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HOUSE BILL NO. 2128

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on February 4, 1999)

(Patron Prior to Substitute —Delegate Dillard)

A BILL to amend §§ 2.1-342 and 2.1-344 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 32.1-283.2, relating to child fatality review; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-342 and 2.1-344 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 32.1-283.2 as follows:

§ 2.1-342. Official records to be open to inspection; procedure for requesting records and responding to request; charges; exceptions to application of chapter.

A. Except as otherwise specifically provided by law, all official records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth. The custodian of such 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, but shall 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. The public body may also make a reasonable charge for preparing documents produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records or documents, 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

60 process the request, require the citizen requesting the information to agree to payment of an amount not
61 to exceed the advance determination by five percent. The period within which the public body must
62 respond under this section shall be tolled for the amount of time that elapses between notice of the
63 advance determination and the response of the citizen requesting the information.

64 Official records maintained by a public body on a computer or other electronic data processing
65 system which are available to the public under the provisions of this chapter shall be made reasonably
66 accessible to the public at reasonable cost. Beginning July 1, 1997, every public body of state
67 government shall compile, and annually update, an index of computer databases which contains at a
68 minimum those databases created by them on or after July 1, 1997. "Computer database" means a
69 structured collection of data or documents residing in a computer. Such index shall be an official record
70 and shall include, at a minimum, the following information with respect to each database listed therein:
71 a list of data fields, a description of the format or record layout, the date last updated, a list of any data
72 fields to which public access is restricted, a description of each format in which the database can be
73 copied or reproduced using the public body's computer facilities, and a schedule of fees for the
74 production of copies in each available form. The form, context, language, and guidelines for the indices
75 and the databases to be indexed shall be developed by the Director of the Department of Information
76 Technology in consultation with the Librarian of Virginia and the State Archivist. The public body shall
77 not be required to disclose its software security, including passwords.

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

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

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

87 1. Memoranda, correspondence, evidence and complaints related to criminal investigations; adult
88 arrestee photographs when necessary to avoid jeopardizing an investigation in felony cases until such
89 time as the release of such photograph will no longer jeopardize the investigation; reports submitted to
90 the state and local police, to investigators authorized pursuant to § 53.1-16 and to the campus police
91 departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et seq.) of
92 Title 23 in confidence; portions of records of local government crime commissions that would identify
93 individuals providing information about crimes or criminal activities under a promise of anonymity;
94 records of local police departments relating to neighborhood watch programs that include the names,
95 addresses, and operating schedules of individual participants in the program that are provided to such
96 departments under a promise of confidentiality; and all records of persons imprisoned in penal
97 institutions in the Commonwealth provided such records relate to the imprisonment. Information in the
98 custody of law-enforcement officials relative to the identity of any individual other than a juvenile who
99 is arrested and charged, and the status of the charge or arrest, shall not be excluded from the provisions
100 of this chapter.

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

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

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

117 Where the person who is the subject of medical records is confined in a state or local correctional
118 facility, the administrator or chief medical officer of such facility may assert such confined person's right
119 of access to the medical records if the administrator or chief medical officer has reasonable cause to
120 believe that such confined person has an infectious disease or other medical condition from which other
121 persons so confined need to be protected. Medical records shall be reviewed only and shall not be

122 copied by such administrator or chief medical officer. The information in the medical records of a
 123 person so confined shall continue to be confidential and shall not be disclosed to any person except the
 124 subject by the administrator or chief medical officer of the facility or except as provided by law.

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

135 4. Memoranda, working papers and correspondence (i) held by or requested from members of the
 136 General Assembly or the Division of Legislative Services or (ii) held or requested by the Office of the
 137 Governor or Lieutenant Governor, Attorney General or the mayor or other chief executive officer of any
 138 political subdivision of the Commonwealth or the president or other chief executive officer of any
 139 state-supported institution of higher education. This exclusion shall not apply to memoranda, studies or
 140 other papers held or requested by the mayor or other chief executive officer of any political subdivision
 141 which are specifically concerned with the evaluation of performance of the duties and functions of any
 142 locally elected official and were prepared after June 30, 1992, nor shall this exclusion apply to agenda
 143 packets prepared and distributed to public bodies for use at a meeting.

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

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

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

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

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

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

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

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

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

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

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

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

183 14. Proprietary information gathered by or for the Virginia Port Authority as provided in
184 § 62.1-132.4 or § 62.1-134.1.

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

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

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

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

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

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

210 21. Information which was filed as confidential under the Toxic Substances Information Act
211 (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

212 22. Documents as specified in § 58.1-3.

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

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

217 25. Investigator notes, and other correspondence and information, furnished in confidence with
218 respect to an active investigation of individual employment discrimination complaints made to the
219 Department of Personnel and Training; however, nothing in this section shall prohibit the disclosure of
220 information taken from inactive reports in a form which does not reveal the identity of charging parties,
221 persons supplying the information or other individuals involved in the investigation.

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

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

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

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

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

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

or other individuals involved in the investigation.

32. Reports, manuals, specifications, documents, minutes or recordings of staff meetings or other information or materials of the Virginia Board of Corrections, the Virginia Department of Corrections or any institution thereof to the extent, as determined by the Director of the Department of Corrections or his designee or of the Virginia Board of Juvenile Justice, the Virginia Department of Juvenile Justice or any facility thereof to the extent as determined by the Director of the Department of Juvenile Justice, or his designee, that disclosure or public dissemination of such materials would jeopardize the security of any correctional or juvenile facility or institution, as follows:

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

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

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

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

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

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

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

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

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

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 clauses (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 Services System and Services pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

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. 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; however, disclosure, unless such disclosure is prohibited by this section, of information from the records of completed investigations shall include, but is not limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. In the event an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person.

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, (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. [Repealed.]

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. 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.

59. All information and records acquired during a review of any child death by the State Child Fatality Review Team established pursuant to § 32.1-283.1 *or during a review of any child death by a local or regional child fatality review team established pursuant to § 32.1-283.2.*

60. Investigative notes, correspondence, documentation and information provided to or produced by or for the committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.1-765.2. Nothing in this section shall prohibit disclosure of information from the records of completed investigations or audits in a form that does not reveal the identity of complainants or persons supplying information.

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

62. Confidential proprietary records which are voluntarily provided by a private entity pursuant to a proposal filed with a public entity under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.), pursuant to a promise of confidentiality from the responsible public entity, used by the responsible public entity for purposes related to the development of a qualifying transportation facility; and memoranda, working papers or other records related to proposals filed under the Public-Private Transportation Act of 1995, where, if such records were made public, the financial interest of the public

429 or private entity involved with such proposal or the process of competition or bargaining would be
430 adversely affected. In order for confidential proprietary information to be excluded from the provisions
431 of this chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other
432 materials for which protection from disclosure is sought, (ii) identify the data or other materials for
433 which protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of
434 this subdivision, the terms public entity and private entity shall be defined as they are defined in the
435 Public-Private Transportation Act of 1995.

436 63. Records of law-enforcement agencies, to the extent that such records contain specific tactical
437 plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or
438 the general public; engineering plans, architectural drawings, or operational specifications of
439 governmental law-enforcement facilities, including but not limited to courthouses, jails, and detention
440 facilities, to the extent that disclosure could jeopardize the safety or security of law-enforcement offices;
441 however, general descriptions shall be provided to the public upon request.

442 64. All records of the University of Virginia or the University of Virginia Medical Center which
443 contain proprietary, business-related information pertaining to the operations of the University of
444 Virginia Medical Center, including its business development or marketing strategies and its activities
445 with existing or future joint venturers, partners, or other parties with whom the University of Virginia
446 Medical Center has formed, or forms, any arrangement for the delivery of health care, if disclosure of
447 such information would be harmful to the competitive position of the Medical Center.

448 65. Patient level data collected by the Board of Health and not yet processed, verified, and released,
449 pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of
450 Health has contracted pursuant to § 32.1-276.4.

451 66. Records of the Medical College of Virginia Hospitals Authority pertaining to any of the
452 following: (i) an individual's qualifications for or continued membership on its medical or teaching
453 staffs; proprietary information gathered by or in the possession of the Authority from third parties
454 pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in
455 awarding contracts for construction or the purchase of goods or services; data, records or information of
456 a proprietary nature produced or collected by or for the Authority or members of its medical or teaching
457 staffs; financial statements not publicly available that may be filed with the Authority from third parties;
458 the identity, accounts or account status of any customer of the Authority; consulting or other reports
459 paid for by the Authority to assist the Authority in connection with its strategic planning and goals; and
460 the determination of marketing and operational strategies where disclosure of such strategies would be
461 harmful to the competitive position of the Authority; and (ii) data, records or information of a
462 proprietary nature produced or collected by or for employees of the Authority, other than the Authority's
463 financial or administrative records, in the conduct of or as a result of study or research on medical,
464 scientific, technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with
465 a governmental body or a private concern, when such data, records or information have not been
466 publicly released, published, copyrighted or patented.

467 67. Confidential proprietary information or trade secrets, not publicly available, provided by a private
468 person or entity to the Virginia Resources Authority or to a fund administered in connection with
469 financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such
470 information is made public, the financial interest of the private person or entity would be adversely
471 affected, and, after June 30, 1997, where such information was provided pursuant to a promise of
472 confidentiality.

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

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

486 70. Records submitted as a grant application, or accompanying a grant application, to the
487 Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 32.1-73.1 et seq.) of
488 Chapter 2 of Title 32.1, to the extent such records contain: (i) medical or mental records, or other data
489 identifying individual patients, or (ii) proprietary business or research related information produced or
490 collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative,

scientific, technical or scholarly issues, when such information has not been publicly released, published, copyrighted or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

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

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

73. Personal information, as defined in § 2.1-379, provided to the Board of the Virginia Higher Education Tuition Trust Fund or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure or publication of information in a statistical or other form which does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

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

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 the Commonwealth or to the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees. The provisions of this subsection, however, shall not apply to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

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

§ 2.1-344. Executive or closed meetings.

A. Public bodies are not required to conduct executive or closed meetings. However, should a public body determine that an executive or closed meeting is desirable, such meeting shall be held only for the following purposes:

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

2. Discussion or consideration of admission or disciplinary matters concerning any student or students of any state institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at an executive or closed meeting, if such student, parents or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

3. Discussion or consideration of the condition, acquisition or use of real property for public purpose, or of the disposition of publicly held property, or of plans for the future of a state institution of higher education which could affect the value of property owned or desirable for ownership by such institution.

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

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

552 locating or expanding its facilities in the community.

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

555 7. Consultation with legal counsel and briefings by staff members, consultants or attorneys,
556 pertaining to actual or probable litigation, or other specific legal matters requiring the provision of legal
557 advice by counsel.

558 8. In the case of boards of visitors of state institutions of higher education, discussion or
559 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts
560 for services or work to be performed by such institution. However, the terms and conditions of any such
561 gifts, bequests, grants and contracts made by a foreign government, a foreign legal entity or a foreign
562 person and accepted by a state institution of higher education shall be subject to public disclosure upon
563 written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign
564 government" means any government other than the United States government or the government of a
565 state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the
566 laws of the United States or of any state thereof if a majority of the ownership of the stock of such
567 legal entity is owned by foreign governments or foreign persons or if a majority of the membership of
568 any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under
569 the laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen
570 or national of the United States or a trust territory or protectorate thereof.

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

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

575 11. Discussion or consideration of tests or examinations or other documents excluded from this
576 chapter pursuant to § 2.1-342 B 9.

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

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

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

589 15. Discussion or consideration of medical and mental records excluded from this chapter pursuant to
590 § 2.1-342 B 3, and those portions of disciplinary proceedings by any regulatory board within the
591 Department of Professional and Occupational Regulation or Department of Health Professions conducted
592 pursuant to § 9-6.14:11 or § 9-6.14:12 during which the board deliberates to reach a decision.

593 16. Discussion, consideration or review of State Lottery Department matters related to proprietary
594 lottery game information and studies or investigations exempted from disclosure under subdivisions 37
595 and 38 of subsection B of § 2.1-342.

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

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

602 19. [Repealed.]

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

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

609 22. In the case of corporations organized by the Virginia Retirement System, discussion or
610 consideration of (i) proprietary information provided by, and financial information concerning,
611 coventurers, partners, lessors, lessees, or investors, and (ii) the condition, acquisition, disposition, use,
612 leasing, development, coventuring, or management of real estate the disclosure of which would have a
613 substantial adverse impact on the value of such real estate or result in a competitive disadvantage to the

corporation or subsidiary.

23. 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 *or 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.*

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

25. In the case of the Medical College of Virginia Hospitals Authority, discussion or consideration of any of the following: the condition, acquisition, use or disposition of real or personal property; operational plans that could affect the value of property, real or personal, owned or desirable for ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other employees.

26. Those portions of the meetings of the Intervention 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.

27. Those meetings or portions of meetings of the Board of the Virginia Higher Education Tuition Trust Fund wherein personal information, as defined in § 2.1-379, 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 pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23 is discussed.

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in an executive or 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 which shall have its substance reasonably identified in the open meeting. This section shall not be construed to (i) require the disclosure of any contract between the Intervention Program Committee within the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.1-1373 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 of this section applies. However, such business or industry must be identified as a matter of public record at least thirty days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

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 regulations for holding executive or closed sessions as are applicable to any other public body.

§ 32.1-283.2. *Local and regional child fatality review teams established; membership; authority; confidentiality; immunity.*

A. *Upon the initiative of any local or regional law-enforcement agency, fire department, department of social services, emergency medical services agency, Commonwealth's attorney's office, or community services board, local or regional child fatality teams may be established for the purpose of conducting contemporaneous reviews of local child deaths in order to develop interventions and strategies for prevention specific to the locality or region. Each team shall establish rules and procedures to govern the review process. Agencies may share information but shall be bound by confidentiality and execute a sworn statement to honor the confidentiality of the information they share. Violations shall be punishable as a Class 3 misdemeanor. The State Child Fatality Review Team shall provide technical assistance and direction as provided for in subsection A of § 32.1-283.1.*

B. *Local and regional teams may be composed of the following persons from the localities represented on a particular board or their designees: a local or regional medical examiner, a local social services official in charge of child protective services, a director of the relevant local or district*

675 health department, a chief law-enforcement officer, a local fire marshal, the attorney for the
676 Commonwealth, an executive director of the local community services board or other local mental
677 health agency, and such additional persons, not to exceed five, as may be appointed to serve by the
678 chairperson of the local or regional team. The chairperson shall be elected from among the designated
679 membership. The additional members appointed by the chairperson may include, but are not restricted
680 to, representatives of local human services agencies; local public education agencies; local
681 pediatricians, psychiatrists and psychologists; and local child advocacy organizations.

682 C. Each team shall establish local rules and procedures to govern the review process prior to
683 conducting the first child fatality review. The review of a death shall be delayed until any criminal
684 investigations connected with the death are completed or the Commonwealth consents to the
685 commencement of such review prior to the completion of the criminal investigation.

686 D. All information and records obtained or created regarding the review of a fatality shall be
687 confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.1-340 et seq.)
688 pursuant to subdivision 59 of subsection B of § 2.1-342 . All such information and records shall be used
689 by the team only in the exercise of its proper purpose and function and shall not be disclosed. Such
690 information or records shall not be subject to subpoena, subpoena duces tecum, or discovery or be
691 admissible in any criminal or civil proceeding. If available from other sources, however, such
692 information and records shall not be immune from subpoena, subpoena duces tecum, discovery or
693 introduction into evidence when obtained through such other sources solely because the information and
694 records were presented to the team during a fatality review. No person who participated in the reviews
695 nor any member of the team shall be required to make any statement as to what transpired during the
696 review or what information was collected during the review. Upon the conclusion of the fatality review,
697 all information and records concerning the victim and the family shall be returned to the originating
698 agency or destroyed. However, the findings of the team may be disclosed or published in statistical or
699 other form which shall not identify individuals. The portions of meetings in which individual cases are
700 discussed by the team shall be closed pursuant to subdivision 23 of subsection A of § 2.1-344. All team
701 members, persons attending closed team meetings, and persons presenting information and records on
702 specific fatalities to the team during closed meetings shall execute a sworn statement to honor the
703 confidentiality of the information, records, discussions, and opinions disclosed during any closed
704 meeting to review a specific death. Violations of this subsection shall be punishable as a Class 3
705 misdemeanor.

706 E. Members of teams, as well as their agents and employees, shall be immune from civil liability for
707 any act or omission made in connection with participation in a child fatality review team review, unless
708 such act or omission was the result of gross negligence or willful misconduct. Any organization,
709 institution, or person furnishing information, data, testimony, reports or records to review teams as part
710 of such review, shall be immune from civil liability for any act or omission in furnishing such
711 information, unless such act or omission was the result of gross negligence or willful misconduct.