

Virginia Freedom of Information Act and the Virginia Conflict of Interest Act

2016-2017 Edition
Guide for Local Government Leaders



June 2017

Introduction

June 2017

THIS UPDATED GUIDE is designed to help local government officials understand their responsibilities under the Virginia Freedom of Information Act (FOIA), Virginia Conflict of Interests Act (COIA) and Virginia Public Records Act.

Each of the acts requires council members and certain other elected and appointed officials to read and familiarize themselves with the three sets of laws.

This 2017 Virginia Municipal League publication explains both laws in non-legal terms as much as possible. It is not written for lawyers, though we hope it will be useful for attorneys, too.

Updates throughout this publication, including those explaining changes in the law made by the 2017 General Assembly, were written by VML.*

While FOIA and COIA constitute a large part of the rules of conduct for state and local government officials, local officials might also want to consult a publication produced by VML and George Mason University on ethical conduct. The Ethical GPS, Navigating Everyday Dilemmas is a comprehensive guide to ethics. VML encourages city and town council members to consult it when questions arise about the propriety of a course of action.

**The code was compiled by VML. We urge you to compare with the online Virginia Code after July 1.*

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Virginia Freedom of Information Act

Guide for Local Government Officials

Introduction

The Virginia Freedom of Information Act was enacted by the General Assembly in 1968. In the years since, the law has undergone major revisions and has been modified annually to address new situations. The 2017 version includes the culmination of a comprehensive three-year study of the Virginia Freedom of Information Act (“Act”) conducted by the Virginia FOIA Advisory Council.

Local public officials are required to read and familiarize themselves with the law. § 2.2-3702(ii). This guide provides useful assistance in meeting that obligation. Many provisions of the act address state agencies and other matters that do not concern local governments. Those provisions are not discussed. This guide will help local officials become familiar with their obligations under the law.

The Freedom of Information Act Advisory Council (“FOIA Council”), through its staff, provides local officials with timely information about the act that will assist in compliance. Contact information for the staff is found later in this report and can be found at <http://foiacouncil.dls.virginia.gov/>.

This guide has two major sections – meetings of a public body and records of a public body. The term “public body” will be used to generally describe any locally elected public body, such as city and town councils, as well as county boards and committees of all such bodies. Where a difference exists in the act’s requirements for a specific type of local elected public body, the difference is noted.

Purpose of the act

FOIA generally determines how local public bodies must conduct their meetings, from city council sessions to a citizen advisory committee recommending where to locate a new sidewalk. The act also regulates the public’s access to local government records.

The guiding principle of FOIA is openness. The act aims to “[ensure] the people of the Commonwealth ready access to records in the custody of public officials

and free entry to meetings of public bodies wherein the business of the people is being conducted.” § 2.2-3700(B). The section further declares that “the affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government.” *Id.*

Thus, FOIA attempts to ensure that Virginia’s citizens have the ability to observe how their elected public officials are conducting public business.

What’s New

In 2014, House Joint Resolution No. 96 directed the FOIA Council to study all exemptions to FOIA to determine if they were still appropriate and necessary. This year the General Assembly passed two major omnibus bills that stemmed from the study. One of the significant changes was the addition on the FOIA Council website of an online comment form. Localities with a population greater than 250 are required to post a link to this comment form. Legislation in 2017 also required the FOIA Council to create and provide training for FOIA officers. This complements last year’s bill that required each locality with a population of more than 250 to designate a FOIA Officer, provide yearly training either through the FOIA Council or their designated attorney, and post both the FOIA officer’s contact information and FOIA rights and responsibilities on its website. The relevant changes and legislation are noted in the general discussion below, along with several other important pieces of legislation related to public access.

I. Notices.

During both the 2016 and 2017 legislative sessions, a lot of new notice requirements were placed on localities. All local public bodies shall designate and publicly identify one or more FOIA officers who will be responsible for FOIA requests in their locality. In addition, they must be trained annually by either the FOIA Council or their locality’s attorney. §2.2-3704.2. The name of the designated officer/officers must be provid-

ed to the FOIA Council by July 1st of each year.

Any city or town with a population of more than 250 shall now post rights and responsibilities on their website. §2.2-3704.1. A template of the rights and responsibilities is available on the FOIA Council website and can be easily adapted to any locality.

Cities and towns with a population of more than 250 shall also include a link on their official government public website to an online public comment form that will be on the FOIA Council's website.

Notice of date, time and location of a public meeting should be posted on the official government website if there is one and also the usual places: in a public location where notices are usually posted and at the office of the clerk or if there is no clerk, the officer of the chief administrator. §2.2-3707.

If a meeting is continued; notice shall be given to the public contemporaneously with the notice to the members of the public body conducting the meeting. §2.2-3708.

II. Meetings.

The basic principle of FOIA is that all meetings of public bodies are open to the public. Section 2.2-3700(B) makes this clear:

All public records and meetings shall be presumed open, unless an exemption is properly invoked. The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of governments. Any exemption from public access to meetings shall be narrowly construed and no shall be meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law.

Nevertheless, the act contains numerous exceptions to the open meeting requirement. Some issues may be discussed in a meeting closed to the public. For instance, public bodies may hold a closed meeting if an open discussion will lead to the release of information that certain other state laws require to be kept secret. See § 2.2-3711(A)(26), (33), (34). Still, the fact that a meeting may be closed does not mean that it must be or even should be closed. Furthermore, any exceptions are to be narrowly construed.

A. Public body.

The open meeting requirements apply whenever a public body holds or participates in a meeting. The definition of "public body" is very broad. See § 2.2-

3701. City and town councils and county boards of supervisors obviously are included. All committees and subcommittees are included, whether any members of the local governing body serve on the committee. Citizen committees are included if the committee is charged with either carrying out some function for the public body or advising it. Private police departments are included for the purpose of access to public records. FOIA specifically states that having citizen members does not exempt the body from the act. Accordingly, a citizens' committee formed by the city or town to advise where a park or school should be located would be a public body subject to FOIA.

A committee of a council is a public body, as noted above. Whether the committee is a standing committee or an ad hoc committee, it is subject to the act. If the chair of a four-member finance committee appoints two members to negotiate a contract or to carry out some other role, that subcommittee of the finance committee is also subject to the act.

B. What is a meeting?

City and town council meetings, county board meetings and committee meetings of a public body are certainly meetings regulated by the act. Like the definition of public body, the definition of meeting is broadly construed under § 2.2-3701, intending to capture any meeting where public business is transacted or discussed. A council work session is also a meeting, as is any other "informal assemblage" of as many as three members of a public body (or a quorum, if quorum is less than three members) where public business of the locality is discussed.

FOIA typically applies to public body gatherings irrespective of the meeting's location. It doesn't matter if a meeting is held in the council chambers or at a council retreat held out of the locality.

Attendance at a VML Annual Conference or a National League of Cities meeting is sometimes a touchy subject. Because of the broad definition of public meeting, some councils and boards consider attendance at a state or national conference to be a meeting, and will comply with the notice requirements of the act (discussed below) to be on the safe side, even though there is no plan to discuss the locality's public business. This action sometimes invokes a negative response from the media or citizens who complain that they cannot attend the out-of-town meeting. Conversely, if the council doesn't consider attendance at a conference to be a meeting, then the complaint becomes one that the council has left town for a private or secret meeting.

The best practice is to announce the conference at a council meeting, but not describe it as a meeting of the locality, and to strictly avoid discussing town, city, or county business while attending the conference.

A gathering of council does not create a meeting if public business is not discussed or carried out and the gathering was not called for the purpose of doing public business. § 2.2-3707. This section is aimed at allowing participation in community events or parties. Without this section, a citizen could criticize a council for holding a meeting if three members of council happen to show up at a community forum.

The definition of meeting includes a gathering of two or more members of a public body to discuss public business. §2.2-3701. It is not a meeting 1) when the discussion or transaction of any public business is no part or purpose of the gathering or attendance, 2) the gathering was not prearranged for the purpose of public business, or 3) if the attendees are at a public forum, debate, or candidate appearance that is held to inform the electorate and no public business is being transacted, even if the performance of members is a topic of discussion or debate at the gathering. Finally, a meeting of employees for business purposes does not constitute a meeting, under the § 2.2-3701 definition.

Number of public officials needed to constitute a meeting

Obviously, any meeting of a council qualifies as a public meeting. For the purposes of the act, such a council meeting is created if a majority of council, or three members, regardless of how many are needed for a majority, get together and discuss public business. § 2.2-3701. Therefore, if three members of a council meet to discuss or act on government business, that creates a council meeting for purposes of FOIA, even if it is not a meeting per the locality's rules.

In contrast, if the three members are on a committee and meet as the committee, that meeting is a committee meeting, not a council meeting. If additional council members attend a committee meeting, that does not necessarily convert the meeting from a committee meeting to a council meeting. This was established in a Winchester Circuit Court opinion in *Shenandoah Publishing House, Inc. v. Winchester City Council*, 37 Va. Cir 149 (1995).

Notice provisions

General notice requirements that are spelled out in the act must be followed in order to hold any meeting of a public body. The state code also contains numerous specific notice and advertising requirements for

particular types of public business. These specific, subject matter requirements apply only if the public body is discussing the relevant type of public business. Examples include notice of zoning actions (§ 15.2-2204) and adopting budgets (§ 15.2-2506). In all cases, the more general requirements in FOIA need to be followed in addition to any other requirements. For all regular meetings of a council, committee, board, or other agency, notice must be posted on the body's official public government website if any, public bulletin board or prominent public location and in the council clerk's office, or, if there is none in the office of the chief administrator. The notice must state the date, time and location of the meeting and must be posted at least three days before the date the meeting is to take place. § 2.2-3707(C).

For regular meetings, a simple way to comply with this requirement is to post a single notice listing the information for all meetings of the next year. This way, nobody will forget to give notice of a regularly scheduled meeting. For special, emergency meetings or continued meetings, the notice must be reasonable given the circumstances. The notice must be given to the public contemporaneously with the notice to the members being called to attend. § 2.2-3707(D).

Any person may file an annual request for notice of all meetings. In that case, the public body must notify the person making the request of all meetings. Sending the annual schedule of all regular meetings will assist in complying with this obligation. If the requester supplies an e-mail address, all notices may be sent via e-mail, unless the person objects. § 2.2-3707(E).

If a citizen submits an e-mail address and other personal information, such as a home address, to the locality for the purpose of being notified of meetings and other events, that e-mail address and other information need not be disclosed to others by the locality, pursuant to § 2.2-3705.1(10), but only if the person who has submitted the e-mail address requests the non-disclosure. Localities that are interested in keeping e-mail addresses private may want to send an e-mail to all e-mail recipients asking them to advise whether they want to have their e-mail address withheld and should have a check-box asking if the person wants to opt out of disclosure on the webpage where citizens sign up.

Meeting minutes

Minutes of council meetings must be taken at all open meetings. § 2.2-3707(H). Minutes must be written and include the meeting's date, time, and location, along with attendance, a summary of discussed matters, and any votes taken. Minutes of council commit-

tee meetings are required to be taken only if a majority of the members of the council serve on the committee.

Draft minutes and any audio or video recording made of a meeting are available to the public for inspection and copying. § 2.2-3707(H). This means that draft minutes must be disclosed if requested.

The agenda packet and all materials furnished to the members of the council (except documents that are exempt from disclosure, such as advice of the town or city attorney) must be made available for public inspection at the same time it is distributed to the members. § 2.2-3707(F). Any records that are exempt from disclosure do not need to be made available. The practical problem is for staff to remember to cull any exempt documents when making the public copy of the agenda. The better practice is to not include exempt documents as a part of the agenda, but to send them separately.

Recording meetings

Citizens have an absolute right to photograph and make video or audiotapes of public meetings. While the council may establish rules for where the equipment may be set up so meetings are not disrupted, the recording equipment may not be excluded altogether. § 2.2-3707(A). Council may not meet in a location where recordings are prohibited. If a courtroom, for example, has a standing order forbidding any form of recordation, public body meetings must be held elsewhere. § 2.2-3707(G).

Electronic meetings

Generally, council may not hold a meeting via electronic media, including a conference call, pursuant to §§ 2.2-3707 & 3708. There are two exceptions:

First, if the governor declares an emergency, the council may hold an electronic meeting, where members phone in or participate by other electronic means, solely to address the emergency. Council must give notice to the public to the extent possible and must provide public access to the meeting. § 2.2-3708(G). Also, all the facts that justify the emergency electronic meeting should be reflected in the meeting minutes.

Second, a member of council may participate electronically if he or she cannot attend due to a temporary or permanent disability, other medical condition, or due to an emergency or personal matter and the public records document that fact. The minutes should record the reason for the member's absence and the remote location from which the member participated. The remote participant must be heard by all persons at the primary meeting location as well. Each public body

must develop a written policy regulating electronic participation by its members. Once this policy is adopted, it must be applied uniformly to all members. A member's participation from a remote location may be disapproved if it violates the established policy. The disapproval must be noted in the body's minutes. An individual may participate electronically in no more than two meetings per year if your reason is an emergency or personal matter. The body must maintain a physical quorum for the meeting. § 2.2-3708.1.

In addition to these exceptions, council members have some flexibility in communicating through e-mail. A 2004 Virginia Supreme Court opinion, *Beck v. Shelton*, 267 Va. 482; 593 S.E.2d 195, ruled that council members e-mailing each other did not create a meeting for purposes of FOIA. In *Beck*, multiple e-mails were sent by an individual council member to all other members; some e-mails were in a reply to all members, and in one or two of the e-mails, the reply was made more than 24 hours after the e-mail to which it replied. The court found that no meeting had occurred, although the opinion noted that the outcome may have been different had the e-mails been part of instant messaging or a chat room discussion.

The Virginia Supreme Court reinforced its *Beck* reasoning in *Hill v. Fairfax County School Board*, No. 111805 (June 7, 2012). *Hill* involved e-mails between members of a school board that were exchanged over an even shorter interval than in *Beck*. Back-and-forth communications only occurred between two board members (not the three required for a meeting under FOIA). Any e-mail that was received by three or more members was found to be of an informational or unilateral nature and did not create any discussion among members. Following *Beck*, the court reiterated that e-mails between council members must be sufficiently simultaneous to create a meeting for the purposes of FOIA. *Hill* affirmed the lower court's finding that the school board members' communications did not create a meeting because the e-mails did not show the simultaneity or group discussion required under FOIA. Thus, responsive e-mails between at least three council members must occur within quick succession to constitute an assembly of members (though the precise responsive speed that would be necessary is unclear).

Beck and *Hill* indicate that e-mail communication between more than two council members may comprise a meeting under FOIA if consisting of mutual discussion within a time frame short enough to be considered an assemblage. In light of these cases, council members have some discretion to send e-mails to other members if this takes place over an extended timeframe

or if non-conversational. (However, these e-mails will almost always be public records and subject to FOIA's disclosure provisions; see Part II of this guide.) Nonetheless, council members should be cautious when communicating public business over e-mail because the courts have not clearly stated at what point responsive e-mails are considered an assemblage. Furthermore, this vagueness will only become amplified as technology improves and e-mail communication becomes ever more instantaneous. If a series of e-mails is found to be sufficiently analogous to an assembly of three or more council members, then all of FOIA's requirements apply. In that case, demonstrating how a group of e-mails among council members was open to the public may prove difficult.

Text messages have been the subject of many discussions by the FOIA Council in the last year or so. If you conduct business via text message, you are obligated to retain those records under the Public and all of the FOIA rules apply.

Voting

All votes must be made publicly. Secret ballots are not allowed, unless permitted by some other provision of law. § 2.2-3710(A). This section, however, specifically authorizes each member of council to contact other members of a council or other body "for the purpose of ascertaining a member's position" on public business without making the position public. § 2.2-3710(B). Further, nonbinding votes may be taken in closed session.

Remote Public Participation

Public bodies that wish to allow their members to participate in meetings remotely, in case of a personal matter or medical condition, must establish a policy governing electronic participation that complies with § 2.2-3708.1. Members will be allowed to participate as long as the reason for their absence does not violate the established policy.

C. Closed meetings.

A closed meeting is a meeting of a council or other public body from which the public is excluded. It may be held only for specific reasons, which are delineated in the act. Closed meetings must be entered into during an open meeting of the public body (the specific procedures are described below). After the closed portion of a meeting, the council must reconvene in open session to certify that the closed meeting portion was carried out legally. There are exceptions to the requirement that a closed meeting be held as a part of an open meeting.

They are discussed below.

Purposes for closed meetings

Section §2.2-3711 sets out four reasons for holding a closed meeting. A city or town council or board of supervisors will generally need to hold a closed meeting for one of six of the possibilities:

- Personnel matters - subsection 1;
- Real property - subsection 3;
- Privacy of individuals unrelated to public business - subsection 4;
- Prospective business - subsection 5;
- Consultation with legal counsel - subsection 7; and
- Terrorism- subsection 19.

1. Personnel matters. § 2.2-3711(A)(1) authorizes a closed meeting for: "[d]iscussion, 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."

The most significant requirement in the subsection is that the discussion be about one or more specific people. This means that the council may not discuss general personnel issues in a closed meeting. For example, the council would not be authorized to meet behind closed doors to discuss a pay plan or set salaries for all employees. The council could, however, meet to discuss the pay increase to be given an employee or appointee, based on the council's discussion in the meeting of the employee's performance.

Note that the section applies to three classes of public officials: public officers, public appointees and employees of the public body. Therefore, the council could discuss the performance of a specific planning commission member in closed meeting since that person is an appointee of the council.

Two Virginia attorney general opinions have clouded the use of the section for a closed meeting discussion of most employees and some other public officials. In an opinion issued Dec. 16, 1998, the attorney general opined that a council may not hold a closed meeting to discuss employees who are not directly employed by the council. The opinion states that only the manager, clerk, and city attorney could be discussed in a closed meeting, because the city charter stated that only those three employees are under the "full supervisory authority" of the council. The attorney general confirmed the opinion in a second opinion dated May 18, 2000, which was written in response to a request for reconsid-

eration. 2000 WL 8752.

Many local government attorneys, as well as VML, disagree with this opinion. The specific language of the subsection allowing a closed meeting for personnel matters states that the individual must be an employee of the public body. The opinion limits the term “employee of the public body” in a manner that is inconsistent with the common understanding of the authority of a city or town council over all employees, not just those who report directly to the council. If a council directs the manager to fire an employee for a problem it discussed in a closed meeting, the manager would be expected to fire the individual. Direct supervisory control by council may not exist, but the council retains the ultimate responsibility for the operation of the city or town; hence, the council should logically retain the ability to confidentially discuss the employee. The FOIA Council does advise that, even accepting the attorney’s general opinion, the council could convene in closed session to discuss the manager’s handling of the personnel matter, since the manager is a direct employee of the council.

The other opinion that has cast a cloud on the use of the exemption was issued April 5, 1999. It states that a school board cannot meet in closed session to discuss choosing a chairman and vice chairman. The rationale was that the chairman and vice chairman are not appointed or employed by the public body. The specific words of the section, however, make personnel matters apply to “specific public officers, appointees or employees” of the public body. Certainly, the chairman is a public officer and appointee of the school board, since the board makes the appointment or election in the case in the opinion, and the chair is the leader of the board.

Opinions of the attorney general do not have the effect of a court decision. They are only opinions that may be considered for guidance. Courts will give some weight to such opinions, but are not bound by them. Localities are cautioned in this area. It is always possible that a judge will simply follow an opinion without evaluating its merits. In that case, a locality could find itself losing a case in court over either of these two issues.

2. Real property. A closed session for discussion of real property issues is allowed for the acquisition of land for a public purpose or disposition of publicly held land, but only if discussing the matter in open session would harm the council’s bargaining position. § 2.2-3711(A)(3).

The council does not need to state why an open dis-

cussion would harm its position in the motion to hold a closed meeting. Still, a council should be prepared to defend the closed meeting if challenged.

3. Privacy of individuals unrelated to public business. Local governments do not use this section very often because a council meeting is generally limited to discussing public business. However, if as a part of public business a matter arises that affects the privacy of an individual unrelated to public business, the meeting may be carried out in private.

This provision’s usefulness can be illustrated through discussion of routing a new street. If a landowner who could be displaced has a medical condition that would make condemning his home a life threatening situation, that would be a privacy issue for the citizen not related to public business. It would be appropriate for the council to avoid discussion in the public view, in order to protect the individual’s privacy. § 2.2-3711(A)(4).

4. Prospective business and business retention. In today’s competitive market for recruiting and retaining businesses, much negotiation goes on between the council and a company, often involving tax benefits, land deals, employment incentives and similar matters. If that kind of information is discussed in public session, competing localities from other states will gain a competitive advantage, since they will know how much must be offered to take the business away from the Virginia locality. Section 2.2-3711(A)(5) allows a closed meeting to protect these negotiations.

In order to enter into a closed meeting, there must have been no “announcement” of the interest of the business in the community. Whether a local newspaper’s report of the business interest may constitute an announcement of the interest is an unresolved question. One circuit court has ruled that a news report without any statement by the government qualifies as an announcement. The state FOIA office, however, takes the position that an announcement is something more than a newspaper report speculating about business. If a public official or official of the business makes the statement about the business in an official capacity, that clearly constitutes an announcement and the section could not be invoked.

The section not only authorizes a meeting for the location of a business, but also the expansion of an existing business. In the case of an expansion, there must have been no announcement of the interest in expanding.

A locality may also go into closed session to discuss the retention of an existing business. The code authorizes this when the retention discussion relies on pro-

proprietary information from the business, or memoranda and/or working papers from the public body that, if publicized, would be adverse to the financial interests of the locality. §§ 2.2-3711(40) & 2.2-3705.6(3).

5. Consultation with legal counsel. This important provision is limited to three types of legal matters:

1. Actual litigation;
 2. Probable litigation: § 2.2-3711(A)(7);
- and,
3. Specific legal matters requiring the advice of counsel. § 2.2-3711(A)(8).

In actual or probable litigation, a closed meeting can be held only if holding a discussion in the open “adversely affect[s] the negotiating or litigating posture” of the council. § 2.2-3711(A)(7). For example, there is no need to hold a closed meeting to simply explain to council that the locality had been sued. The suit is a public record in the circuit court clerk’s office, therefore a briefing that the suit had been filed should be done in open meeting. In contrast, a briefing by the city attorney on the strategy for defending the suit would be appropriate for a closed meeting because open discussion would obviously hinder the defense.

Actual litigation refers to existing litigation. Probable litigation is defined to mean that a suit has been “specifically threatened” or the council or its attorney has a “reasonable basis” to believe a suit will be filed.

The third category is limited to “consultation with counsel ... regarding specific legal matters” requiring legal advice. § 2.2-3711(A)(8). This category, like the two litigation categories, is limited to consulting the attorney (or other staff members or consultants) about a legal issue facing the locality that is an appropriate matter for a closed meeting. Simply having an attorney present does not allow a general discussion among the members about other issues. If non-attorney staff members participate, the attorney should still be present and participating in the consultation.

This rule was demonstrated in the March 2000 Richmond Circuit Court opinion *Colonial Downs, L.P. v. Virginia Racing Commission*, (2000 WL 305986). In that case, the racing commission went into a closed meeting for consultation with counsel, but spent the time holding a general discussion of *Colonial Downs’* application for licensing. The court held that the meeting was a violation of the act.

6. Terrorism. After the September 11 terrorist attacks, it became clear that some provisions of the act made it easy for a terrorist to gain security information

through a FOIA request. One step in response was to allow a meeting in closed session to discuss planning to protect from terrorist activity or specific cybersecurity threats or vulnerabilities under § 2.2-3711(A)(19). The public body may meet to be briefed by staff, attorneys or law-enforcement or emergency personnel to respond to terrorist or “a related threat to public safety”. This exemption applies “where discussion in an open meeting would jeopardize the safety of any person or the security of any facility, building, structure, information technology system or software program; or discussion of reports or plans related to the security of any governmental facility, building or structure, or the safety of persons using such facility, building or structure.”

New Closed Meeting Authorizations for 2017

Legislation adopted in 2017 moved the authorization for closed session relating to consultation with legal counsel employed or retained by a public body to its own section. §2.2-3711(8).

Closed meetings are authorized for local finance boards or boards of trustees established by local public bodies for postemployment purposes. §2.2-3711(A)(20).

Language also was added this year to allow for closed meetings of “discussion or consideration of confidential proprietary information and trade secrets developed and held by a local public body providing certain telecommunications services or cable television services”. §2.2-3711(A)(33).

Procedures for closed meetings

Getting into closed meetings. In order to go from an open meeting to a closed meeting, there must be a recorded vote in open meeting. The motion must include the following elements:

1. The subject must be identified (example: new park in east end of city);
2. A statement of the purpose of the meeting (acquiring land for park); and,
3. A reference to the code section authorizing the meeting. § 2.2-3712(A).

The degree of specificity in the statement of the subject of a meeting varies with the nature of the issue. A discussion about a pending lawsuit should name the suit. After all, the pleadings are public and the suit may well have been the subject of a newspaper article. On the other hand, a discussion of a sensitive personnel matter should not contain much specificity in the motion, so as to not embarrass the employee who is the

subject of the meeting. The council will need to exercise discretion in the motion's specificity.

Nonetheless, in no case will it be sufficient to make a general statement to satisfy the first and second requirements above. "Personnel matters, pursuant to FOIA" is inadequate for a motion for a closed meeting. The Virginia Supreme Court opinion in *White Dog Publishing, Inc. v. Culpeper County Board of Supervisors*, made this clear.

During a closed meeting, only the topics identified in the motion may be discussed. § 2.2-3712(C). In order to discuss more than one topic, the council should either include both topics in one motion, which is the preferred method, or come out of closed meeting and re-enter after making a motion on the second topic. The council may record minutes, but that is not required. In almost every case, it is not a good idea. The minutes serve little purpose, since the council must take any action in open meeting, and there will be a record of the open meeting. § 2.2-3712(I).

Va. Code § 2.2-3712(H) states that any official vote or action must be held in open session. Many local governments, therefore, take no more than a straw poll during a closed meeting, or take no votes at all, no matter how informal.

Getting out of closed meeting. At the conclusion of each closed meeting, the public body must certify in open session that it complied with the act by a roll call vote. The vote must confirm that the meeting was held for purposes allowed by the act and that while in the closed session, only those matters identified in the motion to hold a closed meeting were discussed. If a member disagrees, he must state how the closed meeting did not satisfy the requirements of the act before the vote is taken. § 2.2-3712(D). A record of the vote must be kept in the public body's records.

Interviewing chief administrative officer candidates. Most closed meetings must be held as a part of an open meeting, so the public knows the time and place of it. The act contains an important exception for local governments in § 2.2-3712(B). If a public body is to hold interviews for its chief administrative officer, it may make a single announcement in open meeting that it will hold interviews. It need not identify the location of the interviews or the names of the interviewees. The interviews must be held within 15 days of the motion.

Annexation agreements - no FOIA requirements. Independent of FOIA, Va. Code § 15.2-2907(D) allows a council or board to hold meetings on matters concerning annexation or a voluntary settlement agreement with no FOIA implications. This

means notice need not be given, the public need not be invited, and minutes need not be taken. No other FOIA requirements need to be followed. The section does not prohibit a public body from following the FOIA requirements, but they are not mandatory.

III. Records.

A major purpose of FOIA is to set out the rules for public record disclosure. The general rule in FOIA concerning records is that they are open to public inspection and copying. However, many categories of records are exempt from public access. Most of these categories do not apply to local governments. The fact that a record may be exempt from disclosure does not require it to be withheld. Each exemption section states in the opening sentence that the records "may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law." § 2.2-3705.1, 2, 3, 4, 5, 6, 7.

Some records, however, are prohibited from being disclosed at all. The custodian has no discretion to permit their disclosure. The main examples are certain tax records that Va. Code § 58.1-3 requires to be kept confidential, and matters for which the Privacy Protection Act prohibits disclosure. The act applies to records of the public body, whether the records are on paper, or in an electronic form, such as e-mails, databases and other electronic formats.

A. Responding to disclosure requests

Custodian of records. The records provisions of the act use the term "custodian of the records" as the person who has the responsibility to respond. Some sections mention the obligation of the public body, but the responsibility is clearly with the custodian. If suit is brought over a violation, however, the public body can expect to be named as a defendant.

One temptation is to deny a request because it was made to the wrong public official. If another public official who works in the same local government has the records, the request should not be denied just because it was directed to the wrong official if the recipient knows or should know that the records are available from another official. In this case, the official should respond to the request with the contact information for the other public body or just work with the other official to provide the records. § 2.2-3704(B)(3). With the designation of the FOIA officer this should not be an issue, but it continues to be a question we receive.

If the locality stores archived records off-site, and

the records are in control of a third party, it is still the public body's responsibility to retrieve those records if they are requested. § 2.2-3704(J). The Library of Virginia is the custodian of the records if the locality properly archives records with the state library. If the records were properly archived a locality could refer the request to the Library of Virginia.

Procedures for handling requests. Any citizen or member of the media may request an opportunity to inspect and/or copy public records. The request does not have to refer to the act, but only needs to identify the records with reasonable specificity. § 2.2-3704(B). There is no authority to require the request to be in writing, nor may the custodian of the records refuse to reply to a request if the requester refuses to put a request in writing. Some government offices ask for the request to be reduced to writing. This is a useful policy because it helps the custodian better understand what is being requested. That helps the requester, since the custodian can shorten the time researching records, thereby reducing the cost to the individual. If the individual declines to reduce the request to writing, a helpful option is to confer with the individual and write down the request, allowing the person to see the note and hopefully sign it, so no confusion will exist. The requester does not have say why the records are sought, and the government is not allowed to ask why the records are being requested, or what they will be used for.

The custodian may require the person asking to see or copy records for his name and legal address. § 2.2-3704(A). This 2002 amendment is part of the terrorism bill, but is not limited to requests relating to terrorism. The act is not clear on what happens if the requester refuses. VML suggests that if the requester does refuse, the language that the custodian "may require" the information necessarily implies that the custodian may refuse to allow access to the records.

The act does not give any rights to people who are not residents of Virginia, or to media representatives if the media entity does not publish or broadcast into the state. § 2.2-3704. As a practical matter, however, many government agencies don't discriminate based on where the requester is from. It is generally easy for an out-of-state person or media representative to find a Virginia individual to make the request. Therefore, there is little point in denying a request based on residency. Still, there is nothing that prohibits denying the request, so a locality is certainly free to follow the statute. The right to refuse has been affirmed by the courts.

B. Types of responses

There are three possible responses to a request:

1. Provide the records;
2. Obtain seven additional days to respond; or,
3. Claim an exemption to all or a portion of the request.

The initial response must be made within five business days of the receipt of the request, pursuant to § 2.2-3704, regardless of which response is used. If the custodian fails to respond within the times required, § 2.2-3704 considers that to be a denial of the request and makes it a violation of the act.

Notably, the custodian is not required to create records if they do not exist. § 2.2-3704(D). For example, if a request is for a list of trash collectors who do business in a locality, and the locality does not have such information, there is no requirement to create that list. Subsection D does encourage public bodies to abstract or summarize information in a manner agreed to with the requester.

1. Provide the records. The first response, providing the records, is straightforward. The custodian simply makes them available. If the individual asks to receive copies, the copies need to be made within the five days, if possible, or at such time the custodian and requester agree.

2. Obtain seven additional days to respond. Similarly, if it is "not practically possible to provide the ... records or to determine whether they are available," § 2.2-3704(B)(4), within the five days, the custodian may send a written response to the person explaining the conditions that make the response impractical. Upon compliance with this requirement, the custodian will have an additional seven workdays to respond. The added seven days does not begin until the end of the fifth day of the initial period. For example, if the custodian sends a letter on the second day after receipt of the request, he or she will still have a total of 12 workdays to respond.

One unanswered question is whether the custodian may claim more time to respond based on the time it takes to determine whether an exemption applies. The quoted language above uses the term "available." It is not clear whether deciding if an exemption applies is included in determining whether records are available. In discussions with the Virginia Press Association during the 2000 committee meetings on changes to the act, the VPA spokesman represented that the association would not contest a custodian's obtaining extra time to determine if exemptions apply. No court has answered the issue.

In addition to the 12 days to reply, a public body may petition a court for even more time to respond to a request. The additional time will likely be granted if the public body can demonstrate that the volume of records requested is so large that it would disrupt its operations to respond in the prescribed time and that it is unable to reach an agreement for a time to respond with the requester. § 2.2-3704(C).

3. Claim a partial or full exemption to the request. If one or more of the many exemptions apply, the custodian may, within the five workday limit, send the requester a written explanation of why all or some of the records are exempt. The explanation must identify the subject matter of the records (example: performance evaluations) and must cite the section of FOIA that authorizes the exemption. § 2.2-3704(B)(2). If only a portion of the requested records is exempt, the non-exempt parts must be made available within the five days, unless additional time is properly invoked.

In 1999, the Virginia Supreme Court decided *Lawrence v. Jenkins*, 258 Va. 598, a case in which a county zoning administrator failed to supply the code section he was relying on to exempt certain information in response to a FOIA request. The act required the code sections to be identified in the written response to the requester. Long after the time to respond had passed, the administrator sent the individual a letter identifying the code section. The court ruled that the violation still did not permit the individual to see the records and ruled that the records were exempt. Even though the zoning administrator did fail to meet FOIA requirements, the court determined the violation did not harm the requestor because he would not have been allowed to see the records if the act had been complied with. VML does not recommend relying on *Lawrence*. Every effort should be made to include the code section allowing the exemption in the initial correspondence.

Charges for responding to a request

The public body may charge the requester for searching and copying records. The costs must be reasonable, not to exceed the actual cost “incurred in accessing, duplicating, supplying, or searching for the requested records.” § 2.2-3704(F). A public body may not charge for overhead items, such as utilities, debt payments and the like. The hourly salary rate of any local employee who spends time researching and assembling records for the request may be charged, as may actual copying costs.

In responding to a request for duplication of part of a geographic information system database by making copies of GIS maps, the locality may base its charge on

a per acre cost if the area requested exceeds 50 acres. § 2.2-3704(F).

If the custodian determines that the cost of responding will be more than \$200, he may demand the requester to agree to pay a deposit in the amount of the projected costs before any information is disclosed. The time limits are tolled until payment of the deposit. The custodian is not required to send the estimate in writing, though providing a written estimate is the better practice, in order to avoid a claim by the individual that no deposit was requested. § 2.2-3704(H).

Format of records

Confusingly, the custodian must provide computer records in any “tangible medium identified by the requester,” except that it need not produce the material found in an electronic database in “a format not regularly used by the public body.” § 2.2-3704(G). The subsection is further muddled by a statement that provides – not withstanding this limitation – that the public body is to attempt to come to an agreement with the requester regarding the format of the documents to be supplied. Thus, a public body does not have to disclose electronic records in a format it does not regularly use, but must comply with any request for records maintained in a medium the public body uses in the regular course of business.

In a June 1, 1999 opinion, the attorney general opined that a local commissioner of the revenue is not required to make a copy of the personal property book for a citizen. The personal property book is a large, computer-generated bound book that every commissioner maintains. The attorney general reasoned that the act allows the commissioner to put the burden of copying on the citizen if the office has no means to copy the document. The same reasoning would apply to other local government agencies where the agency is incapable of providing requested information stored on electronic databases. § 2.2-3704(G).

E-mails and Text Messages

E-mails have generated much controversy since they began being used in government business operation. E-mails that deal with public business are public records. E-mails kept on the home computer of a council member or local government employee that relate to the transaction of public business are public and subject to inspection and copying by a citizen who makes a request to see the records.

Text messages have become the subject of many FOIA requests as well. These must be produced if requested and are subject to the records retention rules

as well. If you are transacting public business; the ownership of the device is irrelevant. The FOIA Council is beginning a discussion on emerging technology this summer.

Draft documents

Draft documents are records. The specific mention of draft records in the Code is to the minutes of a public body. Section § 2.2-3707 specifically states that draft minutes are available for inspection. Some local governments once had policies that denied the public viewing of draft minutes. The act prohibits such policies. Some draft documents fall into the working papers exemption. In that case, or if any other exemption applies, the draft documents are not required to be made available for inspection.

C. Exemptions list.

The list of records that may be held exempt from disclosure by the custodian is set out in seven separate, lengthy sections. Fortunately, the sections are arranged by subject area in order to make it easier to find the exemptions that may apply.

The current sections are:

- Exclusions of general application to public bodies: § 2.2-3705.1.
- Exclusions; records relating to public safety: § 2.2-3705.2.
- Exclusions; records relating to administrative investigations: § 2.2-3705.3.
- Exclusions; educational records and certain records of educational institutions: § 2.2-3705.4.
- Exclusions; health and social services records: § 2.2-3705.5.
- Exclusions; proprietary records and trade secrets: § 2.2-3705.6.
- Exclusions; records of specific public bodies and certain other limited exemptions: § 2.2-3705.7.

Most local governments will only use 20 or so of the exemptions, and only 10 will apply frequently. The exemptions that most often apply to local government are:

- “State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § 58.1-3.” § 2.2-3705.7(1).
- “Personnel records containing information concerning identifiable individuals, except that access

shall not be denied to the person who is the subject thereof.” § 2.2-3705.1(1). Any adult subject may waive confidentiality, in which case the government may release information on the person.

Added this year is the following language which was already the law: “*No provision of this chapter or any provision of Chapter 38 (§ 2.2-3800 et seq.) shall be construed as denying public access to (i) contracts between a public body and its officers or employees, other than contracts settling public employee employment disputes held confidential as personnel records under § 2.2-3705.1; (ii) records of the name, position, job classification, official salary, or rate of pay of, and records of the allowances or reimbursements for expenses paid to, any officer, official, or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees. The provisions of this subdivision, however, shall not require public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.*”

- “Working papers and correspondence of the ... mayor or chief executive officer of any political subdivision of the Commonwealth However, no record which is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence. Working papers will not be information that is publicly available that has been aggregated, combined, or changed in format without substantive analysis or revision. § 2.2-3705.7(2).

As used in this subdivision: “Working papers” means those records prepared by or for an above named public official for his personal or deliberative use. Generally, once the records have been shared by the chief administrative officer (county administrator or city or town manager), the records lose the working papers status, unless the records are collected from the council members or other people who have accessed them at the end of a meeting where the records were distributed.

- Consultants’ reports as working papers: Working papers, by the above definition, applies to records prepared by or for a manager or mayor for his personal or deliberative use. Once a consultant’s report is distributed or disclosed to council or the council has scheduled any action on a matter that is the subject of the consultant’s report, the report loses its exempt status as a working paper. § 2.2-3705.8(B). Therefore, until either of the two conditions occur, the report may be withheld as

a working paper. Once either event occurs, the working paper's status ceases to exist. If the report is exempt for other reasons, it remains exempt.

- “Written advice of legal counsel to state, regional or local public bodies or public officials, and any other records protected by the attorney client privilege.” § 2.2-3705.1(2).
- “Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter which is properly the subject of a closed meeting under § 2.2-3711.” § 2.2-3705.1(3).
Subsections 2 and 3 of § 2.2-3705.1 are the classic attorney client and attorney's work product rules.
- “Library records which can be used to identify both (i) both (a) any library patron who has borrowed material from a library, (b) the material such patron borrowed or (ii) any library patron under 18 years of age. For purposes of this clause (ii), access shall not be denied to the parent, including a noncustodial parent, or guardian of such library patron.” § 2.2-3705.7(3).
- “Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by a public body.” § 2.2-3705.1(4). This subsection includes exemptions for test keys and any information that would defeat the usefulness of the test.
- “Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to § 2.2-3711. However, no record which is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.” § 2.2-3705.1(5).
- “Computer software developed by or for a ... political subdivision of the Commonwealth.” § 2.2-3705.1(7).
- “Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but excluding the amount of utility service provided and the amount of money charged or paid for such utility service.” § 2.2-3705.7(7). Note that under this subsection, anyone

has access to the volume of service used by a customer and the price paid, even though the name and address of a customer need not be given. A typical example of how this works: An individual could not demand a listing of the names of customers, but could demand to know how much water, gas, or electricity a customer has used and the amount paid for the same, where the person names the customer.

- “Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease.” § 2.2-3705.1(8).

This section has been modified by Va. Code § 25-248. Local governments are now in the list of agencies that must follow the Uniform Relocation Assistance Act. One of the obligations, in subsection (b) requires that: “real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.” Therefore, in any purchase of land to which the URAA applies, the landowner must be allowed to see a copy of the appraisal, and the appraisal must be done before beginning negotiations for the land.

- “Confidential information designated as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.” § 2.2-3705.6(10). Language in the Procurement Act supports this exemption.
- “Information contained in (i) engineering, architectural, or construction drawings; (ii) operational, procedural, tactical planning, or training manuals; (iii) staff meeting minutes; or (iv) other records that reveal any of the following, the disclosure of which would jeopardize the safety or security of any person; governmental facility, building, or structure; or public or private commercial office, multifamily residential, or retail building or its occupants. § 2.2-3705.2(14).

This section continues on to include critical infrastructure and information related to such as well as vulnerability assessments and information technology.

NOTE: If you receive a request for these types of records, the public body is responsible for notifying the Secretary of Public Safety and Homeland Security or their designees.

- Personal information furnished to a public body for the purpose of receiving electronic mail from the public body, provided that the electronic mail recipient has requested that the public body not disclose such information. However, access shall not be denied to the person who is the subject of the record. § 2.2-3705.1(10). Personal contact information includes home or business address, email address or telephone number.
- The name, address and phone number of a person complaining about another person on a Zoning, Building Code or Fire Prevention Code complaint are exempt from disclosure. This provision is not limited to criminal complaints: it applies in any investigation of the complaints. § 2.2-3705.3(8). §2.2-3705.5(9) exempts information or records of local or regional adult fatality review teams from disclosure. HB 1558. Any locality participating in such review teams may withhold records and information to the extent the information is made confidential by § 32.1-283.6.

D. Criminal incident information.

The majority of the rules for criminal incident information are set out in § 2.2-3706. The section’s basic requirement is that “criminal incident information” has to be made available only if it applies to a felony. This means that local law enforcement officials do not have to make misdemeanor criminal incident information available. The policy behind the distinction between misdemeanors and felonies is based on the probable burden that would be shouldered by local police departments and sheriff’s offices if required to make public information about every misdemeanor.

There are several exemptions that allow a law enforcement agency to withhold information in order to promote public safety and to not hinder ongoing criminal investigations. If release would hinder an investigation or be likely to cause the criminal to flee or destroy evidence, it need not be released. Once the reason for concern has ended, the exemption no longer applies. However, § 2.2-3706(A)(1)(b),(c) requires the names of adult arrestees and the status of charges or arrests to be released.

The identities of crime victims and confidential informants do not need to be released. There is no time limit on this exemption. Thus, unlike other information, the exemption continues even after the reason for concern ceases to exist.

Various other criminal records are exempt:

- complaints, memos, correspondence and evidence that is not “criminal incident information;”

- photos of adult arrestees, if release would harm an investigation or prosecution;
- confidential reports made to the police or sheriffs personnel;
- local crime commission information identifying persons providing information about criminal activity; and,
- neighborhood watch program information that contains the names, addresses or schedules of the watch participants, if the information is provided under a promise of anonymity.

The provision exempting law-enforcement records containing police and other tactical plans that need to be kept secure for safety reasons is set out in § 2.2-3706(A)(2)(e).

Those portions of noncriminal incident and other noncriminal investigative reports or materials that contain identifying information of a personal, medical, or financial nature may be withheld where the release of such information would jeopardize the safety or privacy of any person. Access to personnel records of persons employed by a law-enforcement agency shall be governed by the provisions of subdivision (A)(2)(i) of this section and subdivision 1 of §2.2-3705.1, as applicable.” This section used to specifically refer to the records in §15.2-1722, but the reference has been removed.

§ 2.2-3706(A)(2)(g) exempts from disclosure the mobile phone and pager numbers of police officers for devices provided by the police department to assist the officers in carrying out their duties. This arose from attempts by reporters to obtain the cell phone numbers of police officers, then calling while the officers were on a call.

SB1102 this year requires that records of a completed unattended death investigation be released to the most immediate family member of the decedent. If the person is not a person of interest in the matter. §2.2-3706(A)(1)(d).

Rights of penal institution inmates under FOIA

Section 2.2-3703(C) denies people who are in a local jail or state or federal penitentiary any rights under FOIA. The only rights are those guaranteed by the Constitution, such as the right to subpoena evidence.

Enforcement provisions

Any person who feels a public body or public official has violated the act may file suit in the general district or circuit court of the locality where the body or official operates. § 2.2-3713(A). A FOIA action may commence in the name of a person, even if the plaintiff’s attorney,

acting on his or her behalf, made the original FOIA request. The case must be heard within seven days of filing. § 2.2-3713(C). As a practical matter, this rocket docket provision inconveniences judges greatly, as their court schedules are usually very busy. Saturday hearings are common for FOIA cases.

The petitioner must state a claim of a violation with reasonable specificity, pursuant to subsection D. Even though a suit is filed by the complaining citizen, the public body must put on its evidence first and must prove that it has complied with the act. It is not the petitioner's obligation to prove the violation. § 2.2-3713.

The court may award an injunction against repeated violations, or even for a single occurrence of noncompliance. Further, if the petitioner wins the case, he may be awarded attorney's fees by the court. If the court determines that an official willfully or knowingly violated the law, it is required to impose a civil penalty against him or her in an amount between \$500 and \$2,000 for a first offense and \$2,000 to \$5,000 for subsequent offenses. The penalties are to be paid into the Literary Fund. § 2.2-3714.

Freedom of Information Advisory Council

The Freedom of Information Advisory Council serves primarily as an office to answer questions about FOIA made by government agencies, the public, and the media. An attorney who staffs the office makes the opinions of the council. The opinions are to be informal, advisory, and nonbinding. If a government agency submits records for a review and advice by the FOIA officer, the officer may not release the submitted information without the permission of the agency that submitted them.

The office has a toll-free number (866) 448-4100 for requests, and has a website: <http://foiacouncil.dls.virginia.gov/>. The council has lists of written opinions on the website.

All localities should appoint a FOIA Officer and provide their contact information on the government website. §2.2-3704.2. Each locality that has more than 250 people shall post the FOIA rights and responsibilities, as well as a link to the FOIA Council online public comment form on its government website. §2.2-3704.1.

In addition to issuing opinions, which may be made via telephone, letter or e-mail, the FOIA office conducts FOIA training for the FOIA Officer and any other government officials. Because public officials must read and familiarize themselves with the act, the

training sessions are an important opportunity to learn the act's requirements. § 30-179.

Summary

The Freedom of Information Act includes many requirements and restrictions pertaining to public access of government information. The basic policy woven throughout the act makes clear that the public is to have free access to government information and meetings. The act sets out the types of meetings that can be closed. The exemptions protect the operation of government reasonably well.

FOIA will continue to evolve to meet the changing expectations of the public and government agencies. In the area of electronic information, expect to see significant changes as the General Assembly makes the act more relevant in the fast-changing electronic age. For example, application of the act to the use of e-mail, instant messaging and other social media software will likely be revisited many times!

Title 2.2. Administration of Government

Subtitle II. Administration of Government

Part B. Transaction of Public Business

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§ 2.2-3700. Short title; policy.

A. This chapter may be cited as «The Virginia Freedom of Information Act.»

B. By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked.

The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law. This chapter shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth.

All public bodies and their officers and employees shall make reasonable efforts to reach an agreement with a requester concerning the production of the records requested.

Any ordinance adopted by a local governing body that conflicts with the provisions of this chapter shall be void.

§ 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.

“Regional public body” means a unit of government organized as provided by law within defined boundaries, as determined by the General Assembly, which unit includes two or more localities.

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

§ 2.2-3702. Notice of chapter.

Any person elected, reelected, appointed or reappointed to any body not excepted from this chapter shall (i) be furnished by the public body’s administrator or legal counsel with a copy of this chapter within two weeks following election, reelection, appointment or reappointment and (ii) read and become familiar with the provisions of this chapter.

§ 2.2-3703. Public bodies and records to which chapter inapplicable; voter registration and election records; access by persons incarcerated in a state, local, or federal correctional facility.

A. The provisions of this chapter shall not apply to:

1. The Virginia Parole Board, except that (i) information from the Virginia Parole Board providing the number of inmates considered by such Board for discretionary parole, the number of inmates granted or denied parole, and the number of parolees returned to the custody of the Department of Corrections solely as a result

of a determination by such Board of a violation of parole shall be open to inspection and available for release, on a monthly basis, as provided by § 2.2-3704 and (ii) all records concerning the finances of the Virginia Parole Board shall be public records and subject to the provisions of this chapter. The information required by clause (i) shall be furnished by offense, sex, race, age of the inmate, and the locality in which the conviction was obtained, upon the request of the party seeking the information;

2. Petit juries and grand juries;
3. Family assessment and planning teams established pursuant to § 2.2-5207;
4. The Virginia State Crime Commission; and
5. The records required by law to be maintained by the clerks of the courts of record, as defined in § 1-212, and courts not of record, as defined in § 16.1-69.5. However, other records maintained by the clerks of such courts shall be public records and subject to the provisions of this chapter.

B. Public access to voter registration and election records shall be governed by the provisions of Title 24.2 and this chapter. The provisions of Title 24.2 shall be controlling in the event of any conflict.

C. No provision of this chapter or Chapter 21 (§ 30-178 et seq.) of Title 30 shall be construed to afford any rights to any person (i) incarcerated in a state, local or federal correctional facility, whether or not such facility is (a) located in the Commonwealth or (b) operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.) or (ii) civilly committed pursuant to the Sexually Violent Predators Act (§ 37.2-900 et seq.). However, this subsection shall not be construed to prevent such persons from exercising their constitutionally protected rights, including, but not limited to, their right to call for evidence in their favor in a criminal prosecution.

§ 2.2-3703.1. Disclosure pursuant to court order or subpoena.

Nothing contained in this chapter shall have any bearing upon disclosures required to be made pursuant to any court order or subpoena. No discretionary exemption from mandatory disclosure shall be construed to make records covered by such discretionary exemption privileged under the rules of discovery, unless disclosure is otherwise prohibited by law.

2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to request; charges; transfer of records for storage, etc.

A. Except as otherwise specifically provided by law, all public records shall be open to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall be provided by the custodian in accordance with this chapter by inspection or by providing copies of the requested records, at the option of the requester. The custodian may require the requester to provide his name and legal address. The custodian of such records shall take all necessary precautions for their preservation and safekeeping.

B. A request for public records shall identify the requested records with reasonable specificity. The request need not make reference to this chapter in order to invoke the provisions of this chapter or to impose the time limits for response by a public body. Any public body that is subject to this chapter and that is the custodian of the requested records shall promptly, but in all cases within five working days of receiving a request, provide the requested records to the requester or make one of the following responses in writing:

1. The requested records are being entirely withheld. Such response shall identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.
2. The requested records are being provided in part and are being withheld in part. Such response shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.
3. The requested records could not be found or do not exist. However, if the public body that received the request knows that another public body has the requested records, the response shall include contact information for the other public body.
4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall specify the conditions that make

a response impossible. If the response is made within five working days, the public body shall have an additional seven work days in which to provide one of the four preceding responses.

C. Any public body may petition the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records or requires an extraordinarily lengthy search, and a response by the public body within the time required by this chapter will prevent the public body from meeting its operational responsibilities. Before proceeding with the petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

D. Subject to the provisions of subsection G, no public body shall be required to create a new record if the record does not already exist. However, a public body may abstract or summarize information under such terms and conditions as agreed between the requester and the public body.

E. Failure to respond to a request for records shall be deemed a denial of the request and shall constitute a violation of this chapter.

F. A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. The public body may also make a reasonable charge for the cost incurred in supplying records produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen.

G. Public records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data shall be made available to a requester at a reasonable cost, not to exceed the actual cost in accordance with subsection

F. When electronic or other databases are combined or contain exempt and nonexempt records, the public body may provide access to the exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided by this chapter.

Public bodies shall produce nonexempt records maintained in an electronic database in any tangible medium identified by the requester, including, where the public body has the capability, the option of posting the records on a website or delivering the records through an electronic mail address provided by the requester, if that medium is used by the public body in the regular course of business. No public body shall be required to produce records from an electronic database in a format not regularly used by the public body. However, the public body shall make reasonable efforts to provide records in any format under such terms and conditions as agreed between the requester and public body, including the payment of reasonable costs. The excision of exempt fields of information from a database or the conversion of data from one available format to another shall not be deemed the creation, preparation, or compilation of a new public record.

H. In any case where a public body determines in advance that charges for producing the requested records are likely to exceed \$200, the public body may, before continuing to process the request, require the requester to agree to payment of a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the requester.

I. Before processing a request for records, a public body may require the requester to pay any amounts owed to the public body for previous requests for records that remain unpaid 30 days or more after billing.

J. In the event a public body has transferred possession of public records to any entity, including but not limited to any other public body, for storage, maintenance, or archiving, the public body initiating the transfer of such records shall remain the custodian of such records for purposes of responding to requests for public records made pursuant to this chapter and shall be responsible for retrieving and supplying such public records to the requester. In the event a public body has transferred public records for storage, maintenance, or archiving and such transferring public body is no longer in existence, any public body that is a succes-

sor to the transferring public body shall be deemed the custodian of such records. In the event no successor entity exists, the entity in possession of the public records shall be deemed the custodian of the records for purposes of compliance with this chapter, and shall retrieve and supply such records to the requester. Nothing in this subsection shall be construed to apply to records transferred to the Library of Virginia for permanent archiving pursuant to the duties imposed by the Virginia Public Records Act (§ 42.1-76 et seq.). In accordance with § 42.1-79, the Library of Virginia shall be the custodian of such permanently archived records and shall be responsible for responding to requests for such records made pursuant to this chapter.

§ 2.2-3704.01. Records containing both excluded and nonexcluded information; duty to redact.

No provision of this chapter is intended, nor shall it be construed or applied, to authorize a public body to withhold a public record in its entirety on the grounds that some portion of the public record is excluded from disclosure by this chapter or by any other provision of law. A public record may be withheld from disclosure in its entirety only to the extent that an exclusion from disclosure under this chapter or other provision of law applies to the entire content of the public record. Otherwise, only those portions of the public record containing information subject to an exclusion under this chapter or other provision of law may be withheld, and all portions of the public record that are not so excluded shall be disclosed.

§ 2.2-3704.1. Posting of notice of rights and responsibilities by state and local public bodies; assistance by the Freedom of Information Advisory Council.

A. All state public bodies subject to the provisions of this chapter any county or city, or any town with a population of more than 250, and any school board shall make available the following information to the public upon request and shall post a link to such information on the homepage of their respective official public government websites:

1. A plain English explanation of the rights of a requester under this chapter, the procedures to obtain public records from the public body, and the responsibilities of the public body in complying with this chapter. For purposes of this section, “plain English” means written in nontechnical, readily understandable language using words

of common everyday usage and avoiding legal terms and phrases or other terms and words of art whose usage or special meaning primarily is limited to a particular field or profession;

2. Contact information for the FOIA officer designated by the public body pursuant to § 2.2-3704.2 to (i) assist a requester in making a request for records or (ii) respond to requests for public records;
3. A general description, summary, list, or index of the types of public records maintained by such public body;
4. A general description, summary, list, or index of any exemptions in law that permit or require such public records to be withheld from release;
5. Any policy the public body has concerning the type of public records it routinely withholds from release as permitted by this chapter or other law; and
6. The following statement: “A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen as set forth in subsection F of § 2.2-3704 of the Code of Virginia.”

B. Any state public body subject to the provisions of this chapter and any county or city, and any town with a population of more than 250, shall post a link on its official public government website to the online public comment form on the Freedom of Information Advisory Council’s website to enable any requester to comment on the quality of assistance provided to the requester by the public body.

C. The Freedom of Information Advisory Council, created pursuant to § 30-178, shall assist in the development and implementation of the provisions of subsection A, upon request.

§ 2.2-3704.2. Public bodies to designate FOIA officer.

A. All state public bodies, including state authorities, that are subject to the provisions of this chapter

and all local public bodies that are subject to the provisions of this chapter, shall designate and publicly identify one or more Freedom of Information Act officers (FOIA officer) whose responsibility is to serve as a point of contact for members of the public in requesting public records and to coordinate the public body’s compliance with the provisions of this chapter.

B. For such state public bodies, the name and contact information of the public body’s FOIA officer to whom members of the public may direct requests for public records and who will oversee the public body’s compliance with the provisions of this chapter shall be made available to the public upon request and be posted on the respective public body’s official public government website at the time of designation and maintained thereafter on such website for the duration of the designation.

C. For such local public bodies, the name and contact information of the public body’s FOIA officer to whom members of the public may direct requests for public records and who will oversee the public body’s compliance with the provisions of this chapter shall be made available in a way reasonably calculated to provide notice to the public, including posting at the public body’s place of business, posting on its official public government website, or including such information in its publications.

D. For the purposes of this section, local public bodies shall include constitutional officers.

E. Any such FOIA officer shall possess specific knowledge of the provisions of this chapter and be trained at least annually by legal counsel for the public body or the Virginia Freedom of Information Advisory Council (the Council) or through an online course offered by the Council. Any such training shall document that the training required by this subsection has been fulfilled.

F. The name and contact information of a FOIA officer trained by legal counsel of a public body shall be (i) submitted to the Council by July 1 of each year on a form developed by the Council for that purpose and (ii) updated in a timely manner in the event of any changes to such information.

G. The Council shall maintain on its website a listing of all FOIA officers, including name, contact information, and the name of the public body such FOIA officers serve.

§ 2.2-3705.1. Exclusions to application of chapter; exclusions of general application to public bodies.

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. Personnel information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of such information and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, such information shall be disclosed. Nothing in this subdivision shall be construed to authorize the withholding of any resumes or applications submitted by persons who are appointed by the Governor pursuant to § 2.2-106 or 2.2-107.

No provision of this chapter or any provision of Chapter 38 (§ 2.2-3800 et seq.) shall be construed as denying public access to (i) contracts between a public body and its officers or employees, other than contracts settling public employee employment disputes held confidential as personnel records under § 2.2-3705.1; (ii) records of the name, position, job classification, official salary, or rate of pay of, and records of the allowances or reimbursements for expenses paid to, any officer, official, or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees. The provisions of this subdivision, however, shall not require public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

2. Written advice of legal counsel to state, regional or local public bodies or the officers or employees of such public bodies, and any other information protected by the attorney-client privilege.
3. Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter that is properly the subject of a closed meeting under § 2.2-3711.
4. Any test or examination used, administered or prepared by any public body for purposes of eval-

uation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by a public body.

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

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

5. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.
6. Vendor proprietary information software that may be in the public records of a public body. For the purpose of this subdivision, "vendor proprietary information software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.
7. Computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth.
8. Appraisals and cost estimates of real property subject to a proposed purchase, sale, or lease, prior to the completion of such purchase, sale, or lease.
9. Information concerning reserves established in specific claims administered by the Department of the Treasury through its Division of Risk

Management as provided in Article 5 (§ 2.2-1832 et seq.) of Chapter 18, or by any county, city, or town; and investigative notes, correspondence and information furnished in confidence with respect to an investigation of a claim or a potential claim against a public body's insurance policy or self-insurance plan. However, nothing in this subdivision shall prevent the disclosure of information taken from inactive reports upon expiration of the period of limitations for the filing of a civil suit.

10. Personal contact information, §2.2-3801 furnished to a public body for the purpose of receiving electronic mail from the public body, provided that the electronic mail recipient has requested that the public body not disclose such information. However, access shall not be denied to the person who is the subject of the record. As used in this subdivision, "personal contact information" means the information provided to the public body for the purpose of receiving electronic mail from the public body and includes home or business (i) address, (ii) email address, or (iii) telephone number or comparable number assigned to any other electronic communication device.
11. Communications and materials required to be kept confidential pursuant to § 2.2-4119 of the Virginia Administrative Dispute Resolution Act (§ 2.2-4115 et seq.).
12. Information relating to the negotiation and award of a specific contract where competition or bargaining is involved and where the release of such information would adversely affect the bargaining position or negotiating strategy of the public body. Such information shall not be withheld after the public body has made a decision to award or not to award the contract. In the case of procurement transactions conducted pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.), the provisions of this subdivision shall not apply, and any release of information relating to such transactions shall be governed by the Virginia Public Procurement Act.
13. Account numbers or routing information for any credit card, debit card, or other account with a financial institution of any person or public body. However, access shall not be denied to the person who is the subject of the information. For the purposes of this subdivision, "financial institution" means any organization authorized to do

business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, savings and loan companies or associations, and credit unions.

§ 2.2-3705.2. Exclusions to application of chapter; records relating to public safety.

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. Confidential information, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.
2. Information that describes the design, function, operation, or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.
3. Information that would disclose the security aspects of a system safety program plan adopted pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety Oversight agency; and information in the possession of such agency, the release of which would jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway safety.
4. Information concerning security plans and specific assessment components of school safety audits, as provided in § 22.1-279.8.

Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the effectiveness of security plans after (i) any school building or property has been subjected to fire, explosion, natural disaster, or other catastrophic event or (ii) any person on school property has suffered or been threatened with any personal injury.
5. Information concerning the mental health assessment of an individual subject to commitment as a sexually violent predator under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2 held by the Commitment Review Committee; except that in no case shall information identifying the victims of a

sexually violent predator be disclosed.

6. Subscriber data provided directly or indirectly by a communications services provider to a public body that operates a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system if the data is in a form not made available by the communications services provider to the public generally. Nothing in this subdivision shall prevent the disclosure of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

For the purposes of this subdivision:

“Communications services provider” means the same as that term is defined in § 58.1-647.

“Subscriber data” means the name, address, telephone number, and any other information identifying a subscriber of a communications services provider.

7. Subscriber data collected by a local governing body in accordance with the Enhanced Public Safety Telephone Services Act (§ 56-484.12 et seq.) and other identifying information of a personal, medical, or financial nature provided to a local governing body in connection with a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system if such records are not otherwise publicly available.

Nothing in this subdivision shall prevent the disclosure of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

For the purposes of this subdivision:

“Communications services provider” means the same as that term is defined in § 58.1-647.

“Subscriber data” means the name, address, telephone number, and any other information identifying a subscriber of a communications services provider.

8. Information held by 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, that would (i) reveal strategies under consideration or development by the Council or such commission or organizations to prevent the closure or realignment of federal military installations located in Virginia or the relocation of national security facilities located in Virginia, to limit the adverse economic effect of such realignment, closure, or relocation, or to seek additional tenant activity growth from the Department of Defense or federal government or (ii) disclose trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to the Council or such commission or organizations in connection with their work.

In order to invoke the trade secret protection provided by clause (ii), the submitting entity shall, in writing and at the time of submission (a) invoke this exclusion, (b) identify with specificity the information for which such protection is sought, and (c) state the reason why such protection is necessary. Nothing in this subdivision shall be construed to prevent the disclosure of all or part of any record, other than a trade secret that has been specifically identified as required by this subdivision, after the Department of Defense or federal agency has issued a final, unappealable decision, or in the event of litigation, a court of competent jurisdiction has entered a final, unappealable order concerning the closure, realignment, or expansion of the military installation or tenant activities, or the relocation of the national security facility, for which records are sought.

9. Information, as determined by the State Comptroller, that describes the design, function, operation, or implementation of internal controls over the Commonwealth’s financial processes and systems, and the assessment of risks and vulnerabilities of those controls, including the annual assessment of internal controls mandated by the State Comptroller, if disclosure of such information would jeopardize the security of the Commonwealth’s financial assets. However, records relating to the investigation of and findings concerning the soundness of any fiscal process shall be disclosed in a form that does not compromise internal controls. Nothing in this subdivision shall be construed to prohibit the Auditor of Public Accounts or the Joint Legislative Audit and Review Commission from reporting internal

control deficiencies discovered during the course of an audit.

10. Information relating to the Statewide Agencies Radio System (STARS) or any other similar local or regional public safety communications system that (i) describes the design, function, programming, operation, or access control features of the overall system, components, structures, individual networks, and subsystems of the STARS or any other similar local or regional communications system or (ii) relates to radio frequencies assigned to or utilized by STARS or any other similar local or regional communications system, code plugs, circuit routing, addressing schemes, talk groups, fleet maps, encryption, or programming maintained by or utilized by STARS or any other similar local or regional public safety communications system.
11. Information concerning a salaried or volunteer Fire/EMS company or Fire/EMS department if disclosure of such information would reveal the telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to its personnel for use in the performance of their official duties.
12. Information concerning the disaster recovery plans or the evacuation plans in the event of fire, explosion, natural disaster, or other catastrophic event for hospitals and nursing homes regulated by the Board of Health pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 provided to the Department of Health. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the effectiveness of executed evacuation plans after the occurrence of fire, explosion, natural disaster, or other catastrophic event.
13. Records received by the Department of Criminal Justice Services pursuant to §§ 9.1-184, 22.1-79.4, and 22.1-279.8 or for purposes of evaluating threat assessment teams established by a public institution of higher education pursuant to § 23.1-805 or by a private nonprofit institution of higher education, to the extent such records reveal security plans, walk-through checklists, or vulnerability and threat assessment components.
14. Information contained in (i) engineering, architectural, or construction drawings; (ii) operational, procedural, tactical planning, or training manuals; (iii) staff meeting minutes; or (iv) other records that reveal any of the following, the

disclosure of which would jeopardize the safety or security of any person; governmental facility, building, or structure or persons using such facility, building, or structure; or public or private commercial office, multifamily residential, or retail building or its occupants:

- a. Critical infrastructure information or the location or operation of security equipment and systems of any public building, structure, or information storage facility, including ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, or utility equipment and systems;

- b. Vulnerability assessments, information not lawfully available to the public regarding specific cybersecurity threats or vulnerabilities, or security plans and measures of an entity, facility, building structure, information technology system, or software program;

- c. Surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational or transportation plans or protocols; or

- d. Interconnectivity, network monitoring, network operation centers, master sites, or systems related to the Statewide Agencies Radio System (STARS) or any other similar local or regional public safety communications system.

The same categories of records of any person or entity submitted to a public body for the purpose of antiterrorism response planning or cybersecurity planning or protection may be withheld from disclosure if such person or entity in writing (a) invokes the protections of this subdivision, (b) identifies with specificity the records or portions thereof for which protection is sought, and (c) states with reasonable particularity why the protection of such records from public disclosure is necessary to meet the objective of antiterrorism, cybersecurity planning or protection, or critical infrastructure information security and resilience. Such statement shall be a public record and shall be disclosed upon request.

Any public body receiving a request for records excluded under clauses (a) and (b) of this subdivision 14 shall notify the Secretary of Public Safety and Homeland Security or his designee of such request and the response made by the public body in accordance with § 2.2-3704.

Nothing in this subdivision 14 shall prevent

the disclosure of records relating to (1) the structural or environmental soundness of any such facility, building, or structure or (2) an inquiry into the performance of such facility, building, or structure after it has been subjected to fire, explosion, natural disaster, or other catastrophic event.

As used in this subdivision, “critical infrastructure information” means the same as that term is defined in 6 U.S.C. § 131

2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations.

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. (Effective until July 1, 2018) Information relating to investigations of applicants for licenses and permits, and of all licensees and permittees, made by or submitted to the Alcoholic Beverage Control Board, the Virginia Lottery, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.
2. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth pursuant to § 54.1-108.
3. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management, to such personnel of any local public body, including local school boards, as are responsible for conducting such investigations in confidence, or to any public institution of higher education. However, nothing in this subdivision shall prevent the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information, or other individuals involved in the investigation.
4. Records of active investigations being conducted

by the Department of Medical Assistance Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

5. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance with the authority specified in § 2.2-524, or adopted pursuant to § 15.2-965, or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this subdivision shall prevent the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.
6. Information relating to studies and investigations by the Virginia Lottery of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such information has not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv), and (v) shall be open to inspection and copying upon completion of the study or investigation.
7. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) the Office of the State Inspector General with respect to an investigation initiated through the Fraud, Waste and Abuse Hotline or an investigation initiated pursuant to Chapter 3.2 (§ 2.2-307 et seq.); (v) internal auditors appointed by the head of a state agency or by any public institution of higher education; (vi) the committee or the auditor with respect to an investigation or audit conducted

pursuant to § 15.2-825; or (vii) the auditors, appointed by the local governing body of any county, city, or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department, or program of such body. Information contained in completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is excluded by this subdivision, the information disclosed shall include the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

8. The names, addresses, and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints or complaints relating to the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.) made to a local governing body.
9. Records of active investigations being conducted by the Department of Criminal Justice Services pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185 et seq.), and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.
10. Information furnished to or prepared by the Board of Education pursuant to subsection D of § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school board employees responsible for the distribution or administration of the tests. However, this section shall not prohibit the disclosure of such information to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board.
11. Information contained in (i) an application for licensure or renewal of a license for teachers and other school personnel, including transcripts or other documents submitted in support of an application, and (ii) an active investigation conducted by or for the Board of Education related to the denial, suspension, cancellation, revocation, or reinstatement of teacher and other school personnel licenses including investigator notes and other correspondence and information, furnished in confidence with respect to such investigation. However, this subdivision shall not prohibit the disclosure of such (a) application information to the applicant at his own expense or (b) investigation information to a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee. Information contained in completed investigations shall be disclosed in a form that does not reveal the identity of any complainant or person supplying information to investigators. The completed investigation information disclosed shall include information regarding the school or facility involved, the identity of the person who was the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a complaint or does not lead to corrective action, the identity of the person who was the subject of the complaint may be released only with the consent of the subject person. No personally identifiable information regarding a current or former student shall be released except as permitted by state or federal law.
12. Information provided in confidence and related to an investigation by the Attorney General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2, Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 or Chapter 13 (§ 18.2-512 et seq.) of Title 18.2, or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, information related to an investigation that has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is not otherwise prohibited by law and does not reveal the identity of charging parties, complainants, persons supplying information, witnesses, or other individuals involved in the investigation.

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

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

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

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

Any person who is the subject of any scholastic record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, such records shall be disclosed.

2. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment or promotion, or (iii) receipt of an honor or honorary recognition.
3. Information held by the Brown v. Board of Education Scholarship Awards Committee that would reveal personally identifiable information, including scholarship applications, personal fi-

nancial information, and confidential correspondence and letters of recommendation.

4. Information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such information has not been publicly released, published, copyrighted or patented.
5. Information held by the University of Virginia or the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, that contain 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 be harmful to the competitive position of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be.
6. Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College Savings Plan 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, including personal information related to (i) qualified beneficiaries as that term is defined in § 23.1-700, (ii) designated survivors, or (iii) authorized individuals. Nothing in this subdivision shall be construed to prevent 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.

For purposes of this subdivision:

“Authorized individual” means an individual who may be named by the account owner to receive information regarding the account but

who does not have any control or authority over the account.

“Designated survivor” means the person who will assume account ownership in the event of the account owner’s death.

7. Information maintained in connection with fundraising activities by or for a public institution of higher education that would 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 prevent the disclosure of information 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. Information held by a threat assessment team established by a local school board pursuant to § 22.1-79.4 or by a public institution of higher education pursuant to § 23.1-805 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, such information of the 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 information shall remove personally identifying information of any person who provided information to the threat assessment team under a promise of confidentiality.

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.

Where the person who is the subject of health records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person’s right of access to the health records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Health records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the health records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

Where the person who is the subject of health records is under the age of 18, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent’s parental rights have been terminated, a court of competent jurisdiction has restricted or denied such access, or a parent has been denied access to the health record in accordance with § 20-124.6. In instances where the person who is the subject thereof is an emancipated minor, a student in a public institution of higher education, or is a minor who has consented to his own treatment as authorized by § 16.1-338 or 54.1-2969, the right of access may be asserted by the subject person.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning abuse of individuals receiving services compiled by the Commissioner of Behavioral Health and Developmental Services shall be disclosed. No such summaries or data shall include any information that identifies specific individuals receiving services.

2. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants; information required to be provided to the Department of Health Professions by certain licensees pursuant to § 54.1-2506.1; information held by the Health Practitioners' Monitoring Program Committee within the Department of Health Professions that identifies any practitioner who may be, or who is actually, impaired to the extent that disclosure is prohibited by § 54.1-2517; and information relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such information that are in the possession of the Prescription Monitoring Program (Program) pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or security of the Program.
3. Reports, documentary evidence, and other information as specified in §§ 51.5-122, and 51.5-141, and 63.2-104 Chapter 1 (§ 63.2-100 et seq.) of Title 63.2 and information and statistical registries required to be kept confidential pursuant to Chapter 1 (§ 63.2-100 et seq.) of Title 63.2.
4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2; and information furnished to the Office of the Attorney General in connection with an investigation or litigation pursuant to Article 19.1 (§ 8.01-216.1 et seq.) of Chapter 3 of Title 8.01 and Chapter 9 (§ 32.1-310 et seq.) of Title 32.1. However, nothing in this subdivision shall prevent the disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.
5. Information collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.
6. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § 37.2-818.
7. Information acquired (i) during a review of any child death conducted by the State Child Fatality Review team established pursuant to § 32.1-283.1 or by a local or regional child fatality review team to the extent that such information is made confidential by § 32.1-283.2; (ii) during a review of any death conducted by a family violence fatality review team to the extent that such information is made confidential by § 32.1-283.3; or (iii) during a review of any adult death conducted by the Adult Fatality Review Team to the extent made confidential by § 32.1-283.5 or by a local or regional adult fatality review team to the extent that such information is made confidential by § 32.1-283.6.
8. Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to § 32.1-276.4.
9. Information relating to a grant application, or accompanying a grant application, submitted to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of Chapter 14 of Title 51.5 that would (i) reveal (a) medical or mental health records or other data identifying individual patients or (b) proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.
10. Any information copied, recorded, or received by the Commissioner of Health in the course of an examination, investigation, or review of a managed care health insurance plan licensee pursuant to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.
11. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be kept confidential pursuant to § 38.2-5002.2.
12. Information held by the State Health Commis-

sioner relating to the health of any person subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1. However, nothing in this subdivision shall be construed to prevent the disclosure of statistical summaries, abstracts, or other information in aggregate form.

13. The names and addresses or other contact information of persons receiving transportation services from a state or local public body or its designee under Title II of the Americans with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created under § 63.2-600.
14. Information held by certain health care committees and entities that may be withheld from discovery as privileged communications pursuant to § 8.01-581.17.

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

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4 or 62.1-134.1.
2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.
3. Proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body.
4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

5. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § 28.2-204.
6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.
7. Proprietary information related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.
8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.
9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects if disclosure of such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exclusion provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.
10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade secrets or proprietary information by any person in connection with a procurement transaction or by any person who has submitted to a public body

an application for prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

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

b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity where if such information was made public prior to the execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining position of the public or private entity would be adversely affected. In order for the information specified in clauses (i), (ii), and (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the responsible public entity:

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

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

(3) Stating the reasons why protection is necessary.

The responsible public entity shall determine

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

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

For the purposes of this subdivision, the terms “affected jurisdiction,” “affected local jurisdiction,” “comprehensive agreement,” “interim agreement,” “qualifying project,” “qualifying transportation facility,” “responsible public entity,” and “private entity” shall mean the same as those terms are defined in the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or in the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.).

12. Confidential proprietary information or trade secrets, not publicly available, provided by a private person or entity pursuant to a promise of confidentiality to the Virginia Resources Authority or to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such information were made public, the financial

interest of the private person or entity would be adversely affected.

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

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

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

14. Information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Department of Agriculture and Consumer Services pursuant to subsection E of § 18.2-340.34.
15. Information related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to § 3.2-1215.
16. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1, submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

17. Information relating to a grant or loan application, or accompanying a grant or loan application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 5.3 (§ 32.1-162.23 et seq.) of Title 32.1 if disclosure of such information would (i) reveal proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

18. Confidential proprietary information and trade secrets developed and held by a local public body (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2 if disclosure of such information would be harmful to the competitive position of the locality.

In order for confidential proprietary information or trade secrets to be excluded from the provisions of this chapter, the locality in writing shall (a) invoke the protections of this subdivision, (b) identify with specificity the information for which protection is sought, and (c) state the reasons why protection is necessary. However, the exemption provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

19. Confidential proprietary information and trade secrets developed by or for a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive position of the authority, except that information required to be maintained in accordance with § 15.2-2160 shall be released.
20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial information of a business, including balance sheets and financial statements, that are not generally available to the public through regulatory

disclosure or otherwise, provided to the Department of Small Business and Supplier Diversity as part of an application for certification as a small, women-owned, or minority-owned business in accordance with Chapter 16.1 (§ 2.2-1603 et seq.). In order for such trade secrets or financial information to be excluded from the provisions of this chapter, the business shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reasons why protection is necessary.

21. Information of a proprietary or confidential nature disclosed by a carrier to the State Health Commissioner pursuant to §§ 32.1-276.5:1 and 32.1-276.7:1.
22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including, but not limited to, financial information, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the State Inspector General for the purpose of an audit, special investigation, or any study requested by the Office of the State Inspector General in accordance with law.

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

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

23. Information relating to a grant application, or accompanying a grant application, submitted to the Tobacco Region Revitalization Commission

that would (i) reveal (a) trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), (b) financial information of a grant applicant that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, or (c) research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant; and memoranda, staff evaluations, or other information prepared by the Commission or its staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision shall apply to grants that are consistent with the powers of and in furtherance of the performance of the duties of the Commission pursuant to § 3.2-3103.

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data, information or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

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

24. a. Information held by the Commercial Space Flight Authority relating to rate structures or charges for the use of projects of, the sale of products of, or services rendered by the Authority if disclosure of such information would adversely affect the financial interest or bargaining position of the Authority or a private entity providing the information to the Authority; or
- b. Information provided by a private entity to the Commercial Space Flight Authority if disclosure of such information would (i) reveal (a) trade

secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (b) financial information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) other information submitted by the private entity and (ii) adversely affect the financial interest or bargaining position of the Authority or private entity.

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

- (1) Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- (2) Identifying with specificity the data or other materials for which protection is sought; and
- (3) Stating the reasons why protection is necessary.

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

25. Information of a proprietary nature furnished by an agricultural landowner or operator to the Department of Conservation and Recreation, the Department of Environmental Quality, the Department of Agriculture and Consumer Services, or any political subdivision, agency, or board of the Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when required as part of a state or federal regulatory enforcement action.
26. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to the Department of Environmental Quality pursuant to the provisions of § 10.1-1458. In order for such trade secrets to be excluded from the provisions of this chapter, the submitting party shall (i) invoke this exclusion upon submission of the data or materials for which protection from disclo-

sure is sought, (ii) identify the data or materials for which protection is sought, and (iii) state the reasons why protection is necessary.

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

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

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

28. Records submitted as a grant or loan application, or accompanying a grant or loan application, for an award from the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title 23.1, to the extent that such records contain proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.
29. Information contained in engineering and construction drawings and plans submitted for the sole purpose of complying with the Building Code in obtaining a building permit if disclosure of such information would identify specific trade secrets or other information that would be harmful to the competitive position of the owner or lessee. However, such information shall be exempt only until the building is completed. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure.

§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain other limited exclusions.

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. State income, business, and estate tax returns, personal property tax returns, and confidential records held pursuant to § 58.1-3.
2. Working papers and correspondence of the Office of the Governor; the Lieutenant Governor; or the Attorney General; the members of the General Assembly, the Division of Legislative Services, or the Clerks of the House of Delegates and or the Senate of Virginia; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in Virginia. However, no information that is otherwise open to inspection under this chapter shall be deemed excluded by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence. Further, information publicly available or not otherwise subject to an exclusion under this chapter or other provision of law that has been aggregated, combined, or changed in format without substantive analysis or revision shall not be deemed working papers. Nothing in this subdivision shall be construed to authorize the withholding of any resumes or applications submitted by persons who are appointed by the Governor pursuant to § 2.2-106 or 2.2-107.

As used in this subdivision:

“Members of the General Assembly” means each member of the Senate of Virginia and the House of Delegates and their legislative aides when working on behalf of such member.

“Office of the Governor” means the Governor; the Governor’s chief of staff, counsel, director of policy, and Cabinet Secretaries, the Assistant to the Governor for Intergovernmental Affairs; and those individuals to whom the Governor has delegated his authority pursuant to § 2.2-104.

“Working papers” means those records prepared by or for a public official identified in this

- subdivision for his personal or deliberative use.
3. Information contained in library records that can be used to identify (i) both (a) any library patron who has borrowed material from a library and (b) the material such patron borrowed or (ii) any library patron under 18 years of age. For the purposes of clause (ii), access shall not be denied to the parent, including a noncustodial parent, or guardian of such library patron
 4. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services, and records and automated systems prepared for the Department’s Bid Analysis and Monitoring Program.
 5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by the political subdivision.
 6. Information furnished by a member of the General Assembly to a meeting of a standing committee, special committee, or subcommittee of his house established solely for the purpose of reviewing members’ annual disclosure statements and supporting materials filed under § 30-110 or of formulating advisory opinions to members on standards of conduct, or both.
 7. Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer’s name and service address, but excluding the amount of utility service provided and the amount of money charged or paid for such utility service.
 8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority; or (iv) filed with any local redevelopment and housing

authority created pursuant to § 36-4 or any other local government agency concerning persons who have applied for occupancy or who have occupied affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access to one's own information shall not be denied.

9. Information regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if disclosure of such information would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions, and provisions of the siting agreement.
10. Information on the site-specific location of rare, threatened, endangered, or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body that has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exclusion shall not apply to requests from the owner of the land upon which the resource is located.
11. Memoranda, graphics, video or audio tapes, production models, data, and information of a proprietary nature produced by or for or collected by or for the Virginia Lottery relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such information not been publicly released, published, copyrighted, or patented. Whether released, published, or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.
12. Information held by the Virginia Retirement System, acting pursuant to § 51.1-124.30, or a local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of trustees of a trust established by one or more local public bodies to invest funds for post-retirement benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the Rector and Visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Virginia College Savings Plan, acting pursuant to § 23.1-704, relating to the acquisition, holding, or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, if disclosure of such information would (i) reveal confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system, a local finance board or board of trustees, or the Virginia College Savings Plan, or provided to the retirement system, a local finance board or board of trustees, 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) have an adverse effect on the value of the investment to be acquired, held, or disposed of by the retirement system, a local finance board or board of trustees, 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.
13. Financial, medical, rehabilitative, and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.
14. Information held by the Virginia Commonwealth University Health System Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts, or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic plan-

ning and goals; the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical, or scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body or a private concern, when such information has not been publicly released, published, copyrighted, or patented. This exclusion shall also apply when such information is in the possession of Virginia Commonwealth University.

15. Information held by the Department of Environmental Quality, the State Water Control Board, the State Air Pollution Control Board, or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such information shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prevent the disclosure of information related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.
16. Information related to the operation of toll facilities that identifies an individual, vehicle, or travel itinerary, including vehicle identification data or vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.
17. Information held by the Virginia Lottery pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed.
18. Information held by the Board for Branch Pilots relating to the chemical or drug testing of a person regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary action by the Board for a positive test result.
19. Information pertaining to the planning, scheduling, and performance of examinations of holder records pursuant to the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer or his agents or employees or persons employed to perform an audit or examination of holder records.
20. Information held by the Virginia Department of Emergency Management or a local governing body relating to citizen emergency response teams established pursuant to an ordinance of a local governing body that reveal the name, address, including e-mail address, telephone or pager numbers, or operating schedule of an individual participant in the program.
21. Information held by state or local park and recreation departments and local and regional park authorities concerning identifiable individuals under the age of 18 years. However, nothing in this subdivision shall operate to prevent the disclosure of information defined as directory information under regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out requirements provided by such regulations. Access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For such information of persons who are emancipated, the right of access may be asserted by the subject thereof. Any parent or emancipated person who is the subject of the information may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such information for inspection and copying.
22. Information submitted for inclusion in the Statewide Alert Network administered by the Department of Emergency Management that reveal names, physical addresses, email addresses, computer or internet protocol information, tele-

phone numbers, pager numbers, other wireless or portable communications device information, or operating schedules of individuals or agencies, where the release of such information would compromise the security of the Statewide Alert Network or individuals participating in the Statewide Alert Network.

23. Information held by the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

24. Information held by the Virginia Retirement System acting pursuant to § 51.1-124.30, a local retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement system), or the Virginia College Savings Plan, acting pursuant to § 23.1-704 relating to:

- a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings Plan on the pursuit of particular investment strategies, or the selection or termination of investment managers, prior to the execution of such investment strategies or the selection or termination of such managers, if disclosure of such information would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan; and
- b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a private entity to the retirement system or the Virginia College Savings Plan if disclosure of such records would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan.

For the records specified in subdivision b to be excluded from the provisions of this chapter, the entity shall make a written request to the retirement system or the Virginia College Savings Plan:

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

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

(3) Stating the reasons why protection is necessary.

The retirement system or the Virginia College Savings Plan shall determine whether the requested exclusion from disclosure meets the requirements set forth in subdivision b.

Nothing in this subdivision shall be construed to prevent the disclosure of the identity

or amount of any investment held or the present value and performance of all asset classes and subclasses.

25. Information held by the Department of Corrections made confidential by § 53.1-233.

26. Information maintained by the Department of the Treasury or participants in the Local Government Investment Pool (§ 2.2-4600 et seq.) and required to be provided by such participants to the Department to establish accounts in accordance with § 2.2-4602.

27. Personal information, as defined in § 2.2-3801, contained in the Veterans Care Center Resident Trust Funds concerning residents or patients of the Department of Veterans Services Care Centers, except that access shall not be denied to the person who is the subject of the information.

28. Information maintained in connection with fundraising activities by the Veterans Services Foundation pursuant to § 2.2-2716 that reveal the address, electronic mail address, facsimile or telephone number, social security number or other identification number appearing on a driver's license, or credit card or bank account data of identifiable donors, except that access shall not be denied to the person who is the subject of the information. Nothing in this subdivision, however, shall be construed to prevent the disclosure of information 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 foundation for the performance of services or other work or (ii) the terms and conditions of such grants or contracts.

29. Information prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state prosecutors or law-enforcement personnel, where such information is not otherwise available to the public and the disclosure of such information would reveal confidential strategies, methods, or procedures to be employed in law-enforcement activities or materials created for the investigation and prosecution of a criminal case.

30. Information provided to the Department of

Aviation by other entities of the Commonwealth in connection with the operation of aircraft where the information would not be subject to disclosure by the entity providing the information. The entity providing the information to the Department of Aviation shall identify the specific information to be protected and the applicable provision of this chapter that excludes the information from mandatory disclosure.

31. Information created or maintained by or on the behalf of the judicial performance evaluation program related to an evaluation of any individual justice or judge made confidential by § 17.1-100.
32. Information reflecting the substance of meetings in which (i) individual sexual assault cases are discussed by any sexual assault team established pursuant to § 15.2-1627.4 or (ii) individual child abuse or neglect cases or sex offenses involving a child are discussed by multidisciplinary child abuse teams established pursuant to § 15.2-1627.5. The findings of any such team may be disclosed or published in statistical or other aggregated form that does not disclose the identity of specific individuals.

§ 2.2-3705.8. Limitation on record exclusions.

Nothing in this chapter shall be construed as denying public access to the nonexempt portions of a report of a consultant hired by or at the request of a local public body or the mayor or chief executive or administrative officer of such public body if (i) the contents of such report have been distributed or disclosed to members of the local public body or (ii) the local public body has scheduled any action on a matter that is the subject of the consultant's report.

§ 2.2-3706. Disclosure of criminal records; limitations.

A. All public bodies engaged in criminal law-enforcement activities shall provide requested records in accordance with this chapter as follows:

1. Records required to be released:
 - a. Criminal incident information relating to felony offenses, which shall include:
 - (1) A general description of the criminal activity reported;
 - (2) The date the alleged crime was committed;
 - (3) The general location where the alleged

crime was committed;

- (4) The identity of the investigating officer or other point of contact; and
- (5) A general description of any injuries suffered or property damaged or stolen.

A verbal response as agreed to by the requester and the public body is sufficient to satisfy the requirements of subdivision a.

Where the release of criminal incident information, however, is likely to jeopardize an ongoing investigation or prosecution or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until the above-referenced damage is no longer likely to occur from release of the information. Nothing in subdivision a shall be construed to authorize the withholding of those portions of such information that are not likely to cause the above-referenced damage;

b. Adult arrestee photographs taken during the initial intake following the arrest and as part of the routine booking procedure, except when necessary to avoid jeopardizing an investigation in felony cases until such time as the release of the photograph will no longer jeopardize the investigation;

c. Information relative to the identity of any individual, other than a juvenile, who is arrested and charged, and the status of the charge or arrest; and

d. Records of completed unattended death investigations to the parent or spouse of the decedent or, if there is no living parent or spouse, to the most immediate family member of the decedent, provided the person is not a person of interest or a suspect. For the purposes of this subdivision, "unattended death" means a death determined to be a suicide, accidental or natural death where no criminal charges will be initiated, and "immediate family" means the decedent's personal representative or, if no personal representative has qualified, the decedent's next of kin in order of intestate succession as set forth in § 64.2-200.

2. Discretionary releases. The following records are excluded from the mandatory disclosure provisions of this chapter, but may be disclosed by the custodian, in his discretion, except where such disclosure is prohibited by law:
 - a. Criminal investigative files, defined as any documents and information, including

complaints, court orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness statements, and evidence relating to a criminal investigation or prosecution, other than criminal incident information subject to release in accordance with subdivision 1 a;

b. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators authorized pursuant to Chapter 3.2 (§ 2.2-307 et seq.), and (iii) campus police departments of public institutions of higher education established pursuant to Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1;

c. Records of local law-enforcement agencies relating to neighborhood watch programs that include the names, addresses, and operating schedules of individual participants in the program that are provided to such agencies under a promise of anonymity;

d. All records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment;

e. Records of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public;

f. All records of adult persons under (i) investigation or supervision by a local pretrial services agency in accordance with Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2; (ii) investigation, probation supervision, or monitoring by a local community-based probation services agency in accordance with Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1; or (iii) investigation or supervision by state probation and parole services in accordance with Article 2 (§ 53.1-141 et seq.) of Chapter 4 of Title 53.1;

g. Records of a law-enforcement agency to the extent that they disclose the telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to its personnel for use in the performance of their official duties;

h. Those portions of any records containing information related to undercover operations or protective details that would reveal the staffing, logistics, or tactical plans of such undercover operations or protective details. Nothing in this subdivision shall operate to allow the withholding of information concerning the overall costs or expenses associated with undercover operations

or protective details;

i. Records of (i) background investigations of applicants for law-enforcement agency employment, (ii) administrative investigations relating to allegations of wrongdoing by employees of a law-enforcement agency, and (iii) other administrative investigations conducted by law-enforcement agencies that are made confidential by law;

j. The identity of any victim, witness, or undercover officer, or investigative techniques or procedures. However, the identity of any victim or witness shall be withheld if disclosure is prohibited or restricted under § 19.2-11.2; and

k. Records of the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, including information obtained from state, local, and regional officials, except to the extent that information is required to be posted on the Internet pursuant to § 9.1-913; and

3. Prohibited releases. The identity of any individual providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed.

B. Noncriminal records. Those portions of noncriminal incident or other noncriminal investigative reports or materials that contain identifying information of a personal, medical, or financial nature may be withheld where the release of such information would jeopardize the safety or privacy of any person. Access to personnel records of persons employed by a law-enforcement agency shall be governed by the provisions of subdivision A 2 i of this section and subdivision 1 of § 2.2-3705.1, as applicable.

C. Records of any call for service or other communication to an emergency 911 system or communicated with any other equivalent reporting system shall be subject to the provisions of this chapter.

D. Conflict resolution. In the event of conflict between this section as it relates to requests made under this section and other provisions of law, this section shall control.

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

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

B. No meeting shall be conducted through tel-

ephonic, video, electronic or other communication means where the members are not physically assembled to discuss or transact public business, except as provided in § 2.2-3708, 2.2-3708.1 or as may be specifically provided in Title 54.1 for the summary suspension of professional licenses.

C. Every public body shall give notice of the date, time, and location of its meetings by

1. Posting such notice on its official public government website, if any;
2. Placing such notice in a prominent public location at which notices are regularly posted; and
3. Placing such notice at the office of the clerk of the public body or, in the case of a public body that has no clerk, at the office of the chief administrator.

All state public bodies subject to the provisions of this chapter shall also post notice of their meetings on a central, publicly available electronic calendar maintained by the Commonwealth. Publication of meeting notices by electronic means by other public bodies shall be encouraged.

The notice shall be posted at least three working days prior to the meeting.

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

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

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

G. Any person may photograph, film, record or

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

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

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

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.

§ 2.2-3707.01. Meetings of the General Assembly.

A. Except as provided in subsection B, public access to any meeting of the General Assembly or a portion thereof shall be governed by rules established by the

Joint Rules Committee and approved by a majority vote of each house at the next regular session of the General Assembly. At least 60 days before the adoption of such rules, the Joint Rules Committee shall (i) hold regional public hearings on such proposed rules and (ii) provide a copy of such proposed rules to the Virginia Freedom of Information Advisory Council.

B. Floor sessions of either house of the General Assembly; meetings, including work sessions, of any standing or interim study committee of the General Assembly; meetings, including work sessions, of any subcommittee of such standing or interim study committee; and joint committees of conference of the General Assembly; or a quorum of any such committees or subcommittees, shall be open and governed by this chapter.

C. Meetings of the respective political party caucuses of either house of the General Assembly, including meetings conducted by telephonic or other electronic communication means, without regard to (i) whether the General Assembly is in or out of regular or special session or (ii) whether such caucuses invite staff or guests to participate in their deliberations, shall not be deemed meetings for the purposes of this chapter.

D. No regular, special, or reconvened session of the General Assembly held pursuant to Article IV, Section 6 of the Constitution of Virginia shall be conducted using electronic communication means pursuant § 2.2-3708.

§ 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, and on a central electronic calendar maintained by the Commonwealth. Draft minutes of meetings shall be posted as soon as possible but no later than 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, com-

mission, 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 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. 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. 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 report of the following to the Virginia Freedom of Information Advisory Council by December 15 of each year:

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

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

G. Any public body may meet by electronic commu-

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

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

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

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

Such participation by the member shall be limited each calendar year to two meetings.

2. If a member of a public body notifies the chair of the public body that such member is unable to attend a meeting due to a temporary or permanent disability or other medical condition that prevents the member's physical attendance and the public body records this fact and the remote

location from which the member participated in its minutes; or

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

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

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

§ 2.2-3710. Transaction of public business other than by votes at meetings prohibited.

A. Unless otherwise specifically provided by law, no vote of any kind of the membership, or any part thereof, of any public body shall be taken to authorize the transaction of any public business, other than a vote taken at a meeting conducted in accordance with the provisions of this chapter. No public body shall vote by secret or written ballot, and unless expressly provided by this chapter, no public body shall vote by telephone or other electronic communication means.

B. Notwithstanding the foregoing, nothing contained herein shall be construed to prohibit (i) separately contacting the membership, or any part thereof, of any public body for the purpose of ascertaining a mem-

ber's position with respect to the transaction of public business, whether such contact is done in person, by telephone or by electronic communication, provided the contact is done on a basis that does not constitute a meeting as defined in this chapter or (ii) the House of Delegates or the Senate of Virginia from adopting rules relating to the casting of votes by members of standing committees. Nothing in this subsection shall operate to exclude any public record from the provisions of this chapter.

§ 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. 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. 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 the 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 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, (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 Science Museum of Virginia, of matters relating to specific gifts, bequests, and grants from private sources.
11. Discussion or consideration of honorary degrees or special awards.
12. Discussion or consideration of tests, examinations, or other information used, administered, or prepared by a public body and subject to the exclusion in subdivision 4 of § 2.2-3705.1.
13. Discussion, consideration, or review by the appropriate House or Senate committees of possible disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed by the member, provided the member may request in writing that the committee meeting not be conducted in a closed meeting.
14. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.
15. Discussion by the Governor and any economic advisory board reviewing forecasts of economic

activity and estimating general and nongeneral fund revenues.

16. Discussion or consideration of medical and mental health records subject to the exclusion in subdivision 1 of § 2.2-3705.5.
17. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game information and studies or investigations excluded from disclosure under subdivision 6 of § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.
18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity of, or information tending to identify, any prisoner who (i) provides information about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.
19. Discussion of plans to protect public safety as it relates to terrorist activity or specific cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such matters or a related threat to public safety; discussion of information subject to the exclusion in subdivision 3 or 4 2 or 14 of § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of any person or the security of any facility, building, structure, information technology system, or software program; or discussion of reports or plans related to the security of any governmental facility, building or structure, or the safety of persons using such facility, building or structure.
20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of trustees of a trust established by one or more local public bodies to invest funds for postemployment benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the Rector and Visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system, or a local finance board or board of trustees, or the Virginia College Savings Plan or provided to the retirement system, a local finance board or board of trustees of such a trust pursuant to Article 8 (§15.2-1544 et seq.) of Chapter 15 of Title 15.2, 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, a local finance board or board of trustees of such a trust pursuant to Article 8 (§15.2-1544 et seq.) of Chapter 15 of Title 15.2 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. 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 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; matters relating to gifts or bequests to, and fundraising 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 Authority's medical and teaching staffs and qualifications for appointments thereto.
 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 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 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.
 31. Discussion or consideration by the Commitment Review Committee of subject to the exclusion in subdivision 8 5 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. Discussion or consideration of confidential proprietary information and trade secrets developed and held by a local public body providing certain telecommunication services or cable service and subject to the exclusion in subdivision 18 of § 2.2-3705.6. However, the exemption provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).
33. 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 information and trade subject to the exclusion in subdivision 19 of § 2.2-3705.6.
34. 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.
35. 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 criminal investigative files subject to the exclusion in subdivision A 2 a of § 2.2-3706.
36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of information or confidential matters subject to the exclusion in 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.
37. Discussion or consideration by the Virginia Port Authority of information subject to the exclusion in subdivision 1 of § 2.2-3705.6 related to certain proprietary information gathered by or for the Virginia Port Authority.
38. 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 § 23.1-706, or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § 23.1-702 of information subject to the exclusion in subdivision 24 of § 2.2-3705.7.
39. Discussion or consideration of information subject to the exclusion in subdivision 3 of § 2.2-3705.6 related to economic development.
40. Discussion or consideration by the Board of Education of information relating to the denial, suspension, or revocation of teacher licenses subject to the exclusion in subdivision 11 of § 2.2-3705.3.
41. 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 information subject to the exclusion in subdivision 8 of § 2.2-3705.2.
42. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of information subject to the exclusion in subdivision 28 of § 2.2-3705.7 related to personally identifiable information of donors.
43. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of information subject to the exclusion in subdivision 23 of § 2.2-3705.6 related to certain information contained in grant application.
44. Discussion or consideration by the board of directors of the Commercial Space Flight Authority of information subject to the exclusion in subdivision 24 of § 2.2-3705.6 related to rate structures or charges for the use of projects of the sale of products of, or services rendered by the Authority and certain proprietary information of a private entity provided to the Authority.
45. Discussion or consideration of personal and proprietary information related to the resource management plan program and subject to the exclusion in (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of § 10.1-104.7. This exclusion 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.

46. (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control Authority of information 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.

47. Discussion or consideration of grant or loan application records 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.

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.

49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault team established pursuant to § 15.2-1627.4 or (ii) individual child abuse or neglect cases or sex offenses involving a child by a child abuse team established pursuant to § 15.2-1627.5.

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 Develop-

ment 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) cites the applicable exemption from open meeting requirements provided in §2.2-3707 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.

§ 2.2-3713. Proceedings for enforcement of chapter.

A. Any person, including the attorney for the Commonwealth acting in his official or individual capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause. Such petition may be brought in the name of the person notwithstanding that a request for public records was made by the person's attorney in his representative capacity. Venue for the petition shall be addressed as follows:

1. In a case involving a local public body, to the general district court or circuit court of the county or city from which the public body has been elected or appointed to serve and in which such rights and privileges were so denied;
2. In a case involving a regional public body, to the general district or circuit court of the county or city where the principal business office of such body is located; and
3. In a case involving a board, bureau, commission, authority, district, institution, or agency of the state government, including a public institution of higher education, or a standing or other committee of the General Assembly, to the general district court or the circuit court of the residence of the aggrieved party or of the City of Richmond.

B. In any action brought before a general district court, a corporate petitioner may appear through its officer, director or managing agent without the assistance of counsel, notwithstanding any provision of law or Rule of the Supreme Court of Virginia to the contrary.

C. Notwithstanding the provisions of § 8.01-644, the petition for mandamus or injunction shall be heard within seven days of the date when the same is made, provided the party against whom the petition is brought has received a copy of the petition at least three working days prior to filing. The hearing on any petition made outside of the regular terms of the circuit court of a locality that is included in a judicial circuit with another locality or localities shall be given precedence on the docket of such court over all cases that are not otherwise given precedence by law.

D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorneys' fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust. In making this determination, a court may consider, among other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially supports the public body's position.

E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of proof to establish an exclusion by a preponderance of the evi-

dence. No court shall be required to accord any weight to the determination of a public body as to whether an exclusion applies. Any failure by a public body to follow the procedures established by this chapter shall be presumed to be a violation of this chapter.

F. Failure by any person to request and receive notice of the time and place of meetings as provided in § 2.2-3707 shall not preclude any person from enforcing his rights and privileges conferred by this chapter.

§ 2.2-3714. Violations and penalties.

In a proceeding commenced against any officer, employee, or member of a public body under § 2.2-3713 for a violation of § 2.2-3704, 2.2-3705.1 through 2.2-3705.8 2.2-3705.7, 2.2-3706, 2.2-3707, 2.2-3708, 2.2-3708.1, 2.2-3710, 2.2-3711 or 2.2-3712, the court, if it finds that a violation was willfully and knowingly made, shall impose upon such officer, employee, or member in his individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$500 nor more than \$2,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.

30-178. Virginia Freedom of Information Advisory Council; membership; terms; quorum; expenses.

A. The Virginia Freedom of Information Advisory Council (the Council) is hereby created as an advisory council in the legislative branch to encourage and facilitate compliance with the Freedom of Information Act (§ 2.2-3700 et seq.).

B. The Council shall consist of 14 members as follows: the Attorney General or his designee; the Librarian of Virginia or his designee; the Director of the Division of Legislative Services or his designee; five members appointed by the Speaker of the House of Delegates, two of whom shall be members of the House of Delegates, and three nonlegislative citizen members, at least one of whom shall be or have been a representative of the news media; four members appointed by the Senate Committee on Rules, two of whom shall be members of the Senate, one of whom shall be or have been an officer of local government, and one nonlegislative citizen at-large member; and two nonlegislative citizen members appointed by the Governor, one of whom shall not be a state employee. The local government representative may be selected from a list recommended by the Virginia Association of Counties and the Virginia Municipal League, after due consideration of such list by the Senate Committee on Rules. The

citizen members may be selected from a list recommended by the Virginia Press Association, the Virginia Association of Broadcasters, and the Virginia Coalition for Open Government, after due consideration of such list by the appointing authorities.

C. All appointments following the initial staggering of terms shall be for terms of four years, except that appointments to fill vacancies shall be for the unexpired terms in the same manner as the original appointment. No nonlegislative citizen member shall be eligible to serve for more than two successive four-year terms. At the end of a term, a nonlegislative citizen member shall continue to serve until a successor is appointed. However, after the expiration of a term of three years or less, or after the expiration of the remainder of a term to which appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto. Legislative members and other state government officials shall serve terms coincident with their terms of office. Legislative members may be reappointed for successive terms.

D. The members of the Council shall elect from among their membership a chairman and a vice-chairman for two-year terms. The chairman and vice-chairman may not succeed themselves to the same position.

E. The Council shall hold meetings quarterly or upon the call of the chairman. A majority of the Council shall constitute a quorum. Notwithstanding the provisions of subsection C, if any nonlegislative citizen member of the Council fails to attend a majority of meetings of the Council in a calendar year, the Council shall notify the member's appointing authority. Upon receipt of such notification, the appointing authority may remove the member and appoint a successor as soon as practicable.

F. Members of the Council shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813, 2.2-2825 and 30-19.12, as appropriate. Funding for expenses of the members shall be provided from existing appropriations to the Council.

§ 30-179. Powers and duties of the Council.

The Council shall:

1. Furnish, upon request, advisory opinions or guidelines, and other appropriate information regarding the Freedom of Information Act (§ 2.2-3700 et seq.) to any person or agency of state or local government, in an expeditious manner;

2. Conduct training seminars and educational programs for the members and staff of public bodies and other interested persons on the requirements of the Freedom of Information Act (§ 2.2-3700 et seq.);

3. Publish such educational materials as it deems appropriate on the provisions of the Freedom of Information Act (§ 2.2-3700 et seq.);

4. Request from any agency of state or local government such assistance, services and information as will enable the Council to effectively carry out its responsibilities. Information provided to the Council by an agency of state or local government shall not be released to any other party unless authorized by such agency;

5. Assist in the development and implementation of the provisions of § 2.2-3704.1;

6. Develop the public comment form for use by designated public bodies in accordance with subsection F of § 2.2-3708;

7. Develop an online public comment form to be posted on the Council's official public government website to enable any requester to comment on the quality of assistance provided to the requester by a public body; and

8. Report annually on or before December 1 of each year on its activities and findings regarding the Freedom of Information Act (§ 2.2-3700 et seq.), including recommendations for changes in the law, to the General Assembly and the Governor. The annual report shall be published as a state document.

§ 36-105.3. Security of certain records.

Building Code officials shall institute procedures to ensure the safe storage and secure handling by local officials having access to or in the possession of engineering and construction drawings and plans containing critical structural components, security equipment and systems, ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, and other utility equipment and systems submitted for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.).

Further, information contained in engineering and construction drawings and plans for any single-family residential dwelling submitted for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.) shall be confidential and shall not be

subject to disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except to the applicant or the owner of the property upon the applicant's or owner's request.

§ 17.1-293. Posting and availability of certain information on the Internet; prohibitions.

A. Notwithstanding Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2 or subsection B, it shall be unlawful for any court clerk to disclose the social security number or other identification numbers appearing on driver's licenses or information on credit cards, debit cards, bank accounts, or other electronic billing and payment systems that was supplied to a court clerk for the purpose of paying fees, fines, taxes, or other charges collected by such court clerk. The prohibition shall not apply where disclosure of such information is required (i) to conduct or complete the transaction for which such information was submitted or (ii) by other law or court order.

B. Beginning January 1, 2004, no court clerk shall post on the Internet any document that contains the following information: (i) an actual signature, (ii) a social security number, (iii) a date of birth identified with a particular person, (iv) the maiden name of a person's parent so as to be identified with a particular person, (v) any financial account number or numbers, or (vi) the name and age of any minor child.

C. Each such clerk shall post notice that includes a list of the documents routinely posted on its website. However, the clerk shall not post information on his website that includes private activity for private financial gain.

D. Nothing in this section shall be construed to prohibit access to any original document as provided by law.

E. This section shall not apply to the following:

1. Providing access to any document among the land records via secure remote access pursuant to § 17.1-294;
2. Postings related to legitimate law-enforcement purposes;
3. Postings of historical, genealogical, interpretive, or educational documents and information about historic persons and events;
4. Postings of instruments and records filed or recorded that are more than 100 years old;
5. Providing secure remote access to any person, his counsel, or staff which counsel directly supervises to documents filed in matters to which such

person is a party;

6. Providing official certificates and certified records in digital form of any document maintained by the clerk pursuant to § 17.1-258.3:2; and
7. Providing secure remote access to nonconfidential court records, subject to any fees charged by the clerk, to members in good standing with the Virginia State Bar and their authorized agents, pro hac vice attorneys authorized by the court for purposes of the practice of law, and such governmental agencies as authorized by the clerk.

F. Nothing in this section shall prohibit the Supreme Court or any other court clerk from providing online access to a case management system that may include abstracts of case filings and proceedings in the courts of the Commonwealth, including online access to subscribers of nonconfidential criminal case information to confirm the complete date of birth of a defendant.

G. The court clerk shall be immune from suit arising from any acts or omissions relating to providing remote access on the Internet pursuant to this section unless the clerk was grossly negligent or engaged in willful misconduct.

This subsection shall not be construed to limit, withdraw, or overturn any defense or immunity already existing in statutory or common law, or to affect any cause of action accruing prior to July 1, 2005.

H. Nothing in this section shall be construed to permit any data accessed by secure remote access to be sold or posted on any other website or in any way redistributed to any third party, and the clerk, in his discretion, may deny secure remote access to ensure compliance with these provisions. However, the data accessed by secure remote access may be included in products or services provided to a third party of the subscriber provided that (i) such data is not made available to the general public and (ii) the subscriber maintains administrative, technical, and security safeguards to protect the confidentiality, integrity, and limited availability of the data.

§ 17.1-295. Definitions.

As used in this title:

“Confidential court records” means any civil or criminal record maintained by a clerk of the circuit court designated by this Code as confidential or any such record sealed pursuant to court order.

“Electronic filing of court records” means the networks or systems maintained by a clerk of the circuit

court, or the clerk’s designated application service providers, for the submittal of instruments for electronic filing of court records in accordance with this title, the Rules of the Supreme Court of Virginia, and the secure remote access standards developed by the Virginia Information Technologies Agency.

“Electronic recording of land records” means the networks or systems maintained by a clerk of the circuit court, or the clerk’s designated application service providers, for the submittal of instruments for electronic filing of land records in accordance with the Uniform Real Property Electronic Recording Act (§ 55-142.10 et seq.), the provisions of Article 2.1 (§ 55-66.8 et seq.) of Chapter 4 of Title 55 regarding the satisfaction of mortgages and the provisions of this title.

“Operational expenses” means expenses of the clerk of court used to maintain the clerk’s office and includes, but is not limited to, (i) computer support, maintenance, enhancements, upgrades, and replacements and office automation and information technology equipment, including software and conversion services; (ii) preserving, maintaining, and enhancing court records, including, but not limited to, the costs of repairs, maintenance, consulting services, service contracts, redaction of social security numbers from certain records, and system replacements or upgrades; and (iii) improving public access to records maintained by the clerk, including locating technology in an offsite facility for such purposes or for implementation of a disaster recovery plan.

“Public access” means that the clerk of the circuit court has made available to subscribers that are other than governmental agencies, secure remote access to records maintained by the clerk in accordance with § 17.1-294.

“Secure remote access to court records” means public access by electronic means on a network or system to court records maintained by the clerk of the circuit court or the clerk’s designated application service providers, in compliance with this title, the Rules of the Supreme Court of Virginia, and the secure remote access standards developed by the Virginia Information Technologies Agency.

“Secure remote access to land records” means public access by electronic means on a network or system to land records maintained by the clerk of the circuit court or the clerk’s designated application service providers, in compliance with the Secure Remote Access Standards developed by the Virginia Information Technologies Agency.

“Subscriber” means any person who has entered

into a subscriber agreement with the clerk of the circuit court authorizing the subscriber to have secure remote access to land records or secure remote access to court records maintained by the clerk or the clerk's designated application service providers. If the subscriber is an entity with more than one person who will use the network or system to access land records maintained by the clerk, or the clerk's designated application service providers, each individual user shall execute a subscriber agreement and obtain a separate "user id" and "password" from the clerk. The subscriber is responsible for the fees due under this title and the proper use of the secure remote access system pursuant to the subscriber agreement, applicable Virginia law, and Secure Remote Access Standards developed by the Virginia Information Technologies Agency.

§ 15.2-2103.1. Solar services agreements; nondisclosure of proprietary information.

A. A solar services agreement may be structured as a service agreement or may be subject to available appropriation.

B. Nothing in this article shall be construed to require the disclosure of proprietary information voluntarily provided by a private entity in connection with a franchise, lease, or use under a solar services agreement that is excluded from mandatory disclosure pursuant to subdivision 29 of § 2.2-3705.6 of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

C. Nothing in this section, however, shall be construed as authorizing the withholding of the financial terms of such agreements

Virginia Conflict of Interests Act

Guide for Local Government Officials

Introduction

The Virginia Conflict of Interests Act regulates the financial relationship of council members and mayors with their city, town and with any other governmental agency that is related to the local government. The act is intended to be the one-stop-shopping law for a council member's financial involvement in dealings with the city or town. While this guide refers to councils, cities and towns, it is equally applicable to boards of supervisors and counties.

The act regulates how involved a council member may be in an item being considered by council if he or she has a financial interest in that item. The act also defines what constitutes bribery and taking unfair advantage of information gained by reason of being on council. It sets penalties for violations and provides a procedural framework for its enforcement.

The Conflict of Interests Act is codified in Title 2.2, Chapter 31 of the Code of Virginia, § 2.2-3100 and following. While this guide describes the general operation of the law, the reader should consult the law's specific language for a better understanding (code references are given throughout the guide). Furthermore, a council member with questions about a contract or transaction should consult the city or town attorney.

The 2014 General Assembly created the Virginia Conflict of Interest and Ethics Advisory Council ("Council") to review and post online disclosure forms filed by lobbyists and persons subject to the conflict of interest as well as to provide formal opinions, informal advice, education and training. The Council also encourages and facilitates compliance with sections of the code to include, State and Local Government Conflict of Interests Act. The duties and responsibilities of the Council are discussed throughout this report.

Since the Council was created many changes to the law have occurred as the General Assembly attempts to strike a balance between the need for disclosure and the practicality of complying with the law. For instance, the forms were supposed to be filed semi-annually but now will be filed annually. The definition of gift and how to include family members' interests have also been the subject of many changes to this law.

Purpose of the act

The first section of the act, Va. Code § 2.2-3100, sets out the purpose of the law, citing three main goals:

1. To help ensure that the government will fully represent the public in its operation;
2. To give citizens confidence in public officials and the government so they will trust the government, by creating a clear set of rules for government officials; and,
3. To assemble all the laws affecting conflict of interests in a single location in order to create uniform rules. (While COIA largely accomplishes this purpose, additional rules are stated in the Virginia Procurement Act and in various other code sections.)

The act contains three general areas of regulation (listed below). The act also has procedural, enforcement, and penalty provisions that apply to the substantive areas of the law.

Areas of regulation

The act regulates the financial relationship of council members in their localities in three general areas:

1. General provisions covering bribes and other illegal behavior.
2. Regulation of financial interests a council member may have in business dealings with his or her locality and with agencies related to his or her locality. The act calls this a personal interest in a contract.
3. Regulation of the level of involvement a person, in his role as a council member or other public office or job, may have in an item being considered by the member's locality that involves the member's business, property or other personal financial interest. The act calls this a personal interest in a transaction.

I. Generally Prohibited Conduct

Bribes and other illegal behavior

Section 2.2-3103 prohibits public officials from taking or soliciting bribes and from allowing money to influence their actions. This section applies to a person's actions as a government official; the prohibitions are not aimed at private businesses that may offer the bribes.

The act prohibits a council member from soliciting or accepting money or benefits for doing his or her work as a public official. § 2.2-3103(1). An example would be a council member who takes money for voting on a rezoning to help a developer build a large project. Similarly, a council member may not offer or take money in exchange for landing himself or herself or another person a job with a government agency, or in exchange for obtaining a contract or business deal with the government. §§ 2.2-3103(1) & 3103(2).

Undue influence

One step below the outright bribery rule is the prohibition on taking gifts and opportunities while serving as a public official. §§ 2.2-3103(5), (6), (8), (9) & 2.2-3103.1. The act prohibits a council member from accepting money, loans, gifts, services, business opportunities, or other benefits if it is reasonable to construe that the benefit was given to influence the council member in his or her duties. An exception is made for political campaign contributions – but only if the contribution is used for a political campaign or constituent service purposes and is reported pursuant to the campaign disclosure laws.

A typical example of this issue for cities and towns is when a large developer gives Christmas gifts of substantial value to the members of council. Whether the gift complies with the act is a judgment call in most cases. Is a Christmas turkey reasonable if the developer is also giving the same gift to his employees, his business associates, and his materials suppliers? The circumstances of the specific case usually indicate whether the gifts are appropriate.

The following items are exempted from the prohibition on gifts: (1) coupons and tickets that are not used; (2) honorary degrees; (3) scholarships or financial aid awards that were awarded in the same manner as they would be to the general public; (4) campaign contributions that are properly received and reported; (5) a gift that relates to the private profession or volunteer service of the officer or a member of the officer's immediate family; (6) food or beverages consumed while attending

an event at which the filer is performing official duties related to public service, (7) food or beverages received at or registration of attendance fees waived for any event at which the filer is a featured speaker, presenter, or lecturer, (8) unsolicited awards of appreciation or recognition; (9) a devise or inheritance; (10) travel disclosed under the Campaign Finance Disclosure Act (§24.2-945 et seq.); (11) travel paid for or provided by a government entity; (12) travel provided to facilitate attendance by a legislator at a regular or special session of General Assembly or other meeting approved by the House or Senate Committee on Rules; (13) travel related to an official meeting of, or any meal provided for attendance at such meeting by, the Commonwealth, political subdivisions, or any board, commission, authority, or other entity, or any charitable organization established pursuant to §501(c)(3) of the Internal Revenue Code affiliated with such entity, to which such person has been appointed or elected or is a member by virtue of his office or employment; (14) gifts with a value less than \$20; (15) attendance at a reception or similar function where food, such as hors d'oeuvres, and beverages that can be conveniently consumed by a person while standing or walking are offered; or (16) gifts from relatives or personal friends as the act defines "personal friend". § 2.2-3101.

For purposes of §2.2-3101 and what is not a gift, a relative is defined as the donee's spouse, child, uncle, aunt, niece, nephew, or first cousin; a person to whom the donee is engaged to marry, the donee and their spouses' parent, grandparent, grandchild, brother, sister, step-parent, step-grandparent, step-grandchild, step-brother, or step-sister or the donee's brother's or sister's spouse or the donee's son-in-law or daughter-in-law.

The act limits who can be considered a personal friend for the purposes of the disclosure exemption. The reason for this limitation is to ensure that the term "personal friend" is not applied loosely, allowing anyone to qualify for the gift disclosure exemption.

Section 2.2-3103.1 pertains to prohibited gifts. This provision applies to all candidates, officers, and employees of local governments and advisory agencies. These individuals may not solicit, accept or receive a tangible gift that is valued at over \$100 or a combination of gifts within a year with an aggregate value of over \$100 if it is given to him by (1) a lobbyist, (2) a lobbyist's principal, or (3) a person, organization, or business that is seeking to be or already is a party to a contract with the local agency of which he is an officer or employee. However, the limit only applies to individuals that are required to file a disclosure form prescribed in §2.2-3117. Therefore, it does apply to of-

ficials of localities with a population under 3,500.

A lobbyist or a lobbyist's principal cannot be considered a personal friend, with one exception. A person, organization, or business cannot be considered a personal friend if that entity or person is a party to a contract with the local government or agency for which the officer or employee works. This is true whether the contract has been granted or if the person, organization, or business is just seeking to be a party to the contract. However, an official may accept a gift with a value in excess of \$100 if the gift was from a personal friend. The following factors shall be considered in determining whether someone is a personal friend: (a) the circumstances under which the gift was offered; (b) the history of the relationship to include the nature, duration and previous gift exchanges; (c) to the extent known whether the donor personally paid for the gift or sought a tax deduction or business reimbursement and (d) whether the donor has given similar gifts to other persons required to file disclosure forms. §2.2-3103.1.

Some may wonder how an officer or official would even try to argue that he or she has a personal friendship with an organization or business. In this context, the terms "organization" and "business" include those who are officers, directors, owners, or have a controlling ownership interest in the organization or business. § 2.2-3101.

A council member is also prohibited from taking benefits if he or she knows it is being offered to influence him or her. § 2.2-3103(5). Therefore, even if the gift is not unreasonable, the council member may not accept it if the circumstances or statements of the person giving it make it clear that the money is being given to influence the council member.

A further prohibition is aimed at gifts given by a private party looking for a specific action by the government. § 2.2-3103(8). It prohibits a council member from accepting a gift from a private party whose interests can be affected by the council member's actions, where the timing of the gift would lead a reasonable person to question whether the gift is being given to influence the council member. For example, if the day before an important council vote on a rezoning, the applicant for that rezoning gives the council member \$2,000 and calls it a campaign contribution, it would be reasonable to think the money was given to influence the vote. Also, if a council member accepts gifts so often that it creates the appearance that he or she accepts gifts for doing his or her job, that behavior constitutes a violation. § 2.2-3103(9). Violations of these two prohibitions may not be the basis for a criminal charge.

Local governments can adopt ordinance limiting dollar value of gifts

Local governments may adopt an ordinance to limit the dollar value of gifts to the officials and employees of the locality. § 2.2-3104.2. The ordinance can include a required disclosure provision. While legally you may have nothing to fear when disclosing, keep in mind that the appearance of impropriety is often more harmful than the impropriety itself. A \$50 limit is often used. While this amount is arbitrary, it does make it simpler for all involved to know what behavior is permissible. Whether or not the locality adopts an ordinance limiting gift amounts, if an award is made to a local government employee for meritorious service by an entity that is a 501(c)(3) charitable organization, there is no conflict and no limit on the gift.

Insider information

It is a violation of the act for a public official to use information not available to the public for his or her own or another person's economic benefit. § 2.2-3103(4). For council members, this prohibition is sometimes unfairly alleged. For example, a local businessman on council who pays attention to public plans submitted to the locality and buys land around the project is not violating the provision. Envious business folks, however, may allege a violation of insider information due to the appearance of the situation. When their actions are based on publicly available information, council members have nothing to fear from such claims.

II. Regulation of council member's actions as citizen.

Personal interest in a contract

The act sets forth what financial interests a council member may have in business dealings with his or her locality and with agencies related to his or her locality. § 2.2-3107. The act calls this a personal interest in a contract. While this guide's discussion is limited to the restrictions on council members, the act also sets forth different restrictions for school board members (§ 2.2-3108) and for local government employees (§ 2.2-3109). Council members need to keep in mind the restrictions on the employees of a city or town as they carry out their duties and watch over the affairs of the locality.

According to § 2.2-3107(A), "no person elected or appointed as a member of the governing body of a county, city or town" shall have "a personal interest in a contract" with his or her city or town or with certain other government agencies. (The definition of a personal interest in a contract is described below.)

The council member may not have a personal interest in a contract with any agency of his or her locality, including the departments of the city or town. In addition, he or she may not have a personal interest in a contract with any government agency that is under the council's ultimate control. For example, if the council appoints a library board, then council members would have ultimate control over the library. Therefore, a council member could not be involved in a contract with the library board.

This section of the act also prohibits involvement in a contract with any agency if the council appoints a majority of the members of that agency's governing body. For example, if the locality is a member of a regional jail and its council appoints four of the jail board's seven members, then a council member would be prohibited from being involved in a contract with the jail board.

Definition of personal interest and personal interest in a contract

The act only prohibits a council member's participation if he or she has a personal interest in the contract with one of the agencies described. The definition of "personal interest in a contract" has three parts: "a personal interest," a "personal interest in a transaction" and a "personal interest in a contract." § 2.2-3101.

Personal interest. The definition of a personal interest is the key building block of the act. The term is used throughout. A personal interest exists if any one of the following tests is met:

1. The council member owns at least 3 percent of the equity of a business.
2. The council member has annual income that is or reasonably could be in excess of \$5,000 from owning real or personal property or from owning a business.
3. The council member has a salary, other compensation, fringe benefits, or benefits from the use of property or any combination thereof, from the business involved in a contract that exceeds or reasonably could exceed \$5,000 annually.
4. The council member's ownership interest in property exceeds \$5,000.
5. The council member's liability for a business exceeds 3 percent of the equity of the business.
6. The council member has an option on property and, upon exercise of the option, his or her ownership will meet the levels in either test 1 or 4, above.

Immediate Family. In addition to the council member, if any person in the council member's immediate family has one of the six types of a personal interest, the personal interest exists for the council member. The term "immediate family" always includes the person's spouse. The term also includes any child living in the home who is the council member's dependent. The term "child" is defined in Title 1 of the state code as anyone who is less than 18 years old. Therefore, the definition applies to all minor dependents regardless of their relationship to the council member but it does not apply to adult children of the member, even if he is claimed as a dependent. §1-207. If the child, however, is not a dependent of the council member, the child would not be included. §2.2-3101.

As this definition demonstrates, if a council member's wife has a personal interest in a business that would like to contract with the city, the contract is prohibited even though the husband/council member has no involvement.

Personal Interest in a transaction. A personal interest exists when an officer or employee or immediate family member has a personal interest in property or a business and such property or business is:

The subject of the transaction

May realize a reasonable foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction.

A personal interest in a transaction does not exist when:

An elected member of a local governing body serves without remuneration as a member of the board of trustees of a not-for-profit and the member and his immediate family have no personal interest in the entity.

An officer, employee, or elected member of a local governing body is appointed by such local governing body to serve on a governmental agency and the personal interest in the transaction is the result of benefits provided to the member or his immediate family.

Personal interest in a contract. If the council member's involvement meets any one of the six definitions of a personal interest, the next step is determining whether the council member has a personal interest in the contract in question. According to the act's definition, a council member has a personal interest in a contract with a government agency if that contract is with the council member or with a business in which he or she has a personal interest. § 2.2-3101.

In looking at a particular contract, it is important to ask: Is a council member or his or her business or

property involved in the contract? Does that council member have a personal interest as defined by the act? The answers to these questions will help determine if the contract is prohibited under the act.

Situations where conflicts do not exist

Some situations are not conflicts under the act, even though they may appear to be natural conflicts. If a council member earns a total salary of \$4,900 per year from a business, that business could contract with the locality, because the council member would not have a personal interest for purposes of the act. As the third test of the definition – salary – shows, the salary must exceed \$5,000 per year to create a personal interest.

If a council member serves on the board of a charitable entity, the fact that the council member has divided loyalties between the charity and the locality does not create a conflict, so long as the council member serves on the charity's board for less than \$5,000 compensation per year and doesn't own as much as three percent of the equity of the charity. § 2.2-3101.

Exceptions to conflicts in contracts

The act sets out a series of exceptions to the prohibitions on having a personal interest in a contract.

Exceptions that apply only to council members.

Several exceptions are specific to council members. § 2.2-3107(B).

1. A council member may be an employee of the locality as long as the employment predates his appointment or election to council. § 2.2-3107(B)(1). This section of the law also allows employment and service on council if the person was an employee prior to July 1, 1983, whether or not he or she was elected to council after that date. Even though the law allows employees to serve on council, some localities have banned the practice by charter or by local regulation. If an employee serves on council, he or she will regularly run into potential conflicts when matters come before council that affect his or her employment, such as salary and discipline decisions. (This issue is explored below, in the section on personal interests in a transaction).

2. A council member may buy goods or services from his or her locality as long as they are made available to the public at uniform prices. § 2.2-3107(B)(2).

3. A council member may sell goods to his or her locality if the following conditions are met, pursuant to § 2.2-3107(B)(3):

- a. The purchase must be made by competitive

sealed bidding. Therefore, if the contract is being solicited by a request for proposals, the exception doesn't apply.

- b. The contract must be for goods, not services, and the need for the goods must have been established prior to the person's coming on council. An example is if the city needs a tractor, if a council member has a tractor dealership, and if the city had bought tractors prior to the council member's election, the dealership could continue to bid on the contract.
- c. The council member who wants to sell to the locality must play no role in preparing the specifications for the purchase.
- d. The remaining members of council must pass a resolution in writing that the council member's bidding on the contract is in the public interest.

Note: this exception does not apply to providing services, rather only goods. For example, a council member who is an accountant could not provide auditing services to his or her town or city.

Eight exceptions that apply to all local government officials and employees.

The following eight exceptions to the prohibition on having a personal interest in a contract apply not only to council members, but to all other local government officials and employees as well. § 2.2-3110(A).

1. Any sale, lease, or exchange of real property between a council member and his or her locality is allowed as long as the council member doesn't participate in the deal on behalf of council, and the fact that the member wasn't involved is recorded in the public record of the government involved in the transaction. The reason for this exception is that each parcel of real estate is deemed to be unique. If a city needs a certain lot or parcel, the fact that a council member owns it should not prohibit the purchase by the city. § 2.2-3110(A)(1).

2. The prohibition does not apply to contracts for the publication of official notices, presumably so that the local newspaper may be used for ads required by state law even when a council member is an owner or employee of that paper. This is a balancing of needs: the state code requires many notices to be run in the local paper. Without this exception, those requirements could not be met. § 2.2-3110(A)(2).

3. For towns and cities with a population under 10,000 Michelle does this apply to counties as well?, contracts between a council member and his or her locality are allowed, despite the general prohibition,

if the total of those contracts does not exceed \$10,000 per year. Further, contracts up to \$25,000 are allowed if the contract is awarded by competitive sealed bidding. This higher level only applies if the public official has filed a statement of economic interests form. Every council member in a locality with a population greater than 3,500 must file that form, so the requirement does not create an added obligation, unless the locality has a population of less than 3,500 § 2.2-3110(A)(3).

4. If the sole personal interest the council member has in the contract is his or her employment by the contracting business and has an annual salary exceeding \$10,000, the business may contract with the locality. For this exception to apply, the council member and members of his or her immediate family must have no authority to participate in the deal, and must not participate in the deal. Further, the council member must not participate in the deal on behalf of the locality. A typical example is a contract with a large engineering firm that is the council member's employer. § 2.2-3110(A)(4).

5. If the council member is employed by a public service corporation, a bank, a savings and loan association, or a public utility, and if he or she disqualifies himself from participating on behalf of the city or town and does not participate for his or her locality, then the utility, bank, etc., may contract with the locality. § 2.2-3110(A)(6).

6. The prohibition does not apply to contracts for goods or services below \$500. But if a locality normally purchased paper on an annual contract, for example, could it split up a year's worth of paper contracts so that each is less than \$500? While the section is silent on splitting up a larger contract to meet this exception, the consensus is that this circumvention would violate the law. § 2.2-3110(A)(7).

7. Program grants made to a council member are allowed if the rates or amounts paid to all qualified applicants are uniform and are established solely by the agency administering the grants. § 2.2-3110(A)(8).

8. If the spouse of a council member is employed by the locality, the personal interest prohibition does not apply if the spouse was employed by the agency five or more years prior to marrying the council member. § 2.2-3110(A)(9). If one spouse is the supervisor of the other spouse, the conflict does not exist if the subordinate spouse earns less than \$35,000 per year. § 2.2-3110(B).

III. Council member's participation as public official

Personal interest in a transaction

The rule concerning a personal interest in a transaction sets out the level of involvement a council member may have in an item being considered by his or her council (the transaction) that involves his or her business, property, or other personal financial interest. § 2.2-3112.

As with a personal interest in a contract, the first step is to determine whether the council member has a personal interest in the transaction. The same definition of a personal interest is used in the transactions provisions as in the contracts provisions, but the definition of personal interest in a transaction goes beyond the definition of a personal interest in a contract.

Definition of transaction & personal interest in a transaction

Transaction. In the context of a city or town council, a transaction is defined as any matter considered by the council, a council committee or subcommittee, or any department, agency, or board of the locality, if any official action is taken or is being contemplated. § 2.2-3101.

Personal interest in a transaction. This term is broadly defined as a personal interest of a council member "in any matter considered by his [locality]". § 2.2-3101. Specifically, a personal interest in a transaction exists if a council member or immediate family member has a personal interest (as defined in Part II) in property, business, or governmental agency – or represents/provides services to any individual or business property – and the property, business, or represented/served individual or business either (1) is the subject of the transaction, or (2) may realize a reasonably foreseeable benefit or detriment as the result of the transaction.

A typical example of representing or servicing an individual or business is where the council member is an accountant and his or her accounting firm handles the books of the business that is the subject of the transaction. Another common example is where the council member or spouse is a principal in an engineering firm that represents an applicant for a land-use permit before council. In these cases, the council member may well have a personal interest in the transaction unless he or she is not directly involved in the representation. An example of a reasonably foreseeable benefit is a council member who loaned \$100,000 to a developer, and the developer needs a rezoning to repay the loan.

In practice, if a matter comes before council or a council committee or involves any department of the locality, and a council member has a personal interest in the subject matter or represents the business involved, the council member must then follow the act's requirements for his or her participation in § 2.2-3112 (discussed below in "Levels of transactions" section).

Exceptions and limitation on conflicts

A personal interest in a transaction does not exist if the council member serves on a not-for-profit board without pay and neither the council member nor his immediate family has a personal interest in the not-for-profit organization. (Definition of personal interest in §2.2-3101.)

No conflict exists if an employee or council member of a locality is appointed by his locality to an ex-officio role in a governmental agency and the conflict exists solely due to the employment with the locality or the employment by the locality is of his or her spouse. See the definition of "personal interest in a transaction" in § 2.2-3101.

The act provides in § 2.2-3112(C) that if an employee, but not a council member, is disqualified from participating in the transaction, the employee may still represent his private interests before council as long as he isn't paid for the representation and discloses the nature of his interest. This appears to not apply to council members.

Other employees

Section 2.2-3109 sets out the rules for other government employees having a personal interest in a transaction. The section also contains a list of exceptions that apply to the employees of the government agencies in the locality. Those rules and exceptions do not apply to council members. For example, an employee's spouse may contract with the locality to provide services (for example, accounting) if certain conditions are met. In contrast, a council member's spouse could not provide services to the locality.

Levels of transactions

The fact that a council member has a personal interest in a transaction before council does not always require the member to disqualify himself. The act's requirements for participation, if a personal interest in the transaction does exist, set out three levels of transactions. § 2.2-3112(B).

1. If the council member is in a firm that represents the subject of the transaction, but the council member does not personally represent the subject in the transac-

tion, he may participate in the council discussion provided he complies with the declaration requirements of § 2.2-3114(G) or §2.2-3115(I).

2. If the transaction affects a business, profession, occupation or group of three or more members to which the council member belongs, he may participate in the transaction only if he completes a disclosure form, described in the "Disclosures" section, below. § 2.2-3112(A)(2). For example, if a council votes on the tax rate for professionals, and if the council member is an attorney, that puts him in the subject group affected by the professional license tax. If a town only has two attorneys, then the council member/attorney must disqualify himself from participating.

3. If the transaction affects the public generally, the council member may participate. A council member may obviously vote on raising taxes, even though it affects him, because it affects the public generally. In comparing items 2 and 3, many transactions are considered to affect the public generally, even though not every member of the public is affected. For example, the real estate tax applies only to property owners, but it is considered to affect the general public.

Additional exception

Disqualification under the provisions of this section shall not prevent any employee having a personal interest in a transaction in which his agency is involved from representing himself or a member of his immediate family in such transaction provided he does not receive compensation for such representation and provided he complies with the disqualification and relevant disclosure requirements of this chapter. §2.2-3112(C)

Effects of disqualification

If a council member is disqualified from participating in a transaction, the act requires several steps. § 2.2-3112:

1. The council member must disclose the interest that causes the disqualification by identifying the interest, including the name and address of the business or property. § 2.2-3115(F). The disclosure is required whether the law requires the disqualification or the council member voluntarily disqualifies himself out of an abundance of caution.

2. The disclosure must be kept for five years in the records of the council.

3. The council member may not vote on or participate in discussion on the transaction.

4. The council member may not attend the portion of a closed meeting at which the transaction is discussed.

5. The council member may not discuss the matter with anyone in the government who is involved in the transaction.

Savings clause for certain votes

The act contains a savings clause to allow the remainder of council to vote when disqualifications rob the council of a quorum. § 2.2-3112(D). The council may act by a vote of the majority of the members who are not disqualified. Even if the law requires a unanimous vote, it only has to be by a unanimous vote of the remaining members. This provision would seem to have the odd result of having only one member of a seven-member council being able to vote and fulfill a unanimous vote requirement if the other six members are disqualified. One caution - the Virginia Supreme Court has ruled that when there are disqualifications, and a vote is taken using this savings clause, the disqualified members of council must remain present to maintain a quorum. If the disqualified members leave the meeting, such that fewer members are present than required for a quorum – a quorum does not exist and the meeting cannot continue. See *Jakabcin v. Front Royal*, 271 Va. 660, 628 S.E.2d 319 (2006).

In order for a council to sell or lease land, state law requires a three-fourths vote of all people elected to council. § 15.2-2100. Section 2.2-3112(D) of the act allows a council member to participate in a discussion and vote on a proposed sale, lease, or similar conveyance of land if the council member's only personal interest in that sale is that he or she is employed by the business that is subject to the contract for the deal.

The Council issued a formal advisory opinion (2017-F-001) on April 24, 2017 confirming the quorum analysis above. The opinion states in part that when 5 members of a 7 member board are in attendance and 2 persons are disqualified from voting, the 3 remaining members do constitute a quorum.

IV. Disclosures

If a transaction affects a group, business, or profession as set forth in § 2.2-3112(B)(1), the council member may participate if he or she certifies in good faith that he or she can represent the public fairly in the transaction. The certification requires the following elements to be identified - § 2.2-3115(H):

- The transaction;
- The nature of the personal interest;
- The fact that the council member is a member of a business, profession, occupation, or group that will

be affected by the transaction;

- A statement that the council member is able to participate fairly, objectively, and in the public interest.

If the transaction affects a party that the council member's firm represents but the council member is not involved on behalf of the firm, the disclosure requires the following elements to be identified. § 2.2-3115(I):

- The transaction involved;
- The fact that a party to the transaction is a client of the council member's firm;
- A statement that the council member does not personally represent the client;
- A statement that the council member is able to participate fairly, objectively, and in the public interest.

If either of the disclosures is required, the council member must either state it at the meeting or file it in writing with the clerk of the council or the manager. A written disclosure should be filed before the meeting or, if that is impracticable, by the end of the following business day. § 2.2-3115(H), (I). In both cases, the disclosure is public. VML advises that it is better to make the disclosure at the meeting, orally, when the transaction is on the floor. This conveys a clearer message of self-disqualification than simply handing the clerk a written statement. If the disqualification is handed in with no announcement, the public will wonder why the council member is not participating.

Annual Statement of Economic Interests Form

In addition to transaction-specific disclosures, each council member of every locality with a population of more than 3,500 must file the Statement of Economic Interests form. The Statement of Economic Interests form must be filed annually on or before February 1st for the preceding calendar year. § 2.2-3115.

This disclosure form will be created and provided by the COIA Council at least 30 days prior to the filing deadline. Forms should be disseminated by the clerks of the governing body not less than 20 days prior to the filing deadline. The forms shall be available for review by the public no later than six weeks after the deadline and shall be maintained for five years in the Clerk's Office. §2.2-3115.

The forms for 2017 and forward will require the disclosure of holdings in excess of \$5,000, which is a change from the previous bar of \$10,000. § 2.2-3117.

Council may also adopt an ordinance to require other officials and employees of the locality to file the

Statement of Economic Interests form pursuant to § 2.2-3115(A). Typically, this provision is used for the city or town manager, but some localities require numerous employees to file the form. Many localities do not require the form to be completed by any employees or officials. The council may require boards, commissions and councils it appoints to file a disclosure form. § 2.2-3115(B).

In localities with a population of more than 3,500, members of planning commissions, boards of zoning appeals, real estate assessors, and all county, city and town managers must file an annual disclosure of real estate interests. § 2.2-3115(G). That form is also created by the COIA council and filed with your local clerk.

The section clarifies that no local government officer or employee is required to file any disclosures not specifically mentioned in the article. § 2.2-3115(C).

Who Files Disclosure Form

The following local officials are required to file the State and Local Statement of Economic Interests per § 2.2-3115:

- Members of the Board of Supervisors
- Members of the City Council
- Members of the Town Council, if the town has a population exceeding 3,500
- Members of the school board
- Persons holding positions of trust appointed or employed by the governing body if the governing body has passed an ordinance requiring them to file
- Persons holding positions of trust appointed or employed by school board if the school board has adopted a policy requiring them to file
- Members of the governing body of any entity established in a county or city with the power to issue bonds or expend funds in excess of \$10,000 in any fiscal year if the governing body of the appointing jurisdiction has required them to submit this form

The following local officials are required to file the Financial Disclosure Statement per § 2.2-3115:

Members of the governing body of any entity established in a county or city with the power to issue bonds or expend funds in excess of \$10,000 in any fiscal year unless required to file the Statement of Economic Interest by the governing body of the appointing jurisdiction

Non-salaried citizen members of local boards, commissions, and councils if the governing body has designated them to file.

The following local officials are required to file the Real Estate Disclosure per § 2.2-3115 (G):

- Planning commission members
- Members of board of zoning appeals
- Real estate assessors
- County, city, or town managers
- Executive officers
- V. Enforcement & penalties
- Criminal penalties

A knowing violation of the Conflict of Interests Act is a Class 1 misdemeanor. § 2.2-3120. According to the act, a violation is knowingly made if the council member acts or refuses to act when he or she knows that the behavior is either prohibited or required by the act. An example of refusing to do a required act is a council member's refusal to file a disclosure form. A Class 1 misdemeanor has maximum penalties of one year in jail and a fine of \$2,500.

Three other specific violations have a lower, Class 3 penalty (maximum \$500 fine):

1. Failure to disqualify oneself from participating in a transaction.
2. Failure to file the annual statement of economic interests.
3. Failure to file the statement of reasons for a disqualification in a transaction.

Additional consequences for violations

In addition to the criminal consequences, if the council member is found guilty of a knowing violation, he is also guilty of malfeasance in office. In that case, the judge may order the forfeiture of the seat on council. § 2.2-3122.

If a contract is entered into that involves either a council member who violated the general provisions relating to bribes, insider information, undue influence (§ 2.2-3103), or a violation of the "personal interest in a contract" provisions, the council may rescind the contract. In that case, an innocent contractor may not receive the profits he anticipated in the deal. The contractor may only receive a "reasonable value," according to § 2.2-3123.

If a council action involves a violation of "the personal interest in a transaction" requirements, the council may rescind the award of a contract or other decision made. In rescinding the action, the best interests of the locality and any third parties are to be considered. § 2.2-3112(C).

If a council member violates any of the general

provisions related to bribes and other illegal behavior, the personal interest in a contract rules, or the personal interest in a transaction rules, any value he or she received from the deal is to be forfeited. If the violation was knowingly made, the judge may impose a civil penalty equal to the value received.

If your form is filed after the deadline, there is an additional civil penalty of \$250, §2.2-3124. §30-356.2 outlines the process for an extension in filing the form as well as the penalty if the Clerk failed to provide the form in a timely manner. First, the person shall receive a five-day extension upon request. In addition, the governing body of the locality responsible for providing the disclosure form will be assessed a civil penalty of \$250.

Advisory opinions

Commonwealth's Attorney

The law allows some opportunity to avoid a problem by setting up a process to obtain an opinion on the matter from the commonwealth's attorney. The commonwealth's attorney is required by § 2.2-3126(B) to issue advisory opinions on whether a fact situation constitutes a violation. In addition to issuing opinions, the commonwealth's attorney is charged with prosecuting violations of the act by local officials. If the council member gives the attorney all the relevant facts and the attorney determines that the council member is allowed by law to participate, the council member may not be prosecuted for doing so. § 2.2-3121(B). If the commonwealth's attorney opines that the facts constitute a violation, the council member then may ask the attorney general to review and override the local opinion. The law makes it clear that any written opinions are public records and are therefore available to the public.

If the council member obtains a written opinion from the town or city attorney, based on full disclosure of the facts, the council member may introduce the favorable opinion from the attorney upon challenge. § 2.2-3121(C).

The Virginia Conflict of Interest and Ethics Advisory Council

The Council is another resource that may be used to help localities and local officials avoid a conflicts or ethics problem. It has the authority to issue formal advisory opinions and guidelines relating to ethics and conflicts issues. Additionally, the Council may issue informal advice in response to specific questions. Any informal advice issued by the Council is protected by

attorney-client privilege and is exempt from disclosure under the Virginia Freedom of Information Act. However, if the recipient invokes the immunity provisions of §2.2-3121 or §30-124, the record of the request and the informal advice shall be deemed to be a public record and released upon request.

Formal advisory opinions can be found on the COIA Council website as well as the adopted procedures for issuing formal advisory opinions. Formal opinions are public records, but may have some personal information redacted.

Another role of the Council is to provide trainings on ethics and conflicts issues. These training seminars will be available to lobbyists, state and local government officers and employees, legislators, and other interested persons. The materials for these trainings will also be published by the Council, when it is deemed appropriate. § 30-356(7), (9).

What's New

In the 2017 session, the Conflict of Interest and Ethics Advisory Council proposed 28 changes to the COIA statutes. While the concern continues to be state officials, some of the changes have a significant impact on local officials as well. Here are the major changes affecting local government.

The good news is that the filing deadline has been extended; the deadline to file will be February 1st instead of January 15th. (§2.2-3118.2, §2.2-3116, §30-111.1) Another change that was made regarding filing was that if a filer misses the deadline because he was denied access to the form, he is granted an extension of 5 days upon request and the late penalty becomes the responsibility of the clerk.

All of the forms will be made public 6 weeks after the filing deadline. The changes to §2.2-3115(J) allow for a Clerk to redact personal information: home address (unless the form is the disclosure of real estate) phone number and signature. This is to protect the filer.

Definition of "Gift" - §30-101 and §2.2-3101 continues to be modified:

A modification of the definition was made in subsection (xiii) of both code sections allowing for officials to accept a meal when in attendance at an official meeting.

Currently the definition of gift excludes: any gift related to your private profession occupation; the code was amended this year to also include any gift related to volunteer service. §30-101(v) and §2.2-3101(v).

An exclusion for gifts from relatives or personal friends. §2.2-3101(xvi)

A modification of the definition of “relative” within the gift code sections §30-101, §2.2-3101, was made to include son and daughters in law.

The Definition of “Widely attended event” was also modified (§2.2-419, §30-103.1 and §2.2-3103.1)

The criteria which required the individuals to “share a common interest” was removed. The effect of this is that a filer can no longer accept tickets to a sporting event merely because more than 25 people would be likely attending the event. However, it still allows local officials to attend, at the expense of a lobbyist or a contractor and outside the \$100 gift cap, events such a Rotary or a holiday reception by the Chamber of Commerce.

The definition of “Immunity” was also clarified under §30-124 and §2.2-3121; if the Virginia Conflict of Interest and Ethics Advisory Council provides written informal advice to a councilmember, officer or employee; he cannot be prosecuted for good faith reliance on that advice, if there was a full disclosure of the facts.

For purposes of defining “personal interest” the limit of \$10,000 was lowered to \$5,000 but two code sections §2.2-3110(A)(3) relating to local government and §30-106(A)(3) were overlooked. §2.2-3110(A)(3) states that contracts between the government or school board and an officer or an employee of a town or city with a population of less than 10,000 are not prohibited if the total of such contracts does not exceed \$10,000 per year or is less than \$25,000 if awarded on a sealed bid basis.

Summary

The Virginia Conflict of Interests Act determines when public officials and employees have personal interests in public contracts or transactions, if those interests conflict with the officials’ public duties, and how the officials should behave considering such a conflict. COIA dictates the terms for disclosure of public officials’ personal and financial interests and decides when officials must disqualify themselves. The act also defines other types of conduct that public officials are prohibited from engaging in, including involvement in bribery, undue influence, and use of insider information.

Council members should always consult COIA’s specific language if a potential conflict may arise. Inquiries about specific contracts or transactions should be directed to the relevant city or town attorney. We hope this guide will help local governments become better informed of their responsibilities if a prospective conflict may occur.

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Article 1. General Provisions.

§ 2.2-3100. Policy; application; construction.

The General Assembly, recognizing that our system of representative government is dependent in part upon (i) citizen legislative members representing fully the public in the legislative process and (ii) its citizens maintaining the highest trust in their public officers and employees, finds and declares that the citizens are entitled to be assured that the judgment of public officers and employees will be guided by a law that defines and prohibits inappropriate conflicts and requires disclosure of economic interests. To that end and for the purpose of establishing a single body of law applicable to all state and local government officers and employees on the subject of conflict of interests, the General Assembly enacts this State and Local Government Conflict of Interests Act so that the standards of conduct for such officers and employees may be uniform throughout the Commonwealth.

This chapter shall supersede all general and special acts and charter provisions which purport to deal with matters covered by this chapter except that the provisions of §§ 15.2-852, 15.2-2287, 15.2-2287.1, and 15.2-2289 and ordinances adopted pursuant thereto shall remain in force and effect. The provisions of this chapter shall be supplemented but not superseded by the provisions on ethics in public contracting in Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of this title and ordinances adopted pursuant to § 2.2-3104.2 regulating receipt of gifts.

The provisions of this chapter do not preclude prosecution for any violation of any criminal law of the Commonwealth, including Articles 2 (Bribery and Related Offenses, § 18.2-438 et seq.) and 3 (Bribery of Public Servants and Party Officials, § 18.2-446 et seq.) of Chapter 10 of Title 18.2, and do not constitute a defense to any prosecution for such a violation.

This chapter shall be liberally construed to accomplish its purpose.

§ 2.2-3100.1. Copy of chapter; review by officers and employees.

Any person required to file a disclosure statement of personal interests pursuant to subsections A or B of § 2.2-3114, subsections A or B of § 2.2-3115 or § 2.2-3116 shall be furnished by the public body's administrator a copy of this chapter within two weeks following the person's election, reelection, employment, appointment or reappointment.

All officers and employees shall read and familiarize themselves with the provisions of this chapter.

§ 2.2-3101. Definitions.

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

“Advisory agency” means any board, commission, committee or post which does not exercise any sovereign power or duty, but is appointed by a governmental agency or officer or is created by law for the purpose of making studies or recommendations, or advising or consulting with a governmental agency.

“Affiliated business entity relationship” means a relationship, other than a parent-subsidiary relationship, that exists when (i) one business entity has a controlling ownership interest in the other business entity, (ii) a controlling owner in one entity is also a controlling owner in the other entity, or (iii) there is shared management or control between the business entities. Factors that may be considered in determining the existence of an affiliated business entity relationship include that the same person or substantially the same person owns or manages the two entities, there are common or commingled funds or assets, the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis, or there is otherwise a close working relationship between the entities.

“Business” means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

“Candidate” means a person who seeks or campaigns for an office of the Commonwealth or one of its governmental units in a general, primary, or special election and who is qualified to have his name placed on the ballot for the office. The candidate shall become subject to the provisions of this chapter upon the filing of a statement of qualification pursuant to § 24.2-501. The State Board of Elections or general registrar shall notify each such candidate of the provisions of this chapter. Notification made by the general registrar shall consist of information developed by the State Board of Elections.

“Contract” means any agreement to which a governmental agency is a party, or any agreement on behalf of a governmental agency that involves the payment of money appropriated by the General Assembly or a political subdivision, whether or not such agreement is executed in the name of the Commonwealth, or some political subdivision thereof. “Contract” includes a subcontract only when the contract of which it is a part is with the officer's or employee's own government-

tal agency.

“Council” means the Virginia Conflict of Interest and Ethics Advisory Council established in § 30-355.

“Employee” means all persons employed by a governmental or advisory agency, unless otherwise limited by the context of its use.

“Financial institution” means any bank, trust company, savings institution, industrial loan association, consumer finance company, credit union, broker-dealer as defined in subsection A of § 13.1-501, or investment company or advisor registered under the federal Investment Advisors Act or Investment Company Act of 1940.

“Gift” means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. “Gift” does not include (i) any offer of a ticket, coupon, or other admission or pass unless the ticket, coupon, admission, or pass is used; (ii) honorary degrees; (iii) any athletic, merit, or need-based scholarship or any other financial aid awarded by a public or private school, institution of higher education, or other educational program pursuant to such school, institution, or program’s financial aid standards and procedures applicable to the general public; (iv) a campaign contribution properly received and reported pursuant to Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2; (v) any gift related to the private profession or occupation or volunteer service of an officer or employee or of a member of his immediate family; (vi) food or beverages consumed while attending an event at which the filer is performing official duties related to his public service; (vii) food and beverages received at or registration or attendance fees waived for any event at which the filer is a featured speaker, presenter, or lecturer; (viii) unsolicited awards of appreciation or recognition in the form of a plaque, trophy, wall memento, or similar item that is given in recognition of public, civic, charitable, or professional service; (ix) a devise or inheritance; (x) travel disclosed pursuant to the Campaign Finance Disclosure Act (§ 24.2-945 et seq.); (xi) travel paid for or provided by the government of the United States, any of its territories, or any state or any political subdivision of such state; (xii) travel provided to facilitate attendance by a legislator at a regular or special session of the General Assembly, a meeting of a legislative committee or commission, or a national conference where attendance is approved by the House Committee on

Rules or its Chairman or the Senate Committee on Rules or its Chairman; (xiii) travel related to an official meeting of, or any meal provided for attendance at such meeting by, the Commonwealth, its political subdivisions, or any board, commission, authority, or other entity, or any charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code affiliated with such entity, to which such person has been appointed or elected or is a member by virtue of his office or employment; (xiv) gifts with a value of less than \$20; (xv) attendance at a reception or similar function where food, such as hors d’oeuvres, and beverages that can be conveniently consumed by a person while standing or walking are offered; or (xvi) gifts from relatives or personal friends. For the purpose of this definition, “relative” means the donee’s spouse, child, uncle, aunt, niece, nephew, or first cousin; a person to whom the donee is engaged to be married; the donee’s or his spouse’s parent, grandparent, grandchild, brother, sister, step-parent, step-grandparent, step-grandchild, step-brother, or step-sister; or the donee’s brother’s or sister’s spouse or the donee’s son-in-law or daughter-in-law. For the purpose of this definition, “personal friend” does not include any person that the filer knows or has reason to know is (a) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4 of Title 2.2; (b) a lobbyist’s principal as defined in § 2.2-419; (c) for an officer or employee of a local governmental or advisory agency, a person, organization, or business who is a party to or is seeking to become a party to a contract with the local agency of which he is an officer or an employee; or (d) for an officer or employee of a state governmental or advisory agency, a person, organization, or business who is a party to or is seeking to become a party to a contract with the Commonwealth. For purposes of this definition, “person, organization, or business” includes individuals who are officers, directors, or owners of or who have a controlling ownership interest in such organization or business.

“Governmental agency” means each component part of the legislative, executive or judicial branches of state and local government, including each office, department, authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties. Corporations organized or controlled by the Virginia Retirement System are “governmental agencies” for purposes of this chapter.

“Immediate family” means (i) a spouse and (ii) any other person who resides in the same household as the officer or employee and who is a dependent of the of-

ficer or employee.

“Officer” means any person appointed or elected to any governmental or advisory agency including local school boards, whether or not he receives compensation or other emolument of office. Unless the context requires otherwise, “officer” includes members of the judiciary.

“Parent-subsidiary relationship” means a relationship that exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation.

“Personal interest” means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$5,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, \$5,000 annually; (iv) ownership of real or personal property if the interest exceeds \$5,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or (vi) an option for ownership of a business or real or personal property if the ownership interest will consist of clause (i) or (iv).

“Personal interest in a contract” means a personal interest that an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business that is a party to the contract.

“Personal interest in a transaction” means a personal interest of an officer or employee in any matter considered by his agency. Such personal interest exists when an officer or employee or a member of his immediate family has a personal interest in property or a business or governmental agency, or represents or provides services to any individual or business and such property, business or represented or served individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction. Notwithstanding the above, such personal interest in a transaction shall

not be deemed to exist where (a) an elected member of a local governing body serves without remuneration as a member of the board of trustees of a not-for-profit entity and such elected member or member of his immediate family has no personal interest related to the not-for-profit entity or (b) an officer, employee, or elected member of a local governing body is appointed by such local governing body to serve on a governmental agency, or an officer, employee, or elected member of a separate local governmental agency formed by a local governing body is appointed to serve on a governmental agency, and the personal interest in the transaction of the governmental agency is the result of the salary, other compensation, fringe benefits, or benefits provided by the local governing body or the separate governmental agency to the officer, employee, elected member, or member of his immediate family.

“State and local government officers and employees” shall not include members of the General Assembly.

“State filer” means those officers and employees required to file a disclosure statement of their personal interests pursuant to subsection A or B of § 2.2-3114.

“Transaction” means any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated.

Article 2. Generally Prohibited and Unlawful Conduct.

§ 2.2-3102. Application.

This article applies to generally prohibited conduct that shall be unlawful and to state and local government officers and employees.

§ 2.2-3103. Prohibited conduct.

No officer or employee of a state or local governmental or advisory agency shall:

1. Solicit or accept money or other thing of value for services performed within the scope of his official duties, except the compensation, expenses or other remuneration paid by the agency of which he is an officer or employee. This prohibition shall not apply to the acceptance of special benefits that may be authorized by law;
2. Offer or accept any money or other thing of value for or in consideration of obtaining employment, appointment, or promotion of any person with any governmental or advisory agency;

3. Offer or accept any money or other thing of value for or in consideration of the use of his public position to obtain a contract for any person or business with any governmental or advisory agency;
4. Use for his own economic benefit or that of another party confidential information that he has acquired by reason of his public position and which is not available to the public;
5. Accept any money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence him in the performance of his official duties. This subdivision shall not apply to any political contribution actually used for political campaign or constituent service purposes and reported as required by Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2;
6. Accept any business or professional opportunity when he knows that there is a reasonable likelihood that the opportunity is being afforded him to influence him in the performance of his official duties;
7. Accept any honoraria for any appearance, speech, or article in which the officer or employee provides expertise or opinions related to the performance of his official duties. The term “honoraria” shall not include any payment for or reimbursement to such person for his actual travel, lodging, or subsistence expenses incurred in connection with such appearance, speech, or article or in the alternative a payment of money or anything of value not in excess of the per diem deduction allowable under § 162 of the Internal Revenue Code, as amended from time to time. The prohibition in this subdivision shall apply only to the Governor, Lieutenant Governor, Attorney General, Governor’s Secretaries, and heads of departments of state government;
8. Accept a gift from a person who has interests that may be substantially affected by the performance of the officer’s or employee’s official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the officer’s or employee’s impartiality in the matter affecting the donor. Violations of this subdivision shall not be subject to criminal law penalties;
9. Accept gifts from sources on a basis so frequent as to raise an appearance of the use of his public office for private gain. Violations of this subdivision shall not be subject to criminal law penalties; or
10. Use his public position to retaliate or threaten to retaliate against any person for expressing views on matters of public concern or for exercising any right that is otherwise protected by law, provided, however, that this subdivision shall not restrict the authority of any public employer to govern conduct of its employees, and to take disciplinary action, in accordance with applicable law, and provided further that this subdivision shall not limit the authority of a constitutional officer to discipline or discharge an employee with or without cause.

2.2-3103.1. Certain gifts prohibited.

A. For purposes of this section:

“Person, organization, or business” includes individuals who are officers, directors, or owners of or who have a controlling ownership interest in such organization or business.

“Widely attended event” means an event at which at least 25 persons have been invited to attend or there is a reasonable expectation that at least 25 persons will attend the event and the event is open to individuals (i) who are members of a public, civic, charitable, or professional organization, (ii) who are from a particular industry or profession, or (iii) who represent persons interested in a particular issue.

B. No officer or employee of a local governmental or advisory agency or candidate required to file the disclosure form prescribed in § 2.2-3117 or a member of his immediate family shall solicit, accept, or receive any single gift with a value in excess of \$100 or any combination of gifts with an aggregate value in excess of \$100 within any calendar year for himself or a member of his immediate family from any person that he or a member of his immediate family knows or has reason to know is (i) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4; (ii) a lobbyist’s principal as defined in § 2.2-419; or (iii) a person, organization, or business who is or is seeking to become a party to a contract with the local agency of which he is an officer or an employee. Gifts with a value of less than \$20 are not subject to aggregation for purposes of this prohibition.

C. No officer or employee of a state governmental or advisory agency or candidate required to file the disclosure form prescribed in § 2.2-3117 or a member of his immediate family shall solicit, accept, or receive any single gift with a value in excess of \$100 or any combination of gifts with an aggregate value in excess of \$100 within any calendar year for himself or a mem-

ber of his immediate family from any person that he or a member of his immediate family knows or has reason to know is (i) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4; (ii) a lobbyist's principal as defined in § 2.2-419; or (iii) a person, organization, or business who is or is seeking to become a party to a contract with the state governmental or advisory agency of which he is an officer or an employee or over which he has the authority to direct such agency's activities. Gifts with a value of less than \$20 are not subject to aggregation for purposes of this prohibition.

D. Notwithstanding the provisions of subsections B and C, such officer, employee, or candidate or a member of his immediate family may accept or receive a gift of food and beverages, entertainment, or the cost of admission with a value in excess of \$100 when such gift is accepted or received while in attendance at a widely attended event and is associated with the event. Such gifts shall be reported on the disclosure form prescribed in § 2.2-3117.

E. Notwithstanding the provisions of subsections B and C, such officer or employee or a member of his immediate family may accept or receive a gift from a foreign dignitary with a value exceeding \$100 for which the fair market value or a gift of greater or equal value has not been provided or exchanged. Such gift shall be accepted on behalf of the Commonwealth or a locality and archived in accordance with guidelines established by the Library of Virginia. Such gift shall be disclosed as having been accepted on behalf of the Commonwealth or a locality, but the value of such gift shall not be required to be disclosed.

F. Notwithstanding the provisions of subsections B and C, such officer, employee, or candidate or a member of his immediate family may accept or receive certain gifts with a value in excess of \$100 from a person listed in subsection B or C if such gift was provided to such officer, employee, or candidate or a member of his immediate family on the basis of a personal friendship. Notwithstanding any other provision of law, a person listed in subsection B or C may be a personal friend of such officer, employee, or candidate or his immediate family for purposes of this subsection. In determining whether a person listed in subsection B or C is a personal friend, the following factors shall be considered: (i) the circumstances under which the gift was offered; (ii) the history of the relationship between the person and the donor, including the nature and length of the friendship and any previous exchange of gifts between them; (iii) to the extent known to the person, whether the donor personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and

(iv) whether the donor has given the same or similar gifts to other persons required to file the disclosure form prescribed in § 2.2-3117 or 30-111.

G. Notwithstanding the provisions of subsections B and C, such officer, employee, or candidate or a member of his immediate family may accept or receive gifts of travel, including travel-related transportation, lodging, hospitality, food or beverages, or other thing of value, with a value in excess of \$100 that is paid for or provided by a person listed in subsection B or C when the officer, employee, or candidate has submitted a request for approval of such travel to the Council and has received the approval of the Council pursuant to § 30-356.1. Such gifts shall be reported on the disclosure form prescribed in § 2.2-3117.

H. During the pendency of a civil action in any state or federal court to which the Commonwealth is a party, the Governor or the Attorney General or any employee of the Governor or the Attorney General who is subject to the provisions of this chapter shall not solicit, accept, or receive any gift from any person that he knows or has reason to know is a person, organization, or business that is a party to such civil action. A person, organization, or business that is a party to such civil action shall not knowingly give any gift to the Governor or the Attorney General or any of their employees who are subject to the provisions of this chapter.

I. The \$100 limitation imposed in accordance with this section shall be adjusted by the Council every five years, as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor, rounded to the nearest whole dollar.

J. The provisions of this section shall not apply to any justice of the Supreme Court of Virginia, judge of the Court of Appeals of Virginia, judge of any circuit court, or judge or substitute judge of any district court. However, nothing in this subsection shall be construed to authorize the acceptance of any gift if such acceptance would constitute a violation of the Canons of Judicial Conduct for the State of Virginia.

§ 2.2-3103.2. Return of gifts.

No person shall be in violation of any provision of this chapter prohibiting the acceptance of a gift if (i) the gift is not used by such person and the gift or its equivalent in money is returned to the donor or delivered to a charitable organization within a reasonable period of time upon the discovery of the value of the gift and

is not claimed as a charitable contribution for federal income tax purposes or (ii) consideration is given by the donee to the donor for the value of the gift within a reasonable period of time upon the discovery of the value of the gift provided that such consideration reduces the value of the gift to an amount not in excess of \$100 as provided in subsection B or C of § 2.2-3103.1.

§ 2.2-3104. Prohibited conduct for certain officers and employees of state government.

For one year after the termination of public employment or service, no state officer or employee shall, before the agency of which he was an officer or employee, represent a client or act in a representative capacity on behalf of any person or group, for compensation, on matters related to legislation, executive orders, or regulations promulgated by the agency of which he was an officer or employee. This prohibition shall be in addition to the prohibitions contained in § 2.2-3103.

For the purposes of this section, “state officer or employee” shall mean (i) the Governor, Lieutenant Governor, Attorney General, and officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not, who are regularly employed on a full-time salaried basis; those officers and employees of executive branch agencies who report directly to the agency head; and those at the level immediately below those who report directly to the agency head and are at a payband 6 or higher and (ii) the officers and professional employees of the legislative branch designated by the joint rules committee of the General Assembly. For the purposes of this section, the General Assembly and the legislative branch agencies shall be deemed one agency.

To the extent this prohibition applies to the Governor’s Secretaries, “agency” means all agencies assigned to the Secretary by law or by executive order of the Governor.

Any person subject to the provisions of this section may apply to the Council or Attorney General, as provided in § 2.2-3121 or 2.2-3126, for an advisory opinion as to the application of the restriction imposed by this section on any post-public employment position or opportunity.

1994, cc. 727, 776, § 2.1-639.4:1; 2001, c. 844; 2013, c. 648; 2014, cc. 792, 804; 2015, cc. 763, 777.

§ 2.2-3104.01. Prohibited conduct; bids or proposals under the Virginia Public Procurement Act, Public-Private Transportation Act, and Public-Private Education Facilities and Infrastructure Act; loans or grants from the Commonwealth’s Development Opportunity Fund.

A. Neither the Governor, his political action committee, or the Governor’s Secretaries, if the Secretary is responsible to the Governor for an executive branch agency with jurisdiction over the matters at issue, shall knowingly solicit or accept a contribution, gift, or other item with a value greater than \$50 from any bidder, offeror, or private entity, or from an officer or director of such bidder, offeror, or private entity, who has submitted a bid or proposal to an executive branch agency that is directly responsible to the Governor pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.), the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.), or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) (i) during the period between the submission of the bid and the award of the public contract under the Virginia Public Procurement Act or (ii) following the submission of a proposal under the Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure Act of 2002 until the execution of a comprehensive agreement thereunder.

B. The provisions of this section shall apply only for public contracts, proposals, or comprehensive agreements where the stated or expected value of the contract is \$5 million or more. The provisions of this section shall not apply to contracts awarded as the result of competitive sealed bidding as set forth in § 2.2-4302.1.

C. Any person who knowingly violates this section shall be subject to a civil penalty of \$500 or up to two times the amount of the contribution or gift, whichever is greater, and the contribution, gift, or other item shall be returned to the donor. The attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties. Any civil penalties collected shall be payable to the State Treasurer for deposit to the general fund and shall be used exclusively to fund the Council.

§ 2.2-3104.02. Prohibited conduct for constitutional officers.

In addition to the prohibitions contained in § 2.2-3103, no constitutional officer shall, during the one year after the termination of his public service, act in a representative capacity on behalf of any person or group, for compensation, on any matter before the agency of which he was an officer.

The provisions of this section shall not apply to any attorney for the Commonwealth.

Any person subject to the provisions of this section may apply to the attorney for the Commonwealth for the jurisdiction where such person was elected as provided in § 2.2-3126, for an advisory opinion as to the application of the restriction imposed by this section on any post-public employment position or opportunity.

§ 2.2-3104.1. Exclusion of certain awards from scope of chapter.

The provisions of this chapter shall not be construed to prohibit or apply to the acceptance by (i) any employee of a local government, or (ii) a teacher or other employee of a local school board of an award or payment in honor of meritorious or exceptional services performed by the teacher or employee and made by an organization exempt from federal income taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code .

§ 2.2-3104.2. Ordinance regulating receipt of gifts.

The governing body of any county, city, or town may adopt an ordinance setting a monetary limit on the acceptance of any gift by the officers, appointees or employees of the county, city or town and requiring the disclosure by such officers, appointees or employees of the receipt of any gift.

Article 3. Prohibited Conduct Relating to Contracts.

§ 2.2-3105. Application.

This article proscribes certain conduct relating to contracts by state and local government officers and employees. The provisions of this article shall be supplemented but not superseded by the provisions on ethics in public contracting in Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of this title.

1987, Sp. Sess., c. 1, § 2.1-639.5; 2001, c. 844; 2003, c. 694.

§ 2.2-3106. Prohibited contracts by officers and employees of state government and Eastern Virginia Medical School.

A. No officer or employee of any governmental agency of state government or Eastern Virginia Medical School shall have a personal interest in a contract with the governmental agency of which he is an officer or employee, other than his own contract of employment.

B. No officer or employee of any governmental agency of state government or Eastern Virginia Medical School shall have a personal interest in a contract with any other governmental agency of state government unless such contract is (i) awarded as a result of competitive sealed bidding or competitive negotiation as set forth in § 2.2-4302.1 or 2.2-4302.2 or (ii) is awarded after a finding, in writing, by the administrative head of the governmental agency that competitive bidding or negotiation is contrary to the best interest of the public.

C. The provisions of this section shall not apply to:

1. An employee's personal interest in additional contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided the employee does not exercise any control over the employment or the employment activities of the member of his immediate family and the employee is not in a position to influence those activities;
2. The personal interest of an officer or employee of a state institution of higher education or the Eastern Virginia Medical School in additional contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided (i) the officer or employee and the immediate family member are engaged in teaching, research or administrative support positions at the educational institution or the Eastern Virginia Medical School, (ii) the governing board of the educational institution finds that it is in the best interests of the institution or the Eastern Virginia Medical School and the Commonwealth for such dual employment to exist, and (iii) after such finding, the governing board of the educational institution or the Eastern Virginia Medical School ensures that the officer or employee, or the immediate family member, does not have sole authority to supervise, evaluate or make personnel decisions regarding the other;
3. An officer's or employee's personal interest in a contract of employment with any other governmental agency of state government;
4. Contracts for the sale by a governmental agency or the Eastern Virginia Medical School of services or goods at uniform prices available to the general public;
5. An employee's personal interest in a contract between a public institution of higher education in Virginia or the Eastern Virginia Medical

School and a publisher or wholesaler of textbooks or other educational materials for students, which accrues to him solely because he has authored or otherwise created such textbooks or materials;

6. An employee's personal interest in a contract with his or her employing public institution of higher education to acquire the collections or scholarly works owned by the employee, including manuscripts, musical scores, poetry, paintings, books or other materials, writings, or papers of an academic, research, or cultural value to the institution, provided the president of the institution approves the acquisition of such collections or scholarly works as being in the best interests of the institution's public mission of service, research, or education;
7. Subject to approval by the board of visitors, an employee's personal interest in a contract between the Eastern Virginia Medical School or a public institution of higher education in Virginia that operates a school of medicine or dentistry and a not-for-profit nonstock corporation that operates a clinical practice within such public institution of higher education or the Eastern Virginia Medical School and of which such employee is a member or employee;
8. Subject to approval by the relevant board of visitors, an employee's personal interest in a contract for research and development or commercialization of intellectual property between a public institution of higher education in Virginia or the Eastern Virginia Medical School and a business in which the employee has a personal interest, if (i) the employee's personal interest has been disclosed to and approved by such public institution of higher education or the Eastern Virginia Medical School prior to the time at which the contract is entered into; (ii) the employee promptly files a disclosure statement pursuant to § 2.2-3117 and thereafter files such statement annually on or before January 15; (iii) the institution has established a formal policy regarding such contracts, approved by the State Council of Higher Education or, in the case of the Eastern Virginia Medical School, a formal policy regarding such contracts in conformity with any applicable federal regulations that has been approved by its board of visitors; and (iv) no later than December 31 of each year, the institution or the Eastern Virginia Medical School files an annual report with the Secretary of the

Commonwealth disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's or the Eastern Virginia Medical School's employee responsible for administering each contract, the details of the institution's or the Eastern Virginia Medical School's commitment or investment of resources or finances for each contract, and any other information requested by the Secretary of the Commonwealth; or

9. Subject to approval by the relevant board of visitors, an employee's personal interest in a contract between a public institution of higher education in Virginia or the Eastern Virginia Medical School and a business in which the employee has a personal interest, if (i) the personal interest has been disclosed to the institution or the Eastern Virginia Medical School prior to the time the contract is entered into; (ii) the employee files a disclosure statement pursuant to § 2.2-3117 and thereafter annually on or before January 15; (iii) the employee does not participate in the institution's or the Eastern Virginia Medical School's decision to contract; (iv) the president of the institution or the Eastern Virginia Medical School finds and certifies in writing that the contract is for goods and services needed for quality patient care, including related medical education or research, by the institution's medical center or the Eastern Virginia Medical School, its affiliated teaching hospitals and other organizations necessary for the fulfillment of its mission, including the acquisition of drugs, therapies and medical technologies; and (v) no later than December 31 of each year, the institution or the Eastern Virginia Medical School files an annual report with the Secretary of the Commonwealth disclosing each open contract entered subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's or the Eastern Virginia Medical School's employee responsible for administering each contract, the details of the institution's or the Eastern Virginia Medical School's commitment or investment of resources or finances for each contract, and any other information requested by the Secretary of the Commonwealth.

D. Notwithstanding the provisions of subdivisions C 8 and C 9, if the research and development or commercialization of intellectual property or the employee's personal interest in a contract with a business is subject to policies and regulations governing conflicts of interest promulgated by any agency of the United States government, including the adoption of policies requiring the disclosure and management of such conflicts of interests, the policies established by the Eastern Virginia Medical School pursuant to such federal requirements shall constitute compliance with subdivisions C 8 and C 9, upon notification by the Eastern Virginia Medical School to the Secretary of the Commonwealth by January 31 of each year of evidence of their compliance with such federal policies and regulations.

E. The board of visitors may delegate the authority granted under subdivision C 8 to the president of the institution. If the board elects to delegate such authority, the board shall include this delegation of authority in the formal policy required by clause (iii) of subdivision C 8. In those instances where the board has delegated such authority, on or before December 1 of each year, the president of the relevant institution shall file a report with the relevant board of visitors disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's or the Eastern Virginia Medical School's employee responsible for administering each contract, the details of the institution's or the Eastern Virginia Medical School's commitment or investment of resources or finances for each contract, the details of how revenues are to be dispersed, and any other information requested by the board of visitors.

§ 2.2-3107. Prohibited contracts by members of county boards of supervisors, city councils and town councils.

A. No person elected or appointed as a member of the governing body of a county, city or town shall have a personal interest in (i) any contract with his governing body, or (ii) any contract with any governmental agency that is a component part of his local government and which is subject to the ultimate control of the governing body of which he is a member, or (iii) any contract other than a contract of employment with any other governmental agency if such person's governing body appoints a majority of the members of the governing body of the second governmental agency.

B. The provisions of this section shall not apply to:

1. A member's personal interest in a contract of

employment provided (i) the officer or employee was employed by the governmental agency prior to July 1, 1983, in accordance with the provisions of the former Conflict of Interests Act, Chapter 22 (§ 2.1-347 et seq.) of Title 2.1 as it existed on June 30, 1983, or (ii) the employment first began prior to the member becoming a member of the governing body;

2. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the public; or
3. A contract awarded to a member of a governing body as a result of competitive sealed bidding where the governing body has established a need for the same or substantially similar goods through purchases prior to the election or appointment of the member to serve on the governing body. However, the member shall have no involvement in the preparation of the specifications for such contract, and the remaining members of the governing body, by written resolution, shall state that it is in the public interest for the member to bid on such contract.

§ 2.2-3108. Prohibited contracts by members of school boards.

A. No person elected or appointed as a member of a local school board shall have a personal interest in (i) any contract with his school board or (ii) any contract with any governmental agency that is subject to the ultimate control of the school board of which he is a member.

B. The provisions of this section shall not apply to:

1. A member's personal interest in a contract of employment provided the employment first began prior to the member becoming a member of the school board;
2. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the public; or
3. A contract awarded to a member of a school board as a result of competitive sealed bidding where the school board has established a need for the same or substantially similar goods through purchases prior to the election or appointment of the member to serve on the school board. However, the member shall have no involvement in the preparation of the specifications for such contract, and the remaining members of the school board, by written resolution, shall state that it is in the public interest for the member to bid on such contract.

§ 2.2-3109. Prohibited contracts by other officers and employees of local governmental agencies.

A. No other officer or employee of any governmental agency of local government, including a hospital authority as defined in § 2.2-3109.1, shall have a personal interest in a contract with the agency of which he is an officer or employee other than his own contract of employment.

B. No officer or employee of any governmental agency of local government, including a hospital authority as defined in § 2.2-3109.1, shall have a personal interest in a contract with any other governmental agency that is a component of the government of his county, city or town unless such contract is (i) awarded as a result of competitive sealed bidding or competitive negotiation as set forth in § 2.2-4302.1 or 2.2-4302.2 or is awarded as a result of a procedure embodying competitive principles as authorized by subdivision A 10 or 11 of § 2.2-4343 or (ii) is awarded after a finding, in writing, by the administrative head of the governmental agency that competitive bidding or negotiation is contrary to the best interest of the public.

C. The provisions of this section shall not apply to:

1. An employee's personal interest in additional contracts for goods or services, or contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided the employee does not exercise any control over (i) the employment or the employment activities of the member of his immediate family and (ii) the employee is not in a position to influence those activities or the award of the contract for goods or services;
2. An officer's or employee's personal interest in a contract of employment with any other governmental agency that is a component part of the government of his county, city or town;
3. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the general public;
4. Members of local governing bodies who are subject to § 2.2-3107;
5. Members of local school boards who are subject to § 2.2-3108; or
6. Any ownership or financial interest of members of the governing body, administrators, and other personnel serving in a public charter school in renovating, lending, granting, or leasing public charter school facilities, as the case may be,

provided such interest has been disclosed in the public charter school application as required by § 22.1-212.8.

§ 2.2-3109.1. Prohibited contracts; additional exclusions for contracts by officers and employees of hospital authorities.

A. As used in this section, «hospital authority» means a hospital authority established pursuant to Chapter 53 (§ 15.2-5300 et seq.) of Title 15.2 or an Act of Assembly.

B. The provisions of § 2.2-3109 shall not apply to:

1. The personal interest of an officer or employee of a hospital authority in additional contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided (i) the officer or employee and the immediate family member are licensed members of the medical profession or hold administrative support positions at the hospital authority, (ii) the governing board of the hospital authority finds that it is in the best interests of the hospital authority and the county, city, or town for such dual employment to exist, and (iii) after such finding, the governing board of the hospital authority ensures that neither the officer or employee, nor the immediate family member, has sole authority to supervise, evaluate, or make personnel decisions regarding the other;
2. Subject to approval by the governing board of the hospital authority, an officer or employee's personal interest in a contract between his hospital authority and a professional entity that operates a clinical practice at any medical facilities of such other hospital authority and of which such officer or employee is a member or employee;
3. Subject to approval by the relevant governing body, an officer or employee's personal interest in a contract for research and development or commercialization of intellectual property between the hospital authority and a business in which the employee has a personal interest, provided (i) the officer or employee's personal interest has been disclosed to and approved by the hospital authority prior to the time at which the contract is entered into; (ii) the officer or employee promptly files a disclosure statement pursuant to § 2.2-3117 and thereafter files such statement annually on or before January 15; (iii) the local hospital authority has established a formal policy regarding such contracts in conformity with any applicable

federal regulations that has been approved by its governing body; and (iv) no later than December 31 of each year, the local hospital authority files an annual report with the Virginia Conflict of Interest and Ethics Advisory Council disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the hospital authority's employee responsible for administering each contract, the details of such hospital authority's commitment or investment of resources or finances for each contract, and any other information requested by the Virginia Conflict of Interest and Ethics Advisory Council; or

4. Subject to approval by the relevant governing body, an officer or employee's personal interest in a contract between the hospital authority and a business in which the officer or employee has a personal interest, provided (i) the personal interest has been disclosed to the hospital authority prior to the time the contract is entered into; (ii) the officer or employee files a disclosure statement pursuant to § 2.2-3117 and thereafter annually on or before January 15; (iii) the officer or employee does not participate in the hospital authority's decision to contract; (iv) the president or chief executive officer of the hospital authority finds and certifies in writing that the contract is for goods and services needed for quality patient care, including related medical education or research, by any of the hospital authority's medical facilities or any of its affiliated organizations, or is otherwise necessary for the fulfillment of its mission, including but not limited to the acquisition of drugs, therapies, and medical technologies; and (v) no later than December 31 of each year, the hospital authority files an annual report with the Virginia Conflict of Interest and Ethics Advisory Council disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the hospital authority's employee responsible for administering each contract, the details of the hospital authority's commitment or investment of resources or finances for each contract, and any other information requested by the Virginia Conflict of Interest and Ethics Advisory Council.

C. Notwithstanding the provisions of subdivisions B 3 and B 4, if the research and development or commercialization of intellectual property or the officer or employee's personal interest in a contract with a business is subject to policies and regulations governing conflicts of interest promulgated by any agency of the United States government, including the adoption of policies requiring the disclosure and management of such conflicts of interest, the policies established by the hospital authority pursuant to such federal requirements shall constitute compliance with subdivisions B 3 and B 4, upon notification by the hospital authority to the Virginia Conflict of Interest and Ethics Advisory Council by January 31 of each year of evidence of its compliance with such federal policies and regulations.

D. The governing body may delegate the authority granted under subdivision B 2 to the president or chief executive officer of hospital authority. If the board elects to delegate such authority, the board shall include this delegation of authority in the formal policy required by clause (iii) of subdivision B 3. In those instances where the board has delegated such authority, on or before December 1 of each year, the president or chief executive officer of the hospital authority shall file a report with the relevant governing body disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the hospital authority's employee responsible for administering each contract, the details of the hospital authority's commitment or investment of resources or finances for each contract, the details of how revenues are to be dispersed, and any other information requested by the governing body.

§ § 2.2-3110. Further exceptions.

A. The provisions of Article 3 (§ 2.2-3106 et seq.) shall not apply to:

1. The sale, lease or exchange of real property between an officer or employee and a governmental agency, provided the officer or employee does not participate in any way as such officer or employee in such sale, lease or exchange, and this fact is set forth as a matter of public record by the governing body of the governmental agency or by the administrative head thereof;
2. The publication of official notices;
3. Contracts between the government or school board of a county, city, or town with a population of less than 10,000 and an officer or employee of

that county, city, or town government or school board when the total of such contracts between the government or school board and the officer or employee of that government or school board or a business controlled by him does not exceed \$5,000 per year or such amount exceeds \$5,000 and is less than \$25,000 but results from contracts arising from awards made on a sealed bid basis, and such officer or employee has made disclosure as provided for in § 2.2-3115;

4. An officer or employee whose sole personal interest in a contract with the governmental agency is by reason of income from the contracting firm or governmental agency in excess of \$5,000 per year, provided the officer or employee or a member of his immediate family does not participate and has no authority to participate in the procurement or letting of such contract on behalf of the contracting firm and the officer or employee either does not have authority to participate in the procurement or letting of the contract on behalf of his governmental agency or he disqualifies himself as a matter of public record and does not participate on behalf of his governmental agency in negotiating the contract or in approving the contract;
5. When the governmental agency is a public institution of higher education, an officer or employee whose personal interest in a contract with the institution is by reason of an ownership in the contracting firm in excess of three percent of the contracting firm's equity or such ownership interest and income from the contracting firm is in excess of \$5,000 per year, provided that (i) the officer or employee's ownership interest, or ownership and income interest, and that of any immediate family member in the contracting firm is disclosed in writing to the president of the institution, which writing certifies that the officer or employee has not and will not participate in the contract negotiations on behalf of the contracting firm or the institution, (ii) the president of the institution makes a written finding as a matter of public record that the contract is in the best interests of the institution, (iii) the officer or employee either does not have authority to participate in the procurement or letting of the contract on behalf of the institution or disqualifies himself as a matter of public record, and (iv) does not participate on behalf of the institution in negotiating the contract or approving the contract;

6. Except when the governmental agency is the Virginia Retirement System, contracts between an officer's or employee's governmental agency and a public service corporation, financial institution, or company furnishing public utilities in which the officer or employee has a personal interest, provided the officer or employee disqualifies himself as a matter of public record and does not participate on behalf of his governmental agency in negotiating the contract or in approving the contract;
7. Contracts for the purchase of goods or services when the contract does not exceed \$500;
8. Grants or other payment under any program wherein uniform rates for, or the amounts paid to, all qualified applicants are established solely by the administering governmental agency;
9. An officer or employee whose sole personal interest in a contract with his own governmental agency is by reason of his marriage to his spouse who is employed by the same agency, if the spouse was employed by such agency for five or more years prior to marrying such officer or employee; or
10. Contracts entered into by an officer or employee or immediate family member of an officer or employee of a soil and water conservation district created pursuant to Article 3 (§ 10.1-506 et seq.) of Chapter 5 of Title 10.1 to participate in the Virginia Agricultural Best Management Practices Cost-Share Program (the Program) established in accordance with § 10.1-546.1 or to participate in other cost-share programs for the installation of best management practices to improve water quality. This subdivision shall not apply to subcontracts or other agreements entered into by an officer or employee of a soil and water conservation district to provide services for implementation of a cost-share contract established under the Program or such other cost-share programs.

B. Neither the provisions of this chapter nor, unless expressly provided otherwise, any amendments thereto shall apply to those employment contracts or renewals thereof or to any other contracts entered into prior to August 1, 1987, which were in compliance with either the former Virginia Conflict of Interests Act, Chapter 22 (§ 2.1-347 et seq.) or the former Comprehensive Conflict of Interests Act, Chapter 40 (§ 2.1-599 et seq.) of Title 2.1 at the time of their formation and thereafter. Those contracts shall continue to be governed by the provisions of the appropriate prior Act. Notwith-

standing the provisions of subdivision (f) (4) of former § 2.1-348 of Title 2.1 in effect prior to July 1, 1983, the employment by the same governmental agency of an officer or employee and spouse or any other relative residing in the same household shall not be deemed to create a material financial interest except when one of such persons is employed in a direct supervisory or administrative position, or both, with respect to such spouse or other relative residing in his household and the annual salary of such subordinate is \$35,000 or more.

Article 4. Prohibited Conduct Relating to Transactions.

§ 2.2-3111. Application.

This article proscribes certain conduct by state and local government officers and employees having a personal interest in a transaction.

2.2-3112. Prohibited conduct concerning personal interest in a transaction; exceptions.

A. Each officer and employee of any state or local governmental or advisory agency who has a personal interest in a transaction:

1. Shall disqualify himself from participating in the transaction if (i) the transaction has application solely to property or a business or governmental agency in which he has a personal interest or a business that has a parent-subsidiary or affiliated business entity relationship with the business in which he has a personal interest or (ii) he is unable to participate pursuant to subdivision B 1, 2, or 3. Any disqualification under the provisions of this subsection shall be recorded in the public records of the officer's or employee's governmental or advisory agency. The officer or employee shall disclose his personal interest as required by subsection E of § 2.2-3114 or subsection F of § 2.2-3115 and shall not vote or in any manner act on behalf of his agency in the transaction. The officer or employee shall be prohibited from (i) attending any portion of a closed meeting authorized by the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) when the matter in which he has a personal interest is discussed and (ii) discussing the matter in which he has a personal interest with other governmental officers or employees at any time;

B. An officer or employee of any state or local government or advisory agency who has a personal interest in a transaction may participate in the transaction:

1. If he is a member of a business, profession, occupation, or group of three or more persons the members of which are affected by the transaction, and he complies with the declaration requirements of subsection F of § 2.2-3114 or subsection H of § 2.2-3115;
2. When a party to the transaction is a client of his firm if he does not personally represent or provide services to such client and he complies with the declaration requirements of subsection G of § 2.2-3114 or subsection I of § 2.2-3115; or
3. If it affects the public generally, even though his personal interest, as a member of the public, may also be affected by that transaction.

C. Disqualification under the provisions of this section shall not prevent any employee having a personal interest in a transaction in which his agency is involved from representing himself or a member of his immediate family in such transaction provided he does not receive compensation for such representation and provided he complies with the disqualification and relevant disclosure requirements of this chapter.

D. Notwithstanding any other provision of law, if disqualifications of officers or employees in accordance with this section leave less than the number required by law to act, the remaining member or members shall constitute a quorum for the conduct of business and have authority to act for the agency by majority vote, unless a unanimous vote of all members is required by law, in which case authority to act shall require a unanimous vote of remaining members. Notwithstanding any provisions of this chapter to the contrary, members of a local governing body whose sole interest in any proposed sale, contract of sale, exchange, lease or conveyance is by virtue of their employment by a business involved in a proposed sale, contract of sale, exchange, lease or conveyance, and where such member's or members' vote is essential to a constitutional majority required pursuant to Article VII, Section 9 of the Constitution of Virginia and § 15.2-2100, such member or members of the local governing body may vote and participate in the deliberations of the governing body concerning whether to approve, enter into or execute such sale, contract of sale, exchange, lease or conveyance. Official action taken under circumstances that violate this section may be rescinded by the agency on such terms as the interests of the agency and innocent third parties require.

E. The provisions of subsection A shall not prevent an officer or employee from participating in a transaction merely because such officer or employee is a party

in a legal proceeding of a civil nature concerning such transaction.

F. The provisions of subsection A shall not prevent an employee from participating in a transaction regarding textbooks or other educational material for students at state institutions of higher education, when those textbooks or materials have been authored or otherwise created by the employee.

G. The provisions of this section shall not prevent any justice of the Supreme Court of Virginia, judge of the Court of Appeals of Virginia, judge of any circuit court, judge or substitute judge of any district court, member of the State Corporation Commission, or member of the Virginia Workers' Compensation Commission from participating in a transaction where such individual's participation involves the performance of adjudicative responsibilities as set forth in Canon 3 of the Canons of Judicial Conduct for the State of Virginia. However, nothing in this subsection shall be construed to authorize such individual's participation in a transaction if such participation would constitute a violation of the Canons of Judicial Conduct for the State of Virginia.

Article 5. Disclosure Statements Required to Be Filed.

§ 2.2-3113. Application.

This article requires disclosure of certain personal and financial interests by state and local government officers and employees.

2.2-3114. Disclosure by state officers and employees.

A. In accordance with the requirements set forth in § 2.2-3118.2, the Governor, Lieutenant Governor, Attorney General, Justices of the Supreme Court, judges of the Court of Appeals, judges of any circuit court, judges and substitute judges of any district court, members of the State Corporation Commission, members of the Virginia Workers' Compensation Commission, members of the Commonwealth Transportation Board, members of the Board of Trustees of the Virginia Retirement System, members of the Virginia Alcoholic Beverage Control Board, and members of the Virginia Lottery Board and other persons occupying such offices or positions of trust or employment in state government, including members of the governing bodies of authorities, as may be designated by the Governor, or officers or employees of the legislative branch, as may be designated by the Joint Rules Committee of

the General Assembly, shall file with the Council, as a condition to assuming office or employment, a disclosure statement of their personal interests and such other information as is required on the form prescribed by the Council pursuant to § 2.2-3117 and thereafter shall file such a statement annually on or before February 1.

B. In accordance with the requirements set forth in § 2.2-3118.2, nonsalaried citizen members of all policy and supervisory boards, commissions and councils in the executive branch of state government, other than the Commonwealth Transportation Board, members of the Board of Trustees of the Virginia Retirement System, and the Virginia Lottery Board, shall file with the Council, as a condition to assuming office, a disclosure form of their personal interests and such other information as is required on the form prescribed by the Council pursuant to § 2.2-3118 and thereafter shall file such form annually on or before February 1. Nonsalaried citizen members of other boards, commissions and councils, including advisory boards and authorities, may be required to file a disclosure form if so designated by the Governor, in which case the form shall be that prescribed by the Council pursuant to § 2.2-3118.

C. The disclosure forms required by subsections A and B shall be made available by the Council at least 30 days prior to the filing deadline. Disclosure forms shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § 30-356. All forms shall be maintained as public records for five years in the office of the Council. Such forms shall be made public no later than six weeks after the filing deadline.

D. Candidates for the offices of Governor, Lieutenant Governor or Attorney General shall file a disclosure statement of their personal interests as required by § 24.2-502.

E. Any officer or employee of state government who has a personal interest in any transaction before the governmental or advisory agency of which he is an officer or employee and who is disqualified from participating in that transaction pursuant to subsection A of § 2.2-3112, or otherwise elects to disqualify himself, shall forthwith make disclosure of the existence of his interest, including the full name and address of the business and the address or parcel number for the real estate if the interest involves a business or real estate, and his disclosure shall also be reflected in the public records of the agency for five years in the office of the administrative head of the officer's or employee's governmental agency or advisory agency or, if the agency has a clerk, in the clerk's office.

F. An officer or employee of state government who is required to declare his interest pursuant to subdivision B 1 of § 2.2-3112, shall declare his interest by stating (i) the transaction involved, (ii) the nature of the officer's or employee's personal interest affected by the transaction, (iii) that he is a member of a business, profession, occupation, or group the members of which are affected by the transaction, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

G. An officer or employee of state government who is required to declare his interest pursuant to subdivision B 2 of § 2.2-3112, shall declare his interest by stating (i) the transaction involved, (ii) that a party to the transaction is a client of his firm, (iii) that he does not personally represent or provide services to the client, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

H. Notwithstanding any other provision of law, chairs of departments at a public institution of higher education in the Commonwealth shall not be required to file the disclosure form prescribed by the Council pursuant to § 2.2-3117 or 2.2-3118.

§ 2.2-3114.1. Filings of statements of economic interests by General Assembly members.

The filing of a current statement of economic interests by a General Assembly member, member-elect, or candidate for the General Assembly pursuant to §§ 30-110 and 30-111 of the General Assembly Conflicts of Interests Act (§ 30-100 et seq.) shall suffice for the purposes of this chapter. The Secretary of the Commonwealth may obtain from the Council a copy of the statement of a General Assembly member who is appointed to a position for which a statement is required pursuant to § 2.2-3114. No General Assembly member, member-elect, or candidate shall be required to file a separate statement of economic interests for the purposes of § 2.2-3114.

§ 2.2-3114.2. Report of gifts by certain officers and employees of state government.

The Governor, Lieutenant Governor, Attorney General, and each member of the Governor's Cabinet shall file, on or before May 1, a report of gifts accepted or received by him or a member of his immediate family during the period beginning on January 1 complete through adjournment sine die of the regular session of the General Assembly. The gift report shall be on a form prescribed by the Council and shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § 30-356. For purposes of this section, "adjournment sine die" means adjournment on the last legislative day of the regular session and does not include the ensuing reconvened session. Any gifts reported pursuant to this section shall not be listed on the annual disclosure form prescribed by the Council pursuant to § 2.2-3117.

2016, cc. 773, 774.

§ 2.2-3115. Disclosure by local government officers and employees.

A. In accordance with the requirements set forth in § 2.2-3118.2, the members of every governing body and school board of each county and city and of towns with populations in excess of 3,500 shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is required on the form prescribed by the Council pursuant to § 2.2-3117 and thereafter shall file such a statement annually on or before February 1.

In accordance with the requirements set forth in § 2.2-3118.2, the members of the governing body of any authority established in any county or city, or part or combination thereof, and having the power to issue

bonds or expend funds in excess of \$10,000 in any fiscal year, shall file, as a condition to assuming office, a disclosure statement of their personal interests and other information as is required on the form prescribed by the Council pursuant to § 2.2-3118 and thereafter shall file such a statement annually on or before February 1, unless the governing body of the jurisdiction that appoints the members requires that the members file the form set forth in § 2.2-3117.

In accordance with the requirements set forth in § 2.2-3118.2, persons occupying such positions of trust appointed by governing bodies and persons occupying such positions of employment with governing bodies as may be designated to file by ordinance of the governing body shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is required on the form prescribed by the Council pursuant to § 2.2-3117 and thereafter shall file such a statement annually on or before February 1.

In accordance with the requirements set forth in § 2.2-3118.2, persons occupying such positions of trust appointed by school boards and persons occupying such positions of employment with school boards as may be designated to file by an adopted policy of the school board shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is required on the form prescribed by the Council pursuant to § 2.2-3117 and thereafter shall file such a statement annually on or before February 1.

B. In accordance with the requirements set forth in § 2.2-3118.2, nonsalaried citizen members of local boards, commissions and councils as may be designated by the governing body shall file, as a condition to assuming office, a disclosure form of their personal interests and such other information as is required on the form prescribed by the Council pursuant to § 2.2-3118 and thereafter shall file such form annually on or before February 1.

C. No person shall be mandated to file any disclosure not otherwise required by this article.

D. The disclosure forms required by subsections A and B shall be made available by the Virginia Conflict of Interest and Ethics Advisory Council at least 30 days prior to the filing deadline, and the clerks of the governing body and school board shall distribute the forms to designated individuals at least 20 days prior to the filing deadline. Forms shall be filed and maintained as public records for five years in the office of the clerk of the respective governing body or school board. Forms

filed by members of governing bodies of authorities shall be filed and maintained as public records for five years in the office of the clerk of the governing body of the county or city. Such forms shall be made public no later than six weeks after the filing deadline.

E. Candidates for membership in the governing body or school board of any county, city or town with a population of more than 3,500 persons shall file a disclosure statement of their personal interests as required by § 24.2-502.

F. Any officer or employee of local government who has a personal interest in any transaction before the governmental or advisory agency of which he is an officer or employee and who is disqualified from participating in that transaction pursuant to subsection A of § 2.2-3112 or otherwise elects to disqualify himself, shall forthwith make disclosure of the existence of his interest, including the full name and address of the business and the address or parcel number for the real estate if the interest involves a business or real estate, and his disclosure shall be reflected in the public records of the agency for five years in the office of the administrative head of the officer's or employee's governmental or advisory agency.

G. In addition to any disclosure required by subsections A and B, in each county and city and in towns with populations in excess of 3,500, members of planning commissions, boards of zoning appeals, real estate assessors, and all county, city and town managers or executive officers shall make annual disclosures of all their interests in real estate located in the county, city or town in which they are elected, appointed, or employed. Such disclosure shall include any business in which such persons own an interest, or from which income is received, if the primary purpose of the business is to own, develop or derive compensation through the sale, exchange or development of real estate in the county, city or town. In accordance with the requirements set forth in § 2.2-3118.2, such disclosure shall be filed as a condition to assuming office or employment, and thereafter shall be filed annually with the clerk of the governing body of such county, city, or town on or before February 1. Such disclosures shall be filed and maintained as public records for five years. Such forms shall be made public no later than six weeks after the filing deadline. Forms for the filing of such reports shall be made available by the Virginia Conflict of Interest and Ethics Advisory Council to the clerk of each governing body.

H. An officer or employee of local government who is required to declare his interest pursuant to subdi-

vision B 1 of § 2.2-3112 shall declare his interest by stating (i) the transaction involved, (ii) the nature of the officer's or employee's personal interest affected by the transaction, (iii) that he is a member of a business, profession, occupation, or group the members of which are affected by the transaction, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day. The officer or employee shall also orally disclose the existence of the interest during each meeting of the governmental or advisory agency at which the transaction is discussed and such disclosure shall be recorded in the minutes of the meeting.

I. An officer or employee of local government who is required to declare his interest pursuant to subdivision B 2 of § 2.2-3112, shall declare his interest by stating (i) the transaction involved, (ii) that a party to the transaction is a client of his firm, (iii) that he does not personally represent or provide services to the client, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

J. The clerk of the governing body or school board that releases any form to the public pursuant to this section shall redact from the form any residential address, personal telephone number, or signature contained on such form; however, any form filed pursuant to subsection G shall not have any residential addresses redacted.

§ 2.2-3116. Disclosure by certain constitutional officers.

For the purposes of this chapter, holders of the constitutional offices of treasurer, sheriff, attorney for the Commonwealth, clerk of the circuit court, and commissioner of the revenue of each county and city shall be required to file with the Council, as a condition to assuming office, the Statement of Economic Interests prescribed by the Council pursuant to § 2.2-3117. These officers shall file statements annually on or before January 15 February 1. Candidates shall file statements as required by § 24.2-502. Statements shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § 30-356. These officers shall be subject to the prohibition on certain gifts set forth in subsection B of § 2.2-3103.1.

§ 2.2-3117. (Effective January 1, 2017) Disclosure form.

The disclosure form to be used for filings required by subsections A and D of § 2.2-3114 and subsections A and E of § 2.2-3115 shall be prescribed by the Council. Except as otherwise provided in § 2.2-3115, all completed forms shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § 30-356. Any person who knowingly and intentionally makes a false statement of a material fact on the Statement of Economic Interests is guilty of a Class 5 felony.

§ 2.2-3118. (Effective January 1, 2017) Disclosure form; certain citizen members.

The financial disclosure form to be used for filings required pursuant to subsection B of § 2.2-3114 and subsection B of § 2.2-3115 shall be filed in accordance with the provisions of § 30-356. The financial disclosure form shall be prescribed by the Council. Except as otherwise provided in § 2.2-3115, all completed forms shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § 30-356.

§ 2.2-3118.1. Special provisions for individuals serving in or seeking multiple positions or offices; reappointees.

A. The filing of a single current statement of economic interests by an individual required to file the form prescribed in § 2.2-3117 shall suffice for the purposes of this chapter as filing for all positions or offices held or sought by such individual during a single reporting period. The filing of a single current financial disclosure statement by an individual required to

file the form prescribed in § 2.2-3118 shall suffice for the purposes of this chapter as filing for all positions or offices held or sought by such individual and requiring the filing of the § 2.2-3118 form during a single reporting period.

B. Any individual who has met the requirement for periodically filing a statement provided in § 2.2-3117 or 2.2-3118 shall not be required to file an additional statement upon such individual's reappointment to the same office or position for which he is required to file, provided such reappointment occurs within six months after filing a statement pursuant to § 2.2-3117 and within 12 months after filing a statement pursuant to § 2.2-3118.

§ 2.2-3118.2. Disclosure form; filing requirements.

A. An officer or employee required to file an annual disclosure on or before February 1 pursuant to this article shall disclose his personal interests and other information as required on the form prescribed by the Council for the preceding calendar year complete through December 31. An officer or employee required to file a disclosure as a condition to assuming office or employment shall file such disclosure on or before the day such office or position of employment is assumed and disclose his personal interests and other information as required on the form prescribed by the Council for the preceding 12-month period complete through the last day of the month immediately preceding the month in which the office or position of employment is assumed; however, any officer or employee who assumes office or a position of employment in January shall be required to only file an annual disclosure on or before February 1 for the preceding calendar year complete through December 31.

B. When the deadline for filing any disclosure pursuant to this article falls on a Saturday, Sunday, or legal holiday, the deadline for filing shall be the next day that is not a Saturday, Sunday, or legal holiday.

Article 6. School Boards and Employees of School Boards.

§ 2.2-3119. Additional provisions applicable to school boards and employees of school boards; exceptions.

A. Notwithstanding any other provision of this chapter, it shall be unlawful for the school board of any county or city or of any town constituting a separate school division to employ or pay any teacher or other

school board employee from the public funds, federal, state or local, or for a division superintendent to recommend to the school board the employment of any teacher or other employee, if the teacher or other employee is the father, mother, brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law or brother-in-law of the superintendent, or of any member of the school board.

This section shall apply to any person employed by any school board in the operation of the public free school system, adult education programs or any other program maintained and operated by a local county, city or town school board.

B. This section shall not be construed to prohibit the employment, promotion, or transfer within a school division of any person within a relationship described in subsection A when such person:

1. Has been employed pursuant to a written contract with a school board or employed as a substitute teacher or teacher's aide by a school board prior to the taking of office of any member of such board or division superintendent of schools; or
2. Has been employed pursuant to a written contract with a school board or employed as a substitute teacher or teacher's aide by a school board prior to the inception of such relationship; or
3. Was employed by a school board at any time prior to June 10, 1994, and had been employed at any time as a teacher or other employee of any Virginia school board prior to the taking of office of any member of such school board or division superintendent of schools.

C. A person employed as a substitute teacher may not be employed to any greater extent than he was employed by the school board in the last full school year prior to the taking of office of such board member or division superintendent or to the inception of such relationship. The exceptions in subdivisions B 1, B 2, and B 3 shall apply only if the prior employment has been in the same school divisions where the employee and the superintendent or school board member now seek to serve simultaneously.

D. If any member of the school board or any division superintendent knowingly violates these provisions, he shall be personally liable to refund to the local treasury any amounts paid in violation of this law, and the funds shall be recovered from the individual by action or suit in the name of the Commonwealth on the petition of the attorney for the Commonwealth. Recovered

funds shall be paid into the local treasury for the use of the public schools.

E The provisions of this section shall not apply to employment by a school district located in Planning Districts 3, 4, 11, 12,13, and 17 of the father, mother, brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law, or brother-in-law of any member of the school board provided (i) the member certifies that he had no involvement with the hiring decision and (ii) the superintendent certifies to the remaining members of the governing body in writing that the employment is based upon merit and fitness and the competitive rating of the qualifications of the individual and that no member of the board had any involvement with the hiring decision.

Article 7. Penalties and Remedies.

§ 2.2-3120. Knowing violation of chapter a misdemeanor.

Any person who knowingly violates any of the provisions of Articles 2 through 6 (§§ 2.2-3102 through 2.2-3119) of this chapter shall be guilty of a Class 1 misdemeanor, except that any member of a local governing body who knowingly violates subsection A of § 2.2-3112 or subsection D or F of § 2.2-3115 shall be guilty of a Class 3 misdemeanor. A knowing violation under this section is one in which the person engages in conduct, performs an act or refuses to perform an act when he knows that the conduct is prohibited or required by this chapter.

§ 2.2-3121. Advisory opinions.

A. A state officer or employee shall not be prosecuted for a knowing violation of this chapter if the alleged violation resulted from his good faith reliance on a written opinion of the Attorney General or a formal opinion or written informal advice of the Council made in response to his written request for such opinion or advice and the opinion or advice was made after a full disclosure of the facts regardless of whether such opinion or advice is later withdrawn provided the alleged violation occurred prior to the withdrawal of the opinion or advice.

B. A local officer or employee shall not be prosecuted for a knowing violation of this chapter if the alleged violation resulted from his good faith reliance on a written opinion of the attorney for the Commonwealth or a formal opinion or written informal advice of the Council made in response to his written request for such opinion or advice and the opinion or advice

was made after a full disclosure of the facts regardless of whether such opinion or advice is later withdrawn, provided that the alleged violation occurred prior to the withdrawal of the opinion or advice. The written opinion of the attorney for the Commonwealth shall be a public record and shall be released upon request.

C. If any officer or employee serving at the local level of government is charged with a knowing violation of this chapter, and the alleged violation resulted from his reliance upon a written opinion of his county, city, or town attorney, made after a full disclosure of the facts, that such action was not in violation of this chapter, then the officer or employee shall have the right to introduce a copy of the opinion at his trial as evidence that he did not knowingly violate this chapter.

§ 2.2-3122. Knowing violation of chapter constitutes malfeasance in office or employment.

Any person who knowingly violates any of the provisions of this chapter shall be guilty of malfeasance in office or employment. Upon conviction thereof, the judge or jury trying the case, in addition to any other fine or penalty provided by law, may order the forfeiture of such office or employment.

§ 2.2-3123. Invalidation of contract; rescission of sales.

A. Any contract made in violation of § 2.2-3103 or §§ 2.2-3106 through 2.2-3109 may be declared void and may be rescinded by the governing body of the contracting or selling governmental agency within five years of the date of such contract. In cases in which the contract is invalidated, the contractor shall retain or receive only the reasonable value, with no increment for profit or commission, of the property or services furnished prior to the date of receiving notice that the contract has been voided. In cases of rescission of a contract of sale, any refund or restitution shall be made to the contracting or selling governmental agency.

B. Any purchase by an officer or employee made in violation of § 2.2-3103 or §§ 2.2-3106 through 2.2-3109 may be rescinded by the governing body of the contracting or selling governmental agency within five years of the date of such purchase.

§ 2.2-3124. Civil penalty from violation of this chapter.

A. In addition to any other fine or penalty provided by law, an officer or employee who knowingly violates any provision of §§ 2.2-3103 through 2.2-3112 shall be subject to a civil penalty in an amount equal to the

amount of money or thing of value received as a result of such violation. If the thing of value received by the officer or employee in violation of §§ 2.2-3103 through 2.2-3112 increases in value between the time of the violation and the time of discovery of the violation, the greater value shall determine the amount of the civil penalty. Further, all money or other things of value received as a result of such violation shall be forfeited in accordance with the provisions of § 19.2-386.33.

B. An officer or employee required to file the disclosure form prescribed by § 2.2-3117 who fails to file such form within the time period prescribed shall be assessed a civil penalty in an amount equal to \$250. The Council shall notify the Attorney General of any state officer's or employee's failure to file the required form and the Attorney General shall assess and collect the civil penalty. The clerk of the school board or the clerk of the governing body of the county, city, or town shall notify the attorney for the Commonwealth for the locality in which the officer or employee was elected or is employed of any local officer's or employee's failure to file the required form and the attorney for the Commonwealth shall assess and collect the civil penalty. The Council shall notify the Attorney General and the clerk shall notify the attorney for the Commonwealth within 30 days of the deadline for filing. All civil penalties collected pursuant to this subsection shall be deposited into the general fund and used exclusively to fund the Council.

§ 2.2-3125. Limitation of actions.

The statute of limitations for the criminal prosecution of a person for violation of any provision of this chapter shall be one year from the time the Attorney General, if the violation is by a state officer or employee, or the attorney for the Commonwealth, if the violation is by a local officer or employee, has actual knowledge of the violation or five years from the date of the violation, whichever event occurs first. Any prosecution for malfeasance in office shall be governed by the statute of limitations provided by law.

§ 2.2-3126. Enforcement.

A. The provisions of this chapter relating to an officer or employee serving at the state level of government shall be enforced by the Attorney General.

In addition to any other powers and duties prescribed by law, the Attorney General shall have the following powers and duties within the area for which he is responsible under this section:

1. He shall advise the agencies of state government and officers and employees serving at the state

level of government on appropriate procedures for complying with the requirements of this chapter. He may review any disclosure statements, without notice to the affected person, for the purpose of determining satisfactory compliance, and shall investigate matters that come to his attention reflecting possible violations of the provisions of this chapter by officers and employees serving at the state level of government;

2. If he determines that there is a reasonable basis to conclude that any officer or employee serving at the state level of government has knowingly violated any provision of this chapter, he shall designate an attorney for the Commonwealth who shall have complete and independent discretion in the prosecution of such officer or employee;
3. He shall render advisory opinions to any state officer or employee who seeks advice as to whether the facts in a particular case would constitute a violation of the provisions of this chapter. He shall determine which opinions or portions thereof are of general interest to the public and may, from time to time, be published.

Irrespective of whether an opinion of the Attorney General has been requested and rendered, any person has the right to seek a declaratory judgment or other judicial relief as provided by law.

B. The provisions of this chapter relating to an officer or employee serving at the local level of government shall be enforced by the attorney for the Commonwealth within the political subdivision for which he is elected.

Each attorney for the Commonwealth shall be responsible for prosecuting violations by an officer or employee serving at the local level of government and, if the Attorney General designates such attorney for the Commonwealth, violations by an officer or employee serving at the state level of government. In the event the violation by an officer or employee serving at the local level of government involves more than one local jurisdiction, the Attorney General shall designate which of the attorneys for the Commonwealth of the involved local jurisdictions shall enforce the provisions of this chapter with regard to such violation.

Each attorney for the Commonwealth shall establish an appropriate written procedure for implementing the disclosure requirements of local officers and employees of his county, city or town, and for other political subdivisions, whose principal offices are located within the jurisdiction served by such attorney for the

Commonwealth. The attorney for the Commonwealth shall provide a copy of this act to all local officers and employees in the jurisdiction served by such attorney who are required to file a disclosure statement pursuant to Article 5 (§ 2.2-3113 et seq.) of this chapter. Failure to receive a copy of the act shall not be a defense to such officers and employees if they are prosecuted for violations of the act.

Each attorney for the Commonwealth shall render advisory opinions as to whether the facts in a particular case would constitute a violation of the provisions of this chapter to the governing body and any local officer or employee in his jurisdiction and to political subdivisions other than a county, city or town, including regional political subdivisions whose principal offices are located within the jurisdiction served by such attorney for the Commonwealth. If the advisory opinion is written, then such written opinion shall be a public record and shall be released upon request. In case the opinion given by the attorney for the Commonwealth indicates that the facts would constitute a violation, the officer or employee affected thereby may request that the Attorney General review the opinion. A conflicting opinion by the Attorney General shall act to revoke the opinion of the attorney for the Commonwealth. The Attorney General shall determine which of his reviewing opinions or portions thereof are of general interest to the public and may, from time to time, be published.

Irrespective of whether an opinion of the attorney for the Commonwealth or the Attorney General has been requested and rendered, any person has the right to seek a declaratory judgment or other judicial relief as provided by law.

§ 2.2-3127. Venue.

Any prosecution for a violation involving an officer serving at the state level of government shall be brought in the Circuit Court of the City of Richmond. Any prosecution for a violation involving an employee serving at the state level of government shall be within the jurisdiction in which the employee has his principal place of state employment.

Any proceeding provided in this chapter shall be brought in a court of competent jurisdiction within the county or city in which the violation occurs if the violation involves an officer or employee serving at the local level of government.

Article 8. Orientation for State Filers.

§ 2.2-3128. Semiannual orientation course.

Each state agency shall offer at least semiannually to each of its state filers an orientation course on this chapter, on ethics in public contracting pursuant to Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of this title, if applicable to the filer, and on any other applicable regulations that govern the official conduct of state officers and employees.

§ 2.2-3129. Records of attendance.

Each state agency shall maintain records indicating the specific attendees, each attendee's job title, and dates of their attendance for each orientation course offered pursuant to § 2.2-3128 for a period of not less than five years after each course is given. These records shall be public records subject to inspection and copying consistent with § 2.2-3704.

§ 2.2-3130. Attendance requirements.

Except as set forth in § 2.2-3131, each state filer shall attend the orientation course required in § 2.2-3128, as follows:

1. For a state filer who holds a position with the agency on January 1, 2004, not later than December 31, 2004 and, thereafter, at least once during each consecutive period of two calendar years commencing on January 1, 2006.
2. For a person who becomes a state filer with the agency after January 1, 2004, within two months after he or she becomes a state filer and at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter.

§ 2.2-3131. Exemptions.

A. The requirements of § 2.2-3130 shall not apply to state filers with a state agency who have taken an equivalent ethics orientation course through another state agency within the time periods set forth in subdivision 1 or 2 of § 2.2-3130, as applicable.

B. State agencies may jointly conduct and state filers from more than one state agency may jointly attend an orientation course required by § 2.2-3128, as long as the course content is relevant to the official duties of the attending state filers.

C. Before conducting each orientation course required by § 2.2-3128, state agencies shall consult with the Attorney General and the Virginia Conflict of In-

terest and Ethics Advisory Council regarding appropriate course content.

§ 2.2-4369. Proscribed participation by public employees in procurement transactions.

Except as may be specifically allowed by subdivisions B 1, 2, and 3 of § 2.2-3112, no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that:

1. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction;
2. The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent;
3. The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or
4. The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

§ 24.2-502. Statement of economic interests as requirement of candidacy.

It shall be a requirement of candidacy that a written statement of economic interests shall be filed by (i) a candidate for Governor, Lieutenant Governor, or Attorney General, and a candidate for the Senate or House of Delegates with the State Board, (ii) a candidate for a constitutional office with the general registrar for the county or city, and (iii) a candidate for member of the governing body or elected school board of any county, city, or town with a population in excess of 3,500 persons with the general registrar for the county or city. The statement of economic interests shall be that specified in § 30-111 for candidates for the General Assembly and in § 2.2-3117 for all other candidates. The foregoing requirement shall not apply to a candidate for reelection to the same office who has met the requirement of annually filing a statement pursuant to § 2.2-3114, 2.2-3115, 2.2-3116, or 30-110.

The general registrar, the clerk of the local governing body, or the clerk of the school board, as appropriate, shall transmit to the local electoral board, immediately after the filing deadline, a list of the candidates who have filed initial or annual statements of economic interests.

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