

16106276D

## HOUSE BILL NO. 1343

House Amendments in [ ] - April 20, 2016

A BILL to amend and reenact §§ 2.2-3705.6, 2.2-3711, and 23-9.6:1 of the Code of Virginia and to amend the Code of Virginia by adding in Title 23 a chapter numbered 28, consisting of sections numbered 23-304 through 23-307, and by adding in Article 3.1 of Chapter 1 of Title 51.1 a section numbered 51.1-124.38, relating to research and development in the Commonwealth.

Patron Prior to Engrossment—Delegate Jones

Referred to Committee on Appropriations

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

1. That §§ 2.2-3705.6, 2.2-3711, and 23-9.6:1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 23 a chapter numbered 28, consisting of sections numbered 23-304 through 23-307, and by adding in Article 3.1 of Chapter 1 of Title 51.1 a section numbered 51.1-124.38 as follows:

**§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.**

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

2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

3. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade and tourism development or retention; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where, if such records are made public, the financial interest of the public body would be adversely affected.

4. 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.

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

6. 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.

7. 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.

8. 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.

9. 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.

10. Confidential information designated as provided in subsection F 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.

11. a. Memoranda, staff evaluations, or other records prepared by the responsible public entity, its

REENGROSSED

HB1343E2

59 staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed  
60 under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public Private  
61 Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (i) if such records were  
62 made public prior to or after the execution of an interim or a comprehensive agreement, § 33.2-1820 or  
63 56-575.17 notwithstanding, the financial interest or bargaining position of the public entity would be  
64 adversely affected, and (ii) the basis for the determination required in clause (i) is documented in writing  
65 by the responsible public entity; and

66 b. Records provided by a private entity to a responsible public entity, affected jurisdiction, or  
67 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 or  
68 the Public-Private Education Facilities and Infrastructure Act of 2002, to the extent that such records  
69 contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et  
70 seq.); (ii) financial records of the private entity, including balance sheets and financial statements, that  
71 are not generally available to the public through regulatory disclosure or otherwise; or (iii) other  
72 information submitted by the private entity, where, if the records were made public prior to the  
73 execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining  
74 position of the public or private entity would be adversely affected. In order for the records specified in  
75 clauses (i), (ii), and (iii) to be excluded from the provisions of this chapter, the private entity shall make  
76 a written request to the responsible public entity:

77 1. Invoking such exclusion upon submission of the data or other materials for which protection from  
78 disclosure is sought;

79 2. Identifying with specificity the data or other materials for which protection is sought; and

80 3. Stating the reasons why protection is necessary.

81 The responsible public entity shall determine whether the requested exclusion from disclosure is  
82 necessary to protect the trade secrets or financial records of the private entity. To protect other records  
83 submitted by the private entity from disclosure, the responsible public entity shall determine whether  
84 public disclosure prior to the execution of an interim agreement or a comprehensive agreement would  
85 adversely affect the financial interest or bargaining position of the public or private entity. The  
86 responsible public entity shall make a written determination of the nature and scope of the protection to  
87 be afforded by the responsible public entity under this subdivision. Once a written determination is made  
88 by the responsible public entity, the records afforded protection under this subdivision shall continue to  
89 be protected from disclosure when in the possession of any affected jurisdiction or affected local  
90 jurisdiction.

91 Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed to  
92 authorize the withholding of (a) procurement records as required by § 33.2-1820 or 56-575.17; (b)  
93 information concerning the terms and conditions of any interim or comprehensive agreement, service  
94 contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity  
95 and the private entity; (c) information concerning the terms and conditions of any financing arrangement  
96 that involves the use of any public funds; or (d) information concerning the performance of any private  
97 entity developing or operating a qualifying transportation facility or a qualifying project.

98 For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction,"  
99 "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation  
100 facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined  
101 in the Public-Private Transportation Act of 1995 or in the Public-Private Education Facilities and  
102 Infrastructure Act of 2002.

103 12. Confidential proprietary information or trade secrets, not publicly available, provided by a private  
104 person or entity to the Virginia Resources Authority or to a fund administered in connection with  
105 financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such  
106 information were made public, the financial interest of the private person or entity would be adversely  
107 affected, and, after June 30, 1997, where such information was provided pursuant to a promise of  
108 confidentiality.

109 13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential  
110 proprietary records that are not generally available to the public through regulatory disclosure or  
111 otherwise, provided by a (a) bidder or applicant for a franchise or (b) franchisee under Chapter 21  
112 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of  
113 confidentiality from the franchising authority, to the extent the records relate to the bidder's, applicant's,  
114 or franchisee's financial capacity or provision of new services, adoption of new technologies or  
115 implementation of improvements, where such new services, technologies or improvements have not been  
116 implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such  
117 records were made public, the competitive advantage or financial interests of the franchisee would be  
118 adversely affected.

119 In order for trade secrets or confidential proprietary information to be excluded from the provisions  
120 of this chapter, the bidder, applicant, or franchisee shall (i) invoke such exclusion upon submission of

the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reason why protection is necessary.

No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the applicable franchising authority serves on the management board or as an officer of the bidder, applicant, or franchisee.

14. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Department of Agriculture and Consumer Services pursuant to subsection E of § 18.2-340.34.

15. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to § 3.2-1215.

16. 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.

17. Records submitted as a grant or loan application, or accompanying a grant or loan application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 to the extent such records contain proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

18. Confidential proprietary records and trade secrets developed and held by a local public body (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2, to the extent that disclosure of such records would be harmful to the competitive position of the locality. In order for confidential proprietary information or trade secrets to be excluded from the provisions of this chapter, the locality in writing shall (a) invoke the protections of this subdivision, (b) identify with specificity the records or portions thereof for which protection is sought, and (c) state the reasons why protection is necessary.

19. Confidential proprietary records and trade secrets developed by or for a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive position of the authority, except that records required to be maintained in accordance with § 15.2-2160 shall be released.

20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial records of a business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, provided to the Department of Small Business and Supplier Diversity as part of an application for certification as a small, women-owned, or minority-owned business in accordance with Chapter 16.1 (§ 2.2-1603 et seq.). In order for such trade secrets or financial records to be excluded from the provisions of this chapter, the business shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reasons why protection is necessary.

21. Documents and other information of a proprietary or confidential nature disclosed by a carrier to the State Health Commissioner pursuant to §§ 32.1-276.5:1 and 32.1-276.7:1.

22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including, but not limited to, financial records, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the State Inspector General for the purpose of an audit, special investigation, or any study requested by the Office of the State Inspector General in accordance with law.

In order for the records specified in this subdivision to be excluded from the provisions of this chapter, the private or nongovernmental entity shall make a written request to the State Inspector General:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

2. Identifying with specificity the data or other materials for which protection is sought; and

3. Stating the reasons why protection is necessary.

The State Inspector General shall determine whether the requested exclusion from disclosure is

182 necessary to protect the trade secrets or financial records of the private entity. The State Inspector  
183 General shall make a written determination of the nature and scope of the protection to be afforded by it  
184 under this subdivision.

185 23. Records submitted as a grant application, or accompanying a grant application, to the Tobacco  
186 Region Revitalization Commission to the extent such records contain (i) trade secrets as defined in the  
187 Uniform Trade Secrets Act (§ 59.1-336 et seq.), (ii) financial records of a grant applicant that is not a  
188 public body, including balance sheets and financial statements, that are not generally available to the  
189 public through regulatory disclosure or otherwise, or (iii) research-related information produced or  
190 collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative,  
191 scientific, technical, technological, or scholarly issues, when such information has not been publicly  
192 released, published, copyrighted, or patented, if the disclosure of such information would be harmful to  
193 the competitive position of the applicant; and memoranda, staff evaluations, or other records prepared by  
194 the Commission or its staff exclusively for the evaluation of grant applications. The exclusion provided  
195 by this subdivision shall apply to grants that are consistent with the powers of and in furtherance of the  
196 performance of the duties of the Commission pursuant to § 3.2-3103.

197 In order for the records specified in this subdivision to be excluded from the provisions of this  
198 chapter, the applicant shall make a written request to the Commission:

199 1. Invoking such exclusion upon submission of the data or other materials for which protection from  
200 disclosure is sought;

201 2. Identifying with specificity the data, records or other materials for which protection is sought; and

202 3. Stating the reasons why protection is necessary.

203 The Commission shall determine whether the requested exclusion from disclosure is necessary to  
204 protect the trade secrets, financial records or research-related information of the applicant. The  
205 Commission shall make a written determination of the nature and scope of the protection to be afforded  
206 by it under this subdivision.

207 24. a. Records of the Commercial Space Flight Authority relating to rate structures or charges for the  
208 use of projects of, the sale of products of, or services rendered by the Authority if public disclosure  
209 would adversely affect the financial interest or bargaining position of the Authority or a private entity  
210 providing records to the Authority; or

211 b. Records provided by a private entity to the Commercial Space Flight Authority, to the extent that  
212 such records contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act  
213 (§ 59.1-336 et seq.); (ii) financial records of the private entity, including balance sheets and financial  
214 statements, that are not generally available to the public through regulatory disclosure or otherwise; or  
215 (iii) other information submitted by the private entity, where, if the records were made public, the  
216 financial interest or bargaining position of the Authority or private entity would be adversely affected.

217 In order for the records specified in clauses (i), (ii), and (iii) of subdivision 24 b to be excluded from  
218 the provisions of this chapter, the private entity shall make a written request to the Authority:

219 1. Invoking such exclusion upon submission of the data or other materials for which protection from  
220 disclosure is sought;

221 2. Identifying with specificity the data or other materials for which protection is sought; and

222 3. Stating the reasons why protection is necessary.

223 The Authority shall determine whether the requested exclusion from disclosure is necessary to protect  
224 the trade secrets or financial records of the private entity. To protect other records submitted by the  
225 private entity from disclosure, the Authority shall determine whether public disclosure would adversely  
226 affect the financial interest or bargaining position of the Authority or private entity. The Authority shall  
227 make a written determination of the nature and scope of the protection to be afforded by it under this  
228 subdivision.

229 25. Documents and other information of a proprietary nature furnished by an agricultural landowner  
230 or operator to the Department of Conservation and Recreation, the Department of Environmental  
231 Quality, the Department of Agriculture and Consumer Services or any political subdivision, agency, or  
232 board of the Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when  
233 required as part of a state or federal regulatory enforcement action.

234 26. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to the  
235 Department of Environmental Quality pursuant to the provisions of § 10.1-1458. In order for such trade  
236 secrets to be excluded from the provisions of this chapter, the submitting party shall (i) invoke this  
237 exclusion upon submission of the data or materials for which protection from disclosure is sought, (ii)  
238 identify the data or materials for which protection is sought, and (iii) state the reasons why protection is  
239 necessary.

240 27. Documents and other information of a proprietary nature furnished by a licensed public-use  
241 airport to the Department of Aviation for funding from programs administered by the Department of  
242 Aviation or the Virginia Aviation Board, where if the records were made public, the financial interest of  
243 the public-use airport would be adversely affected.

In order for the records specified in this subdivision to be excluded from the provisions of this chapter, the public-use airport shall make a written request to the Department of Aviation:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

2. Identifying with specificity the data or other materials for which protection is sought; and

3. Stating the reasons why protection is necessary.

28. *Records submitted as a grant or loan application, or accompanying a grant or loan application, for an award from the Virginia Research Investment Fund pursuant to Chapter 28 (§ 23-304 et seq.) of Title 23, to the extent that such records contain proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.*

**§ 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. Discussion or consideration of the investment 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

305 who is not a citizen or national of the United States or a trust territory or protectorate thereof.

306 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum  
307 of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of Virginia,  
308 discussion or consideration of matters relating to specific gifts, bequests, and grants.

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

310 11. Discussion or consideration of tests, examinations, or other records excluded from this chapter  
311 pursuant to subdivision 4 of § 2.2-3705.1.

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

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

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

324 15. Discussion or consideration of medical and mental health records excluded from this chapter  
325 pursuant to subdivision 1 of § 2.2-3705.5.

326 16. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to  
327 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and  
328 discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game  
329 information and studies or investigations exempted from disclosure under subdivision 6 of § 2.2-3705.3  
330 and subdivision 11 of § 2.2-3705.7.

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

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

339 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific  
340 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement  
341 or emergency service officials concerning actions taken to respond to such matters or a related threat to  
342 public safety; discussion of records excluded from this chapter pursuant to subdivision 3 or 4 of  
343 § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of any person or the  
344 security of any facility, building, structure, information technology system, or software program; or  
345 discussion of reports or plans related to the security of any governmental facility, building or structure,  
346 or the safety of persons using such facility, building or structure.

347 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or  
348 of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the  
349 University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings  
350 Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or  
351 other ownership interest in an entity, where such security or ownership interest is not traded on a  
352 governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential  
353 analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement  
354 system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia  
355 College Savings Plan under a promise of confidentiality, of the future value of such ownership interest  
356 or the future financial performance of the entity, and (ii) would have an adverse effect on the value of  
357 the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of  
358 the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be  
359 construed to prevent the disclosure of information relating to the identity of any investment held, the  
360 amount invested or the present value of such investment.

361 21. Those portions of meetings in which individual child death cases are discussed by the State Child  
362 Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which  
363 individual child death cases are discussed by a regional or local child fatality review team established  
364 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by  
365 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in  
366 which individual adult death cases are discussed by the state Adult Fatality Review Team established

pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, have been delegated, in which there is discussed proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

23. In the case of the Virginia Commonwealth University Health System Authority, discussion or consideration of any of the following: the acquisition or disposition of real or personal property where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; operational plans that could affect the value of such property, real or personal, owned or desirable for ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies where disclosure of such strategies would adversely affect the competitive position of the Authority; members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other employees. This exemption shall also apply when the foregoing discussions occur at a meeting of the Virginia Commonwealth University Board of Visitors.

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

25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § 2.2-3801, which has been provided to the Board 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 is discussed.

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

27. Those portions of disciplinary proceedings by any regulatory board within the Department of Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach a decision or meetings of health regulatory boards or conference committees of such boards to consider settlement proposals in pending disciplinary actions or modifications to previously issued board orders as requested by either of the parties.

28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are defined in § 33.2-1800, or any independent review panel appointed to review information and advise the responsible public entity concerning such records.

29. Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.

30. Discussion or consideration of grant or loan application records excluded from this chapter pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

31. Discussion or consideration by the Commitment Review Committee of records excluded from this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

32. [Expired.]

33. Discussion or consideration of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6.

34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade secrets

428 excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

429 35. Discussion or consideration by the State Board of Elections or local electoral boards of voting  
430 security matters made confidential pursuant to § 24.2-625.1.

431 36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee  
432 created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from  
433 this chapter pursuant to subdivision A 2 a of § 2.2-3706.

434 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards  
435 Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of  
436 § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship  
437 award, review and consider scholarship applications and requests for scholarship award renewal, and  
438 cancel, rescind, or recover scholarship awards.

439 38. Discussion or consideration by the Virginia Port Authority of records excluded from this chapter  
440 pursuant to subdivision 1 of § 2.2-3705.6.

441 39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting  
442 pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26,  
443 by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College  
444 Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's Investment  
445 Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this chapter pursuant  
446 to subdivision 25 of § 2.2-3705.7.

447 40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of  
448 § 2.2-3705.6.

449 41. Discussion or consideration by the Board of Education of records relating to the denial,  
450 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of  
451 § 2.2-3705.3.

452 42. Those portions of meetings of the Virginia Military Advisory Council or any commission created  
453 by executive order for the purpose of studying and making recommendations regarding preventing  
454 closure or realignment of federal military and national security installations and facilities located in  
455 Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization  
456 appointed by a local governing body, during which there is discussion of records excluded from this  
457 chapter pursuant to subdivision 12 of § 2.2-3705.2.

458 43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of  
459 records excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.

460 44. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of  
461 records excluded from this chapter pursuant to subdivision 23 of § 2.2-3705.6.

462 45. Discussion or consideration by the board of directors of the Commercial Space Flight Authority  
463 of records excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6.

464 46. Discussion or consideration of personal and proprietary information that are excluded from the  
465 provisions of this chapter pursuant to (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of  
466 § 10.1-104.7. This exemption shall not apply to the discussion or consideration of records that contain  
467 information that has been certified for release by the person who is the subject of the information or  
468 transformed into a statistical or aggregate form that does not allow identification of the person who  
469 supplied, or is the subject of, the information.

470 47. (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the Virginia  
471 Alcoholic Beverage Control Authority of records excluded from this chapter pursuant to subdivision 1 of  
472 § 2.2-3705.3 or subdivision 34 of § 2.2-3705.7.

473 48. *Discussion or consideration of grant or loan application records excluded from this chapter*  
474 *pursuant to subdivision 28 of § 2.2-3705.6 related to the submission of an application for an award*  
475 *from the Virginia Research Investment Fund pursuant to Chapter 28 (§ 23-304 et seq.) of Title 23.*

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

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

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

486 E. This section shall not be construed to (i) require the disclosure of any contract between the  
487 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1  
488 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant  
489 to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body



empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

**§ 23-9.6:1. Duties of Council generally.**

In addition to such other duties as may be prescribed elsewhere, the State Council of Higher Education shall:

1. Develop a statewide strategic plan that (i) reflects the goals set forth in subsection B of § 23-38.88 or (ii) once adopted, reflects the goals and objectives developed pursuant to subdivision B 5 of § 23-38.87:20 for higher education in the Commonwealth, identifies a coordinated approach to such state and regional goals, and emphasizes the future needs for higher education in Virginia at both the undergraduate and the graduate levels, as well as the mission, programs, facilities and location of each of the existing institutions of higher education, each public institution's six-year plan, and such other matters as the Council deems appropriate. The Council shall revise such plans at least once every six years and shall submit such recommendations as are necessary for the implementation of the plan to the Governor and the General Assembly.

2. Review and approve or disapprove any proposed change in the statement of mission of any presently existing public institution of higher education and to define the mission of all public institutions of higher education created after the effective date of this provision. The Council shall, within the time prescribed in subdivision 1, make a report to the Governor and the General Assembly with respect to its actions hereunder. No such actions shall become effective until 30 days after adjournment of the session of the General Assembly next following the filing of such a report. Nothing contained in this provision shall be construed to authorize the Council to modify any mission statement adopted by the General Assembly, nor to empower the Council to affect, either directly or indirectly, the selection of faculty or the standards and criteria for admission of any public institution, whether related to academic standards, residence or other criteria; it being the intention of this section that faculty selection and student admission policies shall remain a function of the individual institutions.

3. Study any proposed escalation of any public institution to a degree-granting level higher than that level to which it is presently restricted and to submit a report and recommendation to the Governor and the General Assembly relating to the proposal. The study shall include the need for and benefits or detriments to be derived from the escalation. No such institution shall implement any such proposed escalation until the Council's report and recommendation have been submitted to the General Assembly and the General Assembly approves the institution's proposal.

4. Review and approve or disapprove all enrollment projections proposed by each public institution of higher education. The Council's projections shall be in numerical terms by level of enrollment and shall be used for budgetary and fiscal planning purposes only. The Council shall develop estimates of the number of degrees to be awarded by each institution and include those estimates in its reports of enrollment projections. The student admissions policies for the institutions and their specific programs shall remain the sole responsibility of the individual boards of visitors; however, all four-year institutions shall adopt dual admissions policies with the community colleges, as required by § 23-9.2:3.02.

5. Review and approve or disapprove all new academic programs which any public institution of higher education proposes. As used herein, "academic programs" include both undergraduate and graduate programs.

6. Review and require the discontinuance of any undergraduate or graduate academic program that is presently offered by any public institution of higher education when the Council determines that such academic program is (i) nonproductive in terms of the number of degrees granted, the number of students served by the program, the program's effectiveness, and budgetary considerations, or (ii) supported by state funds and is unnecessarily duplicative of academic programs offered at other public institutions of higher education in the Commonwealth. The Council shall make a report to the Governor and the General Assembly with respect to the discontinuance of any such academic program. No such discontinuance shall become effective until 30 days after the adjournment of the session of the General Assembly next following the filing of such report.

7. Review and approve or disapprove the creation and establishment of any department, school, college, branch, division or extension of any public institution of higher education that such institution proposes to create and establish. This duty and responsibility shall be applicable to the proposed creation and establishment of departments, schools, colleges, branches, divisions and extensions, whether located on or off the main campus of the institution in question. If any organizational change is determined by the Council to be proposed solely for the purpose of internal management and the institution's curricular offerings remain constant, the Council shall approve the proposed change. Nothing in this provision shall be construed to authorize the Council to disapprove the creation and establishment of any department,

551 school, college, branch, division or extension of any institution that has been created and established by  
552 the General Assembly.

553 8. Review the proposed closure of any academic program in a high demand or critical shortage area,  
554 as defined by the Council, by any public institution of higher education and assist in the development of  
555 an orderly closure plan, when needed.

556 9. Develop a uniform, comprehensive data information system designed to gather all information  
557 necessary to the performance of the Council's duties. The system shall include information on  
558 admissions, enrollments, self-identified students with documented disabilities, personnel, programs,  
559 financing, space inventory, facilities and such other areas as the Council deems appropriate. When  
560 consistent with the Government Data Collection and Dissemination Practices Act, the Virginia  
561 Unemployment Compensation Act, and applicable federal law, the Council, acting solely or in  
562 partnership with the Virginia Department of Education or the Virginia Employment Commission, may  
563 contract with private entities to create de-identified student records for the purpose of assessing the  
564 performance of institutions and specific programs relative to the workforce needs of the Commonwealth.  
565 For the purposes of this section, "de-identified student records" means records in which all personally  
566 identifiable information has been removed.

567 10. Develop in cooperation with institutions of higher education guidelines for the assessment of  
568 student achievement. An institution shall use an approved program that complies with the guidelines of  
569 the Council and is consistent with the institution's mission and educational objectives in the development  
570 of such assessment. The Council shall report the institutions' assessments of student achievement in the  
571 biennial revisions to the state's master plan for higher education.

572 11. Develop in cooperation with the appropriate state financial and accounting officials and to  
573 establish uniform standards and systems of accounting, record keeping and statistical reporting for the  
574 public institutions of higher education.

575 12. Review biennially and approve or disapprove all changes in the inventory of educational and  
576 general space that any public institution of higher education may propose, and to make a report to the  
577 Governor and the General Assembly with respect thereto. No such change shall be made until 30 days  
578 after the adjournment of the session of the General Assembly next following the filing of such report.

579 13. Visit and study the operations of each of the public institutions of higher education at such times  
580 as the Council shall deem appropriate and to conduct such other studies in the field of higher education  
581 as the Council deems appropriate or as may be requested by the Governor or the General Assembly.

582 14. Provide advisory services to private, accredited and nonprofit institutions of higher education,  
583 whose primary purpose is to provide collegiate or graduate education and not to provide religious  
584 training or theological education, on academic, administrative, financial and space utilization matters.  
585 The Council may also review and advise on joint activities, including contracts for services between  
586 such public and private institutions of higher education or between such private institutions and any  
587 agency of the Commonwealth or political subdivision thereof.

588 15. Adopt such rules and regulations as the Council believes necessary to implement all of the  
589 Council's duties and responsibilities as set forth in this Code. The various public institutions of higher  
590 education shall comply with such rules and regulations.

591 16. Issue guidelines consistent with the provisions of the federal Family Education Rights and  
592 Privacy Act (FERPA), 20 U.S.C. § 1232g requiring public institutions of higher education to release a  
593 student's academic and disciplinary record to a student's parent.

594 17. Require that each institution of higher education formed, chartered, or established in the  
595 Commonwealth after July 1, 1980, shall ensure the preservation of student transcripts in the event of  
596 institutional closure or revocation of approval to operate in the Commonwealth of Virginia. An  
597 institution may provide for the preservation of student transcripts by binding agreement with another  
598 institution of higher education with which it is not corporately connected or in such other way as the  
599 Council may authorize by regulation. In the event an institution closes, or has its approval to operate in  
600 the Commonwealth revoked, the Council, through its Director, may take such action as is necessary to  
601 secure and preserve the student transcripts until such time as an appropriate institution accepts all or  
602 some of the transcripts. Nothing in this section shall be deemed to interfere with the right of a student  
603 to his own transcripts; nor shall this section authorize disclosure of student records except as may  
604 otherwise be authorized by law.

605 18. Require the development and submission of articulation, dual admissions, and guaranteed  
606 admissions agreements between two-year and four-year public institutions of higher education in  
607 Virginia.

608 19. Provide periodic updates of base adequacy funding guidelines adopted by the Joint Subcommittee  
609 Studying Higher Education Funding Policies for the various public institutions.

610 20. Develop a uniform certificate of general studies program, in consultation with the Virginia  
611 Community College System and Virginia public institutions of higher education, to be offered at each  
612 community college in Virginia. Such program shall ensure that a community college student who

completes the one-year certificate program shall be able to transfer all credits earned in academic subject coursework to a four-year public institution of higher education in the Commonwealth upon acceptance to the institution.

21. Assist the Virginia Research Investment Committee with the administration of the Virginia Research Investment Fund consistent with the provisions of Chapter 28 (§ 23-304 et seq.).

In carrying out its duties and responsibilities, the Council, insofar as practicable, shall preserve the individuality, traditions and sense of responsibility of the respective institutions. The Council, insofar as practicable, shall seek the assistance and advice of the respective institutions in fulfilling all of its duties and responsibilities.

## CHAPTER 28.

### VIRGINIA RESEARCH INVESTMENT FUND.

#### § 23-304. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means a policy board in the executive branch of government that (i) was created by the 2016 Session of the General Assembly, (ii) has a legislatively stated purpose of promoting collaborative regional economic and workforce development opportunities and activities, and (iii) has membership consisting of members of the House of Delegates, members of the Senate, members of the Governor's Cabinet, and nonlegislative citizen appointees.

"Committee" means the Virginia Research Investment Committee established pursuant to § 23-306.

"Council" means the State Council of Higher Education for Virginia.

"Fund" means the Virginia Research Investment Fund established in § 23-305.

#### § 23-305. Virginia Research Investment Fund.

A. There is hereby created in the state treasury a special nonreverting revolving fund to be known as the Virginia Research Investment Fund. The Fund shall be established on the books of the Comptroller. All moneys appropriated by the General Assembly for the Fund, and from any other sources public or private, shall be paid into the state treasury and credited to the Fund. Interest and other income earned on the Fund shall be credited to the Fund. Any moneys remaining in the Fund, including interest and other income thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

B. 1. Notwithstanding any other provision of law, the General Assembly may specifically designate that certain moneys appropriated to the Fund be invested, reinvested, and managed by the Board of the Virginia Retirement System as provided in § 51.1-124.38. The State Treasurer shall not be held liable for losses suffered by the Virginia Retirement System on investments made under the authority of this subsection.

2. No more than \$4 million of moneys so invested, net of any administrative fee assessed pursuant to subsection E of § 51.1-124.38, may be awarded through grants or loans in a fiscal year for any purpose permitted by this chapter. At the direction of the Committee, the State Comptroller may annually request a disbursement of \$4 million from the moneys invested by the Board of the Virginia Retirement System, to be held with other moneys in the Fund not subject to such investment. At the end of each fiscal year, if less than \$4 million of such annual allocation is awarded as grants or loans in a calendar year, the Comptroller shall return the remainder of the annual \$4 million allocation to the Board of the Virginia Retirement System for reinvestment pursuant to § 51.1-124.38.

3. Any loans awarded pursuant to this chapter shall be paid by the Comptroller from the \$4 million annual allocation set forth in subdivision 2. The recipient of a loan shall repay the loan pursuant to the terms set forth by the Committee. At the end of each fiscal year, the Comptroller shall return any repayments received from loan recipients to the Board of the Virginia Retirement System for reinvestment pursuant to § 51.1-124.38.

C. Moneys in the Fund shall be used solely for grants and loans to (i) promote research and development excellence in the Commonwealth; (ii) foster innovative and collaborative research, development, and commercialization efforts in the Commonwealth in projects and programs with a high potential for economic development and job creation opportunities; (iii) position the Commonwealth as a national leader in science-based and technology-based research, development, and commercialization; (iv) attract and effectively recruit and retain eminent researchers to enhance research superiority at public institutions of higher education; and (v) encourage cooperation and collaboration among higher education research institutions, and with the private sector, in areas and with activities that foster economic development and job creation in the Commonwealth. Areas of focus for awards shall be those areas identified in the Commonwealth Research and Technology Strategic Roadmap, and shall include but not be limited to the biosciences, personalized medicine, cybersecurity, data analytics, and other areas designated in the general appropriation act.

D. The disbursement of grants and loans from the Fund shall be made by the State Comptroller at the written request of the Committee.

REENGROSSED

HB1343E2

674 **§ 23-306. Virginia Research Investment Committee established; report.**

675 A. There is hereby established the Virginia Research Investment Committee to evaluate and award  
676 grants and loans from the Fund pursuant to the provisions of this chapter.

677 B. The Committee shall consist of [ ~~seven members as follows~~ the following members ] : the Director  
678 of the Council, [ the Secretary of Technology, ] the Secretary of Finance, the staff directors of the  
679 House Committee on Appropriations and the Senate Committee on Finance, one nonlegislative citizen  
680 member appointed by the Speaker of the House, one nonlegislative citizen member appointed by the  
681 Senate Committee on Rules, and [ ~~one two~~ ] nonlegislative citizen [ ~~member~~ members ] appointed by the  
682 Governor. If the Board exists, the nonlegislative citizen members appointed by the Speaker of the House,  
683 the Senate Committee on Rules, and the Governor shall be nonlegislative citizen members of the Board.

684 C. Ex officio members shall serve terms coincident with their terms of office. If the Board does not  
685 exist, nonlegislative citizen members shall be appointed to a term of four years, and no nonlegislative  
686 citizen member shall serve more than two consecutive four-year terms. If the Board exists, nonlegislative  
687 citizen members shall serve terms coincident with their terms on the Board.

688 D. The Director of the Council shall serve as the chairman of the Committee.

689 E. The Committee shall report to the Governor and the Chairmen of the House Committee on  
690 Appropriations and the Senate Committee on Finance no later than November 1 of each year. The  
691 report shall include details about awards made from the Fund in the immediately preceding fiscal year  
692 and updates on the research, development, and commercialization efforts resulting from such awards.

693 **§ 23-307. Award from Virginia Research Investment Fund.**

694 A. The Council, in consultation with the Committee, shall establish guidelines, procedures, and  
695 objective criteria for the application for and award of grants and loans from the Fund. Such guidelines,  
696 procedures, and criteria, and any updates thereto, shall be submitted to the House Committee on  
697 Appropriations and the Senate Committee on Finance. The criteria for the award of grants [ and loans ]  
698 shall consider other grants, awards, [ loans, ] or funds awarded to the proposed program or project by  
699 the Commonwealth and shall require [ ~~a grant~~ an ] applicant to indicate other applications for state  
700 grants, awards, [ loans, ] or funds currently pending at the time of the application for an award from  
701 the Fund. The criteria shall consider the potential of the program or project for which a grant [ or loan  
702 ] is sought to (i) culminate in the commercialization of research; (ii) culminate in the formation or  
703 spin-off of viable bioscience, biotechnology, cybersecurity, genomics, or similar companies; (iii) promote  
704 the build-out of scientific areas of expertise in science and technology; (iv) promote applied research  
705 and development; (v) provide modern facilities or infrastructure for research and development; (vi)  
706 result in significant capital investment and job creation; or (vii) promote collaboration among the public  
707 institutions of higher education in the Commonwealth. Such criteria shall also require that the program  
708 or project for which a grant [ or loan ] is sought be related to an area identified in the Commonwealth  
709 Research Technology Strategic Roadmap.

710 B. Grants and loans may be awarded to public institutions of higher education in the Commonwealth  
711 or collaborations between public institutions of higher education in the Commonwealth and private  
712 entities. Any award from the Fund shall require a match of funds at least equal to the amount of the  
713 award.

714 C. Applications for grants and loans from the Fund shall be received by the Council in accordance  
715 with the procedures developed pursuant to subsection A. Upon confirmation that an application is  
716 complete, the Council shall forward the application to an entity with recognized science and technology  
717 expertise for a review and certification of the scientific merits of the proposal, including a scoring or  
718 prioritization of applicant programs and projects deemed viable by the reviewing entity. Such entities  
719 include, but are not limited to, the Virginia Biosciences Health Research Corporation, the Innovation  
720 and Entrepreneurship Investment Authority, the Virginia Academy of Science, Engineering and Medicine,  
721 or any other entity deemed appropriate by the Council, including a scientific advisory committee created  
722 by the Council for the sole purpose of reviewing one or more applications received pursuant to this  
723 article.

724 D. Any proposal receiving a favorable evaluation pursuant to subsection C shall be forwarded, along  
725 with the scoring or prioritization, to the Committee for further review and a decision whether to award  
726 the proposal a grant or loan from the Fund. The award of a grant or loan from the Fund shall be  
727 subject to any terms and conditions set forth by the Committee for the award. All decisions by the  
728 Committee shall be final and not subject to further review or appeal. The Governor may announce any  
729 award approved by the Committee.

730 **§ 51.1-124.38. Investment of assets of the Virginia Research Investment Fund.**

731 A. In addition to such other powers as shall be vested in the Board, the Board shall have the full  
732 power to invest, reinvest, and manage those portions of the Virginia Research Investment Fund (the  
733 Fund), established pursuant to Chapter 28 (§ 23-304 et seq.) of Title 23, designated by the General  
734 Assembly for investment by the Board pursuant to subsection B of § 23-305. The Board shall maintain a  
735 separate accounting for the assets of the Fund invested with it. The Board shall make an annual

736 distribution of such invested moneys to the Comptroller pursuant to subdivision B of § 23-305.

737 B. The Board shall invest the assets of the Fund with the care, skill, prudence, and diligence under  
738 the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such  
739 matters would use in the conduct of an enterprise of a like character and with like aims. The Board  
740 shall also diversify such investments so as to minimize the risk of large losses unless under the  
741 circumstances it is clearly prudent not to do so.

742 C. No officer, director, or member of the Board or of any advisory committee of the Retirement  
743 System or any of its tax-exempt subsidiary corporations whose actions are within the standard of care  
744 set forth in subsection B shall be held personally liable for losses suffered by the Retirement System on  
745 investments made under the authority of this section.

746 D. The provisions of §§ 51.1-124.32, 51.1-124.33, 51.1-124.34, and 51.1-124.35 shall apply to the  
747 Board's activities with respect to moneys in the Fund.

748 E. The Board may assess the Virginia Research Investment Committee a reasonable administrative  
749 fee for its services.

REENGROSSED

HB1343E2