

16100304D

**HOUSE BILL NO. 400**

Offered January 13, 2016

Prefiled January 6, 2016

*A BILL to amend and reenact §§ 2.2-2905, 2.2-3705.4, 2.2-3711, and 2.2-4006 and to amend the Code of Virginia by adding in Title 23 a chapter numbered 4.8:1, consisting of sections numbered 23-38.74:1 through 23-38.74:10, relating to the establishment of the Virginia Student Loan Refinancing Authority.*

Patrons—Simon, Davis, Aird, Bagby, Bell, John J., Boysko, Carr, Filler-Corn, Heretick, Hope, Keam, Kory, Krizek, Mason, McClellan, McQuinn, Murphy, Plum, Price, Rasoul and Watts

Referred to Committee on Commerce and Labor

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

**1. That §§ 2.2-2905, 2.2-3705.4, 2.2-3711, and 2.2-4006 are amended and reenacted and that the Code of Virginia is amended by adding in Title 23 a chapter numbered 4.8:1, consisting of sections numbered 23-38.74:1 through 23-38.74:10, as follows:**

**§ 2.2-2905. Certain officers and employees exempt from chapter.**

The provisions of this chapter shall not apply to:

1. Officers and employees for whom the Constitution specifically directs the manner of selection;
2. Officers and employees of the Supreme Court and the Court of Appeals;
3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not;
4. Officers elected by popular vote or by the General Assembly or either house thereof;
5. Members of boards and commissions however selected;
6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;
7. Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf;
8. The presidents and teaching and research staffs of state educational institutions;
9. Commissioned officers and enlisted personnel of the National Guard;
10. Student employees in institutions of learning and patient or inmate help in other state institutions;
11. Upon general or special authorization of the Governor, laborers, temporary employees, and employees compensated on an hourly or daily basis;
12. County, city, town, and district officers, deputies, assistants, and employees;
13. The employees of the Virginia Workers' Compensation Commission;
14. The officers and employees of the Virginia Retirement System;
15. Employees whose positions are identified by the State Council of Higher Education and the boards of the Virginia Museum of Fine Arts, The Science Museum of Virginia, the Jamestown-Yorktown Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of Natural History, the New College Institute, the Southern Virginia Higher Education Center, and The Library of Virginia, and approved by the Director of the Department of Human Resource Management as requiring specialized and professional training;
16. Employees of the Virginia Lottery;
17. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs;
18. Employees of the Virginia Commonwealth University Health System Authority;
19. Employees of the University of Virginia Medical Center. Any changes in compensation plans for such employees shall be subject to the review and approval of the Board of Visitors of the University of Virginia. The University of Virginia shall ensure that its procedures for hiring University of Virginia Medical Center personnel are based on merit and fitness. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);
20. In executive branch agencies the employee who has accepted serving in the capacity of chief deputy, or equivalent, and the employee who has accepted serving in the capacity of a confidential assistant for policy or administration. An employee serving in either one of these two positions shall be deemed to serve on an employment-at-will basis. An agency may not exceed two employees who serve in this exempt capacity;
21. Employees of Virginia Correctional Enterprises. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);

INTRODUCED

HB400

58 22. Officers and employees of the Virginia Port Authority;  
59 23. Employees of the Virginia College Savings Plan;  
60 24. Directors of state facilities operated by the Department of Behavioral Health and Developmental  
61 Services employed or reemployed by the Commissioner after July 1, 1999, under a contract pursuant to  
62 § 37.2-707. Such employees shall remain subject to the provisions of the State Grievance Procedure  
63 (§ 2.2-3000 et seq.);

64 25. Employees of the Virginia Foundation for Healthy Youth. Such employees shall be treated as  
65 state employees for purposes of participation in the Virginia Retirement System, health insurance, and  
66 all other employee benefits offered by the Commonwealth to its classified employees;

67 26. Employees of the Virginia Indigent Defense Commission;

68 27. Any chief of a campus police department that has been designated by the governing body of a  
69 public institution of higher education as exempt, pursuant to § 23-232; ~~and~~

70 28. (Effective July 1, 2018) The Chief Executive Officer, agents, officers, and employees of the  
71 Virginia Alcoholic Beverage Control Authority; *and*

72 29. *Employees of the Virginia Student Loan Refinancing Authority.*

73 **§ 2.2-3705.4. Exclusions to application of chapter; educational records and certain records of**  
74 **educational institutions.**

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

77 1. Scholastic records containing information concerning identifiable individuals, except that such  
78 access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the  
79 student. However, no student shall have access to (i) financial records of a parent or guardian or (ii)  
80 records of instructional, supervisory, and administrative personnel and educational personnel ancillary  
81 thereto, that are in the sole possession of the maker thereof and that are not accessible or revealed to  
82 any other person except a substitute.

83 The parent or legal guardian of a student may prohibit, by written request, the release of any  
84 individual information regarding that student until the student reaches the age of 18 years. For scholastic  
85 records of students under the age of 18 years, the right of access may be asserted only by his legal  
86 guardian or parent, including a noncustodial parent, unless such parent's parental rights have been  
87 terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic  
88 records of students who are emancipated or attending a state-supported institution of higher education,  
89 the right of access may be asserted by the student.

90 Any person who is the subject of any scholastic record and who is 18 years of age or older may  
91 waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the  
92 public body shall open such records for inspection and copying.

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

96 3. Records of the Brown v. Board of Education Scholarship Awards Committee relating to personally  
97 identifiable information, including scholarship applications, personal financial information, and  
98 confidential correspondence and letters of recommendation.

99 4. Data, records or information of a proprietary nature produced or collected by or for faculty or staff  
100 of public institutions of higher education, other than the institutions' financial or administrative records,  
101 in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues,  
102 whether sponsored by the institution alone or in conjunction with a governmental body or a private  
103 concern, where such data, records or information has not been publicly released, published, copyrighted  
104 or patented.

105 5. All records of the University of Virginia or the University of Virginia Medical Center or Eastern  
106 Virginia Medical School, as the case may be, that contain proprietary, business-related information  
107 pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical  
108 School, as the case may be, including business development or marketing strategies and activities with  
109 existing or future joint venturers, partners, or other parties with whom the University of Virginia  
110 Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any  
111 arrangement for the delivery of health care, if disclosure of such information would be harmful to the  
112 competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

113 6. Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College  
114 Savings Plan or its employees by or on behalf of individuals who have requested information about,  
115 applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to  
116 Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit  
117 disclosure or publication of information in a statistical or other form that does not identify individuals or  
118 provide personal information. Individuals shall be provided access to their own personal information.

119 7. Records maintained in connection with fundraising activities by or for a public institution of

higher education to the extent that such records reveal (i) personal fundraising strategies relating to identifiable donors or prospective donors or (ii) wealth assessments; estate, financial, or tax planning information; health-related information; employment, familial, or marital status information; electronic mail addresses, facsimile or telephone numbers; birth dates or social security numbers of identifiable donors or prospective donors. Nothing in this subdivision, however, shall be construed to authorize the withholding of records relating to the amount, date, purpose, and terms of the pledge or donation, or the identity of the donor unless the donor has requested anonymity in connection with or as a condition of making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the institution for the performance of research services or other work or (ii) the terms and conditions of such grants or contracts.

8. Records of a threat assessment team established by a public institution of higher education pursuant to § 23-9.2:10 relating to the assessment or intervention with a specific individual. However, in the event an individual who has been under assessment commits an act, or is prosecuted for the commission of an act that has caused the death of, or caused serious bodily injury, including any felony sexual assault, to another person, the records of such threat assessment team concerning the individual under assessment shall be made available as provided by this chapter, with the exception of any criminal history records obtained pursuant to § 19.2-389 or 19.2-389.1, health records obtained pursuant to § 32.1-127.1:03, or scholastic records as defined in § 22.1-289. The public body providing such records shall remove information identifying any person who provided information to the threat assessment team under a promise of confidentiality.

9. *Personal information, as defined in § 2.2-3801, provided to the board of the Virginia Student Loan Refinancing Authority or its employees by or on behalf of individuals who have requested information about, applied for, or entered into agreements for qualified education loan refinancing pursuant to Chapter 4.8:1 (§ 23-38.74:1 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure or publication of information in a statistical or other form that does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.*

**§ 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

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

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

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

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

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

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

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

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

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

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

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

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

230 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific  
231 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement  
232 or emergency service officials concerning actions taken to respond to such matters or a related threat to  
233 public safety; discussion of records excluded from this chapter pursuant to subdivision 3 or 4 of  
234 § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of any person or the  
235 security of any facility, building, structure, information technology system, or software program; or  
236 discussion of reports or plans related to the security of any governmental facility, building or structure,  
237 or the safety of persons using such facility, building or structure.

238 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or  
239 of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the  
240 University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings  
241 Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or  
242 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 by the board of the Virginia Student Loan Refinancing Authority of personal information, as defined in § 2.2-3801, that 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 agreements for qualified education loan refinancing pursuant to Chapter 4.8:1 (§ 23-38.74:1 et seq.) of Title 23.

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

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

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

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

**§ 2.2-4006. Exemptions from requirements of this article.**

A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register Act shall be exempted from the operation of this article:

1. Agency orders or regulations fixing rates or prices.  
2. Regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority.

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

4. Regulations that are:

a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. However, such regulations shall be filed with the Registrar within 90 days of the law's effective date;

b. Required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or

c. Necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing. Notice of the proposed adoption of these regulations and the Registrar's determination shall be published in the Virginia Register not less than 30 days prior to the effective date of the regulation.

5. Regulations of the Board of Agriculture and Consumer Services adopted pursuant to subsection B of § 3.2-3929 or clause (v) or (vi) of subsection C of § 3.2-3931 after having been considered at two or more Board meetings and one public hearing.

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

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

8. General permits issued by the (a) State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 or (b) State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, (c) Virginia Soil and Water Conservation Board pursuant to the Dam Safety Act (§ 10.1-604 et seq.), and (d) the development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least

one public hearing on the proposed general permit.

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

10. Regulations of the Board of the Virginia College Savings Plan adopted pursuant to § 23-38.77.

11. Regulations of the Marine Resources Commission.

12. Regulations adopted by the Board of Housing and Community Development pursuant to (i) Statewide Fire Prevention Code (§ 27-94 et seq.), (ii) the Industrialized Building Safety Law (§ 36-70 et seq.), (iii) the Uniform Statewide Building Code (§ 36-97 et seq.), and (iv) § 36-98.3, provided the Board (a) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (b) publishes the proposed regulation and provides an opportunity for oral and written comments as provided in § 2.2-4007.03, and (c) conducts at least one public hearing as provided in §§ 2.2-4009 and 36-100 prior to the publishing of the proposed regulations. Notwithstanding the provisions of this subdivision, any regulations promulgated by the Board shall remain subject to the provisions of § 2.2-4007.06 concerning public petitions, and §§ 2.2-4013 and 2.2-4014 concerning review by the Governor and General Assembly.

13. Amendments to the list of drugs susceptible to counterfeiting adopted by the Board of Pharmacy pursuant to subsection B of § 54.1-3307 or amendments to regulations of the Board to schedule a substance in Schedule I or II pursuant to subsection D of § 54.1-3443.

14. Waste load allocations adopted, amended, or repealed by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), including but not limited to Article 4.01 (§ 62.1-44.19:4 et seq.) of the State Water Control Law, if the Board (i) provides public notice in the Virginia Register; (ii) if requested by the public during the initial public notice 30-day comment period, forms an advisory group composed of relevant stakeholders; (iii) receives and provides summary response to written comments; and (iv) conducts at least one public meeting. Notwithstanding the provisions of this subdivision, any such waste load allocations adopted, amended, or repealed by the Board shall be subject to the provisions of §§ 2.2-4013 and 2.2-4014 concerning review by the Governor and General Assembly.

15. *Regulations of the Virginia Student Loan Refinancing Authority adopted pursuant to Chapter 4.8:1 (§ 23-38.74:1 et seq.) of Title 23.*

B. Whenever regulations are adopted under this section, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. The effective date of regulations adopted under this section shall be in accordance with the provisions of § 2.2-4015, except in the case of emergency regulations, which shall become effective as provided in subsection B of § 2.2-4012.

C. A regulation for which an exemption is claimed under this section or § 2.2-4002 or 2.2-4011 and that is placed before a board or commission for consideration shall be provided at least two days in advance of the board or commission meeting to members of the public that request a copy of that regulation. A copy of that regulation shall be made available to the public attending such meeting.

#### CHAPTER 4.8:1.

#### VIRGINIA STUDENT LOAN REFINANCING AUTHORITY.

##### § 23-38.74:1. *Definitions.*

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

*"Authority" means the Virginia Student Loan Refinancing Authority.*

*"Board" means the governing board of the Authority.*

*"Bonds" means bonds, notes, or other evidences of indebtedness or obligations of the Authority pursuant to this chapter.*

*"Qualified education loan" has the same meaning as provided in 20 U.S.C. § 221(d).*

##### § 23-38.74:2. *Virginia Student Loan Refinancing Authority established; purposes.*

*The Virginia Student Loan Refinancing Authority is established as a political subdivision of the Commonwealth to facilitate the education of residents of the Commonwealth and promote the economic development of the Commonwealth. The Authority's exercise of the powers conferred by this chapter constitutes the exercise of an essential governmental function.*

##### § 23-38.74:3. *Governing board of the Authority.*

A. *The Authority shall be governed by a board composed of 10 members, consisting of (i) nine nonlegislative citizen members appointed by the Governor and (ii) the State Treasurer, who shall serve ex officio with voting privileges.*

B. *At least two members of the board shall have at least 10 years of experience in making qualified education loans or loan refinancing, but no member shall have a financial interest in, be engaged in, or be employed by an employer that is engaged in making qualified education loans.*

C. *Members appointed by the Governor to the board shall serve terms of four years. Vacancies occurring other than by expiration of a term shall be filled for the unexpired term. No member*



appointed by the Governor to the board shall serve more than two consecutive four-year terms; however, a member appointed by the Governor to serve an unexpired term shall be eligible to serve two consecutive four-year terms immediately succeeding such unexpired term. All appointments shall be subject to confirmation by the General Assembly. Members appointed by the Governor to the board shall continue to hold office until their successors have been appointed and confirmed. Ex officio members shall serve a term coincident with their term of office.

D. The board shall annually elect a chairman from among its members and may elect such other officers as it deems appropriate.

E. A majority of the members of the board constitutes a quorum.

F. No member shall be compensated for his service on the board but each member shall be reimbursed for all reasonable and necessary expenses incurred in the performance of his duties. Funding for the expenses of members shall be provided by the Authority.

**§ 23-38.74:4. Powers of the Authority.**

A. The board may:

1. Adopt, amend, and repeal any bylaws, policies, and procedures for the regulation of its affairs and the conduct of its business.

2. Have a seal and alter such seal at its pleasure.

3. Sue and be sued.

4. Maintain an office.

5. Accept gifts, grants, loans, or other contributions from private or public sources.

6. Establish the Authority's annual budget and monitor the fiscal management of the Authority.

7. Execute contracts and other instruments required for the operation of the Authority.

8. Employ any officers, agents, and employees that it may require and determine their qualifications, duties, and compensation.

9. Issue bonds in furtherance of any of its powers or purposes to be payable solely from the revenues and property pledged for the payment of such bonds and refund such obligations.

10. Borrow money in anticipation of the issuance of bonds to be payable first from the proceeds of any obligations to be subsequently issued under this chapter and solely from the revenues and property pledged for the payment of such bonds.

11. Contract for and obtain letters of credit, bond insurance, investment contracts, and other instruments, agreements, and arrangements in connection with the issuance of bonds.

12. Invest and reinvest the funds and assets of the Authority in accordance with all applicable law and agreements.

13. Provide retirement, deferred compensation, employee benefit, and other plans for personnel of the Authority and pay, deposit, and invest Authority funds in accordance with the provisions of such plans.

14. Acquire title to, hold, and dispose of real and personal property in the name of the Authority.

15. Make loans and provide grants.

16. Accept contributions, grants, and other things of value to be expended to accomplish the purposes of the Authority and to be held, used, and applied only for the purposes for which such contributions, grants, and other things of value are made.

17. Procure liability insurance.

18. Make, acquire, originate, service, collect, and discharge qualified education loans.

19. Fix, revise, charge, and collect interest on student loans and fees for originating, servicing, and collecting student loans.

20. Do all other acts necessary or convenient to carry out its express powers except engaging in the business of banking or insurance.

**§ 23-38.74:5. Duties of the Authority.**

The board shall:

1. Develop and implement a program by which each individual who incurred qualified education loan debt as a Virginia student at an institution of higher education in the Commonwealth and who is eligible, on the basis of criteria established by the Authority that are substantially similar to criteria used by private lenders in the Commonwealth to evaluate student eligibility for an unsecured personal loan at market rates, may receive a loan from the Authority to refinance all or part of his qualified education loans.

2. Set interest rates on loans made under to the program established pursuant to subdivision 1 at the lowest rate that is still sufficient to pay all necessary expenses of the program and provide reserves that the board determines necessary.

3. Prescribe the terms, conditions, and limitations upon which it acquires an interest in any qualified education loan, including interest rate, maturity, payment of principal and interest, insurance, and the safekeeping of assets pledged to secure such loan.

4. Appoint a chief executive officer of the Authority and determine his salary.

5. Submit an annual report to the Governor and the General Assembly no later than November 1 that contains the annual financial statements of the Authority for the fiscal year ending the preceding June 30. The annual report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

**§ 23-38.74:6. Bonds.**

A. Each issue of bonds shall be dated, bear interest at such rate as the Authority fixes, and mature at such time as the Authority determines but not to exceed 40 years from their date.

B. Each issue of bonds may be made redeemable before maturity, at the option of the Authority, at such price and under such terms and conditions as the Authority determines prior to the issuance of such bonds.

C. The Authority shall determine the form, manner of execution, and denomination of bonds and the place of payment of principal and interest on bonds, which may be any bank or trust company within or outside the Commonwealth.

D. Bonds shall be signed by either the chairman of the board or the chief executive officer of the Authority. Such signature shall be valid and sufficient for all purposes regardless of whether such individual remains in his office or position.

E. The Authority may (i) issue bonds in coupon or registered form and (ii) make provision for (a) the registration of any coupon bonds as to principal alone or as to both principal and interest, (b) the reconversion into coupon bonds of any bonds registered as to both principal and interest, and (c) the interchange of registered and coupon bonds. The Authority may sell such bonds in such manner, either at public or private sale, and for such price as it determines.

F. The proceeds of the bonds of each issue shall be used solely for such purposes and in furtherance of such powers of the Authority as are set forth in the resolution authorizing the issuance of such bonds or in the trust agreement securing such bonds, as set forth in subsection G.

G. The Authority may secure bonds by a trust agreement between the Authority and a corporate trustee, which may be any trust company or bank that has the powers of a trust company within or outside the Commonwealth. Such trust agreement or the resolution providing for the issuance of bonds may pledge or assign the revenues and property of the Authority as security for the repayment and other performance of the Authority's bonds. Any bank or trust company incorporated under the laws of the Commonwealth that is authorized to act as depository of the proceeds of such bonds or of revenues may furnish such indemnifying bonds or pledge such securities as may be required by the Authority. Any such trust agreement may (i) set forth the rights and remedies of the holders of such bonds and the trustee, (ii) restrict the individual right of action by the holders of such bonds, and (iii) contain such other provisions as the Authority deems reasonable and proper for the security of the holders of such bonds. The Authority may treat all expenses incurred in the carrying out the provisions of such trust agreement or resolution as part of the cost of the operation of the Authority.

H. All moneys received pursuant to the provisions of this chapter, whether as proceeds from the sale of bonds or as revenues, are trust funds that shall be held and applied solely as provided in this chapter. The Authority shall, in the resolution authorizing the issuance of bonds or in the trust agreement securing such obligations, provide for the payment of the proceeds of the sale of the bonds and the revenues to be received by a trustee, which shall be any trust company or bank having the powers of a trust company within or outside the Commonwealth or the State Treasurer acting as trustee of the funds, and hold and apply such proceeds and revenues in accordance with this chapter and the resolution or trust agreement.

I. Except as may be otherwise provided in the trust agreement, any holder of bonds issued pursuant to this chapter or any coupons appertaining to such bonds and the trustee under any trust agreement may protect and enforce all rights under the laws of the Commonwealth or the trust agreement and enforce and compel the performance of all duties required by this chapter or by such resolution or trust agreement to be performed by the Authority or any officer or agent of the Authority.

J. Bonds issued by the Authority pursuant to this chapter are securities (i) in which all public officers and bodies of the Commonwealth and all localities, loan associations, trust companies, beneficial and benevolent associations, administrators, guardians, executors, trustees, and other fiduciaries in the Commonwealth may legally invest funds under their control and (ii) which may be legally deposited with and received by any state or local officer or agency or political subdivision of the Commonwealth for any purpose authorized or required by law.

K. No bond of the Authority shall constitute a debt or pledge of the full faith and credit of the Commonwealth or any political subdivision of the Commonwealth and each bond shall be payable solely from the revenues and other property pledged for such payment. All such bonds shall state on their face that neither the Commonwealth nor any political subdivision of the Commonwealth is obligated to make payment of principal or interest on such bonds and that neither the faith and credit nor the taxing

612 power of the Commonwealth or any political subdivision of the Commonwealth is pledged to the  
613 payment of principal or interest on such bonds.

614 **§ 23-38.74:7. Security interest in loans.**

615 Any pledge by the Authority of its interest in any loan shall be valid and binding from the time the  
616 pledge is made. The Authority's interest in such loan shall immediately be subject to the lien of such  
617 pledge. Notwithstanding any other provision of law to the contrary, a security interest in the pledged  
618 interest in the loan is perfected without physical delivery or filing or any further act at the time of the  
619 agreement by which the pledge is created.

620 **§ 23-38.74:8. Annual audit.**

621 The Auditor of Public Accounts or his legally authorized representative shall annually audit the  
622 accounts of the Authority. The Authority shall bear the cost of such audits.

623 **§ 23-38.74:9. Exemption from taxation.**

624 The Authority is not required to pay any taxes or assessments upon any property it acquires or uses  
625 pursuant to this chapter or income from such property or any bonds issued pursuant to this chapter or  
626 income or profits from the sale or transfer of such bonds.

627 **§ 23-38.74:10. Liability limited.**

628 Neither the Commonwealth nor any political subdivision of the Commonwealth, nor any officer,  
629 employee, or agent of the Commonwealth or any political subdivision of the Commonwealth, is liable  
630 for any debt, obligation, act, or omission of the Authority that is made within the scope of employment  
631 or agency.