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## SENATE BILL NO. 919

Senate Amendments in [ ] — February 4, 1999

*A BILL to amend and reenact §§ 2.1-342, 2.1-344, 23-38.75, 23-38.76, 23-38.77, 23-38.80, 23-38.81, 23-38.86, 23-38.87, and 58.1-322 of the Code of Virginia, relating to taxable income of residents; contributions to savings trust accounts entered into with the Virginia Higher Education Tuition Trust Fund.*

Patrons—Mims, Lambert, Barry, Bolling, Chichester, Colgan, Couric, Edwards, Forbes, Gartlan, Hanger, Hawkins, Holland, Houck, Howell, Lucas, Marsh, Martin, Marye, Maxwell, Miller, K.G., Newman, Norment, Potts, Puckett, Quayle, Reynolds, Saslaw, Schrock, Stolle, Stosch, Ticer, Trumbo, Walker, Wampler, Watkins, Whipple, Williams and Woods; Delegate: Callahan

Referred to Committee on Finance

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

**1. That §§ 2.1-342, 2.1-344, 23-38.75, 23-38.76, 23-38.77, 23-38.80, 23-38.81, 23-38.86, 23-38.87, and 58.1-322 of the Code of Virginia are amended and reenacted as follows:**

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

A. Except as otherwise specifically provided by law, all official records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth. The custodian of such records shall take all necessary precautions for their preservation and safekeeping. Any public body covered under the provisions of this chapter shall make an initial response to citizens requesting records open to inspection within five work days after the receipt of the request by the public body which is the custodian of the requested records. Such citizen request shall designate the requested records with reasonable specificity. A specific reference to this chapter by the requesting citizen in his request shall not be necessary to invoke the provisions of this chapter and the time limits for response by the public body. The response by the public body within such five work days shall be one of the following responses:

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

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

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

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

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

The public body may make reasonable charges for the copying, search time and computer time expended in the supplying of such records. The public body may also make a reasonable charge for preparing documents produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records or documents, except that the public body may

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SB919E

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

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

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

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

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

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

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

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

10. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at

183 the requester's expense, by the individual who is the subject thereof, in the offices of the Department of  
184 Health Professions or in the offices of any health regulatory board, whichever may possess the material.

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

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

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

190 14. Proprietary information gathered by or for the Virginia Port Authority as provided in  
191 § 62.1-132.4 or § 62.1-134.1.

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

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

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

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

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

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

217 21. Information which was filed as confidential under the Toxic Substances Information Act  
218 (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

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

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

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

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

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

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

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

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

240 30. Investigative notes and other correspondence and information furnished in confidence with  
241 respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice  
242 under the Virginia Human Rights Act (§ 2.1-714 et seq.); however, nothing in this section shall prohibit  
243 the distribution of information taken from inactive reports in a form which does not reveal the identity  
244 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

306 Department relating to matters of a specific lottery game design, development, production, operation,  
307 ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to  
308 holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning,  
309 advertising, or marketing, where such official records have not been publicly released, published,  
310 copyrighted or patented. Whether released, published or copyrighted, all game-related information shall  
311 be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game  
312 to which it pertains.

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

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

326 40. [Repealed.]

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

330 42. Information and records collected for the designation and verification of trauma centers and other  
331 specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to  
332 Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

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

334 44. [Repealed.]

335 45. Investigative notes; correspondence and information furnished in confidence with respect to an  
336 investigation; and official records otherwise exempted by this chapter or any Virginia statute, provided  
337 to or produced by or for the Auditor of Public Accounts and the Joint Legislative Audit and Review  
338 Commission; or investigative notes, correspondence, documentation and information furnished and  
339 provided to or produced by or for the Department of the State Internal Auditor with respect to an  
340 investigation initiated through the State Employee Fraud, Waste and Abuse Hotline. Nothing in this  
341 chapter shall prohibit disclosure of information from the records of completed investigations in a form  
342 that does not reveal the identity of complainants, persons supplying information or other individuals  
343 involved in the investigation; however, disclosure, unless such disclosure is prohibited by this section, of  
344 information from the records of completed investigations shall include, but is not limited to, the agency  
345 involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and  
346 the actions taken to resolve the complaint. In the event an investigation does not lead to corrective  
347 action, the identity of the person who is the subject of the complaint may be released only with the  
348 consent of the subject person.

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

352 47. Documentation or other information which describes the design, function, operation or access  
353 control features of any security system, whether manual or automated, which is used to control access to  
354 or use of any automated data processing or telecommunications system.

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

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

367 50. Confidential proprietary records related to inventory and sales, voluntarily provided by private

energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.

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

52. [Repealed.]

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

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

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

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

b. Surveillance techniques;

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

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

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

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

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

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

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

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

(ii) Surveillance techniques;

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

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

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

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

a. Number of employees present during each shift;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

489 69. Records of the Intervention Program Committee within the Department of Health Professions to  
490 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 *or savings trust account agreements* pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure or publication of information in a statistical or other form which does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

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

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

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

§ 2.1-344. Executive or closed meetings.

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

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

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

552 to the presiding officer of the appropriate board.

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

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

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

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

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

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

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

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

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

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

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

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

596 15. Discussion or consideration of medical and mental records excluded from this chapter pursuant to  
597 § 2.1-342 B 3, and those portions of disciplinary proceedings by any regulatory board within the  
598 Department of Professional and Occupational Regulation or Department of Health Professions conducted  
599 pursuant to § 9-6.14:11 or § 9-6.14:12 during which the board deliberates to reach a decision.

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

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

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

609 19. [Repealed.]

610 20. Those portions of meetings in which the Board of Corrections discusses or discloses the identity  
611 of, or information tending to identify, any prisoner who (i) provides information about crimes or  
612 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the  
613 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; members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other employees.

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

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

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

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

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

§ 23-38.75. Definitions.

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

"Board" means the Board of the Virginia Higher Education Tuition Trust Fund.

"Contributor" means a person who contributes money to a savings trust account established pursuant to this chapter on behalf of a qualified beneficiary and who is listed as the owner of the savings trust account.

"Fund" means the Virginia Higher Education Tuition Trust Fund.

"Prepaid tuition contract" means the contract entered into by the Board and a purchaser pursuant to this chapter for the advance payment of tuition at a fixed, guaranteed level by the purchaser for a

675 qualified beneficiary to attend any two-year or four-year public institution of higher education in the  
676 Commonwealth to which the qualified beneficiary is admitted.

677 "Purchaser" means a person who makes or is obligated to make advance payments in accordance  
678 with a prepaid tuition contract *and who is listed as the owner of the prepaid tuition contract.*

679 "Qualified beneficiary" or "beneficiary" means (i) a resident of the Commonwealth, as determined by  
680 the Board ~~or~~, *who is the beneficiary of a contract and who may apply advance tuition payments to*  
681 *tuition as set forth in this chapter;* (ii) a beneficiary of a contract purchased by a resident of the  
682 Commonwealth, as determined by the Board, who may apply advance tuition payments to tuition as set  
683 forth in this chapter; *or (iii) a beneficiary of a savings trust account established pursuant to this*  
684 *chapter.*

685 "Savings trust account" means an account established by a contributor pursuant to this chapter on  
686 behalf of a qualified beneficiary in order to apply distributions from the account toward qualified higher  
687 education expenses at eligible educational institutions, both as defined in § 529 of the Internal Revenue  
688 Code of 1986, as amended, or other applicable federal law.

689 "Savings trust agreement" means the agreement entered into by the Board and a contributor  
690 establishing a savings trust account.

691 "Tuition" means the quarter, semester, or term charges imposed for undergraduate tuition by any  
692 two-year or four-year public institution of higher education in the Commonwealth and all mandatory  
693 fees required as a condition of enrollment of all students. A beneficiary may apply benefits under a  
694 prepaid tuition contract *and distributions from a savings trust account* toward graduate-level tuition and  
695 toward tuition costs at such eligible educational institutions, as that term is defined in 26 U.S.C. § 529  
696 or any other applicable section of the Internal Revenue Code of 1986, as amended, as determined by the  
697 Board in its sole discretion.

698 § 23-38.76. Virginia Higher Education Tuition Trust Fund established; governing board; terms.

699 A. To enhance the accessibility and affordability of higher education for all citizens of the  
700 Commonwealth, there is hereby established as an independent agency of the Commonwealth, the  
701 Virginia Higher Education Tuition Trust Fund (the "Fund"). Moneys of the Fund shall be held in the  
702 state treasury in a special nonreverting fund, which shall consist of payments received pursuant to  
703 prepaid tuition contracts *or contributions to savings trust accounts* made pursuant to this chapter,  
704 bequests, endowments or grants from the United States government, its agencies and instrumentalities,  
705 and any other available sources of funds, public or private. Any moneys remaining in the Fund at the  
706 end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest and income  
707 earned from the investment of such funds shall remain in the Fund and be credited to it.

708 B. The Fund shall be administered by an eight-member Board, as follows: the Director of the State  
709 Council of Higher Education for Virginia or his designee; the Chancellor of the Virginia Community  
710 College System or his designee; the State Treasurer or his designee; the State Comptroller or his  
711 designee; and four citizens, to be appointed by the Governor, with significant experience in finance,  
712 accounting, and investment management. No person holding a full-time position of employment with the  
713 Commonwealth, any county or municipality, any institution of higher education, or any agency,  
714 instrumentality, or subdivision of the foregoing shall be eligible for appointment to the Board.

715 Of the citizen members to be appointed initially, two shall be appointed for four-year terms, and two  
716 shall be appointed for two-year and three-year terms, respectively. Thereafter, all appointments shall be  
717 for terms of four years, except that appointments to fill vacancies shall be for the unexpired terms. No  
718 person shall be appointed to serve for or during more than two successive four-year terms, but after the  
719 expiration of a term of three years or less, or after the expiration of the remainder of a term to which  
720 appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto.  
721 Should a noncitizen member cease to hold his public office, the vacancy shall be filled for the  
722 remainder of the term by his successor.

723 C. Members of the Board shall receive no compensation, but shall be reimbursed for actual expenses  
724 incurred in the performance of their duties. The Board shall elect from its membership a chairman, vice  
725 chairman, and a treasurer for each calendar year. A majority of the members of the Board shall  
726 constitute a quorum.

727 § 23-38.77. Powers and duties of Board.

728 The Board shall administer the Fund established by this chapter and shall develop and implement a  
729 ~~program~~ *programs* for (i) the prepayment of undergraduate tuition, as defined in § 23-38.75, at a fixed,  
730 guaranteed level for application at a two-year or four-year public institution of higher education in the  
731 Commonwealth *and (ii) contributions to savings trust accounts established pursuant to this chapter on*  
732 *behalf of a qualified beneficiary in order to apply distributions from the account toward qualified higher*  
733 *education expenses at eligible educational institutions, both as defined in § 529 of the Internal Revenue*  
734 *Code of 1986, as amended, or other applicable federal law.* In addition, the Board shall have the power  
735 and duty to:

736 1. Invest moneys in the Fund in any instruments, obligations, securities, or property deemed

appropriate by the Board;

2. Develop requirements, procedures, and guidelines regarding prepaid tuition contracts *and savings trust accounts*, including, but not limited to, residency requirements; the number of participants in the Fund; the termination, withdrawal, or transfer of payments under a prepaid tuition contract *or savings trust account*; time limitations for the use of tuition benefits *or savings trust account distributions*; and payment schedules;

3. Enter into contractual agreements, including contracts for legal, actuarial, financial, and consulting services;

4. Procure insurance against any loss in connection with the Fund's property, assets, or activities and indemnifying Board members from personal loss or accountability from liability arising from any action or inaction as a Board member;

5. Make arrangements with two-year and four-year public institutions in the Commonwealth to fulfill obligations under prepaid tuition contracts *and to apply savings trust account distributions*, including, but not limited to, payment from the Fund of the then actual in-state undergraduate tuition cost on behalf of a qualified beneficiary *of a prepaid tuition contract* to the institution in which the beneficiary is admitted and enrolled and application of such benefits towards graduate-level tuition and towards tuition costs at such eligible educational institutions, as that term is defined in 26 U.S.C. § 529 or any other applicable section of the Internal Revenue Code of 1986, as amended, as determined by the Board in its sole discretion;

6. Apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to carry out its objectives;

7. Promulgate regulations and procedures and to perform any act or function consistent with the purposes of this chapter; and

8. Reimburse, at its option, all or part of the cost of employing legal counsel and such other costs as are demonstrated to have been reasonably necessary for the defense of any Board member, officer, or employee of the Fund upon the acquittal, dismissal of charges, nolle prosequi, or any other final disposition concluding the innocence of such member, officer or employee who is brought before any regulatory body, summoned before any grand jury, investigated by any law-enforcement agency, arrested, indicted, or otherwise prosecuted on any criminal charge arising out of any act committed in the discharge of his official duties which alleges a violation of state or federal securities laws. The Board shall provide for the payment of such legal fees and expenses out of funds appropriated or otherwise available to the Board.

§ 23-38.80. Standard of care; investment and administration of Fund.

A. In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the benefit of the Fund, the Board, and any person, investment manager, or committee to whom the Board delegates any of its investment authority, shall act as trustee and shall exercise the judgment of care under the circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but to the permanent disposition of funds, considering the probable income as well as the probable safety of their capital. If the annual accounting and audit required by § 23-38.85 reveal that there are insufficient funds to ensure the actuarial soundness of the Fund, the Board shall be authorized to adjust the terms of subsequent prepaid tuition contracts, arrange refunds for current purchasers to ensure actuarial soundness, or take such other action the Board deems appropriate.

B. The assets of the Fund shall be preserved, invested, and expended solely pursuant to and for the purposes of this chapter and shall not be loaned or otherwise transferred or used by the Commonwealth for any other purpose. Within the standard prescribed in subsection A of this section, the Board, and any person, investment manager, or committee to whom the Board delegates any of its investment authority, is authorized to acquire and retain every kind of property and every kind of investment, specifically including but not limited to (i) debentures and other corporate obligations of foreign or domestic corporations; (ii) common or preferred stocks traded on foreign or domestic stock exchanges, limited to sixty percent of total trust fund investments based on cost; (iii) not less than all of the stock of a corporation organized by the Board under the laws of the Commonwealth for the purposes of acquiring and retaining real property that the Board is authorized under this chapter to acquire and retain; and (iv) securities of any open-end or closed-end management type investment company or investment trust registered under the federal Investment Company Act of 1940, as amended, including such investment companies or investment trusts which, in turn, invest in the securities of such investment companies or investment trusts, which persons of prudence, discretion, and intelligence acquire or retain for their own account. Within the limitations of the foregoing standard, the Board may retain property properly acquired, without time limitation and without regard to its suitability for original purchase. This section shall not be construed to prohibit the investment of the Fund, by purchase or otherwise, in bonds, notes, or other obligations of the Commonwealth or its agencies and instrumentalities.

798 *Notwithstanding the foregoing, the provisions of this section limiting investments in common or*  
799 *preferred stock traded on foreign or domestic stock exchanges to sixty percent of total trust fund*  
800 *investments based on cost shall not apply to that portion of the Fund attributable to savings trust*  
801 *account contributions and the earnings thereon. All other provisions of this subsection shall apply to the*  
802 *portion of the Fund attributable to savings trust account contributions and the earnings thereon.*

803 C. The selection of services related to the operation and administration of the Fund, including, but  
804 not limited to, contracts or agreements for the management, purchase, or sale of authorized investments  
805 or actuarial, record-keeping, or consulting services, shall be governed by the foregoing standard and  
806 shall not be subject to the provisions of the Virginia Public Procurement Act (§ 11-35 et seq.).

807 D. No Board member nor any person, investment manager, or committee to whom the Board  
808 delegates any of its investment authority who acts within the standard of care set forth in subsection A  
809 shall be held personally liable for losses suffered by the Fund on investments made pursuant to this  
810 chapter.

811 § 23-38.81. Prepaid tuition contracts and savings trust agreements; terms; termination; etc.

812 A. Each prepaid tuition contract made pursuant to this chapter shall include the following terms and  
813 provisions:

814 1. The amount of payment or payments and the number of payments required from a purchaser on  
815 behalf of a qualified beneficiary;

816 2. The terms and conditions under which purchasers shall remit payments, including the dates of  
817 such payments;

818 3. Provisions for late payment charges, defaults, withdrawals, refunds, and any penalties;

819 4. The name and date of birth of the qualified beneficiary on whose behalf the contract is made;

820 5. Terms and conditions for a substitution for the qualified beneficiary originally named;

821 6. Terms and conditions for termination of the contract, including any refunds, withdrawals, or  
822 transfers of tuition prepayments, and the name of the person or persons entitled to terminate the  
823 contract;

824 7. The time period during which the qualified beneficiary must claim benefits from the fund;

825 8. The number of credit hours or quarters, semesters, or terms contracted for by the purchaser;

826 9. All other rights and obligations of the purchaser and the trust; and

827 10. Any other terms and conditions which the Board deems necessary or appropriate, including those  
828 necessary to conform the contract with the requirements of Internal Revenue Code § 529, as amended,  
829 which specifies the requirements for qualified state tuition programs.

830 B. *Each savings trust agreement made pursuant to this chapter shall include the following terms*  
831 *and provisions:*

832 1. *The maximum and minimum contribution allowed on behalf of each qualified beneficiary for the*  
833 *payment of qualified higher education expenses at eligible institutions, both as defined in § 529 of the*  
834 *Internal Revenue Code of 1986, as amended, or other applicable federal law;*

835 2. *Provisions for withdrawals, refunds, transfers, and any penalties;*

836 3. *The name, address, and date of birth of the qualified beneficiary on whose behalf the savings trust*  
837 *account is opened;*

838 4. *Terms and conditions for a substitution for the qualified beneficiary originally named;*

839 5. *Terms and conditions for termination of the account, including any refunds, withdrawals, or*  
840 *transfers, and applicable penalties, and the name of the person or persons entitled to terminate the*  
841 *account;*

842 6. *The time period during which the qualified beneficiary must use benefits from the savings trust*  
843 *account;*

844 7. *All other rights and obligations of the contributor and the Fund; and*

845 8. *Any other terms and conditions which the Board deems necessary or appropriate, including those*  
846 *necessary to conform the savings trust account with the requirements of § 529 of the Internal Revenue*  
847 *Code of 1986, as amended, or other applicable federal law.*

848 C. In addition to the provisions required by subsection A of this section, each prepaid tuition contract  
849 shall include provisions for the application of tuition prepayments (i) at accredited, nonprofit,  
850 independent institutions of higher education located in Virginia, including actual interest and income  
851 earned on such prepayments and (ii) at public and at accredited, nonprofit, independent institutions of  
852 higher education located in other states, including principal and reasonable return on such principal as  
853 determined by the Board. Payments authorized for accredited, nonprofit, independent institutions located  
854 in Virginia may not exceed the projected highest payment made for tuition at a public institution of  
855 higher education in Virginia in the same academic year, less a fee to be determined by the Board.  
856 Payments authorized for public and for accredited, nonprofit, independent institutions of higher education  
857 located in other states may not exceed the projected average payment made for tuition at a public  
858 institution of higher education in Virginia in the same academic year, less a fee to be determined by the  
859 Board.

860     C *D.* All prepaid tuition contracts *and savings trust agreements* shall specifically provide that, if after  
 861 a specified period of time the contract *or savings trust agreement* has not been terminated nor the  
 862 qualified beneficiary's rights exercised, the Board, after making reasonable effort to contact the purchaser  
 863 *or contributor* and the qualified beneficiary or their agents, shall report such unclaimed moneys to the  
 864 State Treasurer pursuant to § 55-210.12.

865     D *E.* Notwithstanding any provision of law to the contrary, money in the Fund shall be exempt from  
 866 creditor process and shall not be liable to attachment, garnishment, or other process, nor shall it be  
 867 seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any  
 868 debt or liability of any purchaser, *contributor* or beneficiary.

869     E *F.* No contract *or savings trust account* shall be assigned for the benefit of creditors, used as  
 870 security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge,  
 871 encumbrance or charge.

872     F *G.* The Board's decision on any dispute, claim, or action arising out of or related to a prepaid  
 873 tuition contract *or savings trust agreement* made *or entered into* pursuant to this chapter or benefits  
 874 thereunder shall be considered a case decision as defined in § 9-6.14:4 and all proceedings related  
 875 thereto shall be conducted pursuant to Article 3 (§ 9-6.14:11 et seq.) of the Administrative Process Act.  
 876 Judicial review shall be exclusively provided pursuant to Article 4 (§ 9-6.14:15 et seq.) of the  
 877 Administrative Process Act.

878     § 23-38.86. Admission to institutions not guaranteed.

879     Nothing in this chapter nor in any prepaid tuition contract *or savings trust agreement* shall be  
 880 construed as a promise or guarantee by the Board or the Commonwealth of any admission, continued  
 881 enrollment, or graduation at any public two-year or four-year institution of higher education in the  
 882 Commonwealth.

883     Nothing in this chapter or in any prepaid tuition contract entered into pursuant to this chapter shall  
 884 be construed as a promise or guarantee that the beneficiary's cost of tuition at an institution of higher  
 885 education other than a public institution of higher education will be covered in full by the proceeds of  
 886 the beneficiary's tuition credits.

887     *Nothing in this chapter or in any savings trust agreement entered into pursuant to this chapter shall*  
 888 *be construed as a promise or guarantee that any qualified higher education expense shall be covered in*  
 889 *full by contributions to or earnings on any savings trust account.*

890     § 23-38.87. Payroll deductions.

891     The Commonwealth and its agencies and municipalities and any employer in the Commonwealth are  
 892 authorized to agree, by contract or otherwise, to remit payments *or contributions* on behalf of an  
 893 employee toward prepaid tuition contracts *or savings trust accounts* through payroll deductions.

894     § 58.1-322. Virginia taxable income of residents.

895     A. The Virginia taxable income of a resident individual means his federal adjusted gross income for  
 896 the taxable year, which excludes combat pay for certain members of the Armed Forces of the United  
 897 States as provided in § 112 of the Internal Revenue Code, as amended, and with the modifications  
 898 specified in this section.

899     B. To the extent excluded from federal adjusted gross income, there shall be added:

900     1. Interest, less related expenses to the extent not deducted in determining federal income, on  
 901 obligations of any state other than Virginia, or of a political subdivision of any such other state unless  
 902 created by compact or agreement to which Virginia is a party;

903     2. Interest or dividends, less related expenses to the extent not deducted in determining federal  
 904 taxable income, on obligations or securities of any authority, commission or instrumentality of the  
 905 United States, which the laws of the United States exempt from federal income tax but not from state  
 906 income taxes;

907     3. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

908     4. The amount of a lump sum distribution from a qualified retirement plan, less the minimum  
 909 distribution allowance and any amount excludable for federal income tax purposes which is excluded  
 910 from federal adjusted gross income solely by virtue of an individual's election to use the averaging  
 911 provisions under § 402 of the Internal Revenue Code;

912     5. through 7. [Repealed.]

913     8. For taxable years beginning on and after January 1, 1990, and before January 1, 1994, any amount  
 914 of self-employment tax deduction under § 164 (f) of the Internal Revenue Code; and

915     9. The amount required to be included in income for the purpose of computing the partial tax on an  
 916 accumulation distribution pursuant to § 667 of the Internal Revenue Code.

917     C. To the extent included in federal adjusted gross income, there shall be subtracted:

918     1. Income derived from obligations, or on the sale or exchange of obligations, of the United States  
 919 and on obligations or securities of any authority, commission or instrumentality of the United States to  
 920 the extent exempt from state income taxes under the laws of the United States including, but not limited

921 to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of federal taxes,  
922 interest on equipment purchase contracts, or interest on other normal business transactions.

923 2. Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth  
924 or of any political subdivision or instrumentality of this Commonwealth.

925 3. [Repealed.]

926 4. Benefits received under Title II of the Social Security Act and other benefits subject to federal  
927 income taxation solely pursuant to § 86 of the Internal Revenue Code.

928 4a. A deduction equal to the amount used in computing the federal credit allowed under § 22 of the  
929 Internal Revenue Code by a retiree under age sixty-five who qualified for such retirement on the basis  
930 of permanent and total disability and who is a qualified individual as defined in § 22 (b) (2) of the  
931 Internal Revenue Code; however, any person who claims a subtraction under subdivision 5 of subsection  
932 D of this section may not also claim a deduction under this subdivision.

933 5. The amount of any refund or credit for overpayment of income taxes imposed by the  
934 Commonwealth or any other taxing jurisdiction.

935 6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not  
936 deducted for federal purposes on account of the provisions of § 280 C (a) of the Internal Revenue Code.

937 7. Any amount included therein which is foreign source income as defined in § 58.1-302.

938 8. For taxable years beginning after December 31, 1983, the available portion of total excess cost  
939 recovery as defined in former § 58.1-323 B and for taxable years beginning after December 31, 1987,  
940 the excess cost recovery amount specified in § 58.1-323.1 B.

941 9. [Expired.]

942 10. Any amount included therein less than \$600 from a prize awarded by the State Lottery  
943 Department.

944 11. The wages or salaries received by any person for active and inactive service in the National  
945 Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from thirty-nine  
946 calendar days of such service or \$3,000, whichever amount is less; however, only those persons in the  
947 ranks of O3 and below shall be entitled to the deductions specified herein.

948 12. Amounts received by an individual, not to exceed \$1,000 in any taxable year, as a reward for  
949 information provided to a law-enforcement official or agency, or to a nonprofit corporation created  
950 exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of  
951 perpetrators of crimes. This provision shall not apply to the following: an individual who is an employee  
952 of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime for which  
953 the reward was paid, or any person who is compensated for the investigation of crimes or accidents.

954 13. [Repealed.]

955 14. (Expires for taxable years beginning on and after January 1, 2004.) The amount of any qualified  
956 agricultural contribution as determined in § 58.1-322.2.

957 15. [Repealed.]

958 16. The amounts of self-employment tax required to be added in computing Virginia taxable income  
959 for taxable years beginning on and after January 1, 1990, but before January 1, 1994, pursuant to  
960 subdivision B 8 of this section, as follows:

961 a. For taxable years beginning on and after January 1, 1994, and before January 1, 1995, the amount  
962 of self-employment tax added to federal adjusted gross income in taxable years beginning on and after  
963 January 1, 1990, and before January 1, 1991;

964 b. For taxable years beginning on and after January 1, 1995, and before January 1, 1996, the amount  
965 of self-employment tax added to federal adjusted gross income in taxable years beginning on and after  
966 January 1, 1991, and before January 1, 1992;

967 c. For taxable years beginning on and after January 1, 1996, and before January 1, 1997, the amount  
968 of self-employment tax added to federal adjusted gross income in taxable years beginning on and after  
969 January 1, 1992, and before January 1, 1993;

970 d. For taxable years beginning on and after January 1, 1997, and before January 1, 1998, the amount  
971 of self-employment tax added to federal adjusted gross income in taxable years beginning on and after  
972 January 1, 1993, and before January 1, 1994, and any amount of self-employment tax required to be  
973 added back for taxable years beginning on and after January 1, 1990, and before January 1, 1994, which  
974 was not subtracted in those taxable years.

975 17. For taxable years beginning on and after January 1, 1995, the amount of "qualified research  
976 expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not  
977 deducted, on account of the provisions of § 280 C (c) of the Internal Revenue Code and which shall be  
978 available to partners, shareholders of S corporations, and members of limited liability companies to the  
979 extent and in the same manner as other deductions may pass through to such partners, shareholders, and  
980 members.

981 18. For taxable years beginning on or after January 1, 1995, all military pay and allowances, not  
982 otherwise subtracted under this subsection, earned for any month during any part of which such member



performed military service in any part of the former Yugoslavia, including the air space above such location or any waters subject to related naval operations, in support of Operation JOINT ENDEAVOR as part of the NATO Peace Keeping Force. Such subtraction shall be available until the taxpayer completes such service.

19. For taxable years beginning on and after January 1, 1996, any income received during the taxable year derived from a qualified pension, profit-sharing, or stock bonus plan as described by § 401 of the Internal Revenue Code, an individual retirement account or annuity established under § 408 of the Internal Revenue Code, a deferred compensation plan as defined by § 457 of the Internal Revenue Code, or any federal government retirement program, the contributions to which were deductible from the taxpayer's federal adjusted gross income, but only to the extent the contributions to such plan or program were subject to taxation under the income tax in another state.

20. For taxable years beginning on and after January 1, 1997, any income attributable to a distribution of benefits or a refund from a prepaid tuition contract *or savings trust account* with the Virginia Higher Education Tuition Trust Fund, created pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. The subtraction for any income attributable to a refund shall be limited to income attributable to a refund in the event of a beneficiary's death, disability, or receipt of a scholarship.

21. For taxable years beginning on or after January 1, 1998, all military pay and allowances, to the extent included in federal adjusted gross income and not otherwise subtracted, deducted or exempted under this section, earned by military personnel while serving by order of the President of the United States with the consent of Congress in a combat zone or qualified hazardous duty area which is treated as a combat zone for federal tax purposes pursuant to § 112 of the Internal Revenue Code.

D. In computing Virginia taxable income there shall be deducted from federal adjusted gross income:

1. a. The amount allowable for itemized deductions for federal income tax purposes where the taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted on such federal return and increased by an amount which, when added to the amount deducted under § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for such purposes at a rate of eighteen cents per mile; or

b. Two thousand dollars for taxable years beginning January 1, 1987, through December 31, 1987; \$2,700 for taxable years beginning January 1, 1988, through December 31, 1988; and \$5,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return); and \$3,000 for single individuals for taxable years beginning on and after January 1, 1989; provided that the taxpayer has not itemized deductions for the taxable year on his federal income tax return. For purposes of this section, any person who may be claimed as a dependent on another taxpayer's return for the taxable year may compute the deduction only with respect to earned income.

2. a. A deduction in the amount of \$700 for taxable years beginning January 1, 1987, through December 31, 1987, and \$800 for taxable years beginning on and after January 1, 1988, for each personal exemption allowable to the taxpayer for federal income tax purposes. For taxable years beginning on and after January 1, 1987, each blind or aged taxpayer as defined under § 63 (f) of the Internal Revenue Code shall be entitled to an additional personal exemption.

b. An additional deduction of \$200 for taxable years beginning January 1, 1987, through December 31, 1987, for each blind or aged taxpayer as defined under § 63 (f) of the Internal Revenue Code. The additional deduction for blind or aged taxpayers allowed under this subdivision and the additional personal exemption allowed to blind or aged taxpayers under subdivision 2 a of this subsection shall be allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income tax purposes.

3. A deduction equal to the amount of employment-related expenses upon which the federal credit is based under § 21 of the Internal Revenue Code for expenses for household and dependent care services necessary for gainful employment.

4. An additional \$1,000 deduction for each child residing for the entire taxable year in a home under permanent foster care placement as defined in Chapter 10 (§ 63.1-195 et seq.) of Title 63.1, provided the taxpayer can also claim the child as a personal exemption under § 151 of the Internal Revenue Code.

5. Effective for all taxable years beginning on and after January 1, 1990, a deduction in the amount of \$12,000 for taxpayers age sixty-five or older, or \$6,000 for taxpayers age sixty-two through sixty-four, less any amount received pursuant to the (i) Social Security Act or (ii) Railroad Retirement Act and treated for federal income tax purposes as equivalent to social security. Beginning in taxable year 1992 through taxable year 1993, the \$12,000 and \$6,000 deduction amounts shall be indexed annually in each such taxable year by an amount equivalent to the most recent percentage increase in the social security wage base.

Effective for the taxable year beginning January 1, 1994, a deduction in the amount of \$12,944 for taxpayers age sixty-five or older, or \$6,472 for taxpayers age sixty-two through sixty-four. Effective for

the taxable year beginning January 1, 1995, a deduction in the amount of \$10,000 for taxpayers age sixty-five or older, or \$5,000 for taxpayers age sixty-two through sixty-four. Effective for all taxable years beginning on or after January 1, 1996, a deduction in the amount of \$12,000 for taxpayers age sixty-five or older, or \$6,000 for taxpayers age sixty-two through sixty-four.

Beginning in taxable year 1995, the deduction under this subdivision shall not be reduced by any amount received pursuant to the (i) Social Security Act or (ii) Railroad Retirement Act and treated for federal income tax purposes as equivalent to social security.

6. For taxable years beginning on and after January 1, 1997, the amount an individual pays as a fee for an initial screening to become a possible bone marrow donor, if (i) the individual is not reimbursed for such fee or (ii) the individual has not claimed a deduction for the payment of such fee on his federal income tax return.

7. a. (Effective for taxable years beginning on and after January 1, 1996.) A deduction shall be allowed to the purchaser *or contributor* for the amount paid *or contributed* during the taxable year for a prepaid tuition contract *or savings trust account* entered into with the Virginia Higher Education Tuition Trust Fund, pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. The amount deducted on any individual income tax return in any taxable year shall be limited to \$2,000 per prepaid tuition contract *or savings trust account*. No deduction shall be allowed pursuant to this section if such payments *or contributions* are deducted on the purchaser's *or contributor's* federal income tax return. ~~The deduction allowed under this section shall not be transferable.~~ If the purchase price *or annual contribution to a savings trust account* exceeds \$2,000, the remainder may be carried forward and subtracted in future taxable years until the purchase price *or savings trust contribution* has been fully deducted; however, in no event shall the amount deducted in any taxable year exceed \$2,000 per contract *or per savings trust account*. Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year or years in which distributions or refunds are made for any reason other than (i) to pay qualified higher education expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death, disability, or receipt of a scholarship. *For the purposes of this subdivision, the term "purchaser" or "contributor" means the person shown as such on the records of the Virginia Higher Education Tuition Trust Fund as of December 31 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or savings trust account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition contract or savings trust account, including, but not limited to, carryover and recapture of deductions.*

b. (Effective for taxable years beginning on and after January 1, 1996.) The amount paid for a prepaid tuition contract during taxable years beginning on or after January 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after January 1, 1998, and shall be subject to the limitations set out in subdivision 7 a.

8. For taxable years beginning on and after January 1, 2000, the total amount an individual actually contributed in funds to the Virginia Public School Construction Grants Program and Fund, established in Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1, provided the individual has not claimed a deduction for such amount on his federal income tax return.

E. There shall be added to or subtracted from federal adjusted gross income (as the case may be) the individual's share, as beneficiary of an estate or trust, of the Virginia fiduciary adjustment determined under § 58.1-361.

F. There shall be added or subtracted, as the case may be, the amounts provided in § 58.1-315 as transitional modifications.

**2. That the provisions of this act amending § 58.1-322 of the Code of Virginia that create a deduction and subtraction for savings trust accounts shall be effective for taxable years beginning on and after January 1, 1999. The other provisions of this act amending § 58.1-322 of the Code of Virginia are declaratory of existing law.**

**[ 3. That for the purposes of any of the computations required under the Personal Property Tax Relief Act of 1998, Chapter 35.1 (§ 58.1-3523 et seq.) of the Code of Virginia, the estimated decrease in revenue attributable to the provisions of this act shall be considered as receipts or amounts actually collected. ]**