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SENATE BILL NO. 206

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws

on January 23, 2002)

(Patron Prior to Substitute—Senator Houck)

A BILL to amend and reenact §§ 2.2-3705 and 2.2-3711 of the Code of Virginia, relating to the Virginia Freedom of Information Act; Virginia Retirement System; exemption from record disclosure and open meeting provisions.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705 and 2.2-3711 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3705. Exclusions to application of chapter.

A. The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Confidential records of all investigations of applications for licenses and permits, and all licensees and permittees made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, or the Charitable Gaming Commission.

2. State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § 58.1-3.

3. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. However, no student shall have access to (i) financial records of a parent or guardian or (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, which are in the sole possession of the maker thereof and that are not accessible or revealed to any other person except a substitute.

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of eighteen years. For scholastic records of students under the age of eighteen years, the right of access may be asserted only by his legal guardian or parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic records of students who are emancipated or attending a state-supported institution of higher education, the right of access may be asserted by the student.

Any person who is the subject of any scholastic record and who is eighteen years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

4. Personnel records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of any personnel record and who is eighteen years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

5. Medical and mental records, except that such records may be personally reviewed by the subject person or a physician of the subject person's choice. However, the subject person's mental records may not be personally reviewed by such person when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being.

Where the person who is the subject of medical records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the medical records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Medical records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the medical records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall be open to inspection and copying as provided in § 2.2-3704. No such summaries or data shall include any patient-identifying information. Where the person who is the subject of medical and mental records is under the age of eighteen, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such

access. In instances where the person who is the subject thereof is an emancipated minor or a student in a public institution of higher education, the right of access may be asserted by the subject person.

6. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the Attorney General; the members of the General Assembly or the Division of Legislative Services; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in Virginia. However, no record which is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence.

As used in this subdivision:

"Working papers" means those records prepared by or for an above-named public official for his personal or deliberative use.

"Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet Secretaries, and the Director of the Virginia Liaison Office; and those individuals to whom the Governor has delegated his authority pursuant to § 2.2-104.

7. Written advice of legal counsel to state, regional or local public bodies or public officials and any other records protected by the attorney-client privilege.

8. Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter that is properly the subject of a closed meeting under § 2.2-3711.

9. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment, or (iii) receipt of an honor or honorary recognition.

10. Library records that can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.

11. Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by a public body.

As used in this subdivision, "test or examination" shall include (i) any scoring key for any such test or examination and (ii) any other document that would jeopardize the security of the test or examination. Nothing contained in this subdivision shall prohibit the release of test scores or results as provided by law, or limit access to individual records as provided by law. However, the subject of such employment tests shall be entitled to review and inspect all records relative to his performance on such employment tests.

When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, the test or examination shall be made available to the public. However, minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

12. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

13. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth.

14. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

15. Reports, documentary evidence and other information as specified in §§ 2.2-706 and 63.1-55.4.

16. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4 or § 62.1-134.1.

17. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services, and records and automated systems prepared for the Department's Bid Analysis and Monitoring Program.

18. Vendor proprietary information software that may be in the official records of a public body. For the purpose of this subdivision, "vendor proprietary software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.

19. Financial statements not publicly available filed with applications for industrial development financings.

20. Data, records or information of a proprietary nature produced or collected by or for faculty or

staff of public institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such data, records or information has not been publicly released, published, copyrighted or patented.

21. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by the political subdivision.

22. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from the Department of Business Assistance, the Virginia Economic Development Partnership, the Virginia Tourism Authority, or local or regional industrial or economic development authorities or organizations, used by the Department, the Partnership, the Authority, or such entities for business, trade and tourism development; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by the Partnership, where competition or bargaining is involved and where, if such records are made public, the financial interest of the governmental unit would be adversely affected.

23. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

24. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.

25. Computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth.

26. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management. However, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.

27. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § 28.2-204.

28. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

29. Records and writings furnished by a member of the General Assembly to a meeting of a standing committee, special committee or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of formulating advisory opinions to members on standards of conduct, or both.

30. Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but excluding the amount of utility service provided and the amount of money paid for such utility service.

31. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance with the authority specified in § 2.2-2638, or adopted pursuant to § 15.2-965, or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

32. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; and other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 9 (§ 63.1-172 et seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1. However, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

33. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority; or

183 (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other
184 local government agency concerning persons who have applied for occupancy or who have occupied
185 affordable dwelling units established pursuant to § 15.2-2304 or § 15.2-2305. However, access to one's
186 own information shall not be denied.

187 34. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if
188 disclosure of them would have a detrimental effect upon the negotiating position of a governing body or
189 on the establishment of the terms, conditions and provisions of the siting agreement.

190 35. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior
191 to the completion of such purchase, sale or lease.

192 36. Records containing information on the site specific location of rare, threatened, endangered or
193 otherwise imperiled plant and animal species, natural communities, caves, and significant historic and
194 archaeological sites if, in the opinion of the public body that has the responsibility for such information,
195 disclosure of the information would jeopardize the continued existence or the integrity of the resource.
196 This exemption shall not apply to requests from the owner of the land upon which the resource is
197 located.

198 37. Records, memoranda, working papers, graphics, video or audio tapes, production models, data
199 and information of a proprietary nature produced by or for or collected by or for the State Lottery
200 Department relating to matters of a specific lottery game design, development, production, operation,
201 ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to
202 holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning,
203 advertising, or marketing, where such official records have not been publicly released, published,
204 copyrighted or patented. Whether released, published or copyrighted, all game-related information shall
205 be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game
206 to which it pertains.

207 38. Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii)
208 lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or
209 regulations that cause abuses in the administration and operation of the lottery and any evasions of such
210 provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where
211 such official records have not been publicly released, published or copyrighted. All studies and
212 investigations referred to under clauses (iii), (iv) and (v) shall be open to inspection and copying upon
213 completion of the study or investigation.

214 39. Those portions of engineering and construction drawings and plans submitted for the sole purpose
215 of complying with the Building Code in obtaining a building permit that would identify specific trade
216 secrets or other information the disclosure of which would be harmful to the competitive position of the
217 owner or lessee. However, such information shall be exempt only until the building is completed.
218 Information relating to the safety or environmental soundness of any building shall not be exempt from
219 disclosure.

220 40. Records concerning reserves established in specific claims administered by the Department of the
221 Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-1832 et seq.) of
222 Chapter 18 of this title, or by any county, city, or town.

223 41. Information and records collected for the designation and verification of trauma centers and other
224 specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to
225 Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

226 42. Reports and court documents required to be kept confidential pursuant to § 37.1-67.3.

227 43. Investigative notes, correspondence and information furnished in confidence, and records
228 otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the (i)
229 Auditor of Public Accounts; (ii) Joint Legislative Audit and Review Commission; (iii) Department of the
230 State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste
231 and Abuse Hotline; or (iv) committee or the auditor with respect to an investigation or audit conducted
232 pursuant to § 15.2-825. Records of completed investigations shall be disclosed in a form that does not
233 reveal the identity of the complainants or persons supplying information to investigators. Unless
234 disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the
235 agency involved, the identity of the person who is the subject of the complaint, the nature of the
236 complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective
237 action, the identity of the person who is the subject of the complaint may be released only with the
238 consent of the subject person.

239 44. Data formerly required to be submitted to the Commissioner of Health relating to the
240 establishment of new or the expansion of existing clinical health services, acquisition of major medical
241 equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

242 45. Documentation or other information that describes the design, function, operation or access
243 control features of any security system, whether manual or automated, which is used to control access to
244 or use of any automated data processing or telecommunications system.

46. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.

47. In the case of corporations organized by the Virginia Retirement System (i) proprietary information provided by, and financial information concerning, coventurers, partners, lessors, lessees, or investors and (ii) records concerning the condition, acquisition, disposition, use, leasing, development, coventuring, or management of real estate, the disclosure of which would have a substantial adverse impact on the value of such real estate or result in a competitive disadvantage to the corporation or subsidiary. *Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, relating to the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that: (i) such records contain confidential analyses prepared by the retirement system or provided to the retirement system under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system. Nothing in this subdivision shall be construed to prevent the disclosure of records relating to the identity of any investment held, the amount invested, or the present value of such investment.*

48. Confidential proprietary records related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.

49. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

50. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

51. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information.

52. Information required to be provided pursuant to § 54.1-2506.1.

53. Confidential information designated as provided in subsection D of § 2.2-4342 as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

54. All information and records acquired during a review of any child death by the State Child Fatality Review team established pursuant to § 32.1-283.1, during a review of any child death by a local or regional child fatality review team established pursuant to § 32.1-283.2, and all information and records acquired during a review of any death by a family violence fatality review team established pursuant to § 32.1-283.3.

55. Financial, medical, rehabilitative and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

56. Confidential proprietary records that are voluntarily provided by a private entity pursuant to a proposal filed with a public entity under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.), pursuant to a promise of confidentiality from the responsible public entity, used by the responsible public entity for purposes related to the development of a qualifying transportation facility; and memoranda, working papers or other records related to proposals filed under the Public-Private Transportation Act of 1995, where, if such records were made public, the financial interest of the public or private entity involved with such proposal or the process of competition or bargaining would be adversely affected. In order for confidential proprietary information to be excluded from the provisions

306 of this chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other
307 materials for which protection from disclosure is sought, (ii) identify the data or other materials for
308 which protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of
309 this subdivision, the terms "public entity" and "private entity" shall be defined as they are defined in the
310 Public-Private Transportation Act of 1995.

311 57. Records of law-enforcement agencies, to the extent that such records contain specific tactical
312 plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or
313 the general public; or records of emergency service agencies to the extent that such records contain
314 specific tactical plans relating to antiterrorist activity.

315 58. All records of the University of Virginia or the University of Virginia Medical Center that
316 contain proprietary, business-related information pertaining to the operations of the University of
317 Virginia Medical Center, including its business development or marketing strategies and its activities
318 with existing or future joint venturers, partners, or other parties with whom the University of Virginia
319 Medical Center has formed, or forms, any arrangement for the delivery of health care, if disclosure of
320 such information would be harmful to the competitive position of the Medical Center.

321 59. Patient level data collected by the Board of Health and not yet processed, verified, and released,
322 pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of
323 Health has contracted pursuant to § 32.1-276.4.

324 60. Records of the Virginia Commonwealth University Health System Authority pertaining to any of
325 the following: an individual's qualifications for or continued membership on its medical or teaching
326 staffs; proprietary information gathered by or in the possession of the Authority from third parties
327 pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in
328 awarding contracts for construction or the purchase of goods or services; data, records or information of
329 a proprietary nature produced or collected by or for the Authority or members of its medical or teaching
330 staffs; financial statements not publicly available that may be filed with the Authority from third parties;
331 the identity, accounts or account status of any customer of the Authority; consulting or other reports
332 paid for by the Authority to assist the Authority in connection with its strategic planning and goals; and
333 the determination of marketing and operational strategies where disclosure of such strategies would be
334 harmful to the competitive position of the Authority; and data, records or information of a proprietary
335 nature produced or collected by or for employees of the Authority, other than the Authority's financial
336 or administrative records, in the conduct of or as a result of study or research on medical, scientific,
337 technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a
338 governmental body or a private concern, when such data, records or information have not been publicly
339 released, published, copyrighted or patented.

340 61. Confidential proprietary information or trade secrets, not publicly available, provided by a private
341 person or entity to the Virginia Resources Authority or to a fund administered in connection with
342 financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such
343 information were made public, the financial interest of the private person or entity would be adversely
344 affected, and, after June 30, 1997, where such information was provided pursuant to a promise of
345 confidentiality.

346 62. Confidential proprietary records that are provided by a franchisee under § 15.2-2108 to its
347 franchising authority pursuant to a promise of confidentiality from the franchising authority that relates
348 to the franchisee's potential provision of new services, adoption of new technologies or implementation
349 of improvements, where such new services, technologies or improvements have not been implemented
350 by the franchisee on a nonexperimental scale in the franchise area, and where, if such records were
351 made public, the competitive advantage or financial interests of the franchisee would be adversely
352 affected. In order for confidential proprietary information to be excluded from the provisions of this
353 chapter, the franchisee shall (i) invoke such exclusion upon submission of the data or other materials for
354 which protection from disclosure is sought, (ii) identify the data or other materials for which protection
355 is sought, and (iii) state the reason why protection is necessary.

356 63. Records of the Intervention Program Committee within the Department of Health Professions, to
357 the extent such records may identify any practitioner who may be, or who is actually, impaired to the
358 extent disclosure is prohibited by § 54.1-2517.

359 64. Records submitted as a grant application, or accompanying a grant application, to the
360 Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 32.1-73.1 et seq.) of
361 Chapter 2 of Title 32.1, to the extent such records contain (i) medical or mental records, or other data
362 identifying individual patients or (ii) proprietary business or research-related information produced or
363 collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative,
364 scientific, technical or scholarly issues, when such information has not been publicly released, published,
365 copyrighted or patented, if the disclosure of such information would be harmful to the competitive
366 position of the applicant.

367 65. Information that would disclose the security aspects of a system safety program plan adopted

pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety Oversight agency; and information in the possession of such agency, the release of which would jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway safety.

66. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Charitable Gaming Commission pursuant to subsection E of § 18.2-340.34.

67. Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College Savings Plan or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure or publication of information in a statistical or other form that does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

68. Any record copied, recorded or received by the Commissioner of Health in the course of an examination, investigation or review of a managed care health insurance plan licensee pursuant to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

69. Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security or employee safety of (i) the Virginia Museum of Fine Arts or any of its warehouses; (ii) any government store or warehouse controlled by the Department of Alcoholic Beverage Control; (iii) any courthouse, jail, detention or law-enforcement facility; or (iv) any correctional or juvenile facility or institution under the supervision of the Department of Corrections or the Department of Juvenile Justice.

70. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to §§ 3.1-622 and 3.1-624.

71. Records of the Department of Environmental Quality, the State Water Control Board, State Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.

72. As it pertains to any person, records related to the operation of toll facilities that identify an individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

73. Records of the Department for Rights of Virginians with Disabilities consisting of documentary evidence received or maintained by the Department or its agents in connection with specific complaints or investigations, and records of communications between employees and agents of the Department and its clients or prospective clients concerning specific complaints, investigations or cases. Upon the conclusion of an investigation of a complaint, this exclusion shall no longer apply, but the Department may not at any time release the identity of any complainant or person with mental illness, mental retardation, developmental disabilities or other disability, unless (i) such complainant or person or his legal representative consents in writing to such identification or (ii) such identification is required by court order.

74. Information furnished in confidence to the Department of Employment Dispute Resolution with respect to an investigation, consultation, or mediation under Chapter 10 (§ 2.2-1000 et seq.) of this title, and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

75. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1, submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

76. Records of the State Lottery Department pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations, and (ii) individual lottery winners, except that a winner's name,

hometown, and amount won shall be disclosed.

77. Records, information and statistical registries required to be kept confidential pursuant to §§ 63.1-53 and 63.1-209.

B. Neither any provision of this chapter nor any provision of Chapter 38 (§ 2.2-3800 et seq.) of this title shall be construed as denying public access to (i) contracts between a public official and a public body, other than contracts settling public employee employment disputes held confidential as personnel records under subdivision 4. of subsection A; (ii) records of the position, job classification, official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to any officer, official or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees. The provisions of this subsection, however, shall not require public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

C. No provision of this chapter or Chapter 21 (§ 30-178 et seq.) of Title 30 shall be construed to afford any rights to any person incarcerated in a state, local or federal correctional facility, whether or not such facility is (i) located in the Commonwealth or (ii) operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.). However, this subsection shall not be construed to prevent an incarcerated person from exercising his constitutionally protected rights, including, but not limited to, his rights to call for evidence in his favor in a criminal prosecution.

§ 2.2-3711. Closed meetings authorized for certain limited purposes.

A. Public bodies may hold closed meetings only for the following purposes:

1. Discussion, consideration or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific public officers, appointees or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.

2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any Virginia public institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.

4. The protection of the privacy of individuals in personal matters not related to public business.

5. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the 'business' or industry's interest in locating or expanding its facilities in the community.

6. The investing of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.

7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

8. In the case of boards of visitors of public institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants and contracts made by a foreign government, a foreign legal entity or a foreign person and accepted by a public institution of higher education in Virginia shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the laws of the United States or of any state thereof if a majority of the ownership of the

stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under the laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

9. In the case of the boards of trustees of the Virginia Museum of Fine Arts and The Science Museum of Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

10. Discussion or consideration of honorary degrees or special awards.

11. Discussion or consideration of tests, examinations or other records excluded from this chapter pursuant to subdivision A. 11. of § 2.2-3705.

12. Discussion, consideration or review by the appropriate House or Senate committees of possible disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed by the member, provided the member may request in writing that the committee meeting not be conducted in a closed meeting.

13. Discussion of strategy with respect to the negotiation of a siting agreement or to consider the terms, conditions, and provisions of a siting agreement if the governing body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.

14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic activity and estimating general and nongeneral fund revenues.

15. Discussion or consideration of medical and mental records excluded from this chapter pursuant to subdivision A. 5. of § 2.2-3705, and those portions of disciplinary proceedings by any regulatory board within the Department of Professional and Occupational Regulation or Department of Health Professions conducted pursuant to § 2.2-4019 or § 2.2-4020 during which the board deliberates to reach a decision.

16. Discussion, consideration or review of State Lottery Department matters related to proprietary lottery game information and studies or investigations exempted from disclosure under subdivisions A. 37. and A. 38. of § 2.2-3705.

17. Those portions of meetings by local government crime commissions where the identity of, or information tending to identify, individuals providing information about crimes or criminal activities under a promise of anonymity is discussed or disclosed.

18. Discussion, consideration, review and deliberations by local community corrections resources boards regarding the placement in community diversion programs of individuals previously sentenced to state correctional facilities.

19. Those portions of meetings in which the Board of Corrections discusses or discloses the identity of, or information tending to identify, any prisoner who (i) provides information about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

20. Discussion of plans to protect public safety as it relates to terrorist activity.

21. ~~In the case of corporations organized by the Virginia Retirement System, discussion or consideration of (i) proprietary information provided by, and financial information concerning, coventurers, partners, lessors, lessees, or investors and (ii) the condition, acquisition, disposition, use, leasing, development, coventuring, or management of real estate the disclosure of which would have a substantial adverse impact on the value of such real estate or result in a competitive disadvantage to the corporation or subsidiary.~~ Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses, prepared by the retirement system or provided to the retirement system under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

22. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review team established pursuant to § 32.1-283.1, and those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § 32.1-283.2, and those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3.

552 23. Those portions of meetings of the University of Virginia Board of Visitors and those portions of
553 meetings of any persons to whom management responsibilities for the University of Virginia Medical
554 Center have been delegated, in which there is discussed proprietary, business-related information
555 pertaining to the operations of the University of Virginia Medical Center, including its business
556 development or marketing strategies and its activities with existing or future joint venturers, partners, or
557 other parties with whom the University of Virginia Medical Center has formed, or forms, any
558 arrangement for the delivery of health care, if disclosure of such information would adversely affect the
559 competitive position of the Medical Center.

560 24. In the case of the Virginia Commonwealth University Health System Authority, discussion or
561 consideration of any of the following: the acquisition or disposition of real or personal property where
562 disclosure would adversely affect the bargaining position or negotiating strategy of the Authority;
563 operational plans that could affect the value of such property, real or personal, owned or desirable for
564 ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and
565 contracts for services or work to be performed by the Authority; marketing or operational strategies
566 where disclosure of such strategies would adversely affect the competitive position of the Authority;
567 members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications
568 or evaluations of other employees.

569 25. Those portions of the meetings of the Intervention Program Committee within the Department of
570 Health Professions to the extent such discussions identify any practitioner who may be, or who actually
571 is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

572 26. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
573 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees
574 by or on behalf of individuals who have requested information about, applied for, or entered into
575 prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.)
576 of Title 23 is discussed.

577 27. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created
578 pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et
579 seq.) of Title 59.1, submitted by CMRS providers as defined in § 56-484.12, related to the provision of
580 wireless E-911 service.

581 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a
582 closed meeting shall become effective unless the public body, following the meeting, reconvenes in open
583 meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation or
584 motion that shall have its substance reasonably identified in the open meeting.

585 C. Public officers improperly selected due to the failure of the public body to comply with the other
586 provisions of this section shall be de facto officers and, as such, their official actions are valid until they
587 obtain notice of the legal defect in their election.

588 D. Nothing in this section shall be construed to prevent the holding of conferences between two or
589 more public bodies, or their representatives, but these conferences shall be subject to the same
590 procedures for holding closed meetings as are applicable to any other public body.

591 E. This section shall not be construed to (i) require the disclosure of any contract between the
592 Intervention Program Committee within the Department of Health Professions and an impaired
593 practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the
594 board of directors of any authority created pursuant to the Industrial Development and Revenue Bond
595 Act (§ 15.2-4900 et seq.), or any public body empowered to issue industrial revenue bonds by general or
596 special law, to identify a business or industry to which subdivision A. 5. applies. However, such
597 business or industry shall be identified as a matter of public record at least thirty days prior to the actual
598 date of the board's authorization of the sale or issuance of such bonds.