

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact § 30-179 of the Code of Virginia and to amend the Code of Virginia by
2 adding in Chapter 37 of Title 2.2 a section numbered 2.2-3715 and by adding a section numbered
3 30-179.1, relating to the Virginia Freedom of Information Advisory Council; advisory opinions;
4 immunity from civil penalty; evidence in civil proceeding.

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

6 **1. That § 30-179 of the Code of Virginia is amended and reenacted and that the Code of Virginia is**
7 **amended by adding in Chapter 37 of Title 2.2 a section numbered 2.2-3715 and by adding a section**
8 **numbered 30-179.1 as follows:**

9 **§ 2.2-3715. Effect of advisory opinions from the Freedom of Information Advisory Council**
10 **on liability for willful and knowing violations.**

11 A. No officer, employee, or member of a public body shall be found to have willfully and
12 knowingly violated § 2.2-3704, 2.2-3705.1 through 2.2-3705.7, 2.2-3706, 2.2-3707, 2.2-3708.2, 2.2-3710,
13 2.2-3711, or 2.2-3712 pursuant to § 2.2-3714 if the alleged violation resulted from his good faith reliance
14 on a formal advisory opinion approved by the Virginia Freedom of Information Advisory Council (the
15 Council) furnished in response to his written request pursuant to § 30-179.1 for such opinion, and the
16 opinion was furnished after a full disclosure of the facts, regardless of whether such opinion is later
17 withdrawn, provided that the alleged violation occurred prior to the withdrawal of the opinion.

18 B. Any officer, employee, or member of a public body who is alleged to have willfully and
19 knowingly violated § 2.2-3704, 2.2-3705.1 through 2.2-3705.7, 2.2-3706, 2.2-3707, 2.2-3708.2, 2.2-3710,
20 2.2-3711, or 2.2-3712 pursuant to § 2.2-3714 shall have the right to introduce at his trial a copy of a
21 relevant staff advisory opinion issued pursuant to § 30-179.1 as evidence that he did not willfully and
22 knowingly commit the violation if the alleged violation resulted from his good faith reliance on the
23 relevant staff advisory opinion.

24 **§ 30-179. Powers and duties of the Council.**

25 The Council shall:

26 1. Furnish, upon request, advisory opinions ~~or pursuant to § 30-179.1,~~ guidelines, and other
27 appropriate information regarding the Freedom of Information Act (§ 2.2-3700 et seq.) to any person or
28 ~~agency of state or local government~~ public body, in an expeditious manner;

29 2. Conduct training seminars and educational programs for the members and staff of public bodies
30 and other interested persons on the requirements of the Freedom of Information Act (§ 2.2-3700 et seq.);

31 3. Publish such educational materials as it deems appropriate on the provisions of the Freedom of
32 Information Act (§ 2.2-3700 et seq.);

33 4. Request from any ~~agency of state or local government~~ public body such assistance, services,
34 and information as will enable the Council to effectively carry out its responsibilities. Information
35 provided to the Council by ~~an agency of state or local government~~ a public body shall not be released to
36 any other party unless authorized by such ~~agency~~ public body;

37 5. Assist in the development and implementation of the provisions of § 2.2-3704.1;

38 6. Develop the public comment form for use by designated public bodies in accordance with
39 subdivision D 6 of § 2.2-3708.2;

40 7. Develop an online public comment form to be posted on the Council's official public
41 government website to enable any requester to comment on the quality of assistance provided to the
42 requester by a public body; and

43 8. Report annually on or before December 1 of each year on its activities and findings regarding
44 the Freedom of Information Act (§ 2.2-3700 et seq.), including recommendations for changes in the law,
45 to the General Assembly and the Governor. The annual report shall be published as a state document.

46 **§ 30-179.1. Advisory opinions of the Council; request for opinion or advice not to affect**
47 **responsibility for compliance with the Virginia Freedom of Information Act.**

48 A. The Council shall furnish formal advisory opinions, staff advisory opinions, or informal advice
49 to any public body or interested person upon request. Requests for formal advisory opinions and staff
50 advisory opinions shall be made in writing.

51 B. The Council may authorize a designee to prepare formal advisory opinions and furnish staff
52 advisory opinions or informal advice. Formal advisory opinions prepared by such designee shall be subject
53 to approval by the Council.

54 C. Formal advisory opinions that have been approved by the Council and staff advisory opinions
55 shall be published on the Council's website.

56 D. A request for a formal advisory opinion, staff advisory opinion, or informal advice shall not
57 alter the responsibility of a public body or its officers, employees, and members to respond to requests for
58 public records made pursuant to, and comply with the meetings requirements imposed under, the Virginia
59 Freedom of Information Act (§ 2.2-3700 et seq.).

60 E. The Council shall establish a policy regarding the issuance of formal advisory opinions and
61 staff advisory opinions.

62 **2. That the Virginia Freedom of Information Advisory Council shall establish the policy required**
63 **by subsection E of § 30-179.1 of the Code of Virginia, as created by this act, on or before July 1,**
64 **2020.**

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