more public bodies, or their representatives, but these conferences shall be subject to the same
495 procedures for holding closed meetings as are applicable to any other public body.

496 E. This section shall not be construed to (i) require the disclosure of any contract between the
497 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§
498 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to
499 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered
500 to issue industrial revenue bonds by general or special law, to identify a business or industry to which
501 subdivision A 5 applies. However, such business or industry shall be identified as a matter of public
502 record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such
503 bonds.

504 **§ 2.2-3713. Proceedings for enforcement of chapter.**

505 A. Any person, including the attorney for the Commonwealth acting in his official or individual
506 capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights
507 and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good
508 cause. Such petition may be brought in the name of the person notwithstanding that a request for public
509 records was made by the person's attorney in his representative capacity. Venue for the petition shall be
510 addressed as follows:

511 1. In a case involving a local public body, to the general district court or circuit court of the
512 county or city from which the public body has been elected or appointed to serve and in which such
513 rights and privileges were so denied;

514 2. In a case involving a regional public body, to the general district or circuit court of the county
515 or city where the principal business office of such body is located; ~~and~~

516 3. ~~In~~ Except as provided in subdivision 4, in a case involving a board, bureau, commission,
517 authority, district, institution, or agency of the state government, including a public institution of higher
518 education, or a standing or other committee of the General Assembly, to the general district court or the
519 circuit court of the residence of the aggrieved party or of the City of Richmond; and

520 4. In a case involving the State Corporation Commission, to the Supreme Court in accordance
521 with Article IX, Section 3 of the Constitution of Virginia.

522 B. In any action brought before a general district court, a corporate petitioner may appear
523 through its officer, director or managing agent without the assistance of counsel, notwithstanding any
524 provision of law or Rule of the Supreme Court of Virginia to the contrary.

525 C. Notwithstanding the provisions of § 8.01-644, the petition for mandamus or injunction shall
526 be heard within seven days of the date when the same is made, provided the party against whom the
527 petition is brought has received a copy of the petition at least three working days prior to filing. The
528 hearing on any petition made outside of the regular terms of the circuit court of a locality that is included
529 in a judicial circuit with another locality or localities shall be given precedence on the docket of such
530 court over all cases that are not otherwise given precedence by law.

531 D. The petition shall allege with reasonable specificity the circumstances of the denial of the
532 rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges
533 conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the
534 denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover
535 reasonable costs, including costs and reasonable fees for expert witnesses, and ~~attorneys'~~ attorney fees
536 from the public body if the petitioner substantially prevails on the merits of the case, unless special
537 circumstances would make an award unjust. In making this determination, a court may consider, among
538 other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court
539 that substantially supports the public body's position.

540 E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of
541 proof to establish an exemption by a preponderance of the evidence. Any failure by a public body to
542 follow the procedures established by this chapter shall be presumed to be a violation of this chapter.

543 F. Failure by any person to request and receive notice of the time and place of meetings as
544 provided in § 2.2-3707 shall not preclude any person from enforcing his rights and privileges conferred
545 by this chapter.

546 #