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HOUSE BILL NO. 2339

Offered January 21, 1999

A BILL to amend and reenact §§ 2.1-1.5, 2.1-116, 2.1-342, 2.1-344, 8.01-44.1, 9-6.14:4.1, 23-9.4, and 51.1-124.36 of the Code of Virginia, to amend the Code of Virginia by adding in Title 23 a chapter numbered 24, consisting of sections numbered 23-291 through 23-306, and to repeal Chapter 22 (§§ 23-277 through 23-286) of Title 23 of the Code of Virginia, relating to the Commonwealth Health Research Authority, the Commonwealth Health Research Fund, and the Commonwealth Health Research Board.

Patrons—Dickinson and Callahan; Senators: Chichester and Walker

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-1.5, 2.1-116, 2.1-342, 2.1-344, 8.01-44.1, 9-6.14:4.1, 23-9.4, and 51.1-124.36 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 23 a chapter numbered 24, consisting of sections numbered 23-291 through 23-306, 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 the enabling legislation of the entities:

Authorities

Assistive Technology Loan Fund Authority.
Commonwealth Health Research Authority.
 Medical College of Virginia Hospitals Authority.
 Richmond Eye and Ear Hospital Authority.
 Small Business Financing Authority.
 Virginia Agriculture Development Authority.
 Virginia College Building Authority.
 Virginia Economic Development Partnership.
 Virginia Housing Development Authority.
 Virginia Information Providers Network Authority.
 Virginia Innovative Technology Authority.
 Virginia Port Authority.
 Virginia Public Building Authority.
 Virginia Public School Authority.
 Virginia Resources Authority.

Boards

Board of Commissioners, Virginia Agriculture Development Authority.
 Board of Commissioners, Virginia Port Authority.
 Board of Directors, Assistive Technology Loan Fund Authority.
Board of Directors, Commonwealth Health Research Authority.
 Board of Directors, Medical College of Virginia Hospitals 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 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.

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- 60 Board of Visitors, Christopher Newport University.
61 Board of Visitors, The College of William and Mary in Virginia.
62 Board of Visitors, George Mason University.
63 Board of Visitors, Gunston Hall Plantation.
64 Board of Visitors, James Madison University.
65 Board of Visitors, Longwood College.
66 Board of Visitors, Mary Washington College.
67 Board of Visitors to Mount Vernon.
68 Board of Visitors, Norfolk State University.
69 Board of Visitors, Old Dominion University.
70 Board of Visitors, Radford University.
71 Board of Visitors, University of Virginia.
72 Board of Visitors, Virginia Commonwealth University.
73 Board of Visitors, Virginia Military Institute.
74 Board of Visitors, Virginia Polytechnic Institute and State University.
75 Board of Visitors, Virginia State University.
76 ~~Commonwealth Health Research Board.~~
77 Governing Board, Virginia College Building Authority.
78 Governing Board, Virginia Public School Authority.
79 Library Board, The Library of Virginia.
80 Motor Vehicle Dealer Board.
81 State Board for Community Colleges, Virginia Community College System.
82 Virginia-Israel Advisory Board.
83 (Effective until July 1, 2002) Wireless E-911 Service Board.
84 Commissions
85 Advisory Commission on the Virginia Schools for the Deaf and the Blind.
86 Alexandria Historical Restoration and Preservation Commission.
87 Charitable Gaming Commission.
88 Chesapeake Bay Bridge and Tunnel Commission.
89 Hampton Roads Sanitation District Commission. Districts
90 Chesapeake Bay Bridge and Tunnel District.
91 Hampton Roads Sanitation District.
92 Educational Institutions
93 Christopher Newport University.
94 College of William and Mary in Virginia.
95 Frontier Culture Museum of Virginia.
96 George Mason University.
97 James Madison University.
98 Jamestown-Yorktown Foundation.
99 Longwood College.
100 Mary Washington College.
101 Miller School of Albemarle.
102 Norfolk State University.
103 Old Dominion University.
104 Radford University.
105 The Science Museum of Virginia.
106 University of Virginia.
107 Virginia Commonwealth University.
108 Virginia Community College System.
109 Virginia Military Institute.
110 Virginia Museum of Fine Arts.
111 Virginia Polytechnic Institute and State University.
112 The Library of Virginia.
113 Virginia State University.
114 Foundations
115 Chippokes Plantation Farm Foundation.
116 Rural Virginia Development Foundation.
117 Virginia Arts Foundation.
118 Virginia Conservation and Recreation Foundation.
119 Virginia Historic Preservation Foundation.
120 Virginia Outdoor Foundation.
121 Museum

Virginia Museum of Natural History. Partnership
 A. L. Philpott Manufacturing Extension Partnership.
 Plantation
 Gunston Hall Plantation.
 § 2.1-116. Certain officers and employees exempt from chapter.
 The provisions of this chapter shall not apply to:
 1. Officers and employees for whom the Constitution specifically directs the manner of selection;
 2. Officers and employees of the Supreme Court and the Court of Appeals;
 3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either
 house thereof is required or not;
 4. Officers elected by popular vote or by the General Assembly or either house thereof;
 5. Members of boards and commissions however selected;
 6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of
 accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and
 notaries public;
 7. Officers and employees of the General Assembly and persons employed to conduct temporary or
 special inquiries, investigations, or examinations on its behalf;
 8. The presidents, and teaching and research staffs of state educational institutions;
 9. Commissioned officers and enlisted personnel of the national guard and the naval militia;
 10. Student employees in institutions of learning, and patient or inmate help in other state
 institutions;
 11. Upon general or special authorization of the Governor, laborers, temporary employees and
 employees compensated on an hourly or daily basis;
 12. County, city, town and district officers, deputies, assistants and employees;
 13. The employees of the Virginia Workers' Compensation Commission;
 14. The officers and employees of the Virginia Retirement System;
 15. Employees whose positions are identified by the State Council of Higher Education and the
 boards of the Virginia Museum of Fine Arts, the Science Museum of Virginia, the Jamestown-Yorktown
 Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of Natural History and The
 Library of Virginia, and approved by the Director of the Department of Personnel and Training as
 requiring specialized and professional training;
 16. Employees of the State Lottery Department;
 17. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs;
 18. [Repealed.]
 19. Employees of the Medical College of Virginia Hospitals Authority;
 20. Employees of the University of Virginia Medical Center. Any changes in compensation plans for
 such employees shall be subject to the review and approval of the Board of Visitors of the University of
 Virginia. The University of Virginia shall ensure that its procedures for hiring University of Virginia
 Medical Center personnel are based on merit and fitness. Such employees shall remain subject to the
 provisions of Chapter 10.01 (§ 2.1-116.01 et seq.) of Title 2.1;
 21. In executive branch agencies the employee who has accepted serving in the capacity of chief
 deputy, or equivalent, and the employee who has accepted serving in the capacity of a confidential
 assistant for policy or administration. An employee serving in either one of these two positions shall be
 deemed to serve on an employment-at-will basis. An agency may not exceed two employees who serve
 in this exempt capacity;
 22. Employees of Virginia Correctional Enterprises. Such employees shall remain subject to the
 provisions of Chapter 10.01 (§ 2.1-116.01 et seq.) of Title 2.1;
 23. Officers and employees of the Virginia Port Authority; ~~and~~
 24. Employees of the Virginia Higher Education Tuition Trust Fund; ~~and~~
 25. *Employees of the Commonwealth Health Research Authority.*
 § 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 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. Beginning July 1, 1997, every public body of state government shall compile, and annually update, an index of computer databases which contains at a minimum those databases created by them on or after July 1, 1997. "Computer database" means a structured collection of data or documents residing in a computer. Such index shall be an official record and shall include, at a minimum, the following information with respect to each database listed therein: a list of data fields, a description of the format or record layout, the date last updated, a list of any data fields to which public access is restricted, a description of each format in which the database can be copied or reproduced using the public body's computer facilities, and a schedule of fees for the production of copies in each available form. The form, context, language, and guidelines for the indices and the databases to be indexed shall be developed by the Director of the Department of Information Technology in consultation with the Librarian of Virginia and the State Archivist. The public body shall not be required to disclose its software security, including passwords.

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

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

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

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

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

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

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

Except as provided in § 30-28.18, memoranda, working papers and correspondence of a member of

306 the General Assembly held by the Division of Legislative Services shall not be released by the Division
307 without the prior consent of the member.

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

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

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

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

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

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

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

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

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

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

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

344 14. Proprietary information gathered by or for the Virginia Port Authority as provided in
345 § 62.1-132.4 or § 62.1-134.1.

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

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

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

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

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

363 20. Confidential proprietary records, voluntarily provided by private business pursuant to a promise
364 of confidentiality from the Department of Business Assistance, the Virginia Economic Development
365 Partnership or local or regional industrial or economic development authorities or organizations, used by
366 the Department, the Partnership, or such entities for business, trade and tourism development; and
367 memoranda, working papers or other records related to businesses that are considering locating or

expanding in Virginia, prepared by the Partnership, where competition or bargaining is involved and where, if such records are made public, the financial interest of the governmental unit would be adversely affected.

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 respect to an active investigation of individual employment discrimination complaints made to the Department of Personnel and Training; 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 charging parties, persons supplying the information or other individuals involved in the investigation.

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

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

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

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

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

31. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; and other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 9 (§ 63.1-172 et seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1; however, nothing in this section 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.

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:

552 (1) Number of employees, including security guards, present at any time; or
553 (2) Busiest hours, with the maximum number of visitors in the Museum.

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

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

560 (ii) Surveillance techniques;

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

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

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

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

566 a. Number of employees present during each shift;

567 b. Busiest hours, with the maximum number of customers in such government store; and

568 c. Banking system used, including time and place of deposits.

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

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

573 59. All information and records acquired during a review of any child death by the State Child
574 Fatality Review Team established pursuant to § 32.1-283.1.

575 60. Investigative notes, correspondence, documentation and information provided to or produced by
576 or for the committee or the auditor with respect to an investigation or audit conducted pursuant to
577 § 15.1-765.2. Nothing in this section shall prohibit disclosure of information from the records of
578 completed investigations or audits in a form that does not reveal the identity of complainants or persons
579 supplying information.

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

583 62. Confidential proprietary records which are voluntarily provided by a private entity pursuant to a
584 proposal filed with a public entity under the Public-Private Transportation Act of 1995 (§ 56-556 et
585 seq.), pursuant to a promise of confidentiality from the responsible public entity, used by the responsible
586 public entity for purposes related to the development of a qualifying transportation facility; and
587 memoranda, working papers or other records related to proposals filed under the Public-Private
588 Transportation Act of 1995, where, if such records were made public, the financial interest of the public
589 or private entity involved with such proposal or the process of competition or bargaining would be
590 adversely affected. In order for confidential proprietary information to be excluded from the provisions
591 of this chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other
592 materials for which protection from disclosure is sought, (ii) identify the data or other materials for
593 which protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of
594 this subdivision, the terms public entity and private entity shall be defined as they are defined in the
595 Public-Private Transportation Act of 1995.

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

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

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

611 66. Records of the Medical College of Virginia Hospitals Authority pertaining to any of the
612 following: (i) an individual's qualifications for or continued membership on its medical or teaching
613 staffs; proprietary information gathered by or in the possession of the Authority from third parties

pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; data, records or information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; and the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and (ii) data, records or information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's 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 Authority alone or in conjunction with a governmental body or a private concern, when such data, records or information have not been publicly released, published, copyrighted or patented.

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

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

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

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

75. *Records submitted as a grant application, or accompanying an application for a grant, donation or other assistance, to the Commonwealth Health Research Authority pursuant to Chapter 24 (§ 23-291 et seq.) of Title 23, to the extent such records contain: (i) medical records or other data identifying individual patients or (ii) proprietary business or research related information produced or collected by*

675 *the applicant in the conduct of or as a result of study or research on medical or scholarly issues, when*
676 *such information has not been publicly released, published, copyrighted or patented, if the disclosure of*
677 *such information would be harmful to the competitive position of the applicant.*

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

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

694 § 2.1-344. Executive or closed meetings.

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

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

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

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

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

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

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

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

725 8. In the case of boards of visitors of state institutions of higher education, discussion or
726 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts
727 for services or work to be performed by such institution. However, the terms and conditions of any such
728 gifts, bequests, grants and contracts made by a foreign government, a foreign legal entity or a foreign
729 person and accepted by a state institution of higher education shall be subject to public disclosure upon
730 written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign
731 government" means any government other than the United States government or the government of a
732 state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the
733 laws of the United States or of any state thereof if a majority of the ownership of the stock of such
734 legal entity is owned by foreign governments or foreign persons or if a majority of the membership of
735 any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under
736 the laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen

or national of the United States or a trust territory or protectorate thereof.

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

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

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

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

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

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

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

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

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

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

19. [Repealed.]

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

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

22. In the case of corporations organized by the Virginia Retirement System, discussion or consideration of (i) proprietary information provided by, and financial information concerning, coventurers, partners, lessors, lessees, or investors, and (ii) 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.

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.

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;

798 members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications
799 or evaluations of other employees.

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

803 27. Those meetings or portions of meetings of the Board of the Virginia Higher Education Tuition
804 Trust Fund wherein personal information, as defined in § 2.1-379, which has been provided to the Board
805 or its employees by or on behalf of individuals who have requested information about, applied for, or
806 entered into prepaid tuition contracts pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23 is
807 discussed.

808 28. *Discussion or consideration of records excluded from this chapter pursuant to § 2.1-342 B 75.*

809 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in an
810 executive or closed meeting shall become effective unless the public body, following the meeting,
811 reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule,
812 contract, regulation or motion which shall have its substance reasonably identified in the open meeting.
813 This section shall not be construed to (i) require the disclosure of any contract between the Intervention
814 Program Committee within the Department of Health Professions and an impaired practitioner entered
815 into pursuant to Chapter 25.1 of Title 54.1 or (ii) require the board of directors of any authority created
816 pursuant to the Industrial Development and Revenue Bond Act (§ 15.1-1373 et seq.), or any public body
817 empowered to issue industrial revenue bonds by general or special law, to identify a business or industry
818 to which subdivision A 5 of this section applies. However, such business or industry must be identified
819 as a matter of public record at least thirty days prior to the actual date of the board's authorization of
820 the sale or issuance of such bonds.

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

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

827 § 8.01-44.1. Immunity from civil liability of members of certain committees, etc.

828 Every member of any committee, board, group, commission, or other entity established pursuant to
829 federal or state law or regulation, *including but not limited to the Commonwealth Health Research*
830 *Authority established pursuant to Chapter 24 (§ 23-291 et seq.) of Title 23*, which functions to authorize,
831 review, evaluate, or make recommendations on the nature, conduct, activities, or procedures involved in
832 or related to programs or research protocols conducted under the supervision of members of the faculty
833 or staff of any hospital, college, or university, including but not limited to the design or conduct of
834 experiments involving human subjects, *or otherwise to provide financial support for medical research*
835 *efforts*, shall be immune from civil liability for any act, decision, omission, or utterance done or made in
836 performance of such duties as a member of such committee, board, group, commission, or other entity,
837 unless such act, decision, omission, or utterance is done or made in bad faith or with malicious intent or
838 unless the member, when acting to authorize the nature, conduct, activities, or procedures involved in or
839 related to a program or research protocol, knows or reasonably should know that the program or
840 research protocol is being or will be conducted in violation of Chapter 5.1 (§ 32.1-162.16 et seq.) of
841 Title 32.1. However, the immunity created herein shall not apply to those persons engaged in the actual
842 conduct of the programs or research protocols.

843 § 9-6.14:4.1. Exemptions and exclusions.

844 A. Although required to comply with § 9-6.18 of the Virginia Register Act (§ 9-6.15 et seq.), the
845 following agencies are exempted from the provisions of this chapter, except to the extent that they are
846 specifically made subject to §§ 9-6.14:14.1, 9-6.14:21 and 9-6.14:22:

847 1. The General Assembly.

848 2. Courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly
849 granted any of the powers of a court of record.

850 3. The Department of Game and Inland Fisheries in promulgating regulations regarding the
851 management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2
852 (§ 29.1-200 et seq.), 3 (§ 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7
853 (§ 29.1-700 et seq.) of Title 29.1.

854 4. The Virginia Housing Development Authority.

855 5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created
856 under this Code, including those with federal authorities.

857 6. Educational institutions operated by the Commonwealth provided that, with respect to § 9-6.14:22,
858 such educational institutions shall be exempt from the publication requirements only with respect to
859 regulations which pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and

disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and disciplining of students.

7. The Milk Commission in promulgating regulations regarding (i) producers' licenses and bases, (ii) classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.

8. The Virginia Resources Authority.

9. Agencies expressly exempted by any other provision of this Code.

10. The Virginia Voluntary Formulary Board in formulating recommendations regarding amendments to the Formulary pursuant to § 32.1-81.

11. The Council on Information Management.

12. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.1-526.14.

13, 14. [Repealed.]

15. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23-9.6:2.

16. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.1-726.

17. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and C of § 3.1-106.4, subsection B of § 3.1-126.12:1, § 3.1-271.1, § 3.1-398, subsections B and C of § 3.1-828.4, and subsection A of § 3.1-884.21:1.

18. The Board of Optometry when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1.

19. The Board of Medicine, in consultation with the Board of Pharmacy, when promulgating amendments to the Physician Assistant Formulary established pursuant to § 54.1-2952.1.

20. The Boards of Medicine and Nursing in promulgating amendments to the Nurse Practitioner Formulary established pursuant to § 54.1-2957.01.

21. The Virginia War Memorial Foundation.

22. The Virginia Medicaid Prior Authorization Advisory Committee in making recommendations to the Board of Medical Assistance Services regarding prior authorization for prescription drug coverage pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

23. The State Board of Education, in developing, issuing, and revising guidelines pursuant to § 22.1-280.3.

24. The Virginia Racing Commission, when acting by and through its duly appointed stewards or in matters related to any specific race meeting.

25. The Virginia Small Business Financing Authority.

26. The Virginia Economic Development Partnership Authority.

27. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations pursuant to subsection A (ii) of § 59.1-156.

28. The Insurance Continuing Education Board pursuant to § 38.2-1867.

29. *The Commonwealth Health Research Authority.*

B. Agency action relating to the following subjects is exempted from the provisions of this chapter:

1. Money or damage claims against the Commonwealth or agencies thereof.

2. The award or denial of state contracts, as well as decisions regarding compliance therewith.

3. The location, design, specifications or construction of public buildings or other facilities.

4. Grants of state or federal funds or property.

5. The chartering of corporations.

6. Customary military, naval or police functions.

7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of the Commonwealth.

8. The conduct of elections or eligibility to vote.

9. Inmates of prisons or other such facilities or parolees therefrom.

10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as well as the treatment, supervision, or discharge of such persons.

11. Traffic signs, markers or control devices.

12. Instructions for application or renewal of a license, certificate, or registration required by law.

13. Content of, or rules for the conduct of, any examination required by law.

14. The administration of a pool or pools authorized by Article 7.1 (§ 2.1-234.9:1 et seq.) of Chapter 14 of Title 2.1.

15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent

921 with duly adopted regulations of the State Lottery Board, and provided that such regulations are
922 published and posted.

923 16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish,
924 finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8 of Title 28.2.

925 17. Any operating procedures for review of child deaths developed by the State Child Fatality
926 Review Team pursuant to § 32.1-283.1.

927 18. The regulations for the implementation of the Health Practitioners' Intervention Program and the
928 activities of the Intervention Program Committee pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title
929 54.1.

930 19. The process of reviewing and ranking grant applications submitted to the Commonwealth
931 Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 32.1-73.1 et seq.) of Chapter 2 of Title
932 32.1.

933 20. Loans from the Small Business Environmental Compliance Assistance Fund pursuant to Article 4
934 (§ 10.1-1197.1 et seq.) of Chapter 11.1 of Title 10.1.

935 21. The Virginia Breeders Fund created pursuant to § 59.1-372.

936 22. The types of pari-mutuel wagering pools available for live or simulcast horse racing.

937 23. The administration of medication or other substances foreign to the natural horse.

938 24. *The process of reviewing and ranking applications for grants, donations or other assistance*
939 *submitted to the Commonwealth Health Research Authority pursuant to Chapter 24 (§ 23-291 et seq.) of*
940 *Title 23.*

941 C. The following agency actions otherwise subject to this chapter and § 9-6.18 of the Virginia
942 Register Act are excluded from the operation of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter:

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

944 2. Regulations which establish or prescribe agency organization, internal practice or procedures,
945 including delegations of authority.

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

950 4. Regulations which:

951 (a) Are necessary to conform to changes in Virginia statutory law or the appropriation act where no
952 agency discretion is involved;

953 (b) Are required by order of any state or federal court of competent jurisdiction where no agency
954 discretion is involved; or

955 (c) Are necessary to meet the requirements of federal law or regulations, provided such regulations
956 do not differ materially from those required by federal law or regulation, and the Registrar has so
957 determined in writing; notice of the proposed adoption of these regulations and the Registrar's above
958 determination shall be published in the Virginia Register not less than thirty days prior to the effective
959 date thereof.

960 5. Regulations which an agency finds are necessitated by an emergency situation. For the purposes of
961 this subdivision, "emergency situation" means (i) a situation involving an imminent threat to public
962 health or safety or (ii) a situation in which Virginia statutory law or the appropriation act or federal law
963 or federal regulation requires that a regulation shall be effective in 280 days or less from enactment of
964 the law or the appropriation act or the effective date of the federal regulation, and the regulation is not
965 exempt under the provisions of subdivision C 4 of this section. In such cases, the agency shall state in
966 writing the nature of the emergency and of the necessity for such action and may adopt such
967 regulations. Pursuant to § 9-6.14:9, such regulations shall become effective upon approval by the
968 Governor and filing with the Registrar of Regulations. Such regulations shall be limited to no more than
969 twelve months in duration. During the twelve-month period, an agency may issue additional emergency
970 regulations as needed addressing the subject matter of the initial emergency regulation, but any such
971 additional emergency regulations shall not be effective beyond the twelve-month period from the
972 effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject
973 matter governed by the emergency regulation beyond the twelve-month limitation, a regulation to replace
974 the emergency regulation shall be promulgated in accordance with Article 2 (§ 9-6.14:7.1 et seq.) of this
975 chapter. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be filed
976 with the Registrar within sixty days of the effective date of the emergency regulation and published as
977 soon as practicable, and the proposed replacement regulation shall be filed with the Registrar within 180
978 days after the effective date of the emergency regulation and published as soon as practicable.

979 6. [Repealed.]

980 7. Preliminary program permit fees of the Department of Environmental Quality assessed pursuant to
981 subsection C of § 10.1-1322.2.

982 8. Regulations of the Pesticide Control Board adopted pursuant to subsection B of § 3.1-249.51 or

clause (v) or (vi) of subsection C of § 3.1-249.53 after having been considered at two or more Board meetings and one public hearing.

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

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

11. General permits issued by the State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 if the Board: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed general permit.

12. General permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 if the Board: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed general permit.

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

14. Regulations of the Board of the Virginia Higher Education Tuition Trust Fund promulgated pursuant to § 23-38.77.

15. The development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307 if the Commission: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty days from publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed general permit.

Whenever regulations are adopted under this subsection C, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. The effective date of regulations adopted under this subsection shall be in accordance with the provisions of § 9-6.14:9.3, except in the case of emergency regulations, which shall become effective as provided in subsection B of § 9-6.14:9.

D. The following agency actions otherwise subject to this chapter are excluded from the operation of Article 3 (§ 9-6.14:11 et seq.) of this chapter:

1. The assessment of taxes or penalties and other rulings in individual cases in connection with the administration of the tax laws.

2. The award or denial of claims for workers' compensation.

3. The grant or denial of public assistance.

4. Temporary injunctive or summary orders authorized by law.

5. The determination of claims for unemployment compensation or special unemployment.

6. The suspension of any license, certificate, registration or authority granted any person by the Department of Health Professions or the Department of Professional and Occupational Regulation for the dishonor, by a bank or financial institution named, of any check, money draft or similar instrument used in payment of a fee required by statute or regulation.

E. Appeals from decisions of the Governor's Employment and Training Department otherwise subject to this chapter are excluded from the operation of Article 4 (§ 9-6.14:15 et seq.) of this chapter.

F. The Marine Resources Commission, otherwise subject to this chapter and § 9-6.18 of the Virginia Register Act, is excluded from the operation of subdivision C 5 of this section and of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter.

G. A regulation for which an exemption is claimed under this section and which is placed before a board or commission for consideration shall be provided at least two days in advance of the board or

commission meeting to members of the public that request a copy of that regulation. A copy of that regulation shall be made available to the public attending such meeting.

H. The Joint Legislative Audit and Review Commission shall conduct a review periodically of exemptions and exclusions authorized by this section. The purpose of this review shall be to assess whether there are any exemptions or exclusions which should be discontinued or modified.

I. Minor changes to regulations being published in the Virginia Administrative Code under the Virginia Register Act, Chapter 1.2 (§ 9-6.15 et seq.) of this title, made by the Virginia Code Commission pursuant to § 9-77.10:1 shall be exempt from the provisions of this chapter.

§ 23-9.4. Employment of director and other personnel.

A. The Council shall employ and appoint a director who shall be the chief executive officer of the Council, and such personnel as may be required to assist it in the exercise and performance of its powers and duties.

B. ~~The director shall serve as executive secretary of the Commonwealth Health Research Board. The director and other personnel are authorized to perform all duties imposed on them pursuant to Chapter 22 (§ 23-277 et seq.) of this title.~~

CHAPTER 24.

COMMONWEALTH HEALTH RESEARCH AUTHORITY.

§ 23-291. Definitions.

As used in this chapter, unless the context clearly indicates otherwise:

"Authority" means the Commonwealth Health Research Authority.

"Board" means the Board of Directors of the Authority.

"Director" means the director of the Authority.

"Fund" means the Commonwealth Health Research Fund.

§ 23-292. Commonwealth Health Research Authority created; purposes.

The Commonwealth Health Research Authority is hereby created as a political subdivision of the Commonwealth, with all of the public and corporate powers as are set forth in this chapter. The Authority is hereby constituted a public instrumentality exercising public and essential governmental functions with its purpose being to provide financial support, in the form of grants, donations, or other assistance, for research efforts that have the potential of maximizing human health benefits for the citizens of the Commonwealth. Research efforts eligible for support by the Authority shall include traditional medical and biomedical research relating to the causes and cures of diseases as well as research related to health services and the delivery of health care.

§ 23-293. Powers generally.

The Authority shall have all the powers necessary or convenient to carry out the purposes and provisions of this chapter, including, without limitation, the following powers to:

1. *Sue and be sued in its own name.*

2. *Have and alter an official seal.*

3. *Have perpetual duration and succession in its name.*

4. *Locate and maintain an office at such place as it may designate.*

5. *Direct the payment of grants or other expenditures or disbursements from the Fund to provide support for research efforts approved by the Board in accordance with the purposes of this chapter; however, the Board shall not be obligated to make annual or other periodic disbursements or expenditures.*

6. *Contract for the services of consultants to review research proposals and to assist in the evaluation of the research efforts funded by the Authority.*

7. *Accept, hold, administer, and solicit gifts, grants, bequests, contributions or other assistance from federal agencies, the Commonwealth, or any other public or private source to carry out the purposes of this chapter.*

8. *Enter into any agreement or contract relating to the acceptance or use of any grant, assistance or support provided by or to the Authority, or otherwise in furtherance of the purposes of this chapter.*

9. *Develop policies and procedures consistent with Article 2.1 (§ 11-62.1 et seq.) of Chapter 7 of Title 11.*

10. *Develop policies and procedures that are generally applicable to the procurement of goods and services based on competitive principles.*

11. *Perform any lawful acts necessary or appropriate to carry out the purposes of the Authority.*

§ 23-294. Board of Directors; appointment; officers.

A. *The Commonwealth Health Research Board is hereby continued as the Board of Directors of the Authority. The powers of the Authority shall be vested in the Board. The Board shall be composed of seven members. The Governor shall appoint three members of the Board who shall be confirmed by the affirmative vote of a majority of those voting in each house of the General Assembly. The Joint Rules Committee shall appoint the other four members of the Board who shall be confirmed by the affirmative vote of a majority of those voting in each house of the General Assembly. Appointments to the Board*

shall be for terms of five years. Vacancies in the membership of the Board shall be filled by appointment of the entity initially making the appointment for the unexpired portion of the term. No member shall be eligible to serve for more than two successive five-year terms; however, after the expiration of a term of four years or less, or after the expiration of the remainder of a term to which he was appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto. Immediately after such appointment, the members shall enter upon the performance of their duties.

B. The members of the Board shall have substantial experience or expertise, personal or professional, in at least one of the following areas: medicine, medical or scientific research, public policy, government, business, or education. No member shall be an incumbent elected official, state official or employee, or member of the governing board of a state agency or institution. Members of the Board need not be residents of the Commonwealth.

C. The members shall elect annually a chairman and vice-chairman from among its members. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the Board. A majority of the members of the Board serving at any one time shall constitute a quorum for the transaction of business. The Board shall meet annually or more frequently at the call of the chairman.

D. Members of the Board shall receive compensation for their services at the rate provided in § 2.1-20.3 and shall receive reimbursement for actual expenses incurred in the performance of their duties on behalf of the Board. Such compensation and expenses shall be paid from the Fund.

E. Members of the Board and employees of the Authority shall be subject to the standards of conduct set forth in the State and Local Government Conflict of Interests Act (§ 2.1-639.1 et seq.) and may be removed from office for inefficiency, neglect of duty or misconduct in the manner set forth therein.

F. The Authority may use its funds, and may obtain liability insurance or provide self-insurance, for the payment or reimbursement of costs and expenses (including, without limitation, amounts paid or to be paid in satisfaction of judgment or settlement, penalties, attorneys' fees and expenses, and court costs) incident to any liability of the members of its Board and employees arising from the performance or discharge of their official duties and such other activities as the Board may by resolution approve for the purpose of making such payment or reimbursement or providing such insurance or self-insurance.

§ 23-295. Appointment of director.

A. The Authority shall employ a director who shall also be the secretary of the Board. The director shall be appointed by and serve at the pleasure of the Board. The director shall administer, manage and direct the affairs and business of the Authority in accordance with the provisions of this chapter, subject to the policies, control and direction of the Board. The Board may employ technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The Board may delegate to one or more of its agents or employees such administrative duties as it may deem proper. The actual expenses incurred in the performance of such duties shall be paid from the Fund.

B. The secretary shall keep a record of the proceedings of the Board and the Authority and shall be custodian of all books, documents and papers filed with the Authority and of its minute book and seal. He shall have authority to cause to be made copies of all minutes and other records and documents of the Authority and to give certificates under the seal of the Authority to the effect that such copies are true copies and all persons dealing with the Authority may rely upon such certificates.

§ 23-296. Duties of the Board.

The Board shall perform the following duties:

1. Establish specific criteria and procedures governing decisions by the Authority to support research efforts consistent with its purposes, including, but not limited to, (i) encouraging collaborative research efforts among two or more institutions or organizations, (ii) giving priority to those research efforts where Authority support can be leveraged to foster contributions from federal agencies or other entities, and (iii) supporting both new research efforts and the expansion or continuation of existing research efforts;

2. Establish requirements for the submission of research proposals, including, but not limited to, (i) a clear statement of the problem or opportunity to be addressed; (ii) the specific objectives; (iii) a description of how the results will maximize human health benefits for the citizens of the Commonwealth; (iv) a budget for the research effort including other anticipated sources of financial assistance; and (v) the time frame for the conduct of the research;

3. Evaluate the proposals in accordance with the criteria established by the Board and the provisions of this chapter; and

4. Evaluate the implementation and results of all research efforts receiving support from the Authority.

§ 23-297. Conditions and restrictions on financial assistance.

A. The Authority shall support only those research efforts that satisfy the following conditions:

1. The research shall be conducted by state institutions of higher education, agencies of the Commonwealth, or nonprofit organizations exempt from income taxation pursuant to § 501 (c) (3) of the Internal Revenue Code and located in the Commonwealth;

2. The institution, agency, or organization shall provide a cash amount for the support provided by the Authority in such percentage of the Authority's support as the Authority deems appropriate;

3. Support provided by the Authority shall not be used by the recipient to finance capital improvements or renovations, indirect costs incurred by the institution, agency, or organization in its administration of the financial support, or for any other purpose proscribed by the Authority; and

4. Recipients of support provided by the Authority shall agree to provide the Authority with such information regarding the implementation of the research effort, and to allow monitoring and review of the research effort, as may be required by the Authority to ensure compliance with the terms by which the support is provided.

B. Any support provided from the Fund at the direction of the Authority shall be used by the recipient only for personal services, contractual services, material, supplies, and equipment directly related to the approved research effort.

§ 23-298. Commonwealth Health Research Fund continued; administration.

A. The Commonwealth Health Research Fund is hereby continued in the State Treasury as a special, nonreverting revolving fund, established on the books of the State Comptroller.

B. The Fund shall consist of all stock and cash distributed to the Commonwealth as a policyholder pursuant to the conversion of Blue Cross and Blue Shield of Virginia, doing business as Trigon Blue Cross Blue Shield, from a mutual insurance company to a Virginia stock corporation known as Trigon Healthcare, Inc., exclusive of (i) any such stock and cash distributed to the Commonwealth that is directly attributable to the health insurance plan or plans established for employees of local governments, local officers, teachers, and retirees, and the dependents of such employees, officers, teachers and retirees, as provided in subsection F of § 2.1-20.1:02, and (ii) cash paid by Blue Cross and Blue Shield of Virginia or its successor to the Commonwealth in connection with such conversion, which was assumed as general fund revenue in Chapter 912 of the 1996 Acts of Assembly. The Fund shall also consist of any moneys appropriated from the general fund, grants and donations received by the Board, and other moneys received by the State Treasurer and designated for deposit in the Fund. Interest and other income earned on the Fund shall be credited to the Fund. Any moneys remaining in the Fund, including interest and other income thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

C. Notwithstanding any other provision of law, the moneys and other property comprising the Fund shall be invested, reinvested and managed by the Board of the Virginia Retirement System as provided in § 51.1-124.36. The State Treasurer shall not be held liable for losses suffered by the Virginia Retirement System on investments made under the authority of this section.

D. The Fund shall be expended solely for the purpose of supporting research efforts approved by the Authority and any other purpose permitted by this chapter.

E. Not more than an amount equal to ninety percent of the annual income, including but not limited to interest, dividends, realized gains, fees, and other earnings, from the investment, reinvestment and management of the Fund, net of any administrative fee assessed pursuant to subsection E of § 51.1-124.36, shall be distributed from the Fund in such year for any purpose permitted by this chapter. The Authority shall not be required to request the distribution of such amount from the Fund in any year.

F. The disbursement of moneys from the Fund shall be made by the State Comptroller at the written request of the Authority.

§ 23-299. Audit.

The accounts of the Authority shall be audited annually by the Auditor of Public Accounts, or his legally authorized representatives. Copies of the annual audit shall be distributed to the Governor and to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance. The Auditor of Public Accounts and his legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of the Authority; however, the Authority shall not be deemed to be a state or governmental agency, advisory agency, public body or agency or instrumentality for purposes of Chapter 13 (§ 2.1-153 et seq.) of Title 2.1. The Authority shall be subject to periodic external review under the provisions of the Legislative Program Review and Evaluation Act (§ 30-65 et seq.).

§ 23-300. Forms of accounts and records.

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.

§ 23-301. Reports to the Governor and General Assembly.

The Authority shall submit a report annually to the Governor and the General Assembly. The report shall include information regarding research efforts supported by the Authority and expenditures from

the Fund.

§ 23-302. Public purpose.

The exercise of the powers granted by this chapter shall be in all respects for the benefit of the inhabitants of the Commonwealth and for the promotion of their safety, health, welfare, knowledge, convenience and prosperity. No part of the assets or net earnings of the Authority shall inure to the benefit of, or be distributable to, any private individual, except that reasonable compensation may be paid for services rendered to or for the Authority affecting one or more of its purposes, and benefits may be conferred that are in conformity with said purposes, and no private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Authority.

§ 23-303. Exemption from taxation.

The Authority will be performing essential governmental functions in the exercise of the powers conferred upon it by this chapter. Accordingly, the Authority shall not be required to pay any taxes or assessments upon any property or upon any operations of the Authority or the income therefrom, or any taxes or assessments upon any project or any property or local obligation acquired or used by the Authority under the provisions of this chapter or upon the income therefrom.

§ 23-304. Chapter liberally construed.

This chapter shall constitute full and complete authority, without regard to the provisions of any other law, for the doing of the acts and things herein authorized and shall be liberally construed to effect the purposes hereof. Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, general, specific or local, the provisions of this chapter shall be controlling.

§ 23-305. Exemption of Authority from Workforce Transition Act and Public Procurement Act.

The provisions Chapter 10.5 (§ 2.1-116.20 et seq.) of Title 2.1 and Chapter 7 (§ 11-35 et seq.) of Title 11 shall not apply to the Authority in the exercise of any power conferred under this chapter.

§ 23-306. Reversion of assets.

Upon dissolution of the Authority, all assets of the Authority, after satisfaction of creditors, shall revert to the Commonwealth.

§ 51.1-124.36. Investment of assets of the Commonwealth Health Research Fund.

A. In addition to such other powers as shall be vested in the Board, the Board shall have the full power to invest, reinvest, and manage the assets of the Commonwealth Health Research Fund. The Board shall maintain a separate accounting for the assets of the Commonwealth Health Research Fund.

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

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

D. The provisions of §§ 51.1-124.32, 51.1-124.33, and 51.1-124.34 shall apply to the Board's activities with respect to funds in the Commonwealth Health Research Fund.

E. The Board may assess the Commonwealth Health Research Board Authority a reasonable administrative fee for its services.

2. That the members of the Commonwealth Health Research Board on the effective date of this act shall continue to serve, for the balance of the term of their appointments to such Board, as the members of the Board of Directors of the Commonwealth Health Research Authority established by this act.

3. That Chapter 22 (§§ 23-277 through 23-286) of Title 23 of the Code of Virginia is repealed.