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HOUSE BILL NO. 1540

Offered January 11, 2017

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A *BILL to amend and reenact §§ 2.2-3701, 2.2-3707, 2.2-3707.1, 2.2-3708, 2.2-3708.1, 2.2-3711, 2.2-3712, 10.1-104.7, 15.2-1416, 23.1-1303, and 54.1-2400.2 of the Code of Virginia, relating to the Virginia Freedom of Information Act; public access to meetings of public bodies.*

Patron—LeMunyon

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3701, 2.2-3707, 2.2-3707.1, 2.2-3708, 2.2-3708.1, 2.2-3711, 2.2-3712, 10.1-104.7, 15.2-1416, 23.1-1303, and 54.1-2400.2 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3701. Definitions.

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

"Closed meeting" means a meeting from which the public is excluded.

"Electronic communication" means any audio or combined audio and visual communication method.

"Emergency" means an unforeseen circumstance rendering the notice required by this chapter impossible or impracticable and which circumstance requires immediate action.

"Information" as used in the exclusions established by §§ 2.2-3705.1 through 2.2-3705.7, means the content within a public record that references a specifically identified subject matter, and shall not be interpreted to require the production of information that is not embodied in a public record.

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. Neither the gathering of employees of a public body nor the gathering or attendance of two or more members of a public body (i) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body, or (ii) at a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be deemed a "meeting" subject to the provisions of this chapter.

"Open meeting" or "public meeting" means a meeting at which the public may be present.

"Public body" means any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of public institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee or entity because it has private sector or citizen members. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

For the purposes of the provisions of this chapter applicable to access to public records, constitutional officers and private police departments as defined in § 9.1-101 shall be considered public bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose public records as other custodians of public records.

"Public records" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. Records that are not prepared for or used in the transaction of public business are not public records.

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59 "Regional public body" means a unit of government organized as provided by law within defined
60 boundaries, as determined by the General Assembly, ~~whose members are appointed by the participating~~
61 ~~local governing bodies, and such~~ *which* unit includes two or more ~~counties or cities~~ *localities*.

62 "Scholastic records" means those records containing information directly related to a student or an
63 applicant for admission and maintained by a public body that is an educational agency or institution or
64 by a person acting for such agency or institution.

65 **§ 2.2-3707. Meetings to be public; notice of meetings; recordings; minutes.**

66 A. All meetings of public bodies shall be open, except as provided in §§ 2.2-3707.01 and 2.2-3711.

67 B. No meeting shall be conducted through telephonic, video, electronic or other communication
68 means where the members are not physically assembled to discuss or transact public business, except as
69 provided in § 2.2-3708, 2.2-3708.1 or as may be specifically provided in Title 54.1 for the summary
70 suspension of professional licenses.

71 C. Every public body shall give notice of the date, time, and location of its meetings by ~~placing the~~
72 ~~notice in a prominent public location at which notices are regularly posted and in the office of the clerk~~
73 ~~of the public body, or in the case of a public body that has no clerk, in the office of the chief~~
74 ~~administrator:~~

75 1. *Posting such notice on its official public government website, if any;*

76 2. *Placing such notice in a prominent public location at which notices are regularly posted; and*

77 3. *Placing such notice at the office of the clerk of the public body or, in the case of a public body*
78 *that has no clerk, at the office of the chief administrator.*

79 All state public bodies subject to the provisions of this chapter shall also post notice of their
80 meetings ~~on their websites and on the electronic calendar maintained by the Virginia Information~~
81 ~~Technologies Agency commonly known as the Commonwealth Calendar on a central, publicly available~~
82 ~~electronic calendar maintained by the Commonwealth.~~ Publication of meeting notices by electronic
83 means by other public bodies shall be encouraged.

84 The notice shall be posted at least three working days prior to the meeting. ~~Notices for meetings of~~
85 ~~state public bodies on which there is at least one member appointed by the Governor shall state whether~~
86 ~~or not public comment will be received at the meeting and, if so, the approximate point during the~~
87 ~~meeting when public comment will be received.~~

88 D. Notice, reasonable under the circumstance, of special ~~or~~, emergency, *or continued* meetings shall
89 be given contemporaneously with the notice provided *to the* members of the public body conducting the
90 meeting.

91 E. Any person may annually file a written request for notification with a public body. The request
92 shall include the requester's name, address, zip code, daytime telephone number, electronic mail address,
93 if available, and organization, if any. The public body receiving such request shall provide notice of all
94 meetings directly to each such person. Without objection by the person, the public body may provide
95 electronic notice of all meetings in response to such requests.

96 F. At least one copy of *the proposed agenda and* all agenda packets and, unless exempt, all materials
97 furnished to members of a public body for a meeting shall be made available for public inspection at the
98 same time such documents are furnished to the members of the public body. *The proposed agendas for*
99 *meetings of state public bodies where at least one member has been appointed by the Governor shall*
100 *state whether or not public comment will be received at the meeting and, if so, the approximate point*
101 *during the meeting when public comment will be received.*

102 G. ~~The notice provisions of this chapter shall not apply to informal meetings or gatherings of the~~
103 ~~members of the General Assembly.~~

104 H. Any person may photograph, film, record or otherwise reproduce any portion of a meeting
105 required to be open. The public body conducting the meeting may adopt rules governing the placement
106 and use of equipment necessary for broadcasting, photographing, filming or recording a meeting to
107 prevent interference with the proceedings, but shall not prohibit or otherwise prevent any person from
108 photographing, filming, recording, or otherwise reproducing any portion of a meeting required to be
109 open. No public body shall conduct a meeting required to be open in any building or facility where such
110 recording devices are prohibited.

111 I. *H.* Minutes shall be recorded at all open meetings. However, minutes shall not be required to be
112 taken at deliberations of (i) standing and other committees of the General Assembly; (ii) legislative
113 interim study commissions and committees, including the Virginia Code Commission; (iii) study
114 committees or commissions appointed by the Governor; or (iv) study commissions or study committees,
115 or any other committees or subcommittees appointed by the governing bodies or school boards of
116 counties, cities and towns, except where the membership of any such commission, committee or
117 subcommittee includes a majority of the governing body of the county, city or town or school board.

118 Minutes, including draft minutes, and all other records of open meetings, including audio or
119 audio/visual records shall be deemed public records and subject to the provisions of this chapter.

120 Minutes shall be in writing and shall include (i) the date, time, and location of the meeting; (ii) the

members of the public body recorded as present and absent; and (iii) a summary of the discussion on matters proposed, deliberated or decided, and a record of any votes taken. In addition, for electronic communication meetings conducted in accordance with § 2.2-3708, minutes of state public bodies shall include (a) the identity of the members of the public body at each remote location identified in the notice who participated in the meeting through electronic communications means, (b) the identity of the members of the public body who were physically assembled at the primary or central meeting location, and (c) the identity of the members of the public body who were not present at the locations identified in clauses (a) and (b), but who monitored such meeting through electronic communications means.

§ 2.2-3707.1. Posting of minutes for state boards and commissions.

All boards, commissions, councils, and other public bodies created in the executive branch of state government and subject to the provisions of this chapter shall post minutes of their meetings on such body's *official public government* website; if any, and on ~~the~~ *a central* electronic calendar maintained by the ~~Virginia Information Technologies Agency commonly known as the Commonwealth Calendar~~ *Commonwealth*. Draft minutes of meetings shall be posted as soon as possible but no later than ~~ten~~ 10 working days after the conclusion of the meeting. Final approved meeting minutes shall be posted within three working days of final approval of the minutes.

§ 2.2-3708. Electronic communication meetings; applicability; physical quorum required; exceptions; notice; report.

A. Except as expressly provided in subsection G of this section or § 2.2-3708.1, no local governing body, school board, or any authority, board, bureau, commission, district or agency of local government, any committee thereof, or any entity created by a local governing body, school board, or any local authority, board, or commission shall conduct a meeting wherein the public business is discussed or transacted through telephonic, video, electronic or other communication means where the members are not physically assembled. Nothing in this section shall be construed to prohibit the use of interactive audio or video means to expand public participation.

B. Except as provided in subsection G or H of this section or subsection D of § 2.2-3707.01, state public bodies may conduct any meeting wherein the public business is discussed or transacted through electronic communication means, provided (i) a quorum of the public body is physically assembled at one primary or central meeting location, (ii) notice of the meeting has been given in accordance with subsection C, and (iii) the remote locations, from which additional members of the public body participate through electronic communication means, are open to the public. All persons attending the meeting at any of the meeting locations shall be afforded the same opportunity to address the public body as persons attending the primary or central location.

If an authorized public body holds an electronic meeting pursuant to this section, it shall also hold at least one meeting annually where members in attendance at the meeting are physically assembled at one location and where no members participate by electronic communication means.

C. Notice of any ~~meetings~~ *regular meeting* held pursuant to this section shall be provided at least three working days in advance of the date scheduled for the meeting. *Notice, reasonable under the circumstance, of special, emergency, or continued meetings held pursuant to this section shall be given contemporaneously with the notice provided to members of the public body conducting the meeting. For the purposes of this subsection, "continued meeting" means a meeting that is continued to address an emergency or to conclude the agenda of a meeting for which proper notice was given.*

The notice shall include the date, time, place, and purpose for the meeting; shall identify the locations for the meeting; and shall include a telephone number that may be used at remote locations to notify the primary or central meeting location of any interruption in the telephonic or video broadcast of the meeting to the remote locations. Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access restored.

~~D. Agenda~~ *A copy of the proposed agenda and agenda* packets and, unless exempt, all materials that will be distributed to members of the public body and that have been made available to the staff of the public body in sufficient time for duplication and forwarding to all locations where public access will be provided shall be made available to the public at the time of the meeting. Minutes of all meetings held by electronic communication means shall be recorded as required by § 2.2-3707. Votes taken during any meeting conducted through electronic communication means shall be recorded by name in roll-call fashion and included in the minutes.

E. Three working days' notice shall not be required for meetings authorized under this section held in accordance with subsection G ~~or that are continued to address an emergency or to conclude the agenda of the meeting for which proper notice has been given; when the date, time, place, and purpose of the continued meeting are set during the meeting prior to adjournment.~~ Public bodies conducting emergency meetings through electronic communication means shall comply with the provisions of subsection D requiring minutes of the meeting. The nature of the emergency shall be stated in the minutes.

F. Any authorized public body that meets by electronic communication means shall make a written

182 report of the following to the Virginia Freedom of Information Advisory Council and the Joint
183 Commission on Technology and Science by December 15 of each year:

- 184 1. The total number of electronic communication meetings held that year;
- 185 2. The dates and purposes of the meetings;
- 186 3. A copy of the agenda for the meeting;
- 187 4. The number of sites for each meeting;
- 188 5. The types of electronic communication means by which the meetings were held;
- 189 6. The number of participants, including members of the public, at each meeting location;
- 190 7. The identity of the members of the public body recorded as absent and those recorded as present
191 at each meeting location;
- 192 8. A summary of any public comment received about the electronic communication meetings; and
- 193 9. A written summary of the public body's experience using electronic communication meetings,
194 including its logistical and technical experience.

195 In addition, any authorized public body shall make available to the public at any meeting conducted
196 in accordance with this section a public comment form prepared by the Virginia Freedom of Information
197 Advisory Council in accordance with § 30-179.

198 G. Any public body may meet by electronic communication means without a quorum of the public
199 body physically assembled at one location when the Governor has declared a state of emergency in
200 accordance with § 44-146.17, provided *that* (i) the catastrophic nature of the declared emergency makes
201 it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting
202 is to address the emergency. The public body convening a meeting in accordance with this subsection
203 shall (a) give public notice using the best available method given the nature of the emergency, which
204 notice shall be given contemporaneously with the notice provided members of the public body
205 conducting the meeting; (b) make arrangements for public access to such meeting; and (c) otherwise
206 comply with the provisions of this section. The nature of the emergency, the fact that the meeting was
207 held by electronic communication means, and the type of electronic communication means by which the
208 meeting was held shall be stated in the minutes.

209 H. ~~[Expired].~~

210 **§ 2.2-3708.1. Participation in meetings due to personal matter; certain disabilities; distance from**
211 **meeting location for certain public bodies.**

212 A. A member of a public body may participate in a meeting governed by this chapter through
213 electronic communication means from a remote location that is not open to the public only as follows
214 and subject to the requirements of subsection B:

215 1. If, on or before the day of a meeting, a member of the public body holding the meeting notifies
216 the chair of the public body that such member is unable to attend the meeting due to ~~an emergency or a~~
217 ~~personal matter~~ and identifies with specificity the nature of the ~~emergency or~~ personal matter, and the
218 public body holding the meeting records in its minutes the specific nature of the ~~emergency or~~ personal
219 matter and the remote location from which the member participated. If a member's participation from a
220 remote location is disapproved because such participation would violate the policy adopted pursuant to
221 subsection B, such disapproval shall be recorded in the minutes with specificity.

222 Such participation by the member shall be limited each calendar year to two meetings ~~or 25 percent~~
223 ~~of the meetings of the public body, whichever is fewer;~~

224 2. If a member of a public body notifies the chair of the public body that such member is unable to
225 attend a meeting due to a temporary or permanent disability or other medical condition that prevents the
226 member's physical attendance and the public body records this fact and the remote location from which
227 the member participated in its minutes; or

228 3. If, on the day of a meeting, a member of a regional public body notifies the chair of the public
229 body that such member's principal residence is more than 60 miles from the meeting location identified
230 in the required notice for such meeting and the public body holding the meeting records in its minutes
231 the remote location from which the member participated. If a member's participation from a remote
232 location is disapproved because such participation would violate the policy adopted pursuant to
233 subsection B, such disapproval shall be recorded in the minutes with specificity.

234 B. Participation by a member of a public body as authorized under subsection A shall be only under
235 the following conditions:

236 1. The public body has adopted a written policy allowing for and governing participation of its
237 members by electronic communication means, including an approval process for such participation,
238 subject to the express limitations imposed by this section. Once adopted, the policy shall be applied
239 strictly and uniformly, without exception, to the entire membership and without regard to the identity of
240 the member requesting remote participation or the matters that will be considered or voted on at the
241 meeting;

242 2. A quorum of the public body is physically assembled at the primary or central meeting location;
243 and

3. The public body makes arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location.

§ 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. Nothing in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body or an elected school board to discuss compensation matters that affect the membership of such body or board collectively.

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~~ Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. 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.

9. Discussion or consideration by boards of visitors of public institutions of higher education of matters relating to gifts, bequests and fund-raising activities, and of 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 (a) 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 (b) 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.

10. Discussion or consideration by the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, and The

305 Science Museum of Virginia, ~~discussion or consideration~~ of matters relating to specific gifts, bequests,
306 and grants *from private sources*.

307 ~~10- 11. Discussion or consideration of honorary degrees or special awards.~~

308 ~~11- 12. Discussion or consideration of tests, examinations, or other information excluded from this~~
309 ~~chapter pursuant to used, administered, or prepared by a public body and subject to the exclusion in~~
310 ~~subdivision 4 of § 2.2-3705.1.~~

311 ~~12- 13. Discussion, consideration, or review by the appropriate House or Senate committees of~~
312 ~~possible disciplinary action against a member arising out of the possible inadequacy of the disclosure~~
313 ~~statement filed by the member, provided the member may request in writing that the committee meeting~~
314 ~~not be conducted in a closed meeting.~~

315 ~~13- 14. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement~~
316 ~~or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the~~
317 ~~governing body in open meeting finds that an open meeting will have an adverse effect upon the~~
318 ~~negotiating position of the governing body or the establishment of the terms, conditions and provisions~~
319 ~~of the siting agreement, or both. All discussions with the applicant or its representatives may be~~
320 ~~conducted in a closed meeting.~~

321 ~~14- 15. Discussion by the Governor and any economic advisory board reviewing forecasts of~~
322 ~~economic activity and estimating general and nongeneral fund revenues.~~

323 ~~15- 16. Discussion or consideration of medical and mental health records excluded from this chapter~~
324 ~~pursuant to subject to the exclusion in subdivision 1 of § 2.2-3705.5.~~

325 ~~16- 17. 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 excluded from disclosure under subdivision 6 of~~
329 ~~§ 2.2-3705.3 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 information excluded from this chapter pursuant to subject to the exclusion
342 in subdivision 3 or 4 of § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety
343 of any person or the security of any facility, building, structure, information technology system, or
344 software program; or discussion of reports or plans related to the security of any governmental facility,
345 building or structure, 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 by a local finance board or board of*
348 *trustees of a trust established by one or more local public bodies to invest funds for postemployment*
349 *benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title*
350 *15.2, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by*
351 *the Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition,*
352 *holding or disposition of a security or other ownership interest in an entity, where such security or*
353 *ownership interest is not traded on a governmentally regulated securities exchange, to the extent that*
354 *such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University*
355 *of Virginia, prepared by the retirement system, or by the local finance board or board of trustees of*
356 *such a trust pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the Virginia*
357 *College Savings Plan or provided to the retirement system or the Virginia College Savings Plan under a*
358 *promise of confidentiality, of the future value of such ownership interest or the future financial*
359 *performance of the entity, and (ii) would have an adverse effect on the value of the investment to be*
360 *acquired, held or disposed of by the retirement system, or by the local finance board or board of*
361 *trustees of such a trust pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, the*
362 *Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this*
363 *subdivision shall be construed to prevent the disclosure of information relating to the identity of any*
364 *investment held, the amount invested or the present value of such investment.*

365 21. Those portions of meetings in which individual child death cases are discussed by the State Child
366 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 by the Virginia Commonwealth University Health System Authority or the Virginia Commonwealth University Board of Visitors of any of the following: the acquisition or disposition by the Authority of real or personal property, equipment, or technology software or hardware and related goods or services, 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, or bequests to, and fund-raising activities of, the Authority; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies plans of the Authority where disclosure of such strategies or plans would adversely affect the competitive position of the Authority; and members of its the Authority's medical and teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other employees. This exclusion 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 7 (§ 23.1-700 et seq.) of Title 23.1 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 information ~~excluded from this chapter pursuant to~~ *subject to the exclusion in* 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 information ~~excluded from this chapter pursuant to~~ *subject to the exclusion in* 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.

428 31. Discussion or consideration by the Commitment Review Committee of information ~~excluded from~~
429 ~~this chapter pursuant to~~ *subject to the exclusion* in subdivision 8 of § 2.2-3705.2 relating to individuals
430 subject to commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

431 32. ~~[Expired.]~~

432 33. Discussion or consideration of confidential proprietary information and trade secrets ~~excluded~~
433 ~~from this chapter pursuant to~~ *developed and held by a local public body providing certain*
434 *telecommunication services or cable television services and subject to the exclusion* in subdivision 18 of
435 § 2.2-3705.6. However, the exemption provided by this subdivision shall not apply to any authority
436 created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

437 34. 33. Discussion or consideration by a local authority created in accordance with the Virginia
438 Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and trade
439 secrets ~~excluded from this chapter pursuant to~~ *subject to the exclusion* in subdivision 19 of § 2.2-3705.6.

440 35. 34. Discussion or consideration by the State Board of Elections or local electoral boards of
441 voting security matters made confidential pursuant to § 24.2-625.1.

442 36. 35. Discussion or consideration by the Forensic Science Board or the Scientific Advisory
443 Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of ~~records~~
444 ~~excluded from this chapter pursuant to~~ *criminal investigative files subject to the exclusion* in subdivision
445 A 2 a of § 2.2-3706.

446 37. 36. Discussion or consideration by the Brown v. Board of Education Scholarship Program
447 Awards Committee of information or confidential matters ~~excluded from this chapter pursuant to~~ *subject*
448 *to the exclusion* in subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate
449 concerning the annual maximum scholarship award, review and consider scholarship applications and
450 requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

451 38. 37. Discussion or consideration by the Virginia Port Authority of information ~~excluded from this~~
452 ~~chapter pursuant to~~ *subject to the exclusion* in subdivision 1 of § 2.2-3705.6 *related to certain*
453 *proprietary information gathered by or for the Virginia Port Authority.*

454 39. 38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System
455 acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to
456 § 51.1-124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the
457 Virginia College Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's
458 Investment Advisory Committee appointed pursuant to § 23.1-702 of information ~~excluded from this~~
459 ~~chapter pursuant to~~ *subject to the exclusion* in subdivision 25 of § 2.2-3705.7.

460 40. 39. Discussion or consideration of information ~~excluded from this chapter pursuant to~~ *subject to*
461 *the exclusion* in subdivision 3 of § 2.2-3705.6 *related to economic development.*

462 41. 40. Discussion or consideration by the Board of Education of information relating to the denial,
463 suspension, or revocation of teacher licenses ~~excluded from this chapter pursuant to~~ *subject to the*
464 *exclusion* in subdivision 12 of § 2.2-3705.3.

465 42. 41. Those portions of meetings of the Virginia Military Advisory Council or any commission
466 created by executive order for the purpose of studying and making recommendations regarding
467 preventing closure or realignment of federal military and national security installations and facilities
468 located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs
469 organization appointed by a local governing body, during which there is discussion of information
470 ~~excluded from this chapter pursuant to~~ *subject to the exclusion* in subdivision 11 of § 2.2-3705.2.

471 43. 42. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
472 information ~~excluded from this chapter pursuant to~~ *subject to the exclusion* in subdivision 29 of
473 § 2.2-3705.7 *related to personally identifiable information of donors.*

474 44. 43. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of
475 information ~~excluded from this chapter pursuant to~~ *subject to the exclusion* in subdivision 23 of
476 § 2.2-3705.6 *related to certain information contained in grant applications.*

477 45. 44. Discussion or consideration by the board of directors of the Commercial Space Flight
478 Authority of information ~~excluded from this chapter pursuant to~~ *subject to the exclusion* in subdivision
479 24 of § 2.2-3705.6 *related to rate structures or charges for the use of projects of, the sale of products*
480 *of, or services rendered by the Authority and certain proprietary information of a private entity provided*
481 *to the Authority.*

482 46. 45. Discussion or consideration of personal and proprietary information ~~that are excluded from~~
483 ~~the provisions of this chapter pursuant to~~ *related to the resource management plan program and subject*
484 *to the exclusion* in (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of § 10.1-104.7. This exclusion
485 shall not apply to the discussion or consideration of records that contain information that has been
486 certified for release by the person who is the subject of the information or transformed into a statistical
487 or aggregate form that does not allow identification of the person who supplied, or is the subject of, the
488 information.

489 47. 46. (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the Virginia

Alcoholic Beverage Control Authority of information ~~excluded from this chapter pursuant to~~ subject to the exclusion in subdivision 1 of § 2.2-3705.3 or subdivision 34 of § 2.2-3705.7 related to investigations of applicants for licenses and permits and of licensees and permittees.

~~48.~~ 47. Discussion or consideration of grant or loan application records ~~excluded from this chapter pursuant to~~ subject to the exclusion in subdivision 28 of § 2.2-3705.6 related to the submission of an application for an award from the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title 23.1.

~~49.~~ 48. Discussion or development of grant proposals by a regional council established pursuant to Article 26 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth and Opportunity Board.

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.

§ 2.2-3712. Closed meetings procedures; certification of proceedings.

A. No closed meeting shall be held unless the public body proposing to convene such meeting has taken an affirmative recorded vote in an open meeting approving a motion that (i) identifies the subject matter, (ii) states the purpose of the meeting *as authorized in subsection A of § 2.2-3711 or other provision of law* and (iii) ~~makes specific reference to~~ *cites* the applicable exemption from open meeting requirements provided in ~~§ 2.2-3707 or~~ subsection A of § 2.2-3711 *or other provision of law*. The matters contained in such motion shall be set forth in detail in the minutes of the open meeting. A general reference to the provisions of this chapter, the authorized exemptions from open meeting requirements, or the subject matter of the closed meeting shall not be sufficient to satisfy the requirements for holding a closed meeting.

B. The notice provisions of this chapter shall not apply to closed meetings of any public body held solely for the purpose of interviewing candidates for the position of chief administrative officer. Prior to any such closed meeting for the purpose of interviewing candidates, the public body shall announce in an open meeting that such closed meeting shall be held at a disclosed or undisclosed location within 15 days thereafter.

C. The public body holding a closed meeting shall restrict its discussion during the closed meeting only to those matters specifically exempted from the provisions of this chapter and identified in the motion required by subsection A.

D. At the conclusion of any closed meeting, the public body holding such meeting shall immediately reconvene in an open meeting and shall take a roll call or other recorded vote to be included in the minutes of that body, certifying that to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements under this chapter and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting by the public body. Any member of the public body who believes that there was a departure from the requirements of clauses (i) and (ii), shall so state prior to the vote, indicating the substance of the departure that, in his judgment, has taken place. The statement shall be recorded in the minutes of the public body.

E. Failure of the certification required by subsection D to receive the affirmative vote of a majority of the members of the public body present during a meeting shall not affect the validity or confidentiality of such meeting with respect to matters considered therein in compliance with the provisions of this chapter. The recorded vote and any statement made in connection therewith, shall upon proper authentication, constitute evidence in any proceeding brought to enforce the provisions of this chapter.

F. A public body may permit nonmembers to attend a closed meeting if such persons are deemed necessary or if their presence will reasonably aid the public body in its consideration of a topic that is a subject of the meeting.

G. A member of a public body shall be permitted to attend a closed meeting held by any committee or subcommittee of that public body, or a closed meeting of any entity, however designated, created to perform the delegated functions of or to advise that public body. Such member shall in all cases be permitted to observe the closed meeting of the committee, subcommittee or entity. In addition to the requirements of § 2.2-3707, the minutes of the committee or other entity shall include the identity of the member of the parent public body who attended the closed meeting.

H. Except as specifically authorized by law, in no event may any public body take action on matters discussed in any closed meeting, except at an open meeting for which notice was given as required by § 2.2-3707.

I. Minutes may be taken during closed meetings of a public body, but shall not be required. Such minutes shall not be subject to mandatory public disclosure.

§ 10.1-104.7. Resource management plans; effect of implementation; exclusions.

A. Notwithstanding any other provision of law, agricultural landowners or operators who fully implement and maintain the applicable components of their resource management plan, in accordance with the criteria for such plans set out in § 10.1-104.8 and any regulations adopted thereunder, shall be deemed to be in full compliance with (i) any load allocation contained in a total maximum daily load (TMDL) established under § 303(d) of the federal Clean Water Act addressing benthic, bacteria, nutrient, or sediment impairments; (ii) any requirements of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan; and (iii) applicable state water quality requirements for nutrients and sediment.

B. The presumption of full compliance provided in subsection A shall not prevent or preclude enforcement of provisions pursuant to (i) a resource management plan or a nutrient management plan otherwise required by law for such operation, (ii) a Virginia Pollutant Discharge Elimination System permit, (iii) a Virginia Pollution Abatement permit, or (iv) requirements of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.).

C. Landowners or operators who implement and maintain a resource management plan in accordance with this article shall be eligible for matching grants for agricultural best management practices provided through the Virginia Agricultural Best Management Practices Cost-Share Program administered by the Department in accordance with program eligibility rules and requirements. Such landowners and operators may also be eligible for state tax credits in accordance with §§ 58.1-339.3 and 58.1-439.5.

D. Nothing in this article shall be construed to limit, modify, impair, or supersede the authority granted to the Commissioner of Agriculture and Consumer Services pursuant to Chapter 4 (§ 3.2-400 et seq.) of Title 3.2.

E. Any personal or proprietary information collected pursuant to this article shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that the Director may release information that has been transformed into a statistical or aggregate form that does not allow identification of the persons who supplied, or are the subject of, particular information. This subsection shall not preclude the application of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) in all other instances of federal or state regulatory actions. Pursuant to subdivision 46 45 of § 2.2-3711, public bodies may hold closed meetings for discussion or consideration of certain records excluded from the provisions of this article and the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

§ 15.2-1416. Regular meetings.

The governing body shall assemble at a public place as the governing body may prescribe, in regular session in January for counties and in July for cities and towns. Future meetings shall be held on such days as may be prescribed by resolution of the governing body but in no event shall less than six meetings be held in each fiscal year.

The days, times and places of regular meetings to be held during the ensuing months shall be established at the first meeting which meeting may be referred to as the annual or organizational meeting; however, if the governing body subsequently prescribes any public place other than the initial public meeting place, or any day or time other than that initially established, as a meeting day, place or time, the governing body shall pass a resolution as to such future meeting day, place or time. The governing body shall cause a copy of such resolution to be posted on the door of the courthouse or the initial public meeting place and inserted in a newspaper having general circulation in the county or municipality at least seven days prior to the first such meeting at such other day, place or time. Should the day established by the governing body as the regular meeting day fall on any legal holiday, the meeting shall be held on the next following regular business day, without action of any kind by the governing body.

At its annual meeting the governing body may fix the day or days to which a regular meeting shall be continued if the chairman or mayor, or vice-chairman or vice-mayor if the chairman or mayor is unable to act, finds and declares that weather or other conditions are such that it is hazardous for

members to attend the regular meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised shall be conducted at the continued meeting and no further advertisement is required.

Regular meetings, ~~without further public notice~~, may be adjourned from day to day or from time to time or from place to place, not beyond the time fixed for the next regular meeting, until the business before the governing body is completed. *Notice of any regular meeting continued under this section shall be reasonable under the circumstances and be given as provided in subsection D of § 2.2-3707.*

Notwithstanding the provisions of this section, any city or town that holds an organizational meeting in compliance with its charter or code shall be deemed to be in compliance with this section.

§ 23.1-1303. Governing boards; duties.

A. For purposes of this section, "intellectual property" means (i) a potentially patentable machine, article of manufacture, composition of matter, process, or improvement in any of those; (ii) an issued patent; (iii) a legal right that inheres in a patent; or (iv) anything that is copyrightable.

B. The governing board of each public institution of higher education shall:

1. Adopt and post conspicuously on its website bylaws for its own governance, including provisions that (i) establish the requirement of transparency, to the extent required by law, in all board actions; (ii) describe the board's obligations under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), as set forth in subdivision B 10 of § 23.1-1301, including the requirements that (a) the board record minutes of each open meeting and post the minutes on the board's website, in accordance with subsection H of § 2.2-3707 and § 2.2-3707.1, (b) discussions and actions on any topic not specifically exempted by § 2.2-3711 be held in an open meeting, (c) the board give public notice of all meetings, in accordance with subsection C of § 2.2-3707, and (d) any action taken in a closed meeting be approved in an open meeting before it can have any force or effect, in accordance with subsection B of § 2.2-3711; and (iii) require that the board invite the Attorney General's appointee or representative to all meetings of the board, executive committee, and board committees;

2. Establish regulations or institution policies for the acceptance and assistance of students that include provisions (i) that specify that individuals who have knowingly and willfully failed to meet the federal requirement to register for the selective service are not eligible to receive any state direct student assistance, (ii) that specify that the accreditation status of a public high school in the Commonwealth shall not be considered in making admissions determinations for students who have earned a diploma pursuant to the requirements established by the Board of Education, and (iii) relating to the admission of certain graduates of comprehensive community colleges as set forth in § 23.1-907;

3. Assist the Council in enforcing the provisions relating to eligibility for financial aid;

4. Notwithstanding any other provision of state law, establish policies and procedures requiring the notification of the parent of a dependent student when such student receives mental health treatment at the institution's student health or counseling center and such treatment becomes part of the student's educational record in accordance with the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.) and may be disclosed without prior consent as authorized by the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and related regulations (34 C.F.R. Part 99). Such notification shall only be required if it is determined that there exists a substantial likelihood that, as a result of mental illness the student will, in the near future, (i) cause serious physical harm to himself or others as evidenced by recent behavior or any other relevant information or (ii) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs. However, notification may be withheld if any person licensed to diagnose and treat mental, emotional, or behavioral disorders by a health regulatory board within the Department of Health Professions who is treating the student has made a part of the student's record a written statement that, in the exercise of his professional judgment, the notification would be reasonably likely to cause substantial harm to the student or another person. No public institution of higher education or employee of a public institution of higher education making a disclosure pursuant to this subsection is civilly liable for any harm resulting from such disclosure unless such disclosure constitutes gross negligence or willful misconduct by the institution or its employees;

5. Establish policies and procedures requiring the release of the educational record of a dependent student, as defined by the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g), to a parent at his request;

6. Establish programs to seek to ensure that all graduates have the technology skills necessary to compete in the twenty-first century and that all students matriculating in teacher-training programs receive instruction in the effective use of educational technology;

7. Establish policies for the discipline of students who participate in varsity intercollegiate athletics, including a provision requiring an annual report by the administration of the institution to the governing board regarding enforcement actions taken pursuant to such policies;

8. In addition to all meetings prescribed in Chapters 14 (§ 23.1-1400 et seq.) through 29

674 (§ 23.1-2900 et seq.), meet with the chief executive officer of the institution at least once annually, in a
675 closed meeting pursuant to subdivision A 1 of § 2.2-3711 and deliver an evaluation of the chief
676 executive officer's performance. Any change to the chief executive officer's employment contract during
677 any such meeting or any other meeting of the board shall be made only by a vote of the majority of the
678 board's members;

679 9. If human research, as defined in § 32.1-162.16, is conducted at the institution, adopt regulations
680 pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to effectuate the provisions of Chapter
681 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research. Such regulations shall require the human
682 research committee to submit to the Governor, the General Assembly, and the chief executive officer of
683 the institution or his designee at least annually a report on the human research projects reviewed and
684 approved by the committee and require the committee to report any significant deviations from approved
685 proposals;

686 10. Submit the annual financial statements for the fiscal year ending the preceding June 30 and the
687 accounts and status of any ongoing capital projects to the Auditor of Public Accounts for the audit of
688 such statements pursuant to § 30-133;

689 11. Submit to the General Assembly and the Governor an annual executive summary of its interim
690 activity and work no later than the first day of each regular session of the General Assembly. The
691 executive summary shall be submitted as provided in the procedures of the Division of Legislative
692 Automated Systems for the processing of legislative documents and reports and shall be posted on the
693 General Assembly's website;

694 12. Make available to any interested party upon request a copy of the portion of the most recent
695 report of the Uniform Crime Reporting Section of the Department of State Police entitled "Crime in
696 Virginia" pertaining to institutions of higher education;

697 13. Adopt policies or institution regulations regarding the ownership, protection, assignment, and use
698 of intellectual property and provide a copy of such policies to the Governor and the Joint Commission
699 on Technology and Science. All employees, including student employees, of public institutions of higher
700 education are bound by the intellectual property policies of the institution employing them; and

701 14. Adopt policies that are supportive of the intellectual property rights of matriculated students who
702 are not employed by such institution.

703 **§ 54.1-2400.2. Confidentiality of information obtained during an investigation or disciplinary**
704 **proceeding; penalty.**

705 A. Any reports, information or records received and maintained by the Department of Health
706 Professions or any health regulatory board in connection with possible disciplinary proceedings,
707 including any material received or developed by a board during an investigation or proceeding, shall be
708 strictly confidential. The Department of Health Professions or a board may only disclose such
709 confidential information:

710 1. In a disciplinary proceeding before a board or in any subsequent trial or appeal of an action or
711 order, or to the respondent in entering into a confidential consent agreement under § 54.1-2400;

712 2. To regulatory authorities concerned with granting, limiting or denying licenses, certificates or
713 registrations to practice a health profession, including the coordinated licensure information system, as
714 defined in § 54.1-3030;

715 3. To hospital committees concerned with granting, limiting or denying hospital privileges if a final
716 determination regarding a violation has been made;

717 4. Pursuant to an order of a court of competent jurisdiction for good cause arising from extraordinary
718 circumstances being shown;

719 5. To qualified personnel for bona fide research or educational purposes, if personally identifiable
720 information relating to any person is first deleted. Such release shall be made pursuant to a written
721 agreement to ensure compliance with this section; or

722 6. To the Health Practitioners' Monitoring Program within the Department of Health Professions in
723 connection with health practitioners who apply to or participate in the Program.

724 B. In no event shall confidential information received, maintained or developed by the Department of
725 Health Professions or any board, or disclosed by the Department of Health Professions or a board to
726 others, pursuant to this section, be available for discovery or court subpoena or introduced into evidence
727 in any civil action. This section shall not, however, be construed to inhibit an investigation or
728 prosecution under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2.

729 C. Any claim of a physician-patient or practitioner-patient privilege shall not prevail in any
730 investigation or proceeding by any health regulatory board acting within the scope of its authority. The
731 disclosure, however, of any information pursuant to this provision shall not be deemed a waiver of such
732 privilege in any other proceeding.

733 D. This section shall not prohibit the Director of the Department of Health Professions, after
734 consultation with the relevant health regulatory board president or his designee, from disclosing to the
735 Attorney General, or the appropriate attorney for the Commonwealth, investigatory information which

indicates a possible violation of any provision of criminal law, including the laws relating to the manufacture, distribution, dispensing, prescribing or administration of drugs, other than drugs classified as Schedule VI drugs and devices, by any individual regulated by any health regulatory board.

E. This section shall not prohibit the Director of the Department of Health Professions from disclosing matters listed in subdivision A 1, A 2, or A 3 of § 54.1-2909; from making the reports of aggregate information and summaries required by § 54.1-2400.3; or from disclosing the information required to be made available to the public pursuant to § 54.1-2910.1.

F. This section shall not prohibit the Director of the Department of Health Professions, following consultation with the relevant health regulatory board president or his designee, from disclosing information about a suspected violation of state or federal law or regulation to other agencies within the Health and Human Resources Secretariat or to federal law-enforcement agencies having jurisdiction over the suspected violation or requesting an inspection or investigation of a licensee by such state or federal agency when the Director has reason to believe that a possible violation of federal or state law has occurred. Such disclosure shall not exceed the minimum information necessary to permit the state or federal agency having jurisdiction over the suspected violation of state or federal law to conduct an inspection or investigation. Disclosures by the Director pursuant to this subsection shall not be limited to requests for inspections or investigations of licensees. Nothing in this subsection shall require the Director to make any disclosure. Nothing in this section shall permit any agency to which the Director makes a disclosure pursuant to this section to re-disclose any information, reports, records, or materials received from the Department.

G. Whenever a complaint or report has been filed about a person licensed, certified, or registered by a health regulatory board, the source and the subject of a complaint or report shall be provided information about the investigative and disciplinary procedures at the Department of Health Professions. Prior to interviewing a licensee who is the subject of a complaint or report, or at the time that the licensee is first notified in writing of the complaint or report, whichever shall occur first, the licensee shall be provided with a copy of the complaint or report and any records or supporting documentation, unless such provision would materially obstruct a criminal or regulatory investigation. If the relevant board concludes that a disciplinary proceeding will not be instituted, the board may send an advisory letter to the person who was the subject of the complaint or report. The relevant board may also inform the source of the complaint or report (i) that an investigation has been conducted, (ii) that the matter was concluded without a disciplinary proceeding, (iii) of the process the board followed in making its determination, and (iv), if appropriate, that an advisory letter from the board has been communicated to the person who was the subject of the complaint or report. In providing such information, the board shall inform the source of the complaint or report that he is subject to the requirements of this section relating to confidentiality and discovery.

H. Orders and notices of the health regulatory boards relating to disciplinary actions, other than confidential exhibits described in subsection K, shall be disclosed. Information on the date and location of any disciplinary proceeding, allegations against the respondent, and the list of statutes and regulations the respondent is alleged to have violated shall be provided to the source of the complaint or report by the relevant board prior to the proceeding. The source shall be notified of the disposition of a disciplinary case.

I. This section shall not prohibit investigative staff authorized under § 54.1-2506 from interviewing fact witnesses, disclosing to fact witnesses the identity of the subject of the complaint or report, or reviewing with fact witnesses any portion of records or other supporting documentation necessary to refresh the fact witnesses' recollection.

J. Any person found guilty of the unlawful disclosure of confidential information possessed by a health regulatory board shall be guilty of a Class 1 misdemeanor.

K. In disciplinary actions in which a practitioner is or may be unable to practice with reasonable skill and safety to patients and the public because of a mental or physical disability, a health regulatory board shall consider whether to disclose and may decide not to disclose in its notice or order the practitioner's health records, as defined in § 32.1-127.1:03, or his health services, as defined in § 32.1-127.1:03. Such information may be considered by the relevant board in a closed hearing in accordance with subsection A 15 16 of § 2.2-3711 and included in a confidential exhibit to a notice or order. The public notice or order shall identify, if known, the practitioner's mental or physical disability that is the basis for its determination. In the event that the relevant board, in its discretion, determines that this subsection should apply, information contained in the confidential exhibit shall remain part of the confidential record before the relevant board and is subject to court review under the Administrative Process Act (§ 2.2-4000 et seq.) and to release in accordance with this section.

2. That the provisions of subdivisions A 7, 8, 9, 12, 16, 19, 28, 30, 31, 32, and 35 through 47 of § 2.2-3711 of the Code of Virginia, as amended by this act, are declaratory of existing law.