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**HOUSE BILL NO. 1343****AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee on Finance  
on March 7, 2016)

(Patron Prior to Substitute—Delegate Jones)

*A BILL to amend and reenact §§ 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 Title 23 a chapter numbered 28, consisting of sections numbered 23-304 through 23-307, and by adding in Article 3.1 of Chapter 1 of Title 51.1 a section numbered 51.1-124.38, relating to research and development in the Commonwealth.*

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

**1. That §§ 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 Title 23 a chapter numbered 28, consisting of sections numbered 23-304 through 23-307, and by adding in Article 3.1 of Chapter 1 of Title 51.1 a section numbered 51.1-124.38 as follows:**

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

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

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

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

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

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

6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the 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.

7. 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.

8. 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.

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

60 Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (i) if such records were  
61 made public prior to or after the execution of an interim or a comprehensive agreement, § 33.2-1820 or  
62 56-575.17 notwithstanding, the financial interest or bargaining position of the public entity would be  
63 adversely affected, and (ii) the basis for the determination required in clause (i) is documented in writing  
64 by the responsible public entity; and

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

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

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

79 3. Stating the reasons why protection is necessary.

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

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

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

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

108 13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential  
109 proprietary records that are not generally available to the public through regulatory disclosure or  
110 otherwise, provided by a (a) bidder or applicant for a franchise or (b) franchisee under Chapter 21  
111 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of  
112 confidentiality from the franchising authority, to the extent the records relate to the bidder's, applicant's,  
113 or franchisee's financial capacity or provision of new services, adoption of new technologies or  
114 implementation of improvements, where such new services, technologies or improvements have not been  
115 implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such  
116 records were made public, the competitive advantage or financial interests of the franchisee would be  
117 adversely affected.

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

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

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

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

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

17. Records submitted as a grant or loan application, or accompanying a grant or loan application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 to the extent 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.

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

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

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

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

183 under this subdivision.

184 23. Records submitted as a grant application, or accompanying a grant application, to the Tobacco  
185 Region Revitalization Commission to the extent such records contain (i) trade secrets as defined in the  
186 Uniform Trade Secrets Act (§ 59.1-336 et seq.), (ii) financial records of a grant applicant that is not a  
187 public body, including balance sheets and financial statements, that are not generally available to the  
188 public through regulatory disclosure or otherwise, or (iii) research-related information produced or  
189 collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative,  
190 scientific, technical, technological, or scholarly issues, when such information has not been publicly  
191 released, published, copyrighted, or patented, if the disclosure of such information would be harmful to  
192 the competitive position of the applicant; and memoranda, staff evaluations, or other records prepared by  
193 the Commission or its staff exclusively for the evaluation of grant applications. The exclusion provided  
194 by this subdivision shall apply to grants that are consistent with the powers of and in furtherance of the  
195 performance of the duties of the Commission pursuant to § 3.2-3103.

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

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

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

201 3. Stating the reasons why protection is necessary.

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

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

210 b. Records provided by a private entity to the Commercial Space Flight Authority, to the extent that  
211 such records contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act  
212 (§ 59.1-336 et seq.); (ii) financial records of the private entity, including balance sheets and financial  
213 statements, that are not generally available to the public through regulatory disclosure or otherwise; or  
214 (iii) other information submitted by the private entity, where, if the records were made public, the  
215 financial interest or bargaining position of the Authority or private entity would be adversely affected.

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

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

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

221 3. Stating the reasons why protection is necessary.

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

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

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

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

243 In order for the records specified in this subdivision to be excluded from the provisions of this  
244 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 or loan application, or accompanying a grant or loan application, for an award from the Virginia Research Investment Fund pursuant to Chapter 28 (§ 23-304 et seq.) of Title 23, 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

306 of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of Virginia,  
307 discussion or consideration of matters relating to specific gifts, bequests, and grants.

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

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

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

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

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

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

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

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

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

338 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific  
339 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement  
340 or emergency service officials concerning actions taken to respond to such matters or a related threat to  
341 public safety; discussion of records excluded from this chapter pursuant to subdivision 3 or 4 of  
342 § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of any person or the  
343 security of any facility, building, structure, information technology system, or software program; or  
344 discussion of reports or plans related to the security of any governmental facility, building or structure,  
345 or the safety of persons using such facility, building or structure.

346 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or  
347 of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the  
348 University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings  
349 Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or  
350 other ownership interest in an entity, where such security or ownership interest is not traded on a  
351 governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential  
352 analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement  
353 system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia  
354 College Savings Plan under a promise of confidentiality, of the future value of such ownership interest  
355 or the future financial performance of the entity, and (ii) would have an adverse effect on the value of  
356 the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of  
357 the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be  
358 construed to prevent the disclosure of information relating to the identity of any investment held, the  
359 amount invested or the present value of such investment.

360 21. Those portions of meetings in which individual child death cases are discussed by the State Child  
361 Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which  
362 individual child death cases are discussed by a regional or local child fatality review team established  
363 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by  
364 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in  
365 which individual adult death cases are discussed by the state Adult Fatality Review Team established  
366 pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are  
367 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

429 security matters made confidential pursuant to § 24.2-625.1.

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

433 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards  
434 Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of  
435 § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship  
436 award, review and consider scholarship applications and requests for scholarship award renewal, and  
437 cancel, rescind, or recover scholarship awards.

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

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

446 40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of  
447 § 2.2-3705.6.

448 41. Discussion or consideration by the Board of Education of records relating to the denial,  
449 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of  
450 § 2.2-3705.3.

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

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

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

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

463 46. Discussion or consideration of personal and proprietary information that are excluded from the  
464 provisions of this chapter pursuant to (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of  
465 § 10.1-104.7. This exemption shall not apply to the discussion or consideration of records that contain  
466 information that has been certified for release by the person who is the subject of the information or  
467 transformed into a statistical or aggregate form that does not allow identification of the person who  
468 supplied, or is the subject of, the information.

469 47. (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the Virginia  
470 Alcoholic Beverage Control Authority of records excluded from this chapter pursuant to subdivision 1 of  
471 § 2.2-3705.3 or subdivision 34 of § 2.2-3705.7.

472 48. *Discussion or consideration of grant or loan application records excluded from this chapter*  
473 *pursuant to subdivision 28 of § 2.2-3705.6 related to the submission of an application for an award*  
474 *from the Virginia Research Investment Fund pursuant to Chapter 28 (§ 23-304 et seq.) of Title 23.*

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

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

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

485 E. This section shall not be construed to (i) require the disclosure of any contract between the  
486 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1  
487 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant  
488 to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body  
489 empowered to issue industrial revenue bonds by general or special law, to identify a business or industry  
490 to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of



public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

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

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

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

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

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

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

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

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.

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

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

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

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

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

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

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

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

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

593 17. Require that each institution of higher education formed, chartered, or established in the  
594 Commonwealth after July 1, 1980, shall ensure the preservation of student transcripts in the event of  
595 institutional closure or revocation of approval to operate in the Commonwealth of Virginia. An  
596 institution may provide for the preservation of student transcripts by binding agreement with another  
597 institution of higher education with which it is not corporately connected or in such other way as the  
598 Council may authorize by regulation. In the event an institution closes, or has its approval to operate in  
599 the Commonwealth revoked, the Council, through its Director, may take such action as is necessary to  
600 secure and preserve the student transcripts until such time as an appropriate institution accepts all or  
601 some of the transcripts. Nothing in this section shall be deemed to interfere with the right of a student  
602 to his own transcripts; nor shall this section authorize disclosure of student records except as may  
603 otherwise be authorized by law.

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

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

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

to the institution.

21. Assist the Virginia Research Investment Committee with the administration of the Virginia Research Investment Fund consistent with the provisions of Chapter 28 (§ 23-304 et seq.).

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.

## CHAPTER 28.

### VIRGINIA RESEARCH INVESTMENT FUND.

#### § 23-304. Definitions.

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

"Board" means a policy board in the executive branch of government that (i) was created by the 2016 Session of the General Assembly, (ii) has a legislatively stated purpose of promoting collaborative regional economic and workforce development opportunities and activities, and (iii) has membership consisting of members of the House of Delegates, members of the Senate, members of the Governor's Cabinet, and nonlegislative citizen appointees.

"Committee" means the Virginia Research Investment Committee established pursuant to § 23-306.

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

"Fund" means the Virginia Research Investment Fund established in § 23-305.

"Loan" means a loan made from the moneys in the Fund designated for investment by the Virginia Retirement System.

#### § 23-305. Virginia Research Investment Fund.

A. There is hereby created in the state treasury a special nonreverting revolving fund to be known as the Virginia Research Investment Fund. The Fund shall be established on the books of the Comptroller. All moneys appropriated by the General Assembly for the Fund, and from any other sources public or private, shall be paid into the state treasury and credited to the Fund. Interest and other income earned on the Fund shall be credited to the Fund. Any moneys remaining in the Fund, including interest and other income thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

B. Notwithstanding any other provision of law, the General Assembly may specifically designate that certain moneys appropriated to Fund be invested, reinvested, and managed by the Board of the Virginia Retirement System as provided in § 51.1-124.38. The State Treasurer shall not be held liable for losses suffered by the Virginia Retirement System on investments made under the authority of this section. No more than \$4 million of funds so invested, net of any administrative fee assessed pursuant to subsection E of § 51.1-124.38, may be awarded through grants or loans in a calendar year for any purpose permitted by this chapter.

C. Moneys in the Fund shall be used solely for grants and loans to (i) promote research and development excellence in the Commonwealth; (ii) 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; (iii) position the Commonwealth as a national leader in science-based and technology-based research, development, and commercialization; (iv) attract and effectively recruit and retain eminent researchers to enhance research superiority at public institutions of higher education; and (v) encourage cooperation and collaboration among higher education research institutions, and with the private sector, in areas and with activities that foster economic development and job creation in the Commonwealth. Areas of focus for awards shall be those areas identified in the Commonwealth Research and Technology Strategic Roadmap, and shall include but not be limited to the biosciences, personalized medicine, cybersecurity, data analytics, and other areas designated in the general appropriation act.

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

#### § 23-306. Virginia Research Investment Committee established; report.

A. There is hereby established the Virginia Research Investment Committee to evaluate and award grants and loans from the Fund pursuant to the provisions of this chapter.

B. The Committee shall consist of seven members as follows: the Director of the Council, the Secretary of Finance, the staff directors of the House Committee on Appropriations and the Senate Committee on Finance, one nonlegislative citizen member appointed by the Speaker of the House, one nonlegislative citizen member appointed by the Senate Committee on Rules, and one nonlegislative citizen member appointed by the Governor. If the Board exists, the nonlegislative citizen members appointed by the Speaker of the House, the Senate Committee on Rules, and the Governor shall be nonlegislative citizen members of the Board.

C. Ex officio members shall serve terms coincident with their terms of office. If the Board does not

675 exist, nonlegislative citizen members shall be appointed to a term of four years, and no nonlegislative  
676 citizen member shall serve more than two consecutive four-year terms. If the Board exists, nonlegislative  
677 citizen members shall terms coincident with their terms on the Board.

678 D. The Director of the Council shall serve as the chairman of the Committee.

679 E. The Committee shall report to the Governor and the Chairmen of the House Committee on  
680 Appropriations and the Senate Committee on Finance no later than November 1 of each year. The  
681 report shall include details about awards made from the Fund in the immediately preceding fiscal year  
682 and updates on the research, development, and commercialization efforts resulting from such awards.

683 **§ 23-307. Award from Virginia Research Investment Fund.**

684 A. The Council, in consultation with the Committee, shall establish guidelines, procedures, and  
685 objective criteria for the application for and award of grants and loans from the Fund. Such guidelines,  
686 procedures, and criteria, and any updates thereto, shall be submitted to the House Committee on  
687 Appropriations and the Senate Committee on Finance. The criteria for the award of grants shall  
688 consider other grants, awards, or funds awarded to the proposed program or project by the  
689 Commonwealth and shall require a grant applicant to indicate other applications for state grants,  
690 awards, or funds currently pending at the time of the application for an award from the Fund. The  
691 criteria shall consider the potential of the program or project for which a grant is sought to (i)  
692 culminate in the commercialization of research; (ii) culminate in the formation or spin-off of viable  
693 bioscience, biotechnology, cybersecurity, genomics, or similar companies; (iii) promote the build-out of  
694 scientific areas of expertise in science and technology; (iv) promote applied research and development;  
695 (v) provide modern facilities or infrastructure for research and development; (vi) result in significant  
696 capital investment and job creation; or (vii) promote collaboration among the public institutions of  
697 higher education in the Commonwealth. Such criteria shall also require that the program or project for  
698 which a grant is sought be related to an area identified in the Commonwealth Research Technology  
699 Strategic Roadmap.

700 B. Grants and loans may be awarded to public institutions of higher education in the Commonwealth  
701 or collaborations between public institutions of higher education in the Commonwealth and private  
702 entities. Any award from the Fund shall require a match of funds at least equal to the amount of the  
703 award.

704 C. Applications for grants and loans from the Fund shall be received by the Council in accordance  
705 with the procedures developed pursuant to subsection A. Upon confirmation that an application is  
706 complete, the Council shall forward the application to an entity with recognized science and technology  
707 expertise for a review and certification of the scientific merits of the proposal, including a scoring or  
708 prioritization of applicant programs and projects deemed viable by the reviewing entity. Such entities  
709 include, but are not limited to, the Virginia Biosciences Health Research Corporation, the Innovation  
710 and Entrepreneurship Investment Authority, the Virginia Academy of Science, Engineering and Medicine,  
711 or any other entity deemed appropriate by the Council, including a scientific advisory committee created  
712 by the Council for the sole purpose of reviewing one or more applications received pursuant to this  
713 article.

714 D. Any proposal receiving a favorable evaluation pursuant to subsection C shall be forwarded, along  
715 with the scoring or prioritization, to the Committee for further review and a decision whether to award  
716 the proposal a grant or loan from the Fund. The award of a grant or loan from the Fund shall be  
717 subject to any terms and conditions set forth by the Committee for the award. All decisions by the  
718 Committee shall be final and not subject to further review or appeal. The Governor may announce any  
719 award approved by the Committee.

720 **§ 51.1-124.38. Investment of assets of the Virginia Research Investment Fund.**

721 A. In addition to such other powers as shall be vested in the Board, the Board shall have the full  
722 power to invest, reinvest, and manage those portions of the Virginia Research Investment Fund (the  
723 Fund), established pursuant to Chapter 28 (§ 23-304 et seq.) of Title 23, designated by the General  
724 Assembly for investment by the Board. The Board shall maintain a separate accounting for the assets of  
725 the Fund.

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

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

735 D. The provisions of §§ 51.1-124.32, 51.1-124.33, 51.1-124.34, and 51.1-124.35 shall apply to the  
736 Board's activities with respect to moneys in the Fund.

737        *E. The Board may assess the Virginia Research Investment Committee a reasonable administrative*  
738        *fee for its services.*