

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 2.2-3701, 2.2-3707, 2.2-3707.1, 2.2-3708, 2.2-3708.1, 2.2-3711,*
 3 *2.2-3712, 10.1-104.7, 15.2-1416, 23.1-1303, and 54.1-2400.2 of the Code of Virginia, relating to the*
 4 *Virginia Freedom of Information Act; public access to meetings of public bodies.*

5 [H 1540]

6 Approved

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

8 **1. That §§ 2.2-3701, 2.2-3707, 2.2-3707.1, 2.2-3708, 2.2-3708.1, 2.2-3711, 2.2-3712, 10.1-104.7,**
 9 **15.2-1416, 23.1-1303, and 54.1-2400.2 of the Code of Virginia are amended and reenacted as**
 10 **follows:**

11 **§ 2.2-3701. Definitions.**

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

13 "Closed meeting" means a meeting from which the public is excluded.

14 "Electronic communication" means any audio or combined audio and visual communication method.

15 "Emergency" means an unforeseen circumstance rendering the notice required by this chapter
 16 impossible or impracticable and which circumstance requires immediate action.

17 "Information" as used in the exclusions established by §§ 2.2-3705.1 through 2.2-3705.7, means the
 18 content within a public record that references a specifically identified subject matter, and shall not be
 19 interpreted to require the production of information that is not embodied in a public record.

20 "Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or
 21 through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as
 22 an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the
 23 constituent membership, wherever held, with or without minutes being taken, whether or not votes are
 24 cast, of any public body. Neither the gathering of employees of a public body nor the gathering or
 25 attendance of two or more members of a public body (i) at any place or function where no part of the
 26 purpose of such gathering or attendance is the discussion or transaction of any public business, and such
 27 gathering or attendance was not called or prearranged with any purpose of discussing or transacting any
 28 business of the public body, or (ii) at a public forum, candidate appearance, or debate, the purpose of
 29 which is to inform the electorate and not to transact public business or to hold discussions relating to
 30 the transaction of public business, even though the performance of the members individually or
 31 collectively in the conduct of public business may be a topic of discussion or debate at such public
 32 meeting, shall be deemed a "meeting" subject to the provisions of this chapter.

33 "Open meeting" or "public meeting" means a meeting at which the public may be present.

34 "Public body" means any legislative body, authority, board, bureau, commission, district or agency of
 35 the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and
 36 counties, municipal councils, governing bodies of counties, school boards and planning commissions;
 37 boards of visitors of public institutions of higher education; and other organizations, corporations or
 38 agencies in the Commonwealth supported wholly or principally by public funds. It shall include (i) the
 39 Virginia Birth-Related Neurological Injury Compensation Program and its board of directors established
 40 pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee, subcommittee, or
 41 other entity however designated, of the public body created to perform delegated functions of the public
 42 body or to advise the public body. It shall not exclude any such committee, subcommittee or entity
 43 because it has private sector or citizen members. Corporations organized by the Virginia Retirement
 44 System are "public bodies" for purposes of this chapter.

45 For the purposes of the provisions of this chapter applicable to access to public records,
 46 constitutional officers and private police departments as defined in § 9.1-101 shall be considered public
 47 bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose
 48 public records as other custodians of public records.

49 "Public records" means all writings and recordings that consist of letters, words or numbers, or their
 50 equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse,
 51 optical or magneto-optical form, mechanical or electronic recording or other form of data compilation,
 52 however stored, and regardless of physical form or characteristics, prepared or owned by, or in the
 53 possession of a public body or its officers, employees or agents in the transaction of public business.
 54 Records that are not prepared for or used in the transaction of public business are not public records.

55 "Regional public body" means a unit of government organized as provided by law within defined
 56 boundaries, as determined by the General Assembly, whose members are appointed by the participating

57 ~~local governing bodies, and such which~~ unit includes two or more ~~counties or cities~~ *localities*.

58 "Scholastic records" means those records containing information directly related to a student or an
59 applicant for admission and maintained by a public body that is an educational agency or institution or
60 by a person acting for such agency or institution.

61 **§ 2.2-3707. Meetings to be public; notice of meetings; recordings; minutes.**

62 A. All meetings of public bodies shall be open, except as provided in §§ 2.2-3707.01 and 2.2-3711.

63 B. No meeting shall be conducted through telephonic, video, electronic or other communication
64 means where the members are not physically assembled to discuss or transact public business, except as
65 provided in § 2.2-3708, 2.2-3708.1 or as may be specifically provided in Title 54.1 for the summary
66 suspension of professional licenses.

67 C. Every public body shall give notice of the date, time, and location of its meetings by ~~placing the~~
68 ~~notice in a prominent public location at which notices are regularly posted and in the office of the clerk~~
69 ~~of the public body, or in the case of a public body that has no clerk, in the office of the chief~~
70 ~~administrator:~~

71 1. *Posting such notice on its official public government website, if any;*

72 2. *Placing such notice in a prominent public location at which notices are regularly posted; and*

73 3. *Placing such notice at the office of the clerk of the public body or, in the case of a public body*
74 *that has no clerk, at the office of the chief administrator.*

75 All state public bodies subject to the provisions of this chapter shall also post notice of their
76 meetings ~~on their websites and on the electronic calendar maintained by the Virginia Information~~
77 ~~Technologies Agency commonly known as the Commonwealth Calendar on a central, publicly available~~
78 ~~electronic calendar maintained by the Commonwealth.~~ Publication of meeting notices by electronic
79 means by other public bodies shall be encouraged.

80 The notice shall be posted at least three working days prior to the meeting. ~~Notices for meetings of~~
81 ~~state public bodies on which there is at least one member appointed by the Governor shall state whether~~
82 ~~or not public comment will be received at the meeting and, if so, the approximate point during the~~
83 ~~meeting when public comment will be received.~~

84 D. Notice, reasonable under the circumstance, of special ~~or~~, emergency, *or continued* meetings shall
85 be given contemporaneously with the notice provided *to the* members of the public body conducting the
86 meeting.

87 E. Any person may annually file a written request for notification with a public body. The request
88 shall include the requester's name, address, zip code, daytime telephone number, electronic mail address,
89 if available, and organization, if any. The public body receiving such request shall provide notice of all
90 meetings directly to each such person. Without objection by the person, the public body may provide
91 electronic notice of all meetings in response to such requests.

92 F. At least one copy of *the proposed agenda and* all agenda packets and, unless exempt, all materials
93 furnished to members of a public body for a meeting shall be made available for public inspection at the
94 same time such documents are furnished to the members of the public body. *The proposed agendas for*
95 *meetings of state public bodies where at least one member has been appointed by the Governor shall*
96 *state whether or not public comment will be received at the meeting and, if so, the approximate point*
97 *during the meeting when public comment will be received.*

98 G. ~~The notice provisions of this chapter shall not apply to informal meetings or gatherings of the~~
99 ~~members of the General Assembly.~~

100 H. Any person may photograph, film, record or otherwise reproduce any portion of a meeting
101 required to be open. The public body conducting the meeting may adopt rules governing the placement
102 and use of equipment necessary for broadcasting, photographing, filming or recording a meeting to
103 prevent interference with the proceedings, but shall not prohibit or otherwise prevent any person from
104 photographing, filming, recording, or otherwise reproducing any portion of a meeting required to be
105 open. No public body shall conduct a meeting required to be open in any building or facility where such
106 recording devices are prohibited.

107 I. *H.* Minutes shall be recorded at all open meetings. However, minutes shall not be required to be
108 taken at deliberations of (i) standing and other committees of the General Assembly; (ii) legislative
109 interim study commissions and committees, including the Virginia Code Commission; (iii) study
110 committees or commissions appointed by the Governor; or (iv) study commissions or study committees,
111 or any other committees or subcommittees appointed by the governing bodies or school boards of
112 counties, cities and towns, except where the membership of any such commission, committee or
113 subcommittee includes a majority of the governing body of the county, city or town or school board.

114 Minutes, including draft minutes, and all other records of open meetings, including audio or
115 audio/visual records shall be deemed public records and subject to the provisions of this chapter.

116 Minutes shall be in writing and shall include (i) the date, time, and location of the meeting; (ii) the
117 members of the public body recorded as present and absent; and (iii) a summary of the discussion on

118 matters proposed, deliberated or decided, and a record of any votes taken. In addition, for electronic
 119 communication meetings conducted in accordance with § 2.2-3708, minutes of state public bodies shall
 120 include (a) the identity of the members of the public body at each remote location identified in the
 121 notice who participated in the meeting through electronic communications means, (b) the identity of the
 122 members of the public body who were physically assembled at the primary or central meeting location,
 123 and (c) the identity of the members of the public body who were not present at the locations identified
 124 in clauses (a) and (b), but who monitored such meeting through electronic communications means.

125 **§ 2.2-3707.1. Posting of minutes for state boards and commissions.**

126 All boards, commissions, councils, and other public bodies created in the executive branch of state
 127 government and subject to the provisions of this chapter shall post minutes of their meetings on such
 128 body's *official public government* website; ~~if any,~~ and on ~~the~~ a *central* electronic calendar maintained by
 129 the ~~Virginia Information Technologies Agency commonly known as the Commonwealth Calendar~~
 130 *Commonwealth*. Draft minutes of meetings shall be posted as soon as possible but no later than ~~ten~~ 10
 131 working days after the conclusion of the meeting. Final approved meeting minutes shall be posted within
 132 three working days of final approval of the minutes.

133 **§ 2.2-3708. Electronic communication meetings; applicability; physical quorum required;**
 134 **exceptions; notice; report.**

135 A. Except as expressly provided in subsection G of this section or § 2.2-3708.1, no local governing
 136 body, school board, or any authority, board, bureau, commission, district or agency of local government,
 137 any committee thereof, or any entity created by a local governing body, school board, or any local
 138 authority, board, or commission shall conduct a meeting wherein the public business is discussed or
 139 transacted through telephonic, video, electronic or other communication means where the members are
 140 not physically assembled. Nothing in this section shall be construed to prohibit the use of interactive
 141 audio or video means to expand public participation.

142 B. Except as provided in subsection G or H of this section or subsection D of § 2.2-3707.01, state
 143 public bodies may conduct any meeting wherein the public business is discussed or transacted through
 144 electronic communication means, provided (i) a quorum of the public body is physically assembled at
 145 one primary or central meeting location, (ii) notice of the meeting has been given in accordance with
 146 subsection C, and (iii) the remote locations, from which additional members of the public body
 147 participate through electronic communication means, are open to the public. All persons attending the
 148 meeting at any of the meeting locations shall be afforded the same opportunity to address the public
 149 body as persons attending the primary or central location.

150 If an authorized public body holds an electronic meeting pursuant to this section, it shall also hold at
 151 least one meeting annually where members in attendance at the meeting are physically assembled at one
 152 location and where no members participate by electronic communication means.

153 C. Notice of any ~~meetings~~ *regular meeting* held pursuant to this section shall be provided at least
 154 three working days in advance of the date scheduled for the meeting. *Notice, reasonable under the*
 155 *circumstance, of special, emergency, or continued meetings held pursuant to this section shall be given*
 156 *contemporaneously with the notice provided to members of the public body conducting the meeting. For*
 157 *the purposes of this subsection, "continued meeting" means a meeting that is continued to address an*
 158 *emergency or to conclude the agenda of a meeting for which proper notice was given.*

159 The notice shall include the date, time, place, and purpose for the meeting; shall identify the
 160 locations for the meeting; and shall include a telephone number that may be used at remote locations to
 161 notify the primary or central meeting location of any interruption in the telephonic or video broadcast of
 162 the meeting to the remote locations. Any interruption in the telephonic or video broadcast of the meeting
 163 shall result in the suspension of action at the meeting until repairs are made and public access restored.

164 D. ~~Agenda~~ *A copy of the proposed agenda and agenda* packets and, unless exempt, all materials that
 165 will be distributed to members of the public body and that have been made available to the staff of the
 166 public body in sufficient time for duplication and forwarding to all locations where public access will be
 167 provided shall be made available to the public at the time of the meeting. Minutes of all meetings held
 168 by electronic communication means shall be recorded as required by § 2.2-3707. Votes taken during any
 169 meeting conducted through electronic communication means shall be recorded by name in roll-call
 170 fashion and included in the minutes.

171 E. Three working days' notice shall not be required for meetings authorized under this section held in
 172 accordance with subsection G ~~or that are continued to address an emergency or to conclude the agenda~~
 173 ~~of the meeting for which proper notice has been given, when the date, time, place, and purpose of the~~
 174 ~~continued meeting are set during the meeting prior to adjournment.~~ Public bodies conducting emergency
 175 meetings through electronic communication means shall comply with the provisions of subsection D
 176 requiring minutes of the meeting. The nature of the emergency shall be stated in the minutes.

177 F. Any authorized public body that meets by electronic communication means shall make a written
 178 report of the following to the Virginia Freedom of Information Advisory Council ~~and the Joint~~

179 Commission on Technology and Science by December 15 of each year:

- 180 1. The total number of electronic communication meetings held that year;
- 181 2. The dates and purposes of the meetings;
- 182 3. A copy of the agenda for the meeting;
- 183 4. The number of sites for each meeting;
- 184 5. The types of electronic communication means by which the meetings were held;
- 185 6. The number of participants, including members of the public, at each meeting location;
- 186 7. The identity of the members of the public body recorded as absent and those recorded as present
- 187 at each meeting location;
- 188 8. A summary of any public comment received about the electronic communication meetings; and
- 189 9. A written summary of the public body's experience using electronic communication meetings,
- 190 including its logistical and technical experience.

191 In addition, any authorized public body shall make available to the public at any meeting conducted
192 in accordance with this section a public comment form prepared by the Virginia Freedom of Information
193 Advisory Council in accordance with § 30-179.

194 G. Any public body may meet by electronic communication means without a quorum of the public
195 body physically assembled at one location when the Governor has declared a state of emergency in
196 accordance with § 44-146.17, provided *that* (i) the catastrophic nature of the declared emergency makes
197 it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting
198 is to address the emergency. The public body convening a meeting in accordance with this subsection
199 shall (a) give public notice using the best available method given the nature of the emergency, which
200 notice shall be given contemporaneously with the notice provided members of the public body
201 conducting the meeting; (b) make arrangements for public access to such meeting; and (c) otherwise
202 comply with the provisions of this section. The nature of the emergency, the fact that the meeting was
203 held by electronic communication means, and the type of electronic communication means by which the
204 meeting was held shall be stated in the minutes.

205 H. ~~Expired.~~

206 **§ 2.2-3708.1. Participation in meetings due to personal matter; certain disabilities; distance from**
207 **meeting location for certain public bodies.**

208 A. A member of a public body may participate in a meeting governed by this chapter through
209 electronic communication means from a remote location that is not open to the public only as follows
210 and subject to the requirements of subsection B:

211 1. If, on or before the day of a meeting, a member of the public body holding the meeting notifies
212 the chair of the public body that such member is unable to attend the meeting due to an emergency or a
213 personal matter and identifies with specificity the nature of the emergency or personal matter, and the
214 public body holding the meeting records in its minutes the specific nature of the emergency or personal
215 matter and the remote location from which the member participated. If a member's participation from a
216 remote location is disapproved because such participation would violate the policy adopted pursuant to
217 subsection B, such disapproval shall be recorded in the minutes with specificity.

218 Such participation by the member shall be limited each calendar year to two meetings or 25 percent
219 of the meetings of the public body, whichever is fewer;

220 2. If a member of a public body notifies the chair of the public body that such member is unable to
221 attend a meeting due to a temporary or permanent disability or other medical condition that prevents the
222 member's physical attendance and the public body records this fact and the remote location from which
223 the member participated in its minutes; or

224 3. If, on the day of a meeting, a member of a regional public body notifies the chair of the public
225 body that such member's principal residence is more than 60 miles from the meeting location identified
226 in the required notice for such meeting and the public body holding the meeting records in its minutes
227 the remote location from which the member participated. If a member's participation from a remote
228 location is disapproved because such participation would violate the policy adopted pursuant to
229 subsection B, such disapproval shall be recorded in the minutes with specificity.

230 B. Participation by a member of a public body as authorized under subsection A shall be only under
231 the following conditions:

232 1. The public body has adopted a written policy allowing for and governing participation of its
233 members by electronic communication means, including an approval process for such participation,
234 subject to the express limitations imposed by this section. Once adopted, the policy shall be applied
235 strictly and uniformly, without exception, to the entire membership and without regard to the identity of
236 the member requesting remote participation or the matters that will be considered or voted on at the
237 meeting;

238 2. A quorum of the public body is physically assembled at the primary or central meeting location;
239 and

240 3. The public body makes arrangements for the voice of the remote participant to be heard by all
 241 persons at the primary or central meeting location.

242 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

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

244 1. Discussion, consideration, or interviews of prospective candidates for employment; assignment,
 245 appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public
 246 officers, appointees, or employees of any public body; and evaluation of performance of departments or
 247 schools of public institutions of higher education where such evaluation will necessarily involve
 248 discussion of the performance of specific individuals. Any teacher shall be permitted to be present
 249 during a closed meeting in which there is a discussion or consideration of a disciplinary matter that
 250 involves the teacher and some student and the student involved in the matter is present, provided the
 251 teacher makes a written request to be present to the presiding officer of the appropriate board. Nothing
 252 in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body
 253 or an elected school board to discuss compensation matters that affect the membership of such body or
 254 board collectively.

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

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

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

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

269 6. Discussion or consideration of the investment of public funds where competition or bargaining is
 270 involved, where, if made public initially, the financial interest of the governmental unit would be
 271 adversely affected.

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

281 8. ~~In the case of boards of visitors of public institutions of higher education, discussion~~ *Consultation*
 282 *with legal counsel employed or retained by a public body regarding specific legal matters requiring the*
 283 *provision of legal advice by such counsel. Nothing in this subdivision shall be construed to permit the*
 284 *closure of a meeting merely because an attorney representing the public body is in attendance or is*
 285 *consulted on a matter.*

286 9. *Discussion or consideration by boards of visitors of public institutions of higher education of*
 287 *matters relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or*
 288 *work to be performed by such institution. However, the terms and conditions of any such gifts, bequests,*
 289 *grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and*
 290 *accepted by a public institution of higher education in Virginia shall be subject to public disclosure upon*
 291 *written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign*
 292 *government" means any government other than the United States government or the government of a*
 293 *state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity (a) created*
 294 *under the laws of the United States or of any state thereof if a majority of the ownership of the stock of*
 295 *such legal entity is owned by foreign governments or foreign persons or if a majority of the membership*
 296 *of any such entity is composed of foreign persons or foreign legal entities; or any legal entity (b)*
 297 *created under the laws of a foreign government; and (iii) "foreign person" means any individual who is*
 298 *not a citizen or national of the United States or a trust territory or protectorate thereof.*

299 10. ~~In the case of~~ *Discussion or consideration by the boards of trustees of the Virginia Museum*
 300 *of Fine Arts, the Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, and The*

301 Science Museum of Virginia, ~~discussion or consideration~~ of matters relating to specific gifts, bequests,
302 and grants *from private sources*.

303 ~~10.~~ 11. Discussion or consideration of honorary degrees or special awards.

304 ~~11.~~ 12. Discussion or consideration of tests, examinations, or other information ~~excluded from this~~
305 ~~chapter pursuant to~~ *used, administered, or prepared by a public body and subject to the exclusion in*
306 subdivision 4 of § 2.2-3705.1.

307 ~~12.~~ 13. Discussion, consideration, or review by the appropriate House or Senate committees of
308 possible disciplinary action against a member arising out of the possible inadequacy of the disclosure
309 statement filed by the member, provided the member may request in writing that the committee meeting
310 not be conducted in a closed meeting.

311 ~~13.~~ 14. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement
312 or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the
313 governing body in open meeting finds that an open meeting will have an adverse effect upon the
314 negotiating position of the governing body or the establishment of the terms, conditions and provisions
315 of the siting agreement, or both. All discussions with the applicant or its representatives may be
316 conducted in a closed meeting.

317 ~~14.~~ 15. Discussion by the Governor and any economic advisory board reviewing forecasts of
318 economic activity and estimating general and nongeneral fund revenues.

319 ~~15.~~ 16. Discussion or consideration of medical and mental health records ~~excluded from this chapter~~
320 ~~pursuant to~~ *subject to the exclusion in* subdivision 1 of § 2.2-3705.5.

321 ~~16.~~ 17. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to
322 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
323 discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game
324 information and studies or investigations ~~exempted~~ *excluded* from disclosure under subdivision 6 of
325 § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

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

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

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

342 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or
343 of any local retirement system, acting pursuant to § 51.1-803, *or by a local finance board or board of*
344 *trustees of a trust established by one or more local public bodies to invest funds for postemployment*
345 *benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title*
346 *15.2, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by*
347 *the Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition,*
348 *holding or disposition of a security or other ownership interest in an entity, where such security or*
349 *ownership interest is not traded on a governmentally regulated securities exchange, to the extent that*
350 *such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University*
351 *of Virginia, prepared by the retirement system, or by the local finance board or board of trustees of*
352 *such a trust pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the Virginia*
353 *College Savings Plan or provided to the retirement system or the Virginia College Savings Plan under a*
354 *promise of confidentiality, of the future value of such ownership interest or the future financial*
355 *performance of the entity, and (ii) would have an adverse effect on the value of the investment to be*
356 *acquired, held or disposed of by the retirement system, or by the local finance board or board of*
357 *trustees of such a trust pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, the*
358 *Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this*
359 *subdivision shall be construed to prevent the disclosure of information relating to the identity of any*
360 *investment held, the 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
 367 pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are
 368 discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

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

380 23. ~~In the case of the Virginia Commonwealth University Health System Authority, discussion~~
 381 *Discussion* or consideration by the Virginia Commonwealth University Health System Authority or the
 382 Virginia Commonwealth University Board of Visitors of any of the following: the acquisition or
 383 disposition by the Authority of real ~~or personal~~ property, equipment, or technology software or hardware
 384 and related goods or services, where disclosure would adversely affect the bargaining position or
 385 negotiating strategy of the Authority; ~~operational plans that could affect the value of such property, real~~
 386 ~~or personal, owned or desirable for ownership by the Authority;~~ matters relating to gifts; or bequests to,
 387 and fund-raising activities of, the Authority; grants and contracts for services or work to be performed by
 388 the Authority; marketing or operational strategies *plans of the Authority* where disclosure of such
 389 strategies or plans would adversely affect the competitive position of the Authority; and members of ~~its~~
 390 *the Authority's* medical and teaching staffs and qualifications for appointments thereto; ~~and qualifications~~
 391 ~~or evaluations of other employees. This exclusion shall also apply when the foregoing discussions occur~~
 392 ~~at a meeting of the Virginia Commonwealth University Board of Visitors.~~

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

396 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
 397 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees
 398 by or on behalf of individuals who have requested information about, applied for, or entered into
 399 prepaid tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.)
 400 of Title 23.1 is discussed.

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

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

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

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

419 30. Discussion or consideration of grant or loan application information ~~excluded from this chapter~~
 420 ~~pursuant to~~ *subject to the exclusion in* subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health
 421 Research Board or (ii) the Innovation and Entrepreneurship Investment Authority or the Research and
 422 Technology Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship

423 Investment Authority.

424 31. Discussion or consideration by the Commitment Review Committee of information ~~excluded from~~
 425 ~~this chapter pursuant to~~ *subject to the exclusion* in subdivision 8 of § 2.2-3705.2 relating to individuals
 426 subject to commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

427 32. ~~[Expired.]~~

428 ~~33.~~ Discussion or consideration of confidential proprietary information and trade secrets ~~excluded~~
 429 ~~from this chapter pursuant to~~ *developed and held by a local public body providing certain*
 430 *telecommunication services or cable television services and subject to the exclusion* in subdivision 18 of
 431 § 2.2-3705.6. However, the exemption provided by this subdivision shall not apply to any authority
 432 created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

433 ~~34.~~ 33. Discussion or consideration by a local authority created in accordance with the Virginia
 434 Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and trade
 435 secrets ~~excluded from this chapter pursuant to~~ *subject to the exclusion* in subdivision 19 of § 2.2-3705.6.

436 ~~35.~~ 34. Discussion or consideration by the State Board of Elections or local electoral boards of
 437 voting security matters made confidential pursuant to § 24.2-625.1.

438 ~~36.~~ 35. Discussion or consideration by the Forensic Science Board or the Scientific Advisory
 439 Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of ~~records~~
 440 ~~excluded from this chapter pursuant to~~ *criminal investigative files subject to the exclusion* in subdivision
 441 A 2 a of § 2.2-3706.

442 ~~37.~~ 36. Discussion or consideration by the Brown v. Board of Education Scholarship Program
 443 Awards Committee of information or confidential matters ~~excluded from this chapter pursuant to~~ *subject*
 444 *to the exclusion* in subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate
 445 concerning the annual maximum scholarship award, review and consider scholarship applications and
 446 requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

447 ~~38.~~ 37. Discussion or consideration by the Virginia Port Authority of information ~~excluded from this~~
 448 ~~chapter pursuant to~~ *subject to the exclusion* in subdivision 1 of § 2.2-3705.6 *related to certain*
 449 *proprietary information gathered by or for the Virginia Port Authority.*

450 ~~39.~~ 38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System
 451 acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to
 452 § 51.1-124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the
 453 Virginia College Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's
 454 Investment Advisory Committee appointed pursuant to § 23.1-702 of information ~~excluded from this~~
 455 ~~chapter pursuant to~~ *subject to the exclusion* in subdivision 25 of § 2.2-3705.7.

456 ~~40.~~ 39. Discussion or consideration of information ~~excluded from this chapter pursuant to~~ *subject to*
 457 *the exclusion* in subdivision 3 of § 2.2-3705.6 *related to economic development.*

458 ~~41.~~ 40. Discussion or consideration by the Board of Education of information relating to the denial,
 459 suspension, or revocation of teacher licenses ~~excluded from this chapter pursuant to~~ *subject to the*
 460 *exclusion* in subdivision 12 of § 2.2-3705.3.

461 ~~42.~~ 41. Those portions of meetings of the Virginia Military Advisory Council or any commission
 462 created by executive order for the purpose of studying and making recommendations regarding
 463 preventing closure or realignment of federal military and national security installations and facilities
 464 located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs
 465 organization appointed by a local governing body, during which there is discussion of information
 466 ~~excluded from this chapter pursuant to~~ *subject to the exclusion* in subdivision 11 of § 2.2-3705.2.

467 ~~43.~~ 42. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
 468 information ~~excluded from this chapter pursuant to~~ *subject to the exclusion* in subdivision 29 of
 469 § 2.2-3705.7 *related to personally identifiable information of donors.*

470 ~~44.~~ 43. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of
 471 information ~~excluded from this chapter pursuant to~~ *subject to the exclusion* in subdivision 23 of
 472 § 2.2-3705.6 *related to certain information contained in grant applications.*

473 ~~45.~~ 44. Discussion or consideration by the board of directors of the Commercial Space Flight
 474 Authority of information ~~excluded from this chapter pursuant to~~ *subject to the exclusion* in subdivision
 475 24 of § 2.2-3705.6 *related to rate structures or charges for the use of projects of, the sale of products*
 476 *of, or services rendered by the Authority and certain proprietary information of a private entity provided*
 477 *to the Authority.*

478 ~~46.~~ 45. Discussion or consideration of personal and proprietary information ~~that are excluded from~~
 479 ~~the provisions of this chapter pursuant to~~ *related to the resource management plan program and subject*
 480 *to the exclusion* in (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of § 10.1-104.7. This exclusion
 481 shall not apply to the discussion or consideration of records that contain information that has been
 482 certified for release by the person who is the subject of the information or transformed into a statistical
 483 or aggregate form that does not allow identification of the person who supplied, or is the subject of, the

484 information.

485 47. 46. (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the Virginia
 486 Alcoholic Beverage Control Authority of information ~~excluded from this chapter pursuant to~~ *subject to*
 487 *the exclusion in subdivision 1 of § 2.2-3705.3 or subdivision 34 of § 2.2-3705.7 related to investigations*
 488 *of applicants for licenses and permits and of licensees and permittees.*

489 48. 47. Discussion or consideration of grant or loan application records ~~excluded from this chapter~~
 490 ~~pursuant to~~ *subject to the exclusion in* subdivision 28 of § 2.2-3705.6 related to the submission of an
 491 application for an award from the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130
 492 et seq.) of Chapter 31 of Title 23.1.

493 49. 48. Discussion or development of grant proposals by a regional council established pursuant to
 494 Article 26 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth
 495 and Opportunity Board.

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

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

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

506 E. This section shall not be construed to (i) require the disclosure of any contract between the
 507 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1
 508 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant
 509 to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body
 510 empowered to issue industrial revenue bonds by general or special law, to identify a business or industry
 511 to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of
 512 public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance
 513 of such bonds.

514 **§ 2.2-3712. Closed meetings procedures; certification of proceedings.**

515 A. No closed meeting shall be held unless the public body proposing to convene such meeting has
 516 taken an affirmative recorded vote in an open meeting approving a motion that (i) identifies the subject
 517 matter, (ii) states the purpose of the meeting *as authorized in subsection A of § 2.2-3711 or other*
 518 *provision of law* and (iii) ~~makes specific reference to~~ *cites* the applicable exemption from open meeting
 519 requirements provided in ~~§ 2.2-3707 or~~ *subsection A of § 2.2-3711 or other provision of law.* The
 520 matters contained in such motion shall be set forth in detail in the minutes of the open meeting. A
 521 general reference to the provisions of this chapter, the authorized exemptions from open meeting
 522 requirements, or the subject matter of the closed meeting shall not be sufficient to satisfy the
 523 requirements for holding a closed meeting.

524 B. The notice provisions of this chapter shall not apply to closed meetings of any public body held
 525 solely for the purpose of interviewing candidates for the position of chief administrative officer. Prior to
 526 any such closed meeting for the purpose of interviewing candidates, the public body shall announce in
 527 an open meeting that such closed meeting shall be held at a disclosed or undisclosed location within 15
 528 days thereafter.

529 C. The public body holding a closed meeting shall restrict its discussion during the closed meeting
 530 only to those matters specifically exempted from the provisions of this chapter and identified in the
 531 motion required by subsection A.

532 D. At the conclusion of any closed meeting, the public body holding such meeting shall immediately
 533 reconvene in an open meeting and shall take a roll call or other recorded vote to be included in the
 534 minutes of that body, certifying that to the best of each member's knowledge (i) only public business
 535 matters lawfully exempted from open meeting requirements under this chapter and (ii) only such public
 536 business matters as were identified in the motion by which the closed meeting was convened were
 537 heard, discussed or considered in the meeting by the public body. Any member of the public body who
 538 believes that there was a departure from the requirements of clauses (i) and (ii), shall so state prior to
 539 the vote, indicating the substance of the departure that, in his judgment, has taken place. The statement
 540 shall be recorded in the minutes of the public body.

541 E. Failure of the certification required by subsection D to receive the affirmative vote of a majority
 542 of the members of the public body present during a meeting shall not affect the validity or
 543 confidentiality of such meeting with respect to matters considered therein in compliance with the
 544 provisions of this chapter. The recorded vote and any statement made in connection therewith, shall

545 upon proper authentication, constitute evidence in any proceeding brought to enforce the provisions of
546 this chapter.

547 F. A public body may permit nonmembers to attend a closed meeting if such persons are deemed
548 necessary or if their presence will reasonably aid the public body in its consideration of a topic that is a
549 subject of the meeting.

550 G. A member of a public body shall be permitted to attend a closed meeting held by any committee
551 or subcommittee of that public body, or a closed meeting of any entity, however designated, created to
552 perform the delegated functions of or to advise that public body. Such member shall in all cases be
553 permitted to observe the closed meeting of the committee, subcommittee or entity. In addition to the
554 requirements of § 2.2-3707, the minutes of the committee or other entity shall include the identity of the
555 member of the parent public body who attended the closed meeting.

556 H. Except as specifically authorized by law, in no event may any public body take action on matters
557 discussed in any closed meeting, except at an open meeting for which notice was given as required by
558 § 2.2-3707.

559 I. Minutes may be taken during closed meetings of a public body, but shall not be required. Such
560 minutes shall not be subject to mandatory public disclosure.

561 **§ 10.1-104.7. Resource management plans; effect of implementation; exclusions.**

562 A. Notwithstanding any other provision of law, agricultural landowners or operators who fully
563 implement and maintain the applicable components of their resource management plan, in accordance
564 with the criteria for such plans set out in § 10.1-104.8 and any regulations adopted thereunder, shall be
565 deemed to be in full compliance with (i) any load allocation contained in a total maximum daily load
566 (TMDL) established under § 303(d) of the federal Clean Water Act addressing benthic, bacteria, nutrient,
567 or sediment impairments; (ii) any requirements of the Virginia Chesapeake Bay TMDL Watershed
568 Implementation Plan; and (iii) applicable state water quality requirements for nutrients and sediment.

569 B. The presumption of full compliance provided in subsection A shall not prevent or preclude
570 enforcement of provisions pursuant to (i) a resource management plan or a nutrient management plan
571 otherwise required by law for such operation, (ii) a Virginia Pollutant Discharge Elimination System
572 permit, (iii) a Virginia Pollution Abatement permit, or (iv) requirements of the Chesapeake Bay
573 Preservation Act (§ 62.1-44.15:67 et seq.).

574 C. Landowners or operators who implement and maintain a resource management plan in accordance
575 with this article shall be eligible for matching grants for agricultural best management practices provided
576 through the Virginia Agricultural Best Management Practices Cost-Share Program administered by the
577 Department in accordance with program eligibility rules and requirements. Such landowners and
578 operators may also be eligible for state tax credits in accordance with §§ 58.1-339.3 and 58.1-439.5.

579 D. Nothing in this article shall be construed to limit, modify, impair, or supersede the authority
580 granted to the Commissioner of Agriculture and Consumer Services pursuant to Chapter 4 (§ 3.2-400 et
581 seq.) of Title 3.2.

582 E. Any personal or proprietary information collected pursuant to this article shall be exempt from the
583 Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that the Director may release
584 information that has been transformed into a statistical or aggregate form that does not allow
585 identification of the persons who supplied, or are the subject of, particular information. This subsection
586 shall not preclude the application of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) in all
587 other instances of federal or state regulatory actions. Pursuant to subdivision 46 45 of § 2.2-3711, public
588 bodies may hold closed meetings for discussion or consideration of certain records excluded from the
589 provisions of this article and the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

590 **§ 15.2-1416. Regular meetings.**

591 The governing body shall assemble at a public place as the governing body may prescribe, in regular
592 session in January for counties and in July for cities and towns. Future meetings shall be held on such
593 days as may be prescribed by resolution of the governing body but in no event shall less than six
594 meetings be held in each fiscal year.

595 The days, times and places of regular meetings to be held during the ensuing months shall be
596 established at the first meeting which meeting may be referred to as the annual or organizational
597 meeting; however, if the governing body subsequently prescribes any public place other than the initial
598 public meeting place, or any day or time other than that initially established, as a meeting day, place or
599 time, the governing body shall pass a resolution as to such future meeting day, place or time. The
600 governing body shall cause a copy of such resolution to be posted on the door of the courthouse or the
601 initial public meeting place and inserted in a newspaper having general circulation in the county or
602 municipality at least seven days prior to the first such meeting at such other day, place or time. Should
603 the day established by the governing body as the regular meeting day fall on any legal holiday, the
604 meeting shall be held on the next following regular business day, without action of any kind by the
605 governing body.

606 At its annual meeting the governing body may fix the day or days to which a regular meeting shall
 607 be continued if the chairman or mayor, or vice-chairman or vice-mayor if the chairman or mayor is
 608 unable to act, finds and declares that weather or other conditions are such that it is hazardous for
 609 members to attend the regular meeting. Such finding shall be communicated to the members and the
 610 press as promptly as possible. All hearings and other matters previously advertised shall be conducted at
 611 the continued meeting and no further advertisement is required.

612 Regular meetings, ~~without further public notice~~, may be adjourned from day to day or from time to
 613 time or from place to place, not beyond the time fixed for the next regular meeting, until the business
 614 before the governing body is completed. *Notice of any regular meeting continued under this section*
 615 *shall be reasonable under the circumstances and be given as provided in subsection D of § 2.2-3707.*

616 Notwithstanding the provisions of this section, any city or town that holds an organizational meeting
 617 in compliance with its charter or code shall be deemed to be in compliance with this section.

618 **§ 23.1-1303. Governing boards; duties.**

619 A. For purposes of this section, "intellectual property" means (i) a potentially patentable machine,
 620 article of manufacture, composition of matter, process, or improvement in any of those; (ii) an issued
 621 patent; (iii) a legal right that inheres in a patent; or (iv) anything that is copyrightable.

622 B. The governing board of each public institution of higher education shall:

623 1. Adopt and post conspicuously on its website bylaws for its own governance, including provisions
 624 that (i) establish the requirement of transparency, to the extent required by law, in all board actions; (ii)
 625 describe the board's obligations under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), as
 626 set forth in subdivision B 10 of § 23.1-1301, including the requirements that (a) the board record
 627 minutes of each open meeting and post the minutes on the board's website, in accordance with
 628 subsection *H* of § 2.2-3707 and § 2.2-3707.1, (b) discussions and actions on any topic not specifically
 629 exempted by § 2.2-3711 be held in an open meeting, (c) the board give public notice of all meetings, in
 630 accordance with subsection C of § 2.2-3707, and (d) any action taken in a closed meeting be approved
 631 in an open meeting before it can have any force or effect, in accordance with subsection B of
 632 § 2.2-3711; and (iii) require that the board invite the Attorney General's appointee or representative to
 633 all meetings of the board, executive committee, and board committees;

634 2. Establish regulations or institution policies for the acceptance and assistance of students that
 635 include provisions (i) that specify that individuals who have knowingly and willfully failed to meet the
 636 federal requirement to register for the selective service are not eligible to receive any state direct student
 637 assistance, (ii) that specify that the accreditation status of a public high school in the Commonwealth
 638 shall not be considered in making admissions determinations for students who have earned a diploma
 639 pursuant to the requirements established by the Board of Education, and (iii) relating to the admission of
 640 certain graduates of comprehensive community colleges as set forth in § 23.1-907;

641 3. Assist the Council in enforcing the provisions relating to eligibility for financial aid;

642 4. Notwithstanding any other provision of state law, establish policies and procedures requiring the
 643 notification of the parent of a dependent student when such student receives mental health treatment at
 644 the institution's student health or counseling center and such treatment becomes part of the student's
 645 educational record in accordance with the federal Health Insurance Portability and Accountability Act
 646 (42 U.S.C. § 1320d et seq.) and may be disclosed without prior consent as authorized by the federal
 647 Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and related regulations (34 C.F.R. Part
 648 99). Such notification shall only be required if it is determined that there exists a substantial likelihood
 649 that, as a result of mental illness the student will, in the near future, (i) cause serious physical harm to
 650 himself or others as evidenced by recent behavior or any other relevant information or (ii) suffer serious
 651 harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs.
 652 However, notification may be withheld if any person licensed to diagnose and treat mental, emotional,
 653 or behavioral disorders by a health regulatory board within the Department of Health Professions who is
 654 treating the student has made a part of the student's record a written statement that, in the exercise of
 655 his professional judgment, the notification would be reasonably likely to cause substantial harm to the
 656 student or another person. No public institution of higher education or employee of a public institution
 657 of higher education making a disclosure pursuant to this subsection is civilly liable for any harm
 658 resulting from such disclosure unless such disclosure constitutes gross negligence or willful misconduct
 659 by the institution or its employees;

660 5. Establish policies and procedures requiring the release of the educational record of a dependent
 661 student, as defined by the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g), to a
 662 parent at his request;

663 6. Establish programs to seek to ensure that all graduates have the technology skills necessary to
 664 compete in the twenty-first century and that all students matriculating in teacher-training programs
 665 receive instruction in the effective use of educational technology;

666 7. Establish policies for the discipline of students who participate in varsity intercollegiate athletics,

667 including a provision requiring an annual report by the administration of the institution to the governing
668 board regarding enforcement actions taken pursuant to such policies;

669 8. In addition to all meetings prescribed in Chapters 14 (§ 23.1-1400 et seq.) through 29 (§ 23.1-2900
670 et seq.), meet with the chief executive officer of the institution at least once annually, in a closed
671 meeting pursuant to subdivision A 1 of § 2.2-3711 and deliver an evaluation of the chief executive
672 officer's performance. Any change to the chief executive officer's employment contract during any such
673 meeting or any other meeting of the board shall be made only by a vote of the majority of the board's
674 members;

675 9. If human research, as defined in § 32.1-162.16, is conducted at the institution, adopt regulations
676 pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to effectuate the provisions of Chapter
677 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research. Such regulations shall require the human
678 research committee to submit to the Governor, the General Assembly, and the chief executive officer of
679 the institution or his designee at least annually a report on the human research projects reviewed and
680 approved by the committee and require the committee to report any significant deviations from approved
681 proposals;

682 10. Submit the annual financial statements for the fiscal year ending the preceding June 30 and the
683 accounts and status of any ongoing capital projects to the Auditor of Public Accounts for the audit of
684 such statements pursuant to § 30-133;

685 11. Submit to the General Assembly and the Governor an annual executive summary of its interim
686 activity and work no later than the first day of each regular session of the General Assembly. The
687 executive summary shall be submitted as provided in the procedures of the Division of Legislative
688 Automated Systems for the processing of legislative documents and reports and shall be posted on the
689 General Assembly's website;

690 12. Make available to any interested party upon request a copy of the portion of the most recent
691 report of the Uniform Crime Reporting Section of the Department of State Police entitled "Crime in
692 Virginia" pertaining to institutions of higher education;

693 13. Adopt policies or institution regulations regarding the ownership, protection, assignment, and use
694 of intellectual property and provide a copy of such policies to the Governor and the Joint Commission
695 on Technology and Science. All employees, including student employees, of public institutions of higher
696 education are bound by the intellectual property policies of the institution employing them; and

697 14. Adopt policies that are supportive of the intellectual property rights of matriculated students who
698 are not employed by such institution.

699 **§ 54.1-2400.2. Confidentiality of information obtained during an investigation or disciplinary**
700 **proceeding; penalty.**

701 A. Any reports, information or records received and maintained by the Department of Health
702 Professions or any health regulatory board in connection with possible disciplinary proceedings,
703 including any material received or developed by a board during an investigation or proceeding, shall be
704 strictly confidential. The Department of Health Professions or a board may only disclose such
705 confidential information:

706 1. In a disciplinary proceeding before a board or in any subsequent trial or appeal of an action or
707 order, or to the respondent in entering into a confidential consent agreement under § 54.1-2400;

708 2. To regulatory authorities concerned with granting, limiting or denying licenses, certificates or
709 registrations to practice a health profession, including the coordinated licensure information system, as
710 defined in § 54.1-3030;

711 3. To hospital committees concerned with granting, limiting or denying hospital privileges if a final
712 determination regarding a violation has been made;

713 4. Pursuant to an order of a court of competent jurisdiction for good cause arising from extraordinary
714 circumstances being shown;

715 5. To qualified personnel for bona fide research or educational purposes, if personally identifiable
716 information relating to any person is first deleted. Such release shall be made pursuant to a written
717 agreement to ensure compliance with this section; or

718 6. To the Health Practitioners' Monitoring Program within the Department of Health Professions in
719 connection with health practitioners who apply to or participate in the Program.

720 B. In no event shall confidential information received, maintained or developed by the Department of
721 Health Professions or any board, or disclosed by the Department of Health Professions or a board to
722 others, pursuant to this section, be available for discovery or court subpoena or introduced into evidence
723 in any civil action. This section shall not, however, be construed to inhibit an investigation or
724 prosecution under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2.

725 C. Any claim of a physician-patient or practitioner-patient privilege shall not prevail in any
726 investigation or proceeding by any health regulatory board acting within the scope of its authority. The
727 disclosure, however, of any information pursuant to this provision shall not be deemed a waiver of such

728 privilege in any other proceeding.

729 D. This section shall not prohibit the Director of the Department of Health Professions, after
730 consultation with the relevant health regulatory board president or his designee, from disclosing to the
731 Attorney General, or the appropriate attorney for the Commonwealth, investigatory information which
732 indicates a possible violation of any provision of criminal law, including the laws relating to the
733 manufacture, distribution, dispensing, prescribing or administration of drugs, other than drugs classified
734 as Schedule VI drugs and devices, by any individual regulated by any health regulatory board.

735 E. This section shall not prohibit the Director of the Department of Health Professions from
736 disclosing matters listed in subdivision A 1, A 2, or A 3 of § 54.1-2909; from making the reports of
737 aggregate information and summaries required by § 54.1-2400.3; or from disclosing the information
738 required to be made available to the public pursuant to § 54.1-2910.1.

739 F. This section shall not prohibit the Director of the Department of Health Professions, following
740 consultation with the relevant health regulatory board president or his designee, from disclosing
741 information about a suspected violation of state or federal law or regulation to other agencies within the
742 Health and Human Resources Secretariat or to federal law-enforcement agencies having jurisdiction over
743 the suspected violation or requesting an inspection or investigation of a licensee by such state or federal
744 agency when the Director has reason to believe that a possible violation of federal or state law has
745 occurred. Such disclosure shall not exceed the minimum information necessary to permit the state or
746 federal agency having jurisdiction over the suspected violation of state or federal law to conduct an
747 inspection or investigation. Disclosures by the Director pursuant to this subsection shall not be limited to
748 requests for inspections or investigations of licensees. Nothing in this subsection shall require the
749 Director to make any disclosure. Nothing in this section shall permit any agency to which the Director
750 makes a disclosure pursuant to this section to re-disclose any information, reports, records, or materials
751 received from the Department.

752 G. Whenever a complaint or report has been filed about a person licensed, certified, or registered by
753 a health regulatory board, the source and the subject of a complaint or report shall be provided
754 information about the investigative and disciplinary procedures at the Department of Health Professions.
755 Prior to interviewing a licensee who is the subject of a complaint or report, or at the time that the
756 licensee is first notified in writing of the complaint or report, whichever shall occur first, the licensee
757 shall be provided with a copy of the complaint or report and any records or supporting documentation,
758 unless such provision would materially obstruct a criminal or regulatory investigation. If the relevant
759 board concludes that a disciplinary proceeding will not be instituted, the board may send an advisory
760 letter to the person who was the subject of the complaint or report. The relevant board may also inform
761 the source of the complaint or report (i) that an investigation has been conducted, (ii) that the matter
762 was concluded without a disciplinary proceeding, (iii) of the process the board followed in making its
763 determination, and (iv), if appropriate, that an advisory letter from the board has been communicated to
764 the person who was the subject of the complaint or report. In providing such information, the board
765 shall inform the source of the complaint or report that he is subject to the requirements of this section
766 relating to confidentiality and discovery.

767 H. Orders and notices of the health regulatory boards relating to disciplinary actions, other than
768 confidential exhibits described in subsection K, shall be disclosed. Information on the date and location
769 of any disciplinary proceeding, allegations against the respondent, and the list of statutes and regulations
770 the respondent is alleged to have violated shall be provided to the source of the complaint or report by
771 the relevant board prior to the proceeding. The source shall be notified of the disposition of a
772 disciplinary case.

773 I. This section shall not prohibit investigative staff authorized under § 54.1-2506 from interviewing
774 fact witnesses, disclosing to fact witnesses the identity of the subject of the complaint or report, or
775 reviewing with fact witnesses any portion of records or other supporting documentation necessary to
776 refresh the fact witnesses' recollection.

777 J. Any person found guilty of the unlawful disclosure of confidential information possessed by a
778 health regulatory board shall be guilty of a Class 1 misdemeanor.

779 K. In disciplinary actions in which a practitioner is or may be unable to practice with reasonable skill
780 and safety to patients and the public because of a mental or physical disability, a health regulatory board
781 shall consider whether to disclose and may decide not to disclose in its notice or order the practitioner's
782 health records, as defined in § 32.1-127.1:03, or his health services, as defined in § 32.1-127.1:03. Such
783 information may be considered by the relevant board in a closed hearing in accordance with subsection
784 A ¶ 16 of § 2.2-3711 and included in a confidential exhibit to a notice or order. The public notice or
785 order shall identify, if known, the practitioner's mental or physical disability that is the basis for its
786 determination. In the event that the relevant board, in its discretion, determines that this subsection
787 should apply, information contained in the confidential exhibit shall remain part of the confidential
788 record before the relevant board and is subject to court review under the Administrative Process Act

789 (§ 2.2-4000 et seq.) and to release in accordance with this section.
790 **2. That the provisions of subdivisions A 7, 8, 9, 12, 16, 19, 28, 30, 31, 32, and 35 through 47 of**
791 **§ 2.2-3711 of the Code of Virginia, as amended by this act, are declaratory of existing law.**