

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact § 2.2-3713 of the Code of Virginia, relating to the Virginia Freedom of
2 Information Act; enforcement proceedings for the withholding of trade secret information.

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

4 **1. That § 2.2-3713 of the Code of Virginia is amended and reenacted as follows:**

5 **§ 2.2-3713. Proceedings for enforcement of chapter.**

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

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

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

17 3. In a case involving a board, bureau, commission, authority, district, institution, or agency of the
18 state government, including a public institution of higher education, or a standing or other committee of
19 the General Assembly, to the general district court or the circuit court of the residence of the aggrieved
20 party or of the City of Richmond.

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

24 C. Notwithstanding the provisions of § 8.01-644, the petition for mandamus or injunction shall be
25 heard within seven days of the date when the same is made, provided the party against whom the petition

26 is brought has received a copy of the petition at least three working days prior to filing. The hearing on
27 any petition made outside of the regular terms of the circuit court of a locality that is included in a judicial
28 circuit with another locality or localities shall be given precedence on the docket of such court over all
29 cases that are not otherwise given precedence by law.

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

39 E. If a public body withholds trade secret information pursuant to § 2.2-3705.6 and the requester
40 brings an action under this chapter to challenge such withholding, the requester may name the submitting
41 entity or its successor in interest as an additional defendant in the action. Additionally, upon request of
42 the public body, the court, by order pursuant to the provisions of § 8.01-7, may add the submitting entity
43 as an additional defendant in the action. If, as a result of the action, the court requires the public body to
44 produce such information because it was unreasonably withheld as a trade secret as defined in the Uniform
45 Trade Secrets Act (§ 59.1-336 et seq.), any award of reasonable costs and attorney fees to the requester
46 pursuant to the provisions of this subsection shall be paid by the submitting entity or the public body, or
47 both, in the proportion deemed appropriate by the court.

48 F. In any action to enforce the provisions of this chapter, the public body shall bear the burden of
49 proof to establish an exclusion by a preponderance of the evidence. No court shall be required to accord
50 any weight to the determination of a public body as to whether an exclusion applies. Any failure by a
51 public body to follow the procedures established by this chapter shall be presumed to be a violation of this
52 chapter.

