

## **HB 904: Oppose – general exclusion for trade secrets submitted to a public body**

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HB 904 creates a sweeping blanket exemption to the Freedom of Information Act (FOIA) for any trade secret claimed (not proven as a matter of law) by any private entity or person and submitted to any public body.

Right now, state law only exempts 17 types of trade secrets from FOIA disclosure, with various limitations and conditions on those exemptions. **If passed, HB 904 would exempt an unlimited number of claimed trade secrets from FOIA, removing citizens' access to vast amounts of information that FOIA exists to provide.**

- Of the 17 existing trade secret exemptions from FOIA, 5 have criteria that narrow the scope of the exemption and 7 require an agency or public body to authorize the trade secret protection and determine the scope of protection.
- With the passage of HB 904, those criteria and limitations for exemption would disappear.

### **HB 904 as currently written:**

- **Does the opposite of what it is supposed to do.**  
House Joint Resolution 96 (2014), the claimed impetus for this bill, actually called on the FOIA Council to consider whether existing FOIA exemptions should be eliminated because they are no longer applicable or appropriate. The discussion over the intervening years has resulted in just the opposite—a drastic expansion of exemptions proposed in HB 904.
- **Turns the Freedom of Information Act on its head.**  
The purpose of the Freedom of Information Act is to ensure Virginians have “ready access to public records in the custody of a public body” because “[t]he affairs of government are not intended to be conducted in an atmosphere of secrecy[.]” It goes on to say, **[a]ny exemption from public access to records or meetings shall be narrowly construed[.]** Va. Code Ann. § 2.2-3700.
- **Improperly places the burden on citizens to prove they have a right to public records.**  
HB904 also would place the burden on citizens to discover when a claimed trade secret has been deemed exempt from FOIA and bring costly lawsuits to challenge whether the exemption was proper. This is particularly backwards – and likely impossible - because citizens must prove the information is not a trade secret entitled to protection without having any information about what the claimed trade secret is.
- **Has significant unintended consequences.**  
For example: Virginia regulations require gas operators to disclose which chemicals they used in fracking operations. That information, including trade secrets, is open to the public through the Freedom of Information Act. No FOIA exemption exists following bipartisan opposition to creating such exemptions. HB 904 would change that, allowing operators to keep fracking chemicals from disclosure under FOIA anytime the operator claimed it was a trade secret.
- **Would prevent Virginians from accessing public records at every level of government.**  
“Public body” means any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning commissions; governing boards of public institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds. Va. Code Ann. § 2.2-3701.

*For More Information:*

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