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SENATE BILL NO. 438

Offered January 10, 2018

Prefiled January 9, 2018

A BILL to amend and reenact §§ 2.2-2905, 2.2-3705.4, 2.2-3711, and 2.2-4006 of the Code of Virginia and to amend the Code of Virginia by adding in Title 23.1 a chapter numbered 7.1, consisting of sections numbered 23.1-713.1 through 23.1-713.10, relating to the establishment of the Virginia Student Loan Refinancing Authority.

Patron—Wexton

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2905, 2.2-3705.4, 2.2-3711, and 2.2-4006 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 23.1 a chapter numbered 7.1, consisting of sections numbered 23.1-713.1 through 23.1-713.10, as follows:

§ 2.2-2905. Certain officers and employees exempt from chapter.

The provisions of this chapter shall not apply to:

1. Officers and employees for whom the Constitution specifically directs the manner of selection;
2. Officers and employees of the Supreme Court and the Court of Appeals;
3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not;
4. Officers elected by popular vote or by the General Assembly or either house thereof;
5. Members of boards and commissions however selected;
6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;
7. Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf;
8. The presidents and teaching and research staffs of state educational institutions;
9. Commissioned officers and enlisted personnel of the National Guard;
10. Student employees at institutions of higher education and patient or inmate help in other state institutions;
11. Upon general or special authorization of the Governor, laborers, temporary employees, and employees compensated on an hourly or daily basis;
12. County, city, town, and district officers, deputies, assistants, and employees;
13. The employees of the Virginia Workers' Compensation Commission;
14. The officers and employees of the Virginia Retirement System;
15. Employees whose positions are identified by the State Council of Higher Education and the boards of the Virginia Museum of Fine Arts, The Science Museum of Virginia, the Jamestown-Yorktown Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of Natural History, the New College Institute, the Southern Virginia Higher Education Center, and The Library of Virginia, and approved by the Director of the Department of Human Resource Management as requiring specialized and professional training;
16. Employees of the Virginia Lottery;
17. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs;
18. Employees of the Virginia Commonwealth University Health System Authority;
19. Employees of the University of Virginia Medical Center. Any changes in compensation plans for such employees shall be subject to the review and approval of the Board of Visitors of the University of Virginia. The University of Virginia shall ensure that its procedures for hiring University of Virginia Medical Center personnel are based on merit and fitness. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);
20. In executive branch agencies the employee who has accepted serving in the capacity of chief deputy, or equivalent, and the employee who has accepted serving in the capacity of a confidential assistant for policy or administration. An employee serving in either one of these two positions shall be deemed to serve on an employment-at-will basis. An agency may not exceed two employees who serve in this exempt capacity;
21. Employees of Virginia Correctional Enterprises. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);

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- 59 22. Officers and employees of the Virginia Port Authority;
60 23. Employees of the Virginia College Savings Plan;
61 24. Directors of state facilities operated by the Department of Behavioral Health and Developmental
62 Services employed or reemployed by the Commissioner after July 1, 1999, under a contract pursuant to
63 § 37.2-707. Such employees shall remain subject to the provisions of the State Grievance Procedure
64 (§ 2.2-3000 et seq.);
65 25. Employees of the Virginia Foundation for Healthy Youth. Such employees shall be treated as
66 state employees for purposes of participation in the Virginia Retirement System, health insurance, and
67 all other employee benefits offered by the Commonwealth to its classified employees;
68 26. Employees of the Virginia Indigent Defense Commission;
69 27. Any chief of a campus police department that has been designated by the governing body of a
70 public institution of higher education as exempt, pursuant to § 23.1-809; and
71 28. The Chief Executive Officer, agents, officers, and employees of the Virginia Alcoholic Beverage
72 Control Authority; and
73 29. *Employees of the Virginia Student Loan Refinancing Authority.*

74 **§ 2.2-3705.4. Exclusions to application of chapter; educational records and certain records of**
75 **educational institutions.**

76 The following information contained in a public record is excluded from the mandatory disclosure
77 provisions of this chapter but may be disclosed by the custodian in his discretion, except where such
78 disclosure is prohibited by law. Redaction of information excluded under this section from a public
79 record shall be conducted in accordance with § 2.2-3704.01.

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

86 The parent or legal guardian of a student may prohibit, by written request, the release of any
87 individual information regarding that student until the student reaches the age of 18 years. For scholastic
88 records of students under the age of 18 years, the right of access may be asserted only by his legal
89 guardian or parent, including a noncustodial parent, unless such parent's parental rights have been
90 terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic
91 records of students who are emancipated or attending a public institution of higher education in the
92 Commonwealth, the right of access may be asserted by the student.

93 Any person who is the subject of any scholastic record and who is 18 years of age or older may
94 waive, in writing, the protections afforded by this subdivision. If the protections are so waived, such
95 records shall be disclosed.

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

99 3. Information held by the Brown v. Board of Education Scholarship Committee that would reveal
100 personally identifiable information, including scholarship applications, personal financial information, and
101 confidential correspondence and letters of recommendation.

102 4. Information of a proprietary nature produced or collected by or for faculty or staff of public
103 institutions of higher education, other than the institutions' financial or administrative records, in the
104 conduct of or as a result of study or research on medical, scientific, technical or scholarly issues,
105 whether sponsored by the institution alone or in conjunction with a governmental body or a private
106 concern, where such information has not been publicly released, published, copyrighted or patented.

107 5. Information held by the University of Virginia or the University of Virginia Medical Center or
108 Eastern Virginia Medical School, as the case may be, that contain proprietary, business-related
109 information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia
110 Medical School, as the case may be, including business development or marketing strategies and
111 activities with existing or future joint venturers, partners, or other parties with whom the University of
112 Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms,
113 any arrangement for the delivery of health care, if disclosure of such information would be harmful to
114 the competitive position of the University of Virginia Medical Center or Eastern Virginia Medical
115 School, as the case may be.

116 6. Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College
117 Savings Plan or its employees by or on behalf of individuals who have requested information about,
118 applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to
119 Chapter 7 (§ 23.1-700 et seq.) of Title 23.1, including personal information related to (i) qualified
120 beneficiaries as that term is defined in § 23.1-700, (ii) designated survivors, or (iii) authorized

121 individuals. Nothing in this subdivision shall be construed to prevent disclosure or publication of
122 information in a statistical or other form that does not identify individuals or provide personal
123 information. Individuals shall be provided access to their own personal information.

124 For purposes of this subdivision:

125 "Authorized individual" means an individual who may be named by the account owner to receive
126 information regarding the account but who does not have any control or authority over the account.

127 "Designated survivor" means the person who will assume account ownership in the event of the
128 account owner's death.

129 7. Information maintained in connection with fundraising activities by or for a public institution of
130 higher education that would reveal (i) personal fundraising strategies relating to identifiable donors or
131 prospective donors or (ii) wealth assessments; estate, financial, or tax planning information;
132 health-related information; employment, familial, or marital status information; electronic mail addresses,
133 facsimile or telephone numbers; birth dates or social security numbers of identifiable donors or
134 prospective donors. Nothing in this subdivision, however, shall be construed to prevent the disclosure of
135 information relating to the amount, date, purpose, and terms of the pledge or donation, or the identity of
136 the donor unless the donor has requested anonymity in connection with or as a condition of making a
137 pledge or donation. The exclusion provided by this subdivision shall not apply to protect from disclosure
138 (i) the identities of sponsors providing grants to or contracting with the institution for the performance
139 of research services or other work or (ii) the terms and conditions of such grants or contracts.

140 8. Information held by a threat assessment team established by a local school board pursuant to
141 § 22.1-79.4 or by a public institution of higher education pursuant to § 23.1-805 relating to the
142 assessment or intervention with a specific individual. However, in the event an individual who has been
143 under assessment commits an act, or is prosecuted for the commission of an act that has caused the
144 death of, or caused serious bodily injury, including any felony sexual assault, to another person, such
145 information of the threat assessment team concerning the individual under assessment shall be made
146 available as provided by this chapter, with the exception of any criminal history records obtained
147 pursuant to § 19.2-389 or 19.2-389.1, health records obtained pursuant to § 32.1-127.1:03, or scholastic
148 records as defined in § 22.1-289. The public body providing such information shall remove personally
149 identifying information of any person who provided information to the threat assessment team under a
150 promise of confidentiality.

151 9. *Personal information, as defined in § 2.2-3801, provided to the board of the Virginia Student Loan*
152 *Refinancing Authority or its employees by or on behalf of individuals who have requested information*
153 *about, applied for, or entered into agreements for qualified education loan refinancing pursuant to*
154 *Chapter 7.1 (§ 23.1-713.1 et seq.) of Title 23.1. Nothing in this subdivision shall be construed to*
155 *prohibit disclosure or publication of information in a statistical or other form that does not identify*
156 *individuals or provide personal information. Individuals shall be provided access to their own personal*
157 *information.*

158 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

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

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

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

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

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

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

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

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

195 8. Consultation with legal counsel employed or retained by a public body regarding specific legal
196 matters requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be
197 construed to permit the closure of a meeting merely because an attorney representing the public body is
198 in attendance or is consulted on a matter.

199 9. Discussion or consideration by governing boards of public institutions of higher education of
200 matters relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or
201 work to be performed by such institution. However, the terms and conditions of any such gifts, bequests,
202 grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and
203 accepted by a public institution of higher education in the Commonwealth shall be subject to public
204 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
205 (i) "foreign government" means any government other than the United States government or the
206 government of a state or a political subdivision thereof, (ii) "foreign legal entity" means any legal entity
207 (a) created under the laws of the United States or of any state thereof if a majority of the ownership of
208 the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
209 membership of any such entity is composed of foreign persons or foreign legal entities or (b) created
210 under the laws of a foreign government, and (iii) "foreign person" means any individual who is not a
211 citizen or national of the United States or a trust territory or protectorate thereof.

212 10. Discussion or consideration by the boards of trustees of the Virginia Museum of Fine Arts, the
213 Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of
214 Virginia of matters relating to specific gifts, bequests, and grants from private sources.

215 11. Discussion or consideration of honorary degrees or special awards.

216 12. Discussion or consideration of tests, examinations, or other information used, administered, or
217 prepared by a public body and subject to the exclusion in subdivision 4 of § 2.2-3705.1.

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

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

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

230 16. Discussion or consideration of medical and mental health records subject to the exclusion in
231 subdivision 1 of § 2.2-3705.5.

232 17. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to
233 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
234 discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game
235 information and studies or investigations excluded from disclosure under subdivision 6 of § 2.2-3705.3
236 and subdivision 11 of § 2.2-3705.7.

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

242 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific
243 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement

or emergency service officials concerning actions taken to respond to such matters or a related threat to public safety; discussion of information subject to the exclusion in subdivision 2 or 14 of § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of any person or the security of any facility, building, structure, information technology system, or software program; or discussion of reports or plans related to the security of any governmental facility, building or structure, or the safety of persons using such facility, building or structure.

20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of trustees of a trust established by one or more local public bodies to invest funds for postemployment benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the board of visitors of the University of Virginia, prepared by the retirement system, or a local finance board or board of trustees, or the Virginia College Savings Plan or provided to the retirement system, a local finance board or board of trustees, or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held, or disposed of by the retirement system, a local finance board or board of trustees, the board of visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in 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 board of visitors of the University of Virginia 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. Discussion or consideration by the Virginia Commonwealth University Health System Authority or the board of visitors of Virginia Commonwealth University of any of the following: the acquisition or disposition by the Authority of real property, equipment, or technology software or hardware and related goods or services, where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; matters relating to gifts or bequests to, and fund-raising activities of, the Authority; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies plans of the Authority where disclosure of such strategies or plans would adversely affect the competitive position of the Authority; and members of the Authority's medical and teaching staffs and qualifications for appointments thereto.

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 7 (§ 23.1-700 et seq.) of Title 23.1 is discussed.

26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created

305 pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et
306 seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of wireless
307 E-911 service.

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

314 28. Discussion or consideration of information subject to the exclusion in subdivision 11 of
315 § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are
316 defined in § 33.2-1800, or any independent review panel appointed to review information and advise
317 the responsible public entity concerning such records.

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

322 30. Discussion or consideration of grant or loan application information subject to the exclusion in
323 subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the Innovation
324 and Entrepreneurship Investment Authority or the Research and Technology Investment Advisory
325 Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

326 31. Discussion or consideration by the Commitment Review Committee of information subject to the
327 exclusion in subdivision 5 of § 2.2-3705.2 relating to individuals subject to commitment as sexually
328 violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

329 32. Discussion or consideration of confidential proprietary information and trade secrets developed
330 and held by a local public body providing certain telecommunication services or cable television services
331 and subject to the exclusion in subdivision 18 of § 2.2-3705.6. However, the exemption provided by this
332 subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et
333 seq.).

334 33. Discussion or consideration by a local authority created in accordance with the Virginia Wireless
335 Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and trade secrets
336 subject to the exclusion in subdivision 19 of § 2.2-3705.6.

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

339 35. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee
340 created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of criminal investigative
341 files subject to the exclusion in subdivision A 2 a of § 2.2-3706.

342 36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of
343 information or confidential matters subject to the exclusion in subdivision 3 of § 2.2-3705.4, and
344 meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and
345 consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or
346 recover scholarship awards.

347 37. Discussion or consideration by the Virginia Port Authority of information subject to the exclusion
348 in subdivision 1 of § 2.2-3705.6 related to certain proprietary information gathered by or for the Virginia
349 Port Authority.

350 38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting
351 pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26,
352 by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College
353 Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's Investment
354 Advisory Committee appointed pursuant to § 23.1-702 of information subject to the exclusion in
355 subdivision 24 of § 2.2-3705.7.

356 39. Discussion or consideration of information subject to the exclusion in subdivision 3 of
357 § 2.2-3705.6 related to economic development.

358 40. Discussion or consideration by the Board of Education of information relating to the denial,
359 suspension, or revocation of teacher licenses subject to the exclusion in subdivision 11 of § 2.2-3705.3.

360 41. Those portions of meetings of the Virginia Military Advisory Council or any commission created
361 by executive order for the purpose of studying and making recommendations regarding preventing
362 closure or realignment of federal military and national security installations and facilities located in
363 Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization
364 appointed by a local governing body, during which there is discussion of information subject to the
365 exclusion in subdivision 8 of § 2.2-3705.2.

366 42. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of

information subject to the exclusion in subdivision 28 of § 2.2-3705.7 related to personally identifiable information of donors.

43. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of information subject to the exclusion in subdivision 23 of § 2.2-3705.6 related to certain information contained in grant applications.

44. Discussion or consideration by the board of directors of the Commercial Space Flight Authority of information subject to the exclusion in subdivision 24 of § 2.2-3705.6 related to rate structures or charges for the use of projects of, the sale of products of, or services rendered by the Authority and certain proprietary information of a private entity provided to the Authority.

45. Discussion or consideration of personal and proprietary information related to the resource management plan program and subject to the exclusion in (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of § 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records that contain information that has been certified for release by the person who is the subject of the information or transformed into a statistical or aggregate form that does not allow identification of the person who supplied, or is the subject of, the information.

46. Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control Authority of information subject to the exclusion in subdivision 1 of § 2.2-3705.3 related to investigations of applicants for licenses and permits and of licensees and permittees.

47. Discussion or consideration of grant or loan application records subject to the exclusion in subdivision 28 of § 2.2-3705.6 related to the submission of an application for an award from the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title 23.1 or interviews of parties to an application by a reviewing entity pursuant to subsection D of § 23.1-3133 or by the Virginia Research Investment Committee.

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

49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault team established pursuant to § 15.2-1627.4 or (ii) individual child abuse or neglect cases or sex offenses involving a child by a child abuse team established pursuant to § 15.2-1627.5.

50. Discussion or consideration by the Board of the Virginia Economic Development Partnership Authority, or any subcommittee thereof, of the portions of the strategic plan, marketing plan, or operational plan exempt from disclosure pursuant to subdivision 33 of § 2.2-3705.7.

51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic Development Partnership Authority established pursuant to subsection F of § 2.2-2237.3 to review and discuss information received from the Virginia Employment Commission pursuant to subdivision C 2 of § 60.2-114.

52. Discussion or consideration by the board of the Virginia Student Loan Refinancing Authority of personal information, as defined in § 2.2-3801, that 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 agreements for qualified education loan refinancing pursuant to Chapter 7.1 (§ 23.1-713.1 et seq.) of Title 23.1.

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

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

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

E. This section shall not be construed to (i) require the disclosure of any contract between the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant 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.

§ 2.2-4006. Exemptions from requirements of this article.

A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia

428 Register Act shall be exempted from the operation of this article:

429 1. Agency orders or regulations fixing rates or prices.

430 2. Regulations that establish or prescribe agency organization, internal practice or procedures,
431 including delegations of authority.

432 3. Regulations that consist only of changes in style or form or corrections of technical errors. Each
433 promulgating agency shall review all references to sections of the Code of Virginia within their
434 regulations each time a new supplement or replacement volume to the Code of Virginia is published to
435 ensure the accuracy of each section or section subdivision identification listed.

436 4. Regulations that are:

437 a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no
438 agency discretion is involved. However, such regulations shall be filed with the Registrar within 90 days
439 of the law's effective date;

440 b. Required by order of any state or federal court of competent jurisdiction where no agency
441 discretion is involved; or

442 c. Necessary to meet the requirements of federal law or regulations, provided such regulations do not
443 differ materially from those required by federal law or regulation, and the Registrar has so determined in
444 writing. Notice of the proposed adoption of these regulations and the Registrar's determination shall be
445 published in the Virginia Register not less than 30 days prior to the effective date of the regulation.

446 5. Regulations of the Board of Agriculture and Consumer Services adopted pursuant to subsection B
447 of § 3.2-3929 or clause (v) or (vi) of subsection C of § 3.2-3931 after having been considered at two or
448 more Board meetings and one public hearing.

449 6. Regulations of the regulatory boards served by (i) the Department of Labor and Industry pursuant
450 to Title 40.1 and (ii) the Department of Professional and Occupational Regulation or the Department of
451 Health Professions pursuant to Title 54.1 that are limited to reducing fees charged to regulants and
452 applicants.

453 7. The development and issuance of procedural policy relating to risk-based mine inspections by the
454 Department of Mines, Minerals and Energy authorized pursuant to §§ 45.1-161.82 and 45.1-161.292:55.

455 8. General permits issued by the (a) State Air Pollution Control Board pursuant to Chapter 13
456 (§ 10.1-1300 et seq.) of Title 10.1 or (b) State Water Control Board pursuant to the State Water Control
457 Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et
458 seq.) of Title 62.1, (c) Virginia Soil and Water Conservation Board pursuant to the Dam Safety Act
459 (§ 10.1-604 et seq.), and (d) the development and issuance of general wetlands permits by the Marine
460 Resources Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission
461 (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of
462 § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended
463 Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including
464 potentially affected citizens groups, to assist in the development of the general permit, (iii) provides
465 notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least
466 one public hearing on the proposed general permit.

467 9. The development and issuance by the Board of Education of guidelines on constitutional rights
468 and restrictions relating to the recitation of the pledge of allegiance to the American flag in public
469 schools pursuant to § 22.1-202.

470 10. Regulations of the Board of the Virginia College Savings Plan adopted pursuant to § 23.1-704.

471 11. Regulations of the Marine Resources Commission.

472 12. Regulations adopted by the Board of Housing and Community Development pursuant to (i)
473 Statewide Fire Prevention Code (§ 27-94 et seq.), (ii) the Industrialized Building Safety Law (§ 36-70 et
474 seq.), (iii) the Uniform Statewide Building Code (§ 36-97 et seq.), and (iv) § 36-98.3, provided the
475 Board (a) provides a Notice of Intended Regulatory Action in conformance with the provisions of
476 § 2.2-4007.01, (b) publishes the proposed regulation and provides an opportunity for oral and written
477 comments as provided in § 2.2-4007.03, and (c) conducts at least one public hearing as provided in §§
478 2.2-4009 and 36-100 prior to the publishing of the proposed regulations. Notwithstanding the provisions
479 of this subdivision, any regulations promulgated by the Board shall remain subject to the provisions of
480 § 2.2-4007.06 concerning public petitions, and §§ 2.2-4013 and 2.2-4014 concerning review by the
481 Governor and General Assembly.

482 13. Amendments to regulations of the Board to schedule a substance pursuant to subsection D or E
483 of § 54.1-3443.

484 14. Waste load allocations adopted, amended, or repealed by the State Water Control Board pursuant
485 to the State Water Control Law (§ 62.1-44.2 et seq.), including but not limited to Article 4.01
486 (§ 62.1-44.19:4 et seq.) of the State Water Control Law, if the Board (i) provides public notice in the
487 Virginia Register; (ii) if requested by the public during the initial public notice 30-day comment period,
488 forms an advisory group composed of relevant stakeholders; (iii) receives and provides summary
489 response to written comments; and (iv) conducts at least one public meeting. Notwithstanding the

provisions of this subdivision, any such waste load allocations adopted, amended, or repealed by the Board shall be subject to the provisions of §§ 2.2-4013 and 2.2-4014 concerning review by the Governor and General Assembly.

15. Regulations of the Workers' Compensation Commission adopted pursuant to § 65.2-605, including regulations that adopt, amend, adjust, or repeal Virginia fee schedules for medical services, provided the Workers' Compensation Commission (i) utilizes a regulatory advisory panel constituted as provided in subdivision F 2 of § 65.2-605 to assist in the development of such regulations and (ii) provides an opportunity for public comment on the regulations prior to adoption.

16. *Regulations of the Virginia Student Loan Refinancing Authority adopted pursuant to Chapter 7.1 (§ 23.1-713.1 et seq.) of Title 23.1.*

B. Whenever regulations are adopted under this section, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. The effective date of regulations adopted under this section shall be in accordance with the provisions of § 2.2-4015, except in the case of emergency regulations, which shall become effective as provided in subsection B of § 2.2-4012.

C. A regulation for which an exemption is claimed under this section or § 2.2-4002 or 2.2-4011 and that is placed before a board or commission for consideration shall be provided at least two days in advance of the board or commission meeting to members of the public that request a copy of that regulation. A copy of that regulation shall be made available to the public attending such meeting.

CHAPTER 7.1.

VIRGINIA STUDENT LOAN REFINANCING AUTHORITY.

§ 23.1-713.1. Definitions.

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

"Authority" means the Virginia Student Loan Refinancing Authority.

"Board" means the governing board of the Authority.

"Bonds" means bonds, notes, or other evidences of indebtedness or obligations of the Authority pursuant to this chapter.

"Eligible student" means any individual who is the borrower on a qualified education loan that the individual obtained to finance his own education.

"Lender" means any federally chartered or state-chartered bank, federal land bank, production credit association, federally chartered or state-chartered credit union, federally chartered or state-chartered savings institution, building and loan association, or small business investment company or any other financial institution qualified within the Commonwealth to originate and service refinancing loans.

"Qualified education loan" has the same meaning as provided in 20 U.S.C. § 221(d).

"Refinancing loan" means a loan made by a lender to refinance an eligible student's qualified education loan.

"Revenues" means any and all fees, profits, and receipts collected by, payable to, or otherwise derived by the Authority, and all other moneys and income of whatsoever kind or character collected by, payable to, or otherwise derived by the Authority, in connection with guarantees of refinancing loans in furtherance of the purposes of this article.

§ 23.1-713.2. Virginia Student Loan Refinancing Authority established; purposes.

The Virginia Student Loan Refinancing Authority is established as a political subdivision of the Commonwealth to facilitate the education of residents of the Commonwealth and promote the economic development of the Commonwealth. The Authority's exercise of the powers conferred by this chapter constitutes the exercise of an essential governmental function.

§ 23.1-713.3. Governing board of the Authority.

A. *The Authority shall be governed by a board composed of 10 members, consisting of (i) nine nonlegislative citizen members appointed by the Governor and (ii) the State Treasurer, who shall serve ex officio with voting privileges.*

B. *At least two nonlegislative citizen members of the board shall have at least 10 years of experience in making qualified education loans or loan refinancing, but no nonlegislative citizen member shall have a financial interest in, be engaged in, or be employed by an employer that is engaged in making qualified education loans.*

C. *Members appointed by the Governor to the board shall serve terms of four years. Vacancies occurring other than by expiration of a term shall be filled for the unexpired term. No member appointed by the Governor to the board shall serve more than two consecutive four-year terms; however, a member appointed by the Governor to serve an unexpired term shall be eligible to serve two consecutive four-year terms immediately succeeding such unexpired term. All appointments shall be subject to confirmation by the General Assembly. Members appointed by the Governor to the board shall continue to hold office until their successors have been appointed and qualified. The State Treasurer shall serve a term coincident with their term of office.*

551 *D. The board shall annually elect a chairman from among its members and may elect such other*
552 *officers as it deems appropriate.*

553 *E. A majority of the members of the board constitutes a quorum.*

554 *F. No member shall be compensated for his service on the board, but each nonlegislative citizen*
555 *member shall be reimbursed for all reasonable and necessary expenses incurred in the performance of*
556 *his duties. Funding for the expenses of members shall be provided by the Authority.*

557 **§ 23.1-713.4. Powers of the Authority.**

558 *A. The board may:*

559 *1. Adopt, amend, and repeal any bylaws, policies, and procedures for the regulation of its affairs*
560 *and the conduct of its business.*

561 *2. Have a seal and alter such seal at its pleasure.*

562 *3. Sue and be sued.*

563 *4. Maintain an office.*

564 *5. Accept gifts, grants, loans, or other contributions from private or public sources.*

565 *6. Establish the Authority's annual budget and monitor the fiscal management of the Authority.*

566 *7. Execute contracts and other instruments required for the operation of the Authority.*

567 *8. Employ any officers, agents, and employees that it may require and determine their qualifications,*
568 *duties, and compensation.*

569 *9. Issue bonds in furtherance of any of its powers or purposes to be payable solely from the*
570 *revenues and property pledged for the payment of such bonds and refund such obligations.*

571 *10. Borrow money in anticipation of the issuance of bonds to be payable first from the proceeds of*
572 *any obligations to be subsequently issued under this chapter and solely from the revenues and property*
573 *pledged for the payment of such bonds.*

574 *11. Contract for and obtain letters of credit, bond insurance, investment contracts, and other*
575 *instruments, agreements, and arrangements in connection with the issuance of bonds.*

576 *12. Invest and reinvest the funds and assets of the Authority in accordance with all applicable law*
577 *and agreements.*

578 *13. Provide retirement, deferred compensation, employee benefit, and other plans for personnel of*
579 *the Authority and pay, deposit, and invest Authority funds in accordance with the provisions of such*
580 *plans.*

581 *14. Acquire title to, hold, and dispose of real and personal property in the name of the Authority.*

582 *15. Accept contributions, grants, and other things of value to be expended to accomplish the*
583 *purposes of the Authority and to be held, used, and applied only for the purposes for which such*
584 *contributions, grants, and other things of value are made.*

585 *16. Procure liability insurance.*

586 *17. Guarantee, in full or in part, the obligations of eligible students to repay refinancing loans,*
587 *which may include payment to the lender of sums owed by an eligible student under the terms of a*
588 *refinancing loan utilizing funds raised through the issuance by the Authority of bonds as authorized by*
589 *this chapter.*

590 *18. Enter into agreements with eligible students whose refinancing loans are guaranteed by the*
591 *Authority providing for the Authority to recover, from an eligible student whose default under a*
592 *refinancing loan results in the payment of sums by the Authority to the lender, all sums paid by the*
593 *Authority to such lender and any costs or expenses incurred by the Authority in connection with*
594 *performing its obligations thereunder.*

595 *19. Fix, revise, charge, and collect fees for guaranteeing to lenders the obligations of eligible*
596 *students to repay their refinancing loans.*

597 *20. Do all other acts necessary or convenient to carry out the purposes of this chapter except (i)*
598 *engaging in the business of banking or insurance or (ii) directly making qualified education loans or*
599 *refinancing loans to eligible students.*

600 **§ 23.1-713.5. Duties of the Authority.**

601 *The board shall:*

602 *1. Develop and implement a program by which each individual who incurred qualified education*
603 *loan debt as a Virginia student at an institution of higher education in the Commonwealth, who has not*
604 *received, and is not eligible to receive, relief under applicable federal student loan repayment or loan*
605 *forgiveness programs, and who seeks to refinance all or part of his qualified education loans by*
606 *obtaining a refinancing loan from a lender, may obtain the guarantee of the Authority to perform the*
607 *individual's obligations to repay the amounts due to the lender under the terms of the refinancing loan,*
608 *if the refinancing loan qualifies for the Authority's guarantee.*

609 *2. Set fees and charges for guaranteeing refinancing loans made under the program established*
610 *pursuant to subdivision 1 at the lowest rate that is still sufficient to pay all necessary expenses of the*
611 *program and provide reserves that the board determines necessary.*

612 *3. Prescribe the terms, conditions, and limitations upon which the Authority guarantees the*

performance of the individual's obligations to repay the amounts due to the lender under the terms of a refinancing loan, including requirements for insurance and the safekeeping of assets pledged to secure such guarantees.

4. Appoint a chief executive officer of the Authority and determine his salary.

5. Submit an annual report to the Governor and the General Assembly no later than November 1 that contains the annual financial statements of the Authority for the fiscal year ending the preceding June 30. The annual report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

§ 23.1-713.6. Bonds.

A. Each issue of bonds shall be dated, bear interest at such rate as the Authority fixes, and mature at such time as the Authority determines but not to exceed 40 years from the bonds' date.

B. Each issue of bonds may be made redeemable before maturity, at the option of the Authority, at such price and under such terms and conditions as the Authority determines prior to the issuance of such bonds.

C. The Authority shall determine the form, manner of execution, and denomination of bonds and the place of payment of principal and interest on bonds, which may be any bank or trust company within or outside the Commonwealth.

D. Bonds shall be signed by either the chairman of the board or the chief executive officer of the Authority. Such signature shall be valid and sufficient for all purposes regardless of whether such individual remains in his office or position.

E. The Authority may (i) issue bonds in coupon or registered form and (ii) make provision for (a) the registration of any coupon bonds as to principal alone or as to both principal and interest, (b) the reconversion into coupon bonds of any bonds registered as to both principal and interest, and (c) the interchange of registered and coupon bonds. The Authority may sell such bonds in such manner, either at public or private sale, and for such price as it determines.

F. The proceeds of the bonds of each issue shall be used solely for such purposes and in furtherance of such powers of the Authority as are set forth in the resolution authorizing the issuance of such bonds or in the trust agreement securing such bonds, as set forth in subsection G.

G. The Authority may secure bonds by a trust agreement between the Authority and a corporate trustee, which may be any trust company or bank that has the powers of a trust company within or outside the Commonwealth. Such trust agreement or the resolution providing for the issuance of bonds may pledge or assign the revenues and property of the Authority as security for the repayment and other performance of the Authority's bonds. Any bank or trust company incorporated under the laws of the Commonwealth that is authorized to act as depository of the proceeds of such bonds or of revenues may furnish such indemnifying bonds or pledge such securities as may be required by the Authority. Any such trust agreement may (i) set forth the rights and remedies of the holders of such bonds and the trustee, (ii) restrict the individual right of action by the holders of such bonds, and (iii) contain such other provisions as the Authority deems reasonable and proper for the security of the holders of such bonds. The Authority may treat all expenses incurred in carrying out the provisions of such trust agreement or resolution as part of the cost of the operation of the Authority.

H. All moneys received pursuant to the provisions of this chapter, whether as proceeds from the sale of bonds or as revenues, are trust funds that shall be held and applied solely as provided in this chapter. The Authority shall, in the resolution authorizing the issuance of bonds or in the trust agreement securing such obligations, provide for the payment of the proceeds of the sale of the bonds and the revenues to be received by a trustee, which shall be (i) any trust company or bank having the powers of a trust company within or outside the Commonwealth or (ii) the State Treasurer acting as trustee of the funds, and hold and apply such proceeds and revenues in accordance with this chapter and the resolution or trust agreement.

I. Except as may be otherwise provided in the trust agreement, any holder of bonds issued pursuant to this chapter or any coupons appertaining to such bonds and the trustee under any trust agreement may protect and enforce all rights under the laws of the Commonwealth or the trust agreement and enforce and compel the performance of all duties required by this chapter or by such resolution or trust agreement to be performed by the Authority or any officer or agent of the Authority.

J. Bonds issued by the Authority pursuant to this chapter are securities (i) in which all public officers and bodies of the Commonwealth and all localities, loan associations, trust companies, beneficial and benevolent associations, administrators, guardians, executors, trustees, and other fiduciaries in the Commonwealth may legally invest funds under their control and (ii) that may be legally deposited with and received by any state or local officer or agency or political subdivision of the Commonwealth for any purpose authorized or required by law.

K. No bond of the Authority shall constitute a debt or pledge of the full faith and credit of the

674 Commonwealth or any political subdivision of the Commonwealth, and each bond shall be payable
675 solely from the revenues and other property pledged for such payment. All such bonds shall state on
676 their face that neither the Commonwealth nor any political subdivision of the Commonwealth is
677 obligated to make payment of principal or interest on such bonds and that neither the faith and credit
678 nor the taxing power of the Commonwealth or any political subdivision of the Commonwealth is pledged
679 to the payment of principal or interest on such bonds.

680 **§ 23.1-713.7. Security interest in guaranty agreements.**

681 Any pledge by the Authority of its interest in any guaranty agreement shall be valid and binding
682 from the time the pledge is made. The Authority's interest in such guaranty agreement shall immediately
683 be subject to the lien of such pledge. Notwithstanding any other provision of law to the contrary, a
684 security interest in the pledged interest in the guaranty agreement is perfected without physical delivery
685 or filing or any further act at the time of the agreement by which the pledge is created.

686 **§ 23.1-713.8. Annual audit.**

687 The Auditor of Public Accounts or his legally authorized representative shall annually audit the
688 accounts of the Authority. The Authority shall bear the cost of such audits.

689 **§ 23.1-713.9. Exemption from taxation.**

690 The Authority is not required to pay any taxes or assessments upon any property it acquires or uses
691 pursuant to this chapter or income from such property or any bonds issued pursuant to this chapter or
692 income or profits from the sale or transfer of such bonds.

693 **§ 23.1-713.10. Liability limited.**

694 Neither the Commonwealth nor any political subdivision of the Commonwealth, nor any officer,
695 employee, or agent of the Commonwealth or any political subdivision of the Commonwealth, is liable
696 for any debt, obligation, act, or omission of the Authority that is made within the scope of employment
697 or agency.