SENATE BILL NO. __________  HOUSE BILL NO. __________

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

Be it enacted by the General Assembly of Virginia:

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

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

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and the opinion was furnished after a full disclosure of the facts, regardless of whether such opinion is later withdrawn, provided that the alleged violation occurred prior to the withdrawal of the opinion.

   B. Any officer, employee, or member of a public body who is alleged to have willfully and 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, 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 relevant staff advisory opinion issued pursuant to § 30-179.1 as evidence that he did not willfully and knowingly commit the violation if the alleged violation resulted from his good faith reliance on the relevant staff advisory opinion.


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

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

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

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

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

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

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

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

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

A. The Council shall furnish formal advisory opinions, staff advisory opinions, or informal advice to any public body or interested person upon request. Requests for formal advisory opinions and staff advisory opinions shall be made in writing.
B. The Council may authorize a designee to prepare formal advisory opinions and furnish staff advisory opinions or informal advice. Formal advisory opinions prepared by such designee shall be subject to approval by the Council.

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

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

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

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