

LD2901200

SENATE BILL NO. 1086

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on February 20, 1995)

(Patron Prior to Substitute—Senator Hawkins)

A BILL to amend and reenact §§ 2.1-1.5 and 2.1-342 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 32.1 of Title 2.1 an article numbered 7, consisting of sections numbered 2.1-548.26 through 2.1-548.43, relating to the creation of the Virginia Economic Development Partnership, an authority.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-1.5 and 2.1-342 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 32.1 of Title 2.1 an article numbered 7, consisting of sections numbered 2.1-548.26 through 2.1-548.43, as follows:

§ 2.1-1.5. Entities not subject to standard nomenclature.

The following entities are not subject to the provisions of § 2.1-1.2 due to the unique characteristics or enabling legislation of the entities:

Authorities

Richmond Eye and Ear Hospital Authority.
Small Business Financing Authority.
State Education Assistance Authority.
Virginia Agriculture Development Authority.
Virginia College Building Authority.
Virginia Economic Development Partnership.
Virginia Education Loan Authority.
Virginia Housing Development Authority.
Virginia Innovative Technology Authority.
Virginia Port Authority.
Virginia Public Building Authority.
Virginia Public School Authority.
Virginia Resources Authority.
Virginia Student Assistance Authorities.

Boards

Board of Commissioners, Virginia Agriculture Development Authority.
Board of Commissioners, Virginia Port Authority.
Board of Directors, Richmond Eye and Ear Hospital Authority.
Board of Directors, Small Business Financing Authority.
Board of Directors, Virginia Economic Development Partnership.
Board of Directors, Virginia Student Assistance Authorities.
Board of Directors, Virginia Innovative Technology Authority.
Board of Directors, Virginia Resources Authority.
Board of Regents, Gunston Hall Plantation.
Board of Regents, James Monroe Memorial Law Office and Library.
Board of Trustees, Family and Children's Trust Fund.
Board of Trustees, Frontier Culture Museum of Virginia.
Board of Trustees, Jamestown-Yorktown Foundation.
Board of Trustees, Miller School of Albemarle.
Board of Trustees, Rural Virginia Development Foundation.
Board of Trustees, The Science Museum of Virginia.
Board of Trustees, Virginia Museum of Fine Arts.
Board of Trustees, Virginia Museum of Natural History.
Board of Trustees, Virginia Outdoor Foundation.
(Effective July 1, 1996) Board of the Virginia Higher Education Tuition Trust Fund.
Board of Visitors, Christopher Newport University.
Board of Visitors, The College of William and Mary in Virginia.
Board of Visitors, George Mason University.
Board of Visitors, Gunston Hall Plantation.
Board of Visitors, James Madison University.
Board of Visitors, Longwood College.
Board of Visitors, Mary Washington College.

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- 60 Board of Visitors to Mount Vernon.
 61 Board of Visitors, Norfolk State University.
 62 Board of Visitors, Old Dominion University.
 63 Board of Visitors, Radford University.
 64 Board of Visitors, University of Virginia.
 65 Board of Visitors, Virginia Commonwealth University.
 66 Board of Visitors, Virginia Military Institute.
 67 Board of Visitors, Virginia Polytechnic Institute and State University.
 68 Board of Visitors, Virginia State University.
 69 Governing Board, Virginia College Building Authority.
 70 Governing Board, Virginia Public School Authority.
 71 Library Board, The Library of Virginia.
 72 State Board for Community Colleges, Virginia Community College System.
 73 Commissions
 74 Alexandria Historical Restoration and Preservation Commission.
 75 Chesapeake Bay Bridge and Tunnel Commission.
 76 Hampton Roads Sanitation District Commission.
 77 Districts
 78 Chesapeake Bay Bridge and Tunnel District.
 79 Hampton Roads Sanitation District.
 80 Educational Institutions
 81 Christopher Newport University.
 82 College of William and Mary in Virginia.
 83 Frontier Culture Museum of Virginia.
 84 George Mason University.
 85 James Madison University.
 86 Jamestown-Yorktown Foundation.
 87 Longwood College.
 88 Mary Washington College.
 89 Miller School of Albemarle.
 90 Norfolk State University.
 91 Old Dominion University.
 92 Radford University.
 93 The Science Museum of Virginia.
 94 University of Virginia.
 95 Virginia Commonwealth University.
 96 Virginia Community College System.
 97 Virginia Military Institute.
 98 Virginia Museum of Fine Arts.
 99 Virginia Polytechnic Institute and State University.
 100 The Library of Virginia.
 101 Virginia State University.
 102 Foundations
 103 Chippokes Plantation Farm Foundation.
 104 Rural Virginia Development Foundation.
 105 Virginia Conservation and Recreation Foundation.
 106 Virginia Historic Preservation Foundation.
 107 Virginia Outdoor Foundation.
 108 Museum
 109 Virginia Museum of Natural History.
 110 Plantation
 111 Gunston Hall Plantation.
 112 System
 113 Virginia Retirement System.
 114 § 2.1-342. Official records to be open to inspection; procedure for requesting records and responding
 115 to request; charges; exceptions to application of chapter.
 116 A. Except as otherwise specifically provided by law, all official records shall be open to inspection
 117 and copying by any citizens of this Commonwealth during the regular office hours of the custodian of
 118 such records. Access to such records shall not be denied to citizens of this Commonwealth,
 119 representatives of newspapers and magazines with circulation in this Commonwealth, and representatives
 120 of radio and television stations broadcasting in or into this Commonwealth. The custodian of such
 121 records shall take all necessary precautions for their preservation and safekeeping. Any public body

covered under the provisions of this chapter shall make an initial response to citizens requesting records open to inspection within five work days after the receipt of the request by the public body which is the custodian of the requested records. Such citizen request shall designate the requested records with reasonable specificity. A specific reference to this chapter by the requesting citizen in his request shall not be necessary to invoke the provisions of this chapter and the time limits for response by the public body. The response by the public body within such five work days shall be one of the following responses:

1. The requested records shall be provided to the requesting citizen.

2. If the public body determines that an exemption applies to all of the requested records, it may refuse to release such records and provide to the requesting citizen a written explanation as to why the records are not available with the explanation making specific reference to the applicable Code sections which make the requested records exempt.

3. If the public body determines that an exemption applies to a portion of the requested records, it may delete or excise that portion of the records to which an exemption applies, disclose the remainder of the requested records and provide to the requesting citizen a written explanation as to why these portions of the record are not available to the requesting citizen with the explanation making specific reference to the applicable Code sections which make that portion of the requested records exempt. Any reasonably segregatable portion of an official record shall be provided to any person requesting the record after the deletion of the exempt portion.

4. If the public body determines that it is practically impossible to provide the requested records or to determine whether they are available within the five-work-day period, the public body shall so inform the requesting citizen and shall have an additional seven work days in which to provide one of the three preceding responses.

Nothing in this section shall prohibit any public body from petitioning the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records and a response by the public body within the time required by this chapter will prevent the public body from meeting its operational responsibilities. Before proceeding with this petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

The public body may make reasonable charges for the copying, search time and computer time expended in the supplying of such records; however, such charges shall not exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than fifty acres. Such charges for the supplying of requested records shall be estimated in advance at the request of the citizen. The public body may require the advance payment of charges which are subject to advance determination.

In any case where a public body determines in advance that search and copying charges for producing the requested documents are likely to exceed \$200, the public body may, before continuing to process the request, require the citizen requesting the information to agree to payment of an amount not to exceed the advance determination by five percent. The period within which the public body must respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the citizen requesting the information.

Official records maintained by a public body on a computer or other electronic data processing system which are available to the public under the provisions of this chapter shall be made reasonably accessible to the public at reasonable cost.

Public bodies shall not be required to create or prepare a particular requested record if it does not already exist. Public bodies may, but shall not be required to, abstract or summarize information from official records or convert an official record available in one form into another form at the request of the citizen. The public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

Failure to make any response to a request for records shall be a violation of this chapter and deemed a denial of the request.

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

1. Memoranda, correspondence, evidence and complaints related to criminal investigations; adult arrestee photographs when necessary to avoid jeopardizing an investigation in felony cases until such time as the release of such photograph will no longer jeopardize the investigation; reports submitted to the state and local police, to investigators authorized pursuant to § 53.1-16 and to the campus police departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et seq.) of Title 23 in confidence; portions of records of local government crime commissions that would identify individuals providing information about crimes or criminal activities under a promise of anonymity;

183 records of local police departments relating to neighborhood watch programs that include the names,
184 addresses, and operating schedules of individual participants in the program that are provided to such
185 departments under a promise of confidentiality; and all records of persons imprisoned in penal
186 institutions in this Commonwealth provided such records relate to the imprisonment. Information in the
187 custody of law-enforcement officials relative to the identity of any individual other than a juvenile who
188 is arrested and charged, and the status of the charge or arrest, shall not be excluded from the provisions
189 of this chapter.

190 Criminal incident information relating to felony offenses shall not be excluded from the provisions of
191 this chapter; however, where the release of criminal incident information is likely to jeopardize an
192 ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection,
193 or result in the destruction of evidence, such information may be withheld until the above-referenced
194 damage is no longer likely to occur from release of the information.

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

198 3. State income, business, and estate tax returns, personal property tax returns, scholastic records and
199 personnel records containing information concerning identifiable individuals, except that such access
200 shall not be denied to the person who is the subject thereof, and medical and mental records, except that
201 such records can be personally reviewed by the subject person or a physician of the subject person's
202 choice; however, the subject person's mental records may not be personally reviewed by such person
203 when the subject person's treating physician has made a part of such person's records a written statement
204 that in his opinion a review of such records by the subject person would be injurious to the subject
205 person's physical or mental health or well-being.

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

214 For the purposes of this chapter such statistical summaries of incidents and statistical data concerning
215 patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental
216 Retardation and Substance Abuse Services shall be open to inspection and releasable as provided in
217 subsection A of this section. No such summaries or data shall include any patient-identifying
218 information. Where the person who is the subject of scholastic or medical and mental records is under
219 the age of eighteen, his right of access may be asserted only by his guardian or his parent, including a
220 noncustodial parent, unless such parent's parental rights have been terminated or a court of competent
221 jurisdiction has restricted or denied such access. In instances where the person who is the subject thereof
222 is an emancipated minor or a student in a state-supported institution of higher education, such right of
223 access may be asserted by the subject person.

224 4. Memoranda, working papers and correspondence (i) held by or requested from members of the
225 General Assembly or the Division of Legislative Services or (ii) held or requested by the office of the
226 Governor or Lieutenant Governor, Attorney General or the mayor or other chief executive officer of any
227 political subdivision of the Commonwealth or the president or other chief executive officer of any
228 state-supported institution of higher education. This exclusion shall not apply to memoranda, studies or
229 other papers held or requested by the mayor or other chief executive officer of any political subdivision
230 which are specifically concerned with the evaluation of performance of the duties and functions of any
231 locally elected official and were prepared after June 30, 1992.

232 Except as provided in § 30-28.18, memoranda, working papers and correspondence of a member of
233 the General Assembly held by the Division of Legislative Services shall not be released by the Division
234 without the prior consent of the member.

235 5. Written opinions of the city, county and town attorneys of the cities, counties and towns in the
236 Commonwealth and any other writing protected by the attorney-client privilege.

237 6. Memoranda, working papers and records compiled specifically for use in litigation or as a part of
238 an active administrative investigation concerning a matter which is properly the subject of an executive
239 or closed meeting under § 2.1-344 and material furnished in confidence with respect thereto.

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

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

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

As used in this subdivision 9, "test or examination" shall include (i) any scoring key for any such test or examination, and (ii) any other document which would jeopardize the security of such test or examination. Nothing contained in this subdivision 9 shall prohibit the release of test scores or results as provided by law, or limit access to individual records as is provided by law. However, the subject of such employment tests shall be entitled to review and inspect all documents relative to his performance on such employment tests.

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

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

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

12. Memoranda, legal opinions, working papers and records recorded in or compiled exclusively for executive or closed meetings lawfully held pursuant to § 2.1-344.

13. Reports, documentary evidence and other information as specified in §§ 2.1-373.2 and 63.1-55.4.

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

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

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

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

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

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

20. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from the *Virginia Economic Development Partnership*, the Department of Economic Development, or local or regional industrial or economic development authorities or organizations, used by the *Partnership*, the Department and or such entities for business, trade and tourism development. *Memoranda, working papers, and other records concerning businesses that are considering locating or expanding in Virginia prepared by the Virginia Economic Development Partnership where (i) competition or bargaining is involved and (ii) the financial interest of the governmental unit would be adversely affected if such records were made public,*

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

22. Documents as specified in § 58.1-3.

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

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

25. Investigator notes, and other correspondence and information, furnished in confidence with

306 respect to an active investigation of individual employment discrimination complaints made to the
307 Department of Personnel and Training; however, nothing in this section shall prohibit the disclosure of
308 information taken from inactive reports in a form which does not reveal the identity of charging parties,
309 persons supplying the information or other individuals involved in the investigation.

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

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

314 28. Documents and writings furnished by a member of the General Assembly to a meeting of a
315 standing committee, special committee or subcommittee of his house established solely for the purpose
316 of reviewing members' annual disclosure statements and supporting materials filed under § 2.1-639.40 or
317 of formulating advisory opinions to members on standards of conduct, or both.

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

321 30. Investigative notes and other correspondence and information furnished in confidence with
322 respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice
323 under the Virginia Human Rights Act (§ 2.1-714 et seq.); however, nothing in this section shall prohibit
324 the distribution of information taken from inactive reports in a form which does not reveal the identity
325 of the parties involved or other persons supplying information.

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

334 32. Reports, manuals, specifications, documents, minutes or recordings of staff meetings or other
335 information or materials of the Virginia Board of Corrections, the Virginia Department of Corrections or
336 any institution thereof to the extent, as determined by the Director of the Department of Corrections or
337 his designee or of the Virginia Board of Youth and Family Services, the Virginia Department of Youth
338 and Family Services or any facility thereof to the extent as determined by the Director of the
339 Department of Youth and Family Services, or his designee, that disclosure or public dissemination of
340 such materials would jeopardize the security of any correctional or juvenile facility or institution, as
341 follows:

342 (i) Security manuals, including emergency plans that are a part thereof;

343 (ii) Engineering and architectural drawings of correctional and juvenile facilities, and operational
344 specifications of security systems utilized by the Departments, provided the general descriptions of such
345 security systems, cost and quality shall be made available to the public;

346 (iii) Training manuals designed for correctional and juvenile facilities to the extent that they address
347 procedures for institutional security, emergency plans and security equipment;

348 (iv) Internal security audits of correctional and juvenile facilities, but only to the extent that they
349 specifically disclose matters described in (i), (ii), or (iii) above or other specific operational details the
350 disclosure of which would jeopardize the security of a correctional or juvenile facility or institution;

351 (v) Minutes or recordings of divisional, regional and institutional staff meetings or portions thereof to
352 the extent that such minutes deal with security issues listed in (i), (ii), (iii), and (iv) of this subdivision;

353 (vi) Investigative case files by investigators authorized pursuant to § 53.1-16; however, nothing in
354 this section shall prohibit the disclosure of information taken from inactive reports in a form which does
355 not reveal the identity of complainants or charging parties, persons supplying information, confidential
356 sources, or other individuals involved in the investigation, or other specific operational details the
357 disclosure of which would jeopardize the security of a correctional or juvenile facility or institution;
358 nothing herein shall permit the disclosure of materials otherwise exempt as set forth in subdivision 1 of
359 subsection B of this section;

360 (vii) Logs or other documents containing information on movement of inmates, juvenile clients or
361 employees; and

362 (viii) Documents disclosing contacts between inmates, juvenile clients and law-enforcement
363 personnel.

364 Notwithstanding the provisions of this subdivision, reports and information regarding the general
365 operations of the Departments, including notice that an escape has occurred, shall be open to inspection
366 and copying as provided in this section.

367 33. Personal information, as defined in § 2.1-379, (i) filed with the Virginia Housing Development

Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority, (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs, or (iii) filed with any local redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority. However, access to one's own information shall not be denied.

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

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

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

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

38. Official records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations which cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under subdivisions (iii), (iv) and (v) shall be subject to public disclosure under this chapter upon completion of the study or investigation.

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

40. [Repealed.]

41. Records concerning reserves established in specific claims administered by the Department of General Services through its Division of Risk Management as provided in Article 5.1 (§ 2.1-526.1 et seq.) of Chapter 32 of this title, or by any county, city, or town.

42. Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Care System pursuant to § 32.1-112.

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

44. [Repealed.]

45. Investigative notes; correspondence and information furnished in confidence with respect to an investigation; and official records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the Auditor of Public Accounts and the Joint Legislative Audit and Review Commission; or investigative notes, correspondence, documentation and information furnished and provided to or produced by or for the Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline; however, nothing in this chapter shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information or other individuals involved in the investigation.

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

47. Documentation or other information which describes the design, function, operation or access

control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.

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

49. In the case of corporations organized by the Virginia Retirement System, RF&P Corporation and its wholly owned subsidiaries, (i) proprietary information provided by, and financial information concerning, coventurers, partners, lessors, lessees, or investors, and (ii) records concerning the condition, acquisition, disposition, use, leasing, development, coventuring, or management of real estate the disclosure of which would have a substantial adverse impact on the value of such real estate or result in a competitive disadvantage to the corporation or subsidiary.

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

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

52. Patient level data collected by the Virginia Health Services Cost Review Council and not yet processed, verified, and released, pursuant to § 9-166.7, to the Council by the nonprofit organization with which the Executive Director has contracted pursuant to § 9-166.4.

53. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240) for transportation projects, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Interstate Commerce Commission or the Federal Rail Administration with respect to data provided in confidence to the Interstate Commerce Commission and the Federal Railroad Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

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

55. Reports, documents, memoranda or other information or materials which describe any aspect of security used by the Virginia Museum of Fine Arts to the extent that disclosure or public dissemination of such materials would jeopardize the security of the Museum or any warehouse controlled by the Museum, as follows:

a. Operational, procedural or tactical planning documents, including any training manuals to the extent they discuss security measures;

b. Surveillance techniques;

c. Installation, operation, or utilization of any alarm technology;

d. Engineering and architectural drawings of the Museum or any warehouse;

e. Transportation of the Museum's collections, including routes and schedules; or

f. Operation of the Museum or any warehouse used by the Museum involving the:

(1) Number of employees, including security guards, present at any time; or

(2) Busiest hours, with the maximum number of visitors in the Museum.

56. Reports, documents, memoranda or other information or materials which describe any aspect of security used by the Virginia Department of Alcoholic Beverage Control to the extent that disclosure or public dissemination of such materials would jeopardize the security of any government store as defined in Title 4.1, or warehouse controlled by the Department of Alcoholic Beverage Control, as follows:

(i) Operational, procedural or tactical planning documents, including any training manuals to the extent they discuss security measures;

(ii) Surveillance techniques;

(iii) The installation, operation, or utilization of any alarm technology;

(iv) Engineering and architectural drawings of such government stores or warehouses;

(v) The transportation of merchandise, including routes and schedules; and

(vi) The operation of any government store or the central warehouse used by the Department of Alcoholic Beverage Control involving the:

a. Number of employees present during each shift;

- b. Busiest hours, with the maximum number of customers in such government store; and
 c. Banking system used, including time and place of deposits.

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

58. (Effective July 1, 1995) Confidential information designated as provided in subsection D of § 11-52 as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 11-46.

C. Neither any provision of this chapter nor any provision of Chapter 26 (§ 2.1-377 et seq.) of this title shall be construed as denying public access to contracts between a public official and a public body, other than contracts settling public employee employment disputes held confidential as personnel records under subdivision 3 of subsection B of this section, or to records of the position, job classification, official salary or rate of pay of, and to records of the allowances or reimbursements for expenses paid to, any public officer, official or employee at any level of state, local or regional government in this Commonwealth or to the compensation or benefits paid by any corporation organized by the Virginia Retirement System, RF&P Corporation and its wholly owned subsidiaries, to their officers or employees. The provisions of this subsection, however, shall not apply to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

Article 7.

Virginia Economic Development Partnership Act.

§ 2.1-548.26. Short title.

This article shall be known and may be cited as the "Virginia Economic Development Partnership Act."

§ 2.1-548.27. Definitions.

The following terms, whenever used or referred to in this article, have the following meanings, except where the context clearly indicates otherwise:

"Authority" means the Virginia Economic Development Partnership, the body corporate and political subdivision of the Commonwealth created by this article.

"Board" means the Board of Directors of the authority.

"Federal agency" means the United States; the President of the United States; and any department, corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by the United States.

"Person" means natural persons, firms, foundations, associations, corporations, business trusts, partnerships, joint ventures, and public bodies, including but not limited to the Commonwealth of Virginia; any state; and any agency, department, institution, political subdivision or instrumentality of the Commonwealth or any state.

§ 2.1-548.28. Authority created.

The Virginia Economic Development Partnership, hereinafter referred to as the authority, is created as a body corporate and political subdivision and as such shall have, and is hereby vested with, the powers and duties hereinafter conferred in this article

§ 2.1-548.29. Economic development services.

It shall be the duty of the authority to encourage, stimulate, and support the development and expansion of the economy of the Commonwealth. The authority is charged with the following duties and responsibilities:

1. To see that there are prepared and carried out effective economic development marketing and promotional programs;

2. To make available, in conjunction and cooperation with localities, chambers of commerce, industrial authorities, and other public and private groups, to prospective new businesses basic information and pertinent factors of interest and concern to such businesses;

3. To formulate, promulgate, and advance programs throughout the Commonwealth for encouraging the location of new businesses in the Commonwealth and the retention and growth of existing businesses;

4. To encourage and solicit private sector involvement, support, and funding for economic development in the Commonwealth;

5. To encourage the coordination of the economic development efforts of public institutions, regions, communities, and private industry and collect and maintain data on the development and utilization of economic development capabilities; and

6. To establish such offices within and without the Commonwealth that are necessary to the expansion and development of industries and trade.

§ 2.1-548.30. Planning and research.

It shall also be the duty of the authority to:

1. Assist in the development of the comprehensive economic development strategy for the

Commonwealth, starting the first year of each new gubernatorial administration, consistent with the provisions of Chapter 5.9 (§ 2.1-51.38 et seq.) of Title 2.1;

2. Report annually to the Governor on the status of the implementation of the comprehensive economic development strategy and recommend legislative and executive actions related to the implementation of the comprehensive economic development strategy; and

3. Conduct such studies and research, in collaboration with state agencies, universities, local and regional industrial authorities and organizations, and other persons within and without the Commonwealth, as the Board may deem necessary, to assist in the development of the comprehensive economic strategy and the development of recommendations and advice on the improvement of economic development and related programs and strategies across the Commonwealth.

§ 2.1-548.31. Board of Directors; members and officers; Executive Director.

All powers, rights, and duties conferred by this article, or other provisions of law, upon the authority shall be exercised by the Board of Directors of the Virginia Economic Development Partnership, hereinafter referred to as the Board. The Board shall consist of the Secretary of Commerce and Trade, the Secretary of Finance, and eleven members, one from each congressional district in the Commonwealth, appointed by the Governor, subject to confirmation by the General Assembly. Four of the eleven directors initially appointed by the Governor shall be appointed for terms of two and one-half years, four for terms of four and one-half years, and three for terms of six and one-half years, from the effective date of their appointment; and thereafter the terms of members of the Board shall be six years. No member appointed by the Governor shall be eligible to serve more than two terms; however, after the expiration of a term of four years or less, two additional terms may be served if appointed thereto. Any appointment to fill a vacancy shall be for the unexpired term. A person appointed by the Governor to fill a vacancy may be appointed to serve two additional terms. Members of the Board shall receive their expenses and shall be compensated at the rate provided in § 2.1-20.3 for each day spent on the business of the Board.

The Board shall elect from its membership a chairman and a vice-chairman, and shall also elect a secretary and a treasurer, who may or may not be members of the Board, and may also elect other subordinate officers, who may or may not be members of the Board, as it shall deem proper. The Board may also form committees and advisory councils, which may include representatives who are not members of the Board, to undertake more extensive study and discussion of the issues before the Board.

The Board shall appoint the chief executive officer of the authority, who shall not be a member of the Board, who shall be known as the Executive Director and who shall serve at the pleasure of the Board and carry out such of the powers and duties conferred upon him as may be delegated by the Board.

§ 2.1-548.32. Powers and duties of the Executive Director.

The Executive Director shall employ or retain such agents or employees subordinate to the Executive Director as may be necessary to fulfill the duties of the authority conferred upon the Executive Director, subject to the Board's approval. The Executive Director shall also exercise such of the powers and duties relating to the direction of the Commonwealth's economic development efforts conferred upon the authority as may be delegated to him by the Board, including powers and duties involving the exercise of discretion. The Executive Director shall also exercise and perform such other powers and duties as may be lawfully delegated to him or as may be conferred or imposed upon him by law.

§ 2.1-548.33. Bylaws and organization.

The Authority shall have the power to adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business shall be transacted and the manner in which the powers of the authority shall be exercised and its duties performed.

§ 2.1-548.34. Powers not restrictive.

The authority shall have the power to perform any act or carry out any function not inconsistent with state law, whether included in the provisions of this chapter, which may be useful in carrying out the provisions of this chapter.

§ 2.1-548.35. Powers of authority.

The authority is hereby granted and shall have and may exercise all powers necessary or convenient for the carrying out of its statutory purposes, including, but without limiting the generality of the foregoing, the power to:

1. Sue and be sued, implead and be implead, complain and defend in all courts;

2. Adopt, use, and alter at will a common seal;

3. Acquire, purchase, hold, use, lease or otherwise dispose of any property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the authority, and to lease as lessee, any property, real, personal or mixed, tangible or intangible, or any interest therein, at such annual rental and on such terms and conditions as may be determined by the Board of the authority and to lease as lessor to any person, any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the authority, whether wholly or

partially completed, at such annual rental and on such terms and conditions as may be determined by the Board of the authority, and to sell, transfer or convey any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired or held by the authority on such terms and conditions as may be determined by the Board of the authority, provided that the terms of any conveyance or lease of real property shall be subject to the prior approval of the Governor in writing;

4. Fix, alter, charge and collect rates, rentals, fees, and other charges for the use of property of, the sale of products of, or services rendered by the authority at rates to be determined by it for the purpose of providing for the payment of the expenses of the authority;

5. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes, and the execution of its powers under this article, including agreements with any person or federal agency;

6. Employ, at its discretion, consultants, researchers, attorneys, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers and such other employees and agents as may be necessary, and to fix their compensation to be payable from funds made available to the authority. The authority may hire employees within and without the Commonwealth and the United States without regard to whether such employees are citizens of the Commonwealth;

7. Receive and accept from any federal or private agency, foundation, corporation, association or person, grants or other aid to be expended in accomplishing the objectives of the Authority, and receive and accept from the Commonwealth or any state, and any municipality, county or other political subdivision thereof or from any other source, aid or contributions of either money, property, or other things of value, to be held, used, and applied only for the purposes for which such grants and contributions may be made. All federal moneys accepted under this section shall be accepted and expended by the authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law; and all state moneys accepted under this section shall be expended by the authority upon such terms and conditions as are prescribed by the Commonwealth.

8. Render advice and assistance and to provide services to state agencies, local and regional economic development entities, private firms, and other persons providing services or facilities for economic development in Virginia;

9. Develop, undertake, and provide programs, alone or in conjunction with any person, for economic research, industrial development research, and all other research that might lead to improvements in economic development in Virginia; and

10. Do all acts and things necessary or convenient to carry out the powers granted to it by this article or any other acts.

§ 2.1-548.36. Appropriations by any government.

Any government may make appropriations for the acquisition, construction, improvement, maintenance or operation of any property acquired, constructed, improved, maintained or operated by the authority.

§ 2.1-548.37. Conveyance, lease or transfer of property by a city or county to the authority.

Any city or county within the Commonwealth in order to provide for the construction, reconstruction, improvement, repair or management of any property, or in order to accomplish any of the purposes of this article may, with or without consideration or for a nominal consideration, lease, sell, convey or otherwise transfer to the authority any real, personal or mixed property located within such city or county.

§ 2.1-548.38. Exemption of authority from personnel and procurement procedures.

The provisions of Chapter 10 (§ 2.1-100 et seq.) of Title 2.1 and Chapter 7 (§ 11-35 et seq.) of Title 11 of the Code of Virginia shall not apply to the authority in the exercise of any power conferred under this article.

§ 2.1-548.39. Moneys of authority.

All moneys of the authority, from whatever source derived, shall be paid to the treasurer of the authority. Such moneys shall be deposited in the first instance by the treasurer in one or more banks or trust companies, in one or more special accounts. All banks and trust companies are authorized to give such security for such deposits, if required by the authority. The moneys in such accounts shall be paid out on the warrant or other orders of such person or persons as the authority may authorize to execute such warrants or orders.

§ 2.1-548.40. Forms of accounts and records; audit; annual report.

The accounts and records of the authority showing the receipt and disbursement of funds from whatever source derived, shall be in such form as the Auditor of Public Accounts prescribes. The Auditor of Public Accounts of the Commonwealth, and his legally authorized representatives, shall annually examine the accounts and books of the authority. The authority shall submit an annual report to the Governor and General Assembly on or before November 1 of each year, beginning in 1996. Such

675 report shall contain the audited annual financial statements of the authority for the year ending the
676 previous June 30. The annual report shall be distributed in accordance with the provisions of § 2.1-467.
677 The authority shall submit a detailed annual operational plan and budget to the Secretary of Commerce
678 and Trade and the Director of the Department of Planning and Budget by November 1, beginning in
679 1996. Notwithstanding other provisions of this article, the form and content of the operating plan and
680 budget shall be determined by the Director of the Department of Planning and Budget and shall include
681 information on salaries, expenditures, indebtedness and other information as shall be determined by the
682 Director of Planning and Budget.

683 § 2.1-548.41. Exemptions from taxes or assessments.

684 The exercise of the powers granted by this article will be in all respects for the benefit of the people
685 of the Commonwealth, for the increase of their commerce and prosperity, and for the improvement of
686 their living conditions, and as the undertaking of activities in the furtherance of the purposes of the
687 authority will constitute the performance of essential governmental functions, the authority shall not be
688 required to pay any taxes or assessments upon any property acquired or used by the authority under the
689 provisions of this article or upon the income therefrom, including sales and use taxes on the tangible
690 personal property used in the operations of the authority. The exemption hereby granted shall not be
691 construed to extend to persons conducting on the premises of any property of the authority businesses
692 for which local or state taxes would otherwise be required.

693 § 2.1-548.42. State agencies to furnish information and assistance.

694 All agencies of the Commonwealth shall assist the authority upon its request and furnish such
695 assistance and information as the authority may require in the discharge of its duties.

696 § 2.1-548.43. Nonstock corporation to assist economic development.

697 The Board is hereby authorized to establish nonprofit, nonstock corporations under Chapter 10
698 (§ 13.1-801 et seq.) of Title 13.1 as public instrumentalities exercising public and essential governmental
699 functions, to assist the Board and the authority in (i) promoting Virginia's economic development efforts
700 in the national and international corporate community; (ii) raising money in the corporate and nonprofit
701 community to pay for advertising and promotion of the Commonwealth; (iii) raising nonstate dollars to
702 complement state and local economic development activities; or (iv) conducting or undertaking other
703 activities useful in carrying out the provisions of this article.

704 The board of directors of any such corporation shall be composed of the Executive Director of the
705 Virginia Economic Development Partnership and eight members appointed by the Board.

706 The Board shall require any such corporation to report to it annually on its activities.

707 **2. That the Board of Directors of the Virginia Economic Development Partnership, hereinafter**
708 **referred to as the authority, created pursuant to the first enactment of this act, in collaboration**
709 **with the Secretary of Commerce and Trade and others as it may deem appropriate, shall develop**
710 **an operational plan and budget for the 1996-1998 biennium. The plan shall identify functions to be**
711 **transferred from the Department of Economic Development, staffing requirements of the**
712 **authority, expected contributions from the private sector, and other details as may be appropriate**
713 **for the orderly commencement of operations of the authority. In developing the plan, the Board**
714 **shall consider the recommendations of the Governor's Commission on the Development of the**
715 **Virginia Travel and Tourism Industry with regard to the placement of the tourism promotion**
716 **efforts of the Commonwealth. The plan and proposed budget shall be presented to the Governor**
717 **and the General Assembly by December 15, 1995. No functions shall be transferred from the**
718 **Department of Economic Development to the Authority before July 1, 1996.**