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HOUSE BILL NO. 1343**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Appropriations
on February 12, 2016)

(Patron Prior to Substitute—Delegate Jones)

A BILL to amend and reenact §§ 2.2-2101, as it is currently effective and as it shall become effective, 2.2-3705.6, 2.2-3711, and 23-9.6:1 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 24 of Title 2.2 an article numbered 26, consisting of sections numbered 2.2-2484 through 2.2-2488, relating to the creation of the Virginia Growth and Opportunity Board; awarding of grants for certain research and development, technology, and economic development projects.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2101, as it is currently effective and as it shall become effective, 2.2-3705.6, 2.2-3711, and 23-9.6:1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 24 of Title 2.2 an article numbered 26, consisting of sections numbered 2.2-2484 through 2.2-2488, as follows:

§ 2.2-2101. (Effective until July 1, 2017) Prohibition against service by legislators on boards, commissions, and councils within the executive branch; exceptions.

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government who are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch of state government that is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position.

The provisions of this section shall not apply to members of the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.3; to members of the Board of Trustees of the Southern Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.25; to members of the Board of Directors of the New College Institute who shall be appointed as provided for in § 23-231.31; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § 2.2-5204; to members of the Board of Veterans Services, who shall be appointed as provided for in § 2.2-2452; to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § 23-231.15; to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § 2.2-2423; to members of the Standards of Learning Innovation Committee, who shall be appointed as provided for in § 22.1-253.13:10; to members of the Board of Visitors of the Virginia School for the Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.2; to members of the Substance Abuse Services Council, who shall be appointed as provided for in § 2.2-2696; to members of the Criminal Justice Services Board, who shall be appointed as provided in § 9.1-108; to members of the Council on Virginia's Future, who shall be appointed as provided for in § 2.2-2685; to members of the State Executive Council for Children's Services, who shall be appointed as provided in § 2.2-2648; to members of the Virginia Board of Workforce Development, who shall be appointed as provided for in § 2.2-2471; to members of the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund Board, who shall be appointed as provided for in § 51.1-1201; to members of the Secure Commonwealth Panel, who shall be appointed as provided for in § 2.2-222.3; to members of the Forensic Science Board, who shall be appointed as provided for in § 9.1-1109; or to members of the Southwest Virginia Cultural Heritage Foundation, who shall be appointed as provided in § 2.2-2735; or to members of the Virginia Growth and Opportunity Board, who shall be appointed as provided in § 2.2-2486.

§ 2.2-2101. (Effective July 1, 2017) Prohibition against service by legislators on boards, commissions, and councils within the executive branch; exceptions.

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government who are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch of state government that is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position.

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61 be appointed as provided for in § 54.1-901; to members of the Board of Trustees of the Southwest
62 Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.3; to members of
63 the Board of Trustees of the Southern Virginia Higher Education Center, who shall be appointed as
64 provided for in § 23-231.25; to members of the Board of Directors of the New College Institute who
65 shall be appointed as provided for in § 23-231.31; to members of the Virginia Interagency Coordinating
66 Council who shall be appointed as provided for in § 2.2-5204; to members of the Board of Veterans
67 Services, who shall be appointed as provided for in § 2.2-2452; to members appointed to the Board of
68 Trustees of the Roanoke Higher Education Authority pursuant to § 23-231.15; to members of the
69 Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in
70 § 2.2-2423; to members of the Standards of Learning Innovation Committee, who shall be appointed as
71 provided for in § 22.1-253.13; to members of the Board of Visitors of the Virginia School for the
72 Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.2; to members of the
73 Substance Abuse Services Council, who shall be appointed as provided for in § 2.2-2696; to members of
74 the Criminal Justice Services Board, who shall be appointed as provided in § 9.1-108; to members of the
75 State Executive Council for Children's Services, who shall be appointed as provided in § 2.2-2648; to
76 members of the Virginia Board of Workforce Development, who shall be appointed as provided for in
77 § 2.2-2471; to members of the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund
78 Board, who shall be appointed as provided for in § 51.1-1201; to members of the Secure Commonwealth
79 Panel, who shall be appointed as provided for in § 2.2-222.3; to members of the Forensic Science
80 Board, who shall be appointed as provided for in § 9.1-1109; ~~or~~ to members of the Southwest Virginia
81 Cultural Heritage Foundation, who shall be appointed as provided in § 2.2-2735; *or to members of the*
82 *Virginia Growth and Opportunity Board, who shall be appointed as provided in § 2.2-2486.*

83 *Article 26.*

84 *Virginia Growth and Opportunity Act.*

85 **§ 2.2-2484. Definitions.**

86 *As used in this article, unless the context requires a different meaning:*

87 *"Board" means the Virginia Growth and Opportunity Board.*

88 *"Council" means the State Council of Higher Education for Virginia.*

89 *"Research Fund" means the Virginia Research, Development, and Commercialization Fund.*

90 **§ 2.2-2485. Virginia Growth and Opportunity Board; membership; terms; compensation.**

91 *A. The Virginia Growth and Opportunity Board is established as a policy board in the executive*
92 *branch of state government. The purpose of the Board is (i) to promote collaborative regional economic*
93 *and workforce development opportunities and activities in the Commonwealth and (ii) to foster*
94 *innovative and collaborative research, development, and commercialization efforts in the*
95 *Commonwealth.*

96 *B. The Board shall have a total membership of 21 members that shall consist of seven legislative*
97 *members, 11 nonlegislative citizen members, and three ex officio members. Members shall be appointed*
98 *as follows: four members of the House of Delegates, consisting of the Chairman of the House*
99 *Committee on Appropriations and three members appointed by the Speaker of the House of Delegates;*
100 *three members of the Senate, consisting of the Chairman of the Senate Committee on Finance and two*
101 *members appointed by the Senate Committee on Rules; four nonlegislative citizen members to be*
102 *appointed by the Speaker of the House of Delegates, who shall be from different regions of the*
103 *Commonwealth and have significant private-sector business experience; four nonlegislative citizen*
104 *members to be appointed by the Senate Committee on Rules, who shall be from different regions of the*
105 *Commonwealth and have significant private-sector business experience; and three nonlegislative citizen*
106 *members to be appointed by the Governor, who shall be from different regions of the Commonwealth*
107 *and have significant private-sector business experience. At least two of the nonlegislative citizen*
108 *members appointed by the Governor shall represent areas other than those represented by Planning*
109 *District 8, 15, 16, or 23. The Governor shall also appoint three Secretaries from the following, who*
110 *shall serve ex officio with voting privileges: the Secretary of Agriculture and Forestry, the Secretary of*
111 *Commerce and Trade, the Secretary of Education, the Secretary of Finance, and the Secretary of*
112 *Technology. Nonlegislative citizen members shall be citizens of the Commonwealth.*

113 *C. Legislative members and ex officio members of the Board shall serve terms coincident with their*
114 *terms of office. After the initial staggering of terms, nonlegislative citizen members shall be appointed*
115 *for a term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for*
116 *the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. No*
117 *House member appointed by the Speaker of the House shall serve more than four consecutive two-year*
118 *terms, no Senate member appointed by the Senate Committee on Rules shall serve more than two*
119 *consecutive four-year terms, and no nonlegislative citizen member shall serve more than two consecutive*
120 *four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not*
121 *constitute a term in determining the member's eligibility for reappointment.*

D. The Board shall elect a chairman and vice-chairman from among its membership. The chairman shall be a nonlegislative citizen member. A majority of the members shall constitute a quorum.

E. Legislative members of the Board shall receive such compensation as provided in § 30-19.12, and nonlegislative citizen members shall receive compensation as provided in § 2.2-2813 for the performance of their duties. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825.

F. Staff support and technical assistance to the Board and the Governor in carrying out the provisions of this article shall be provided by the agencies of the Secretariats of Commerce and Trade, Education, and Finance.

§ 2.2-2486. Powers and duties of the Board related to research, development, and commercialization.

The Board shall have the power and duty to:

1. Hold meetings and functions at any place within the Commonwealth that it deems necessary;
2. Approve procedures, criteria, and guidelines developed by the Council for the application for and award of grants from the Research Fund pursuant to subsection A of § 2.2-2488;
3. Receive recommendations for the funding of projects and programs pursuant to § 2.2-2488;
4. Award grants from the Research Fund pursuant to the provisions of this article; and
5. Report on or before December 1 of each year on grants made during the year from the Research Fund and the progress or status of projects or programs funded with such grants. The annual report shall be submitted by the chairman as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be published as a state document.

B. The development of guidelines and procedures to implement the provisions of this article shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

§ 2.2-2487. Virginia Research, Development, and Commercialization Fund.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Research, Development, and Commercialization Fund. The Research Fund shall be established on the books of the Comptroller. All moneys appropriated by the General Assembly for the Research Fund, and from any other sources, public or private, shall be paid into the state treasury and credited to the Research Fund. Interest earned on moneys in the Research Fund shall remain in the Research Fund and be credited to it. Any moneys remaining in the Research Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Research Fund. Expenditures and disbursements from the Research Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the chairman of the Board.

B. Moneys in the Research Fund shall be used to promote research and development excellence in the Commonwealth; to foster innovative and collaborative research, development, and commercialization efforts in the Commonwealth in projects and programs with a high potential for economic development and job creation opportunities; to attract and acquire eminent researchers to enhance research superiority at public institutions of higher education; and to position the Commonwealth as a national leader in science-based and technology-based research, development, and commercialization.

§ 2.2-2488. Award of Research Fund grants.

A. Consistent with the duties set forth in § 23-9.6:1, the Council shall develop procedures, criteria, and guidelines for the application for and award of grants from the Research Fund, subject to approval by the Board. The criteria for the award of grants shall consider other grants, awards, or other funds awarded to the proposed program or project by the Commonwealth, and shall require a grant applicant to indicate other applications for state grants, awards, or funds currently pending at the time of the application for an award from the Research Fund. The criteria shall consider the potential of the program or project for which a grant is sought to (i) culminate in the commercialization of research; (ii) culminate in the formation or spin-off of viable bioscience, biotechnology, cybersecurity, genomics, or similar companies; (iii) promote the build-out of centers of excellence in science and technology; (iv) promote applied research and development; (v) provide modern facilities or infrastructure for research and development; (vi) result in significant capital investment and job creation; (vii) promote collaboration among the public institutions of higher education in the Commonwealth; or (viii) foster regional economic development or diversification. Such criteria shall also require that the program or project for which a grant is sought be related to an area identified in the Commonwealth Research and Technology Strategic Roadmap.

B. Applications for grants from the Research Fund shall be received by the Council in accordance with the procedures developed pursuant to subsection A. Upon confirmation that an application is complete, the Council shall forward the application to an entity with recognized science and technology expertise for a review and certification of the scientific merits of the proposal, including a scoring or prioritization of applicant programs and projects deemed viable by the reviewing entity. Such entities

183 include, but are not limited to, the Virginia Biosciences Health Research Corporation, the Center for
184 Innovative Technology, the Research and Technology Investment Advisory Council, the Virginia
185 Academy of Science, Engineering and Medicine, or any other entity deemed appropriate by the Council,
186 including a scientific advisory committee created by the Council for the sole purpose of reviewing one
187 or more applications received pursuant to this article.

188 C. 1. After the review required by subsection B, the Council shall forward the applications deemed
189 viable, along with the scoring or prioritization, to the Research Proposal Review Committee established
190 herein.

191 2. The Research Proposal Review Committee shall consist of eight members as follows: the director
192 of the Council, the president of the Center for Innovative Technology, the staff directors of the House
193 Committee on Appropriations and the Senate Committee on Finance, the director of the Department of
194 Planning and Budget, and three nonlegislative citizen members of the Board to be appointed by the
195 chairman of the Board. The director of the Council shall serve as the chairman of the Research
196 Proposal Review Committee.

197 3. The Research Proposal Review Committee shall review and evaluate the applications forwarded to
198 it by the Council. If the Research Proposal Review Committee deems it necessary, it may meet with and
199 question the grant applicants in order to gather additional information relevant to the program or
200 project in order to better assess the commercialization and the potential economic impact presented by
201 the applications.

202 4. The Research Proposal Review Committee shall forward its recommendations and comments
203 regarding the applications to the Board for consideration.

204 D. The Board shall review the applications, taking into account the scoring and prioritization of the
205 scientific review pursuant to subsection B and the recommendations of the Research Proposal Review
206 Committee pursuant to subsection C. A decision by the Board to award grants from the Research Fund
207 shall require an affirmative vote of (i) a majority of the members of the Board who are present and
208 voting, (ii) a majority of the legislative members of the Board from the House of Delegates who are
209 present and voting, (iii) a majority of the legislative members of the Board from the Senate who are
210 present and voting, and (iv) a majority of the members of the Board who are gubernatorial Secretaries
211 who are present and voting. Decisions of the Board shall be final and not subject to review or appeal.

212 E. The Board may condition the receipt of any grant awarded pursuant to this section on any
213 performance metrics, goals, or criteria as it deems appropriate. Any applicant awarded a grant shall be
214 required to report to the Board on the progress and results of the program or project on a schedule set
215 in accordance with the procedures, criteria, and guidelines developed pursuant to this article and the
216 individual terms of the award.

217 **§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.**

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

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

222 2. Financial statements not publicly available filed with applications for industrial development
223 financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

224 3. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of
225 confidentiality from a public body, used by the public body for business, trade and tourism development
226 or retention; and memoranda, working papers or other records related to businesses that are considering
227 locating or expanding in Virginia, prepared by a public body, where competition or bargaining is
228 involved and where, if such records are made public, the financial interest of the public body would be
229 adversely affected.

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

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

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

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

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

Chapter 10 of Title 32.1.

9. 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 Transportation Equity Act for the 21st Century (P.L. 105-178) 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 Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

10. Confidential information designated as provided in subsection F of § 2.2-4342 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 § 2.2-4317.

11. a. Memoranda, staff evaluations, or other records prepared by the responsible public entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (i) if such records were made public prior to or after the execution of an interim or a comprehensive agreement, § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public entity would be adversely affected, and (ii) the basis for the determination required in clause (i) is documented in writing by the responsible public entity; and

b. Records provided by a private entity to a responsible public entity, affected jurisdiction, or affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure Act of 2002, to the extent that such records contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial records of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity, where, if the records were made public prior to the execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining position of the public or private entity would be adversely affected. In order for the records specified in clauses (i), (ii), and (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the responsible public entity:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

2. Identifying with specificity the data or other materials for which protection is sought; and

3. Stating the reasons why protection is necessary.

The responsible public entity shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. To protect other records submitted by the private entity from disclosure, the responsible public entity shall determine whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement would adversely affect the financial interest or bargaining position of the public or private entity. The responsible public entity shall make a written determination of the nature and scope of the protection to be afforded by the responsible public entity under this subdivision. Once a written determination is made by the responsible public entity, the records afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of any affected jurisdiction or affected local jurisdiction.

Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed to authorize the withholding of (a) procurement records as required by § 33.2-1820 or 56-575.17; (b) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity and the private entity; (c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or (d) information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction," "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education Facilities and Infrastructure Act of 2002.

12. Confidential proprietary information or trade secrets, not publicly available, provided by a private person or entity to the Virginia Resources Authority or to a fund administered in connection with

306 financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such
307 information were made public, the financial interest of the private person or entity would be adversely
308 affected, and, after June 30, 1997, where such information was provided pursuant to a promise of
309 confidentiality.

310 13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential
311 proprietary records that are not generally available to the public through regulatory disclosure or
312 otherwise, provided by a (a) bidder or applicant for a franchise or (b) franchisee under Chapter 21
313 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of
314 confidentiality from the franchising authority, to the extent the records relate to the bidder's, applicant's,
315 or franchisee's financial capacity or provision of new services, adoption of new technologies or
316 implementation of improvements, where such new services, technologies or improvements have not been
317 implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such
318 records were made public, the competitive advantage or financial interests of the franchisee would be
319 adversely affected.

320 In order for trade secrets or confidential proprietary information to be excluded from the provisions
321 of this chapter, the bidder, applicant, or franchisee shall (i) invoke such exclusion upon submission of
322 the data or other materials for which protection from disclosure is sought, (ii) identify the data or other
323 materials for which protection is sought, and (iii) state the reason why protection is necessary.

324 No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the
325 bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the
326 applicable franchising authority serves on the management board or as an officer of the bidder,
327 applicant, or franchisee.

328 14. Documents and other information of a proprietary nature furnished by a supplier of charitable
329 gaming supplies to the Department of Agriculture and Consumer Services pursuant to subsection E of
330 § 18.2-340.34.

331 15. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple
332 Board pursuant to § 3.2-1215.

333 16. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1,
334 submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery
335 Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

336 17. Records submitted as a grant or loan application, or accompanying a grant or loan application, to
337 the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.) of
338 Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 22
339 (§ 23-277 et seq.) of Title 23 to the extent such records contain proprietary business or research-related
340 information produced or collected by the applicant in the conduct of or as a result of study or research
341 on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information
342 has not been publicly released, published, copyrighted, or patented, if the disclosure of such information
343 would be harmful to the competitive position of the applicant.

344 18. Confidential proprietary records and trade secrets developed and held by a local public body (i)
345 providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television
346 services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2, to the extent that
347 disclosure of such records would be harmful to the competitive position of the locality. In order for
348 confidential proprietary information or trade secrets to be excluded from the provisions of this chapter,
349 the locality in writing shall (a) invoke the protections of this subdivision, (b) identify with specificity the
350 records or portions thereof for which protection is sought, and (c) state the reasons why protection is
351 necessary.

352 19. Confidential proprietary records and trade secrets developed by or for a local authority created in
353 accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to provide
354 qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of
355 Title 56, where disclosure of such information would be harmful to the competitive position of the
356 authority, except that records required to be maintained in accordance with § 15.2-2160 shall be
357 released.

358 20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial
359 records of a business, including balance sheets and financial statements, that are not generally available
360 to the public through regulatory disclosure or otherwise, provided to the Department of Small Business
361 and Supplier Diversity as part of an application for certification as a small, women-owned, or
362 minority-owned business in accordance with Chapter 16.1 (§ 2.2-1603 et seq.). In order for such trade
363 secrets or financial records to be excluded from the provisions of this chapter, the business shall (i)
364 invoke such exclusion upon submission of the data or other materials for which protection from
365 disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state
366 the reasons why protection is necessary.

367 21. Documents and other information of a proprietary or confidential nature disclosed by a carrier to

the State Health Commissioner pursuant to §§ 32.1-276.5:1 and 32.1-276.7:1.

22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including, but not limited to, financial records, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the State Inspector General for the purpose of an audit, special investigation, or any study requested by the Office of the State Inspector General in accordance with law.

In order for the records specified in this subdivision to be excluded from the provisions of this chapter, the private or nongovernmental entity shall make a written request to the State Inspector General:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

2. Identifying with specificity the data or other materials for which protection is sought; and

3. Stating the reasons why protection is necessary.

The State Inspector General shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. The State Inspector General shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

23. Records submitted as a grant application, or accompanying a grant application, to the Tobacco Region Revitalization Commission to the extent such records contain (i) trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), (ii) financial records of a grant applicant that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, or (iii) 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, technological, 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; and memoranda, staff evaluations, or other records prepared by the Commission or its staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision shall apply to grants that are consistent with the powers of and in furtherance of the performance of the duties of the Commission pursuant to § 3.2-3103.

In order for the records specified in this subdivision to be excluded from the provisions of this chapter, the applicant shall make a written request to the Commission:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

2. Identifying with specificity the data, records or other materials for which protection is sought; and

3. Stating the reasons why protection is necessary.

The Commission shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets, financial records or research-related information of the applicant. The Commission shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

24. a. Records of the Commercial Space Flight Authority relating to rate structures or charges for the use of projects of, the sale of products of, or services rendered by the Authority if public disclosure would adversely affect the financial interest or bargaining position of the Authority or a private entity providing records to the Authority; or

b. Records provided by a private entity to the Commercial Space Flight Authority, to the extent that such records contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial records of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity, where, if the records were made public, the financial interest or bargaining position of the Authority or private entity would be adversely affected.

In order for the records specified in clauses (i), (ii), and (iii) of subdivision 24 b to be excluded from the provisions of this chapter, the private entity shall make a written request to the Authority:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

2. Identifying with specificity the data or other materials for which protection is sought; and

3. Stating the reasons why protection is necessary.

The Authority shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. To protect other records submitted by the private entity from disclosure, the Authority shall determine whether public disclosure would adversely affect the financial interest or bargaining position of the Authority or private entity. The Authority shall make a written determination of the nature and scope of the protection to be afforded by it under this

subdivision.

25. Documents and other information of a proprietary nature furnished by an agricultural landowner or operator to the Department of Conservation and Recreation, the Department of Environmental Quality, the Department of Agriculture and Consumer Services or any political subdivision, agency, or board of the Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when required as part of a state or federal regulatory enforcement action.

26. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to the Department of Environmental Quality pursuant to the provisions of § 10.1-1458. In order for such trade secrets to be excluded from the provisions of this chapter, the submitting party shall (i) invoke this exclusion upon submission of the data or materials for which protection from disclosure is sought, (ii) identify the data or materials for which protection is sought, and (iii) state the reasons why protection is necessary.

27. Documents and other information of a proprietary nature furnished by a licensed public-use airport to the Department of Aviation for funding from programs administered by the Department of Aviation or the Virginia Aviation Board, where if the records were made public, the financial interest of the public-use airport would be adversely affected.

In order for the records specified in this subdivision to be excluded from the provisions of this chapter, the public-use airport shall make a written request to the Department of Aviation:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

2. Identifying with specificity the data or other materials for which protection is sought; and

3. Stating the reasons why protection is necessary.

28. *Records submitted as a grant application, or accompanying a grant application, for an award from the Virginia Research, Development, and Commercialization Fund pursuant to Article 26 (§ 2.2-2484 et seq.) of Chapter 24 of Title 2.2, to the extent that such records contain 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, technological, 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.*

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

A. Public bodies may hold closed meetings 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 public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is 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 or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any Virginia public 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 a closed meeting, if such student, parents, or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

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

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

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

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

7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe

will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

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

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

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

11. Discussion or consideration of tests, examinations, or other records excluded from this chapter pursuant to subdivision 4 of § 2.2-3705.1.

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

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

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

15. Discussion or consideration of medical and mental health records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.5.

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

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

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

19. Discussion of plans to protect public safety as it relates to terrorist activity or specific cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such matters or a related threat to public safety; discussion of records excluded from this chapter pursuant to subdivision 3 or 4 of § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of any person or the security of any facility, building, structure, information technology system, or software program; or discussion of reports or plans related to the security of any governmental facility, building or structure, or the safety of persons using such facility, building or structure.

20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or

other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in which individual adult death cases are discussed by the state Adult Fatality Review Team established pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

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

23. In the case of the Virginia Commonwealth University Health System Authority, discussion or consideration of any of the following: the acquisition or disposition of real or personal property where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; operational plans that could affect the value of such 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 adversely affect 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. This exemption shall also apply when the foregoing discussions occur at a meeting of the Virginia Commonwealth University Board of Visitors.

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

25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23 is discussed.

26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of wireless E-911 service.

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

28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are defined in § 33.2-1800, or any independent review panel appointed to review information and advise the responsible public entity concerning such records.

29. Discussion of the award of a public contract involving the expenditure of public funds, including

interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.

30. Discussion or consideration of grant or loan application records excluded from this chapter pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

31. Discussion or consideration by the Commitment Review Committee of records excluded from this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

32. [Expired.]

33. Discussion or consideration of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6.

34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

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

36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from this chapter pursuant to subdivision A 2 a of § 2.2-3706.

37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

38. Discussion or consideration by the Virginia Port Authority of records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.6.

39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this chapter pursuant to subdivision 25 of § 2.2-3705.7.

40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.6.

41. Discussion or consideration by the Board of Education of records relating to the denial, suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of § 2.2-3705.3.

42. Those portions of meetings of the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, during which there is discussion of records excluded from this chapter pursuant to subdivision 12 of § 2.2-3705.2.

43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of records excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.

44. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of § 2.2-3705.6.

45. Discussion or consideration by the board of directors of the Commercial Space Flight Authority of records excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6.

46. Discussion or consideration of personal and proprietary information that are excluded from the provisions of this chapter pursuant to (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of § 10.1-104.7. This exemption shall not apply to the discussion or consideration of records that contain information that has been certified for release by the person who is the subject of the information or transformed into a statistical or aggregate form that does not allow identification of the person who supplied, or is the subject of, the information.

47. (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control Authority of records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.3 or subdivision 34 of § 2.2-3705.7.

48. Discussion or consideration of grant application records excluded from this chapter pursuant to

675 subdivision 28 of § 2.2-3705.6 related to the submission of an application for an award from the
676 Virginia Research, Development, and Commercialization Fund pursuant to Article 26 (§ 2.2-2484 et
677 seq.) of Chapter 24 of Title 2.2.

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

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

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

688 E. This section shall not be construed to (i) require the disclosure of any contract between the
689 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1
690 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant
691 to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body
692 empowered to issue industrial revenue bonds by general or special law, to identify a business or industry
693 to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of
694 public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance
695 of such bonds.

696 **§ 23-9.6:1. Duties of Council generally.**

697 In addition to such other duties as may be prescribed elsewhere, the State Council of Higher
698 Education shall:

699 1. Develop a statewide strategic plan that (i) reflects the goals set forth in subsection B of § 23-38.88
700 or (ii) once adopted, reflects the goals and objectives developed pursuant to subdivision B 5 of
701 § 23-38.87:20 for higher education in the Commonwealth, identifies a coordinated approach to such state
702 and regional goals, and emphasizes the future needs for higher education in Virginia at both the
703 undergraduate and the graduate levels, as well as the mission, programs, facilities and location of each
704 of the existing institutions of higher education, each public institution's six-year plan, and such other
705 matters as the Council deems appropriate. The Council shall revise such plans at least once every six
706 years and shall submit such recommendations as are necessary for the implementation of the plan to the
707 Governor and the General Assembly.

708 2. Review and approve or disapprove any proposed change in the statement of mission of any
709 presently existing public institution of higher education and to define the mission of all public
710 institutions of higher education created after the effective date of this provision. The Council shall,
711 within the time prescribed in subdivision 1, make a report to the Governor and the General Assembly
712 with respect to its actions hereunder. No such actions shall become effective until 30 days after
713 adjournment of the session of the General Assembly next following the filing of such a report. Nothing
714 contained in this provision shall be construed to authorize the Council to modify any mission statement
715 adopted by the General Assembly, nor to empower the Council to affect, either directly or indirectly, the
716 selection of faculty or the standards and criteria for admission of any public institution, whether related
717 to academic standards, residence or other criteria; it being the intention of this section that faculty
718 selection and student admission policies shall remain a function of the individual institutions.

719 3. Study any proposed escalation of any public institution to a degree-granting level higher than that
720 level to which it is presently restricted and to submit a report and recommendation to the Governor and
721 the General Assembly relating to the proposal. The study shall include the need for and benefits or
722 detriments to be derived from the escalation. No such institution shall implement any such proposed
723 escalation until the Council's report and recommendation have been submitted to the General Assembly
724 and the General Assembly approves the institution's proposal.

725 4. Review and approve or disapprove all enrollment projections proposed by each public institution
726 of higher education. The Council's projections shall be in numerical terms by level of enrollment and
727 shall be used for budgetary and fiscal planning purposes only. The Council shall develop estimates of
728 the number of degrees to be awarded by each institution and include those estimates in its reports of
729 enrollment projections. The student admissions policies for the institutions and their specific programs
730 shall remain the sole responsibility of the individual boards of visitors; however, all four-year
731 institutions shall adopt dual admissions policies with the community colleges, as required by
732 § 23-9.2:3.02.

733 5. Review and approve or disapprove all new academic programs which any public institution of
734 higher education proposes. As used herein, "academic programs" include both undergraduate and
735 graduate programs.

736 6. Review and require the discontinuance of any undergraduate or graduate academic program that is

presently offered by any public institution of higher education when the Council determines that such academic program is (i) nonproductive in terms of the number of degrees granted, the number of students served by the program, the program's effectiveness, and budgetary considerations, or (ii) supported by state funds and is unnecessarily duplicative of academic programs offered at other public institutions of higher education in the Commonwealth. The Council shall make a report to the Governor and the General Assembly with respect to the discontinuance of any such academic program. No such discontinuance shall become effective until 30 days after the adjournment of the session of the General Assembly next following the filing of such report.

7. Review and approve or disapprove the creation and establishment of any department, school, college, branch, division or extension of any public institution of higher education that such institution proposes to create and establish. This duty and responsibility shall be applicable to the proposed creation and establishment of departments, schools, colleges, branches, divisions and extensions, whether located on or off the main campus of the institution in question. If any organizational change is determined by the Council to be proposed solely for the purpose of internal management and the institution's curricular offerings remain constant, the Council shall approve the proposed change. Nothing in this provision shall be construed to authorize the Council to disapprove the creation and establishment of any department, school, college, branch, division or extension of any institution that has been created and established by the General Assembly.

8. Review the proposed closure of any academic program in a high demand or critical shortage area, as defined by the Council, by any public institution of higher education and assist in the development of an orderly closure plan, when needed.

9. Develop a uniform, comprehensive data information system designed to gather all information necessary to the performance of the Council's duties. The system shall include information on admissions, enrollments, self-identified students with documented disabilities, personnel, programs, financing, space inventory, facilities and such other areas as the Council deems appropriate. When consistent with the Government Data Collection and Dissemination Practices Act, the Virginia Unemployment Compensation Act, and applicable federal law, the Council, acting solely or in partnership with the Virginia Department of Education or the Virginia Employment Commission, may contract with private entities to create de-identified student records for the purpose of assessing the performance of institutions and specific programs relative to the workforce needs of the Commonwealth. For the purposes of this section, "de-identified student records" means records in which all personally identifiable information has been removed.

10. Develop in cooperation with institutions of higher education guidelines for the assessment of student achievement. An institution shall use an approved program that complies with the guidelines of the Council and is consistent with the institution's mission and educational objectives in the development of such assessment. The Council shall report the institutions' assessments of student achievement in the biennial revisions to the state's master plan for higher education.

11. Develop in cooperation with the appropriate state financial and accounting officials and to establish uniform standards and systems of accounting, record keeping and statistical reporting for the public institutions of higher education.

12. Review biennially and approve or disapprove all changes in the inventory of educational and general space that any public institution of higher education may propose, and to make a report to the Governor and the General Assembly with respect thereto. No such change shall be made until 30 days after the adjournment of the session of the General Assembly next following the filing of such report.

13. Visit and study the operations of each of the public institutions of higher education at such times as the Council shall deem appropriate and to conduct such other studies in the field of higher education as the Council deems appropriate or as may be requested by the Governor or the General Assembly.

14. Provide advisory services to private, accredited and nonprofit institutions of higher education, whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education, on academic, administrative, financial and space utilization matters. The Council may also review and advise on joint activities, including contracts for services between such public and private institutions of higher education or between such private institutions and any agency of the Commonwealth or political subdivision thereof.

15. Adopt such rules and regulations as the Council believes necessary to implement all of the Council's duties and responsibilities as set forth in this Code. The various public institutions of higher education shall comply with such rules and regulations.

16. Issue guidelines consistent with the provisions of the federal Family Education Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g requiring public institutions of higher education to release a student's academic and disciplinary record to a student's parent.

17. Require that each institution of higher education formed, chartered, or established in the Commonwealth after July 1, 1980, shall ensure the preservation of student transcripts in the event of

institutional closure or revocation of approval to operate in the Commonwealth of Virginia. An institution may provide for the preservation of student transcripts by binding agreement with another institution of higher education with which it is not corporately connected or in such other way as the Council may authorize by regulation. In the event an institution closes, or has its approval to operate in the Commonwealth revoked, the Council, through its Director, may take such action as is necessary to secure and preserve the student transcripts until such time as an appropriate institution accepts all or some of the transcripts. Nothing in this section shall be deemed to interfere with the right of a student to his own transcripts; nor shall this section authorize disclosure of student records except as may otherwise be authorized by law.

18. Require the development and submission of articulation, dual admissions, and guaranteed admissions agreements between two-year and four-year public institutions of higher education in Virginia.

19. Provide periodic updates of base adequacy funding guidelines adopted by the Joint Subcommittee Studying Higher Education Funding Policies for the various public institutions.

20. Develop a uniform certificate of general studies program, in consultation with the Virginia Community College System and Virginia public institutions of higher education, to be offered at each community college in Virginia. Such program shall ensure that a community college student who completes the one-year certificate program shall be able to transfer all credits earned in academic subject coursework to a four-year public institution of higher education in the Commonwealth upon acceptance to the institution.

21. *Assist the Virginia Growth and Opportunity Board with the administration of the Commonwealth Research, Development, and Commercialization Fund consistent with the provisions of Article 26 (§ 2.2-2484 et seq.) of Chapter 24 of Title 2.2.*

In carrying out its duties and responsibilities, the Council, insofar as practicable, shall preserve the individuality, traditions and sense of responsibility of the respective institutions. The Council, insofar as practicable, shall seek the assistance and advice of the respective institutions in fulfilling all of its duties and responsibilities.

2. That the initial appointments of nonlegislative citizen members to the Virginia Growth and Opportunity Board shall be staggered as follows: (i) one member for two years, two members for three years, and one member for one year appointed by the Speaker of the House of Delegates; (ii) two members for two years, one member for three years, and one member for four years appointed by the Senate Committee on Rules; and (iii) one member for two years, one member for three years, and one member for four years appointed by the Governor.