

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; payment of attorney's fees and costs in certain cases.

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

4 **1. That § 2.2-3713 of the Code of Virginia are 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
8 and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good
9 cause. Such petition may be brought in the name of the person notwithstanding that a request for public
10 records was made by the person's attorney in his representative capacity. Venue for the petition shall be
11 addressed as follows:

12 1. In a case involving a local public body, to the general district court or circuit court of the
13 county or city from which the public body has been elected or appointed to serve and in which such
14 rights and 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
18 the state government, including a public institution of higher education, or a standing or other committee
19 of the General Assembly, to the general district court or the circuit court of the residence of the
20 aggrieved party or of the City of Richmond.

21 B. In any action brought before a general district court, a corporate petitioner may appear
22 through its officer, director or managing agent without the assistance of counsel, notwithstanding any
23 provision of 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
25 be heard within seven days of the date when the same is made, provided the party against whom the

26 petition is brought has received a copy of the petition at least three working days prior to filing. The
27 hearing on any petition made outside of the regular terms of the circuit court of a locality that is included
28 in a judicial circuit with another locality or localities shall be given precedence on the docket of such
29 court over all 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
31 rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges
32 conferred by this chapter shall be sufficient to invoke the remedies granted herein. If Except as provided
33 in subsection F, if the court finds the denial to be in violation of the provisions of this chapter, the
34 petitioner shall be entitled to recover reasonable costs, including costs and reasonable fees for expert
35 witnesses, and attorneys' fees from the public body if the petitioner substantially prevails on the merits
36 of the case, unless special circumstances would make an award unjust. In making this determination, a
37 court may consider, among other things, the reliance of a public body on an opinion of the Attorney
38 General or a decision of a court that substantially supports the public body's position.

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

42 F. Where a public body has denied access to a record or portion thereof on the grounds that such
43 record has been identified by the submitting entity as a trade secret and the requester disputes such
44 designation, the public body shall notify the submitting entity within two working days that the requester
45 disputes such designation. If the submitting entity and the requester are unable after conferring to reach
46 agreement on the proper designation of the record in dispute or the submitting entity refuses to confer
47 with the requester, the requester may bring an action under this chapter to require the public body to
48 produce the requested record, which action shall also name as defendant the submitting entity. If as a
49 result of the action, the court requires the public body to produce such record, the petitioner shall be
50 entitled to recover reasonable costs, including costs, reasonable fees for expert witnesses, and attorneys'
51 fees if the petitioner substantially prevails on the merits of the case, unless special circumstances would

52 make an award unjust. If awarded, the court shall order such fees and costs to be paid by the submitting
53 entity or the public body, or both, in the proportion deemed appropriate by the court.

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

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