



**DRAFTS**  
**RECOMMENDED**  
**BY**  
**RECORDS**  
**SUBCOMMITTEE**



**DRAFT**  
SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

1 A BILL to amend and reenact §§ 2.2-3705.1 and 2.2-3705.8 of the Code of Virginia, relating to the  
2 Virginia Freedom of Information Act; personnel record exemption.

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

4 **1. That §§ 2.2-3705.1 and 2.2-3705.8 of the Code of Virginia are amended and reenacted as**  
5 **follows:**

6 **§ 2.2-3705.1. Exclusions to application of chapter; exclusions of general application to**  
7 **public bodies.**

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

10 1. Personnel records containing information concerning identifiable individuals, except that  
11 access shall not be denied to the person who is the subject thereof. Any person who is the subject of any  
12 personnel record and who is 18 years of age or older may waive, in writing, the protections afforded by  
13 this subdivision. If the protections are so waived, the public body shall open such records for inspection  
14 and copying.

15 No provision of this chapter or Chapter 38 (§ 2.2-3800 et seq.) shall be construed as denying  
16 public access to (i) contracts between a public body and its officers or employees, other than contracts  
17 settling public employee employment disputes exempted under this subdivision;[VWagner2] (ii) records  
18 of the name, position, job classification, official salary, or rate of pay of, and records of the allowances  
19 or reimbursements for expenses paid to, any officer, official, or employee of a public body; or (iii)  
20 [VWagner3]the compensation or benefits paid by any corporation organized by the Virginia Retirement  
21 System or its officers or employees. The provisions of this subdivision, however, shall not require public  
22 access to records of the official salaries or rates of pay of public employees whose annual rate of  
23 pay[LHausenfluck5] is \$10,000 or less.

24 2. Written advice of legal counsel to state, regional or local public bodies or the officers or  
25 employees of such public bodies, and any other records protected by the attorney-client privilege.

26           3. Legal memoranda and other work product compiled specifically for use in litigation or for use  
27 in an active administrative investigation concerning a matter that is properly the subject of a closed  
28 meeting under § 2.2-3711.

29           4. Any test or examination used, administered or prepared by any public body for purposes of  
30 evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's  
31 qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license  
32 or certificate issued by a public body.

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

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

45           5. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant  
46 to § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be  
47 deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

48           6. Vendor proprietary information software that may be in the official records of a public body.  
49 For the purpose of this subdivision, "vendor proprietary software" means computer programs acquired  
50 from a vendor for purposes of processing data for agencies or political subdivisions of the  
51 Commonwealth.

- 52           7. Computer software developed by or for a state agency, state-supported institution of higher  
53 education or political subdivision of the Commonwealth.
- 54           8. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease,  
55 prior to the completion of such purchase, sale or lease.
- 56           9. Records concerning reserves established in specific claims administered by the Department of  
57 the Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-1832 et seq.) of  
58 Chapter 18 of this title, or by any county, city, or town; and investigative notes, correspondence and  
59 information furnished in confidence with respect to an investigation of a claim or a potential claim  
60 against a public body's insurance policy or self-insurance plan. However, nothing in this subdivision  
61 shall prohibit the disclosure of information taken from inactive reports upon expiration of the period of  
62 limitations for the filing of a civil suit.
- 63           10. Personal information, as defined in § 2.2-3801, including electronic mail addresses, furnished  
64 to a public body for the purpose of receiving electronic mail from the public body, provided that the  
65 electronic mail recipient has requested that the public body not disclose such information. However,  
66 access shall not be denied to the person who is the subject of the record.
- 67           11. Communications and materials required to be kept confidential pursuant to § 2.2-4119 of the  
68 Virginia Administrative Dispute Resolution Act (§ 2.2-4115 et seq.).
- 69           12. Records relating to the negotiation and award of a specific contract where competition or  
70 bargaining is involved and where the release of such records would adversely affect the bargaining  
71 position or negotiating strategy of the public body. Such records shall not be withheld after the public  
72 body has made a decision to award or not to award the contract. In the case of procurement transactions  
73 conducted pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.), the provisions of this  
74 subdivision shall not apply, and any release of records relating to such transactions shall be governed by  
75 the Virginia Public Procurement Act.
- 76           13. Those portions of records that contain account numbers or routing information for any credit  
77 card, debit card, or other account with a financial institution of any person or public body. However,  
78 access shall not be denied to the person who is the subject of the record. For the purposes of this

79 subdivision, "financial institution" means any organization authorized to do business under state or  
80 federal laws relating to financial institutions, including, without limitation, banks and trust companies,  
81 savings banks, savings and loan companies or associations, and credit unions.

82 **§ 2.2-3705.8. Limitation on record exclusion for certain consultant's reports.**

83 ~~A. [LHausenfluck4] Neither any provision of this chapter nor any provision of Chapter 38 (§ 2.2-~~  
84 ~~3800 et seq.) of this title shall be construed as denying public access to (i) contracts between a public~~  
85 ~~body and its officers or employees, other than contracts settling public employee employment disputes~~  
86 ~~held confidential as personnel records under § 2.2-3705.1; (ii) records of the position, job classification,~~  
87 ~~official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to~~  
88 ~~any officer, official or employee of a public body; or (iii) the compensation or benefits paid by any~~  
89 ~~corporation organized by the Virginia Retirement System or its officers or employees.~~

90 ~~The provisions of this subsection, however, shall not require public access to records of the~~  
91 ~~official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.~~

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

97 **2. That the provisions of this act are declaratory of existing law.**

98 #

SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_  
**DRAFT**

1 A BILL to amend and reenact § 2.2-3705.1 of the Code of Virginia, relating to the Virginia Freedom of  
 2 Information Act; record exemption for certain contact information.

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

4 **1. That § 2.2-3705.1 of the Code of Virginia is amended and reenacted as follows:**

5 **§ 2.2-3705.1. Exclusions to application of chapter; exclusions of general application to**  
 6 **public bodies.**

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

9 1. Personnel records containing information concerning identifiable individuals, except that  
 10 access shall not be denied to the person who is the subject thereof. Any person who is the subject of any  
 11 personnel record and who is 18 years of age or older may waive, in writing, the protections afforded by  
 12 this subdivision. If the protections are so waived, the public body shall open such records for inspection  
 13 and copying.

14 2. Written advice of legal counsel to state, regional or local public bodies or the officers or  
 15 employees of such public bodies, and any other records protected by the attorney-client privilege.

16 3. Legal memoranda and other work product compiled specifically for use in litigation or for use  
 17 in an active administrative investigation concerning a matter that is properly the subject of a closed  
 18 meeting under § 2.2-3711.

19 4. Any test or examination used, administered or prepared by any public body for purposes of  
 20 evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's  
 21 qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license  
 22 or certificate issued by a public body.

23 As used in this subdivision, "test or examination" shall include (a) any scoring key for any such  
 24 test or examination and (b) any other document that would jeopardize the security of the test or  
 25 examination. Nothing contained in this subdivision shall prohibit the release of test scores or results as

26 provided by law, or limit access to individual records as provided by law. However, the subject of such  
27 employment tests shall be entitled to review and inspect all records relative to his performance on such  
28 employment tests.

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

35 5. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant  
36 to § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be  
37 deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

38 6. Vendor proprietary information software that may be in the official records of a public body.  
39 For the purpose of this subdivision, "vendor proprietary software" means computer programs acquired  
40 from a vendor for purposes of processing data for agencies or political subdivisions of the  
41 Commonwealth.

42 7. Computer software developed by or for a state agency, state-supported institution of higher  
43 education or political subdivision of the Commonwealth.

44 8. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease,  
45 prior to the completion of such purchase, sale or lease.

46 9. Records concerning reserves established in specific claims administered by the Department of  
47 the Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-1832 et seq.) of  
48 Chapter 18 of this title, or by any county, city, or town; and investigative notes, correspondence and  
49 information furnished in confidence with respect to an investigation of a claim or a potential claim  
50 against a public body's insurance policy or self-insurance plan. However, nothing in this subdivision  
51 shall prohibit the disclosure of information taken from inactive reports upon expiration of the period of  
52 limitations for the filing of a civil suit.



53 | 10. Personal contact information, ~~as defined in § 2.2-3801~~, including electronic mail addresses,  
54 furnished to a public body for the purpose of receiving electronic mail from the public body, provided  
55 that the electronic mail recipient has requested that the public body not disclose such information.  
56 However, access shall not be denied to the person who is the subject of the record. As used in this  
57 subdivision, "personal contact information" means home address, home telephone number, personal cell  
58 phone number, or personal email address.

59 11. Communications and materials required to be kept confidential pursuant to § 2.2-4119 of the  
60 Virginia Administrative Dispute Resolution Act (§ 2.2-4115 et seq.).

61 12. Records relating to the negotiation and award of a specific contract where competition or  
62 bargaining is involved and where the release of such records would adversely affect the bargaining  
63 position or negotiating strategy of the public body. Such records shall not be withheld after the public  
64 body has made a decision to award or not to award the contract. In the case of procurement transactions  
65 conducted pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.), the provisions of this  
66 subdivision shall not apply, and any release of records relating to such transactions shall be governed by  
67 the Virginia Public Procurement Act.

68 13. Those portions of records that contain account numbers or routing information for any credit  
69 card, debit card, or other account with a financial institution of any person or public body. However,  
70 access shall not be denied to the person who is the subject of the record. For the purposes of this  
71 subdivision, "financial institution" means any organization authorized to do business under state or  
72 federal laws relating to financial institutions, including, without limitation, banks and trust companies,  
73 savings banks, savings and loan companies or associations, and credit unions.

74 #



**DRAFT**  
 SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

1 A BILL to amend and reenact § 2.2-3705.7 of the Code of Virginia, relating to the Virginia Freedom of  
 2 Information Act; record exemption for certain tax and scholastic information.

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

4 **1. That § 2.2-3705.7 of the Code of Virginia is amended and reenacted as follows:**

5 **§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and**  
 6 **certain other limited exemptions.**

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

9 1. State income, business, and estate tax returns, personal property tax returns, ~~scholastic~~ and  
 10 confidential records held pursuant to § 58.1-3.

11 2. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the  
 12 Attorney General; the members of the General Assembly, the Division of Legislative Services, or the  
 13 Clerks of the House of Delegates and the Senate of Virginia; the mayor or chief executive officer of any  
 14 political subdivision of the Commonwealth; or the president or other chief executive officer of any  
 15 public institution of higher education in Virginia. However, no record, which is otherwise open to  
 16 inspection under this chapter, shall be deemed exempt by virtue of the fact that it has been attached to or  
 17 incorporated within any working paper or correspondence.

18 As used in this subdivision:

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

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

24 "Working papers" means those records prepared by or for an above-named public official for his  
 25 personal or deliberative use.

26           3. Library records that can be used to identify both (i) any library patron who has borrowed  
27 material from a library and (ii) the material such patron borrowed.

28           4. Contract cost estimates prepared for the confidential use of the Department of Transportation  
29 in awarding contracts for construction or the purchase of goods or services, and records and automated  
30 systems prepared for the Department's Bid Analysis and Monitoring Program.

31           5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth,  
32 whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by  
33 the political subdivision.

34           6. Records and writings furnished by a member of the General Assembly to a meeting of a  
35 standing committee, special committee or subcommittee of his house established solely for the purpose  
36 of reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of  
37 formulating advisory opinions to members on standards of conduct, or both.

38           7. Customer account information of a public utility affiliated with a political subdivision of the  
39 Commonwealth, including the customer's name and service address, but excluding the amount of utility  
40 service provided and the amount of money paid for such utility service.

41           8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing  
42 Development Authority concerning individuals who have applied for or received loans or other housing  
43 assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise  
44 assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or  
45 persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local  
46 redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or  
47 persons on the waiting list for housing assistance programs funded by local governments or by any such  
48 authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or  
49 any other local government agency concerning persons who have applied for occupancy or who have  
50 occupied affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access  
51 to one's own information shall not be denied.

52           9. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441,  
53 if disclosure of them would have a detrimental effect upon the negotiating position of a governing body  
54 or on the establishment of the terms, conditions and provisions of the siting agreement.

55           10. Records containing information on the site specific location of rare, threatened, endangered  
56 or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and  
57 archaeological sites if, in the opinion of the public body that has the responsibility for such information,  
58 disclosure of the information would jeopardize the continued existence or the integrity of the resource.  
59 This exemption shall not apply to requests from the owner of the land upon which the resource is  
60 located.

61           11. Records, memoranda, working papers, graphics, video or audio tapes, production models,  
62 data and information of a proprietary nature produced by or for or collected by or for the Virginia  
63 Lottery relating to matters of a specific lottery game design, development, production, operation, ticket  
64 price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of  
65 winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or  
66 marketing, where such official records have not been publicly released, published, copyrighted or  
67 patented. Whether released, published or copyrighted, all game-related information shall be subject to  
68 public disclosure under this chapter upon the first day of sales for the specific lottery game to which it  
69 pertains.

70           12. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local  
71 retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of  
72 Virginia, acting pursuant to § 23-76.1, or of the Virginia College Savings Plan, acting pursuant to § 23-  
73 38.77, relating to the acquisition, holding or disposition of a security or other ownership interest in an  
74 entity, where such security or ownership interest is not traded on a governmentally regulated securities  
75 exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and  
76 Visitors of the University of Virginia, prepared by the retirement system or the Virginia College Savings  
77 Plan, or provided to the retirement system or the Virginia College Savings Plan under a promise of  
78 confidentiality, of the future value of such ownership interest or the future financial performance of the

79 entity; and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the  
80 investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the  
81 University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be  
82 construed to prevent the disclosure of records relating to the identity of any investment held, the amount  
83 invested, or the present value of such investment.

84 13. Names and addresses of subscribers to Virginia Wildlife magazine, published by the  
85 Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing  
86 that the Department not release such information.

87 14. Financial, medical, rehabilitative and other personal information concerning applicants for or  
88 recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority  
89 under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

90 15. Records of the Virginia Commonwealth University Health System Authority pertaining to  
91 any of the following: an individual's qualifications for or continued membership on its medical or  
92 teaching staffs; proprietary information gathered by or in the possession of the Authority from third  
93 parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in  
94 awarding contracts for construction or the purchase of goods or services; data, records or information of  
95 a proprietary nature produced or collected by or for the Authority or members of its medical or teaching  
96 staffs; financial statements not publicly available that may be filed with the Authority from third parties;  
97 the identity, accounts or account status of any customer of the Authority; consulting or other reports paid  
98 for by the Authority to assist the Authority in connection with its strategic planning and goals; the  
99 determination of marketing and operational strategies where disclosure of such strategies would be  
100 harmful to the competitive position of the Authority; and data, records or information of a proprietary  
101 nature produced or collected by or for employees of the Authority, other than the Authority's financial or  
102 administrative records, in the conduct of or as a result of study or research on medical, scientific,  
103 technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a  
104 governmental body or a private concern, when such data, records or information have not been publicly  
105 released, published, copyrighted or patented.

106 16. Records of the Department of Environmental Quality, the State Water Control Board, State  
107 Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal  
108 environmental enforcement actions that are considered confidential under federal law and (ii)  
109 enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such  
110 records shall be disclosed after a proposed sanction resulting from the investigation has been proposed  
111 to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records  
112 related to inspection reports, notices of violation, and documents detailing the nature of any  
113 environmental contamination that may have occurred or similar documents.

114 17. As it pertains to any person, records related to the operation of toll facilities that identify an  
115 individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle  
116 enforcement system information; video or photographic images; Social Security or other identification  
117 numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone  
118 numbers; or records of the date or time of toll facility use.

119 18. Records of the Virginia Lottery pertaining to (i) the social security number, tax identification  
120 number, state sales tax number, home address and telephone number, personal and lottery banking  
121 account and transit numbers of a retailer, and financial information regarding the nonlottery operations  
122 of specific retail locations; and (ii) individual lottery winners, except that a winner's name, hometown,  
123 and amount won shall be disclosed.

124 19. Records of the Board for Branch Pilots relating to the chemical or drug testing of a person  
125 regulated by the Board, where such person has tested negative or has not been the subject of a  
126 disciplinary action by the Board for a positive test result.

127 20. Records, investigative notes, correspondence, and information pertaining to the planning,  
128 scheduling and performance of examinations of holder records pursuant to the Uniform Disposition of  
129 Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer, his agents,  
130 employees or persons employed to perform an audit or examination of holder records.

131 21. Records of the Virginia Department of Emergency Management or a local governing body  
132 relating to citizen emergency response teams established pursuant to an ordinance of a local governing

133 body, to the extent that such records reveal the name, address, including e-mail address, telephone or  
134 pager numbers, or operating schedule of an individual participant in the program.

135 22. Records of state or local park and recreation departments and local and regional park  
136 authorities to the extent such records contain information identifying a person under the age of 18 years.  
137 However, nothing in this subdivision shall operate to prohibit the disclosure of information defined as  
138 directory information under regulations implementing the Family Educational Rights and Privacy Act,  
139 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out  
140 requirements provided by such regulations. Access shall not be denied to the parent, including a  
141 noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated  
142 or a court of competent jurisdiction has restricted or denied such access. For records of such persons  
143 who are emancipated, the right of access may be asserted by the subject thereof. Any parent or  
144 emancipated person who is the subject of the record may waive, in writing, the protections afforded by  
145 this subdivision. If the protections are so waived, the public body shall open such records for inspection  
146 and copying.

147 23. Records submitted for inclusion in the Statewide Alert Network administered by the  
148 Department of Emergency Management, to the extent that they reveal names, physical addresses, email  
149 addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless  
150 or portable communications device information, or operating schedules of individuals or agencies,  
151 where the release of such information would compromise the security of the Statewide Alert Network or  
152 individuals participating in the Statewide Alert Network.

153 24. Records of the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

154 25. Records of the Virginia Retirement System acting pursuant to § 51.1-124.30, of a local  
155 retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement  
156 system), or of the Virginia College Savings Plan, acting pursuant to § 23-38.77 relating to:

157 a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings  
158 Plan on the pursuit of particular investment strategies, or the selection or termination of investment  
159 managers, prior to the execution of such investment strategies or the selection or termination of such



160 managers, to the extent that disclosure of such records would have an adverse impact on the financial  
161 interest of the retirement system or the Virginia College Savings Plan; and

162 b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a  
163 private entity to the retirement system or the Virginia College Savings Plan, to the extent disclosure of  
164 such records would have an adverse impact on the financial interest of the retirement system or the  
165 Virginia College Savings Plan.

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

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

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

171 (3) Stating the reasons why protection is necessary.

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

174 Nothing in this subdivision shall be construed to authorize the withholding of the identity or  
175 amount of any investment held or the present value and performance of all asset classes and subclasses.

176 26. Records of the Department of Corrections made confidential by § 53.1-233.

177 27. Records maintained by the Department of the Treasury or participants in the Local  
178 Government Investment Pool (§ 2.2-4600 et seq.), to the extent such records relate to information  
179 required to be provided by such participants to the Department to establish accounts in accordance with  
180 § 2.2-4602.

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

184 29. Records maintained in connection with fundraising activities by the Veterans Services  
185 Foundation pursuant to § 2.2-2716 to the extent that such records reveal the address, electronic mail  
186 address, facsimile or telephone number, social security number or other identification number appearing

187 on a driver's license, or credit card or bank account data of identifiable donors, except that access shall  
188 not be denied to the person who is the subject of the record. Nothing in this subdivision, however, shall  
189 be construed to authorize the withholding of records relating to the amount, date, purpose, and terms of  
190 the pledge or donation or the identity of the donor. The exclusion provided by this subdivision shall not  
191 apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the  
192 foundation for the performance of services or other work or (ii) the terms and conditions of such grants  
193 or contracts.

194 30. Names, physical addresses, telephone numbers, and email addresses contained in  
195 correspondence between an individual and a member of the governing body, school board, or other  
196 public body of the locality in which the individual is a resident, unless the correspondence relates to the  
197 transaction of public business. However, no record that is otherwise open to inspection under this  
198 chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within  
199 any such correspondence.

200 31. Records of the Commonwealth's Attorneys' Services Council, to the extent such records are  
201 prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state  
202 prosecutors or law-enforcement personnel, where such records are not otherwise available to the public  
203 and the release of such records would reveal confidential strategies, methods or procedures to be  
204 employed in law-enforcement activities, or materials created for the investigation and prosecution of a  
205 criminal case.

206 32. Records provided to the Department of Aviation by other entities of the Commonwealth in  
207 connection with the operation of aircraft, where the records would not be subject to disclosure by the  
208 entity providing the records. The entity providing the records to the Department of Aviation shall  
209 identify the specific portion of the records to be protected and the applicable provision of this chapter  
210 that exempts the record or portions thereof from mandatory disclosure.

211 33. Records created or maintained by or on the behalf of the judicial performance evaluation  
212 program related to an evaluation of any individual justice or judge made confidential by § 17.1-100.

213

#

**DRAFT**

SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

1 A BILL to amend and reenact § 2.2-3705.7 of the Code of Virginia, relating to the Virginia Freedom of  
2 Information Act; record exemption for certain customer account information.

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

4 **1. That § 2.2-3705.7 of the Code of Virginia is amended and reenacted as follows:**

5 **§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and**  
6 **certain other limited exemptions.**

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

9 1. State income, business, and estate tax returns, personal property tax returns, scholastic and  
10 confidential records held pursuant to § 58.1-3.

11 2. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the  
12 Attorney General; the members of the General Assembly, the Division of Legislative Services, or the  
13 Clerks of the House of Delegates and the Senate of Virginia; the mayor or chief executive officer of any  
14 political subdivision of the Commonwealth; or the president or other chief executive officer of any  
15 public institution of higher education in Virginia. However, no record, which is otherwise open to  
16 inspection under this chapter, shall be deemed exempt by virtue of the fact that it has been attached to or  
17 incorporated within any working paper or correspondence.

18 As used in this subdivision:

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

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

24 "Working papers" means those records prepared by or for an above-named public official for his  
25 personal or deliberative use.

26           3. Library records that can be used to identify both (i) any library patron who has borrowed  
27 material from a library and (ii) the material such patron borrowed.

28           4. Contract cost estimates prepared for the confidential use of the Department of Transportation  
29 in awarding contracts for construction or the purchase of goods or services, and records and automated  
30 systems prepared for the Department's Bid Analysis and Monitoring Program.

31           5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth,  
32 whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by  
33 the political subdivision.

34           6. Records and writings furnished by a member of the General Assembly to a meeting of a  
35 standing committee, special committee or subcommittee of his house established solely for the purpose  
36 of reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of  
37 formulating advisory opinions to members on standards of conduct, or both.

38           7. Customer account information of a public utility affiliated with a political subdivision of the  
39 Commonwealth, including the customer's name and service address, but excluding the amount of utility  
40 service provided and the amount of money charged or paid for such utility service.

41           8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing  
42 Development Authority concerning individuals who have applied for or received loans or other housing  
43 assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise  
44 assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or  
45 persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local  
46 redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or  
47 persons on the waiting list for housing assistance programs funded by local governments or by any such  
48 authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or  
49 any other local government agency concerning persons who have applied for occupancy or who have  
50 occupied affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access  
51 to one's own information shall not be denied.

52 9. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441,  
53 if disclosure of them would have a detrimental effect upon the negotiating position of a governing body  
54 or on the establishment of the terms, conditions and provisions of the siting agreement.

55 10. Records containing information on the site specific location of rare, threatened, endangered  
56 or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and  
57 archaeological sites if, in the opinion of the public body that has the responsibility for such information,  
58 disclosure of the information would jeopardize the continued existence or the integrity of the resource.  
59 This exemption shall not apply to requests from the owner of the land upon which the resource is  
60 located.

61 11. Records, memoranda, working papers, graphics, video or audio tapes, production models,  
62 data and information of a proprietary nature produced by or for or collected by or for the Virginia  
63 Lottery relating to matters of a specific lottery game design, development, production, operation, ticket  
64 price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of  
65 winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or  
66 marketing, where such official records have not been publicly released, published, copyrighted or  
67 patented. Whether released, published or copyrighted, all game-related information shall be subject to  
68 public disclosure under this chapter upon the first day of sales for the specific lottery game to which it  
69 pertains.

70 12. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local  
71 retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of  
72 Virginia, acting pursuant to § 23-76.1, or of the Virginia College Savings Plan, acting pursuant to § 23-  
73 38.77, relating to the acquisition, holding or disposition of a security or other ownership interest in an  
74 entity, where such security or ownership interest is not traded on a governmentally regulated securities  
75 exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and  
76 Visitors of the University of Virginia, prepared by the retirement system or the Virginia College Savings  
77 Plan, or provided to the retirement system or the Virginia College Savings Plan under a promise of  
78 confidentiality, of the future value of such ownership interest or the future financial performance of the

79 entity; and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the  
80 investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the  
81 University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be  
82 construed to prevent the disclosure of records relating to the identity of any investment held, the amount  
83 invested, or the present value of such investment.

84 13. Names and addresses of subscribers to Virginia Wildlife magazine, published by the  
85 Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing  
86 that the Department not release such information.

87 14. Financial, medical, rehabilitative and other personal information concerning applicants for or  
88 recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority  
89 under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

90 15. Records of the Virginia Commonwealth University Health System Authority pertaining to  
91 any of the following: an individual's qualifications for or continued membership on its medical or  
92 teaching staffs; proprietary information gathered by or in the possession of the Authority from third  
93 parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in  
94 awarding contracts for construction or the purchase of goods or services; data, records or information of  
95 a proprietary nature produced or collected by or for the Authority or members of its medical or teaching  
96 staffs; financial statements not publicly available that may be filed with the Authority from third parties;  
97 the identity, accounts or account status of any customer of the Authority; consulting or other reports paid  
98 for by the Authority to assist the Authority in connection with its strategic planning and goals; the  
99 determination of marketing and operational strategies where disclosure of such strategies would be  
100 harmful to the competitive position of the Authority; and data, records or information of a proprietary  
101 nature produced or collected by or for employees of the Authority, other than the Authority's financial or  
102 administrative records, in the conduct of or as a result of study or research on medical, scientific,  
103 technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a  
104 governmental body or a private concern, when such data, records or information have not been publicly  
105 released, published, copyrighted or patented.

106 16. Records of the Department of Environmental Quality, the State Water Control Board, State  
107 Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal  
108 environmental enforcement actions that are considered confidential under federal law and (ii)  
109 enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such  
110 records shall be disclosed after a proposed sanction resulting from the investigation has been proposed  
111 to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records  
112 related to inspection reports, notices of violation, and documents detailing the nature of any  
113 environmental contamination that may have occurred or similar documents.

114 17. As it pertains to any person, records related to the operation of toll facilities that identify an  
115 individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle  
116 enforcement system information; video or photographic images; Social Security or other identification  
117 numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone  
118 numbers; or records of the date or time of toll facility use.

119 18. Records of the Virginia Lottery pertaining to (i) the social security number, tax identification  
120 number, state sales tax number, home address and telephone number, personal and lottery banking  
121 account and transit numbers of a retailer, and financial information regarding the nonlottery operations  
122 of specific retail locations; and (ii) individual lottery winners, except that a winner's name, hometown,  
123 and amount won shall be disclosed.

124 19. Records of the Board for Branch Pilots relating to the chemical or drug testing of a person  
125 regulated by the Board, where such person has tested negative or has not been the subject of a  
126 disciplinary action by the Board for a positive test result.

127 20. Records, investigative notes, correspondence, and information pertaining to the planning,  
128 scheduling and performance of examinations of holder records pursuant to the Uniform Disposition of  
129 Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer, his agents,  
130 employees or persons employed to perform an audit or examination of holder records.

131 21. Records of the Virginia Department of Emergency Management or a local governing body  
132 relating to citizen emergency response teams established pursuant to an ordinance of a local governing

133 body, to the extent that such records reveal the name, address, including e-mail address, telephone or  
134 pager numbers, or operating schedule of an individual participant in the program.

135 22. Records of state or local park and recreation departments and local and regional park  
136 authorities to the extent such records contain information identifying a person under the age of 18 years.  
137 However, nothing in this subdivision shall operate to prohibit the disclosure of information defined as  
138 directory information under regulations implementing the Family Educational Rights and Privacy Act,  
139 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out  
140 requirements provided by such regulations. Access shall not be denied to the parent, including a  
141 noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated  
142 or a court of competent jurisdiction has restricted or denied such access. For records of such persons  
143 who are emancipated, the right of access may be asserted by the subject thereof. Any parent or  
144 emancipated person who is the subject of the record may waive, in writing, the protections afforded by  
145 this subdivision. If the protections are so waived, the public body shall open such records for inspection  
146 and copying.

147 23. Records submitted for inclusion in the Statewide Alert Network administered by the  
148 Department of Emergency Management, to the extent that they reveal names, physical addresses, email  
149 addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless  
150 or portable communications device information, or operating schedules of individuals or agencies,  
151 where the release of such information would compromise the security of the Statewide Alert Network or  
152 individuals participating in the Statewide Alert Network.

153 24. Records of the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

154 25. Records of the Virginia Retirement System acting pursuant to § 51.1-124.30, of a local  
155 retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement  
156 system), or of the Virginia College Savings Plan, acting pursuant to § 23-38.77 relating to:

157 a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings  
158 Plan on the pursuit of particular investment strategies, or the selection or termination of investment  
159 managers, prior to the execution of such investment strategies or the selection or termination of such



160 managers, to the extent that disclosure of such records would have an adverse impact on the financial  
161 interest of the retirement system or the Virginia College Savings Plan; and

162 b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a  
163 private entity to the retirement system or the Virginia College Savings Plan, to the extent disclosure of  
164 such records would have an adverse impact on the financial interest of the retirement system or the  
165 Virginia College Savings Plan.

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

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

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

171 (3) Stating the reasons why protection is necessary.

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

174 Nothing in this subdivision shall be construed to authorize the withholding of the identity or  
175 amount of any investment held or the present value and performance of all asset classes and subclasses.

176 26. Records of the Department of Corrections made confidential by § 53.1-233.

177 27. Records maintained by the Department of the Treasury or participants in the Local  
178 Government Investment Pool (§ 2.2-4600 et seq.), to the extent such records relate to information  
179 required to be provided by such participants to the Department to establish accounts in accordance with  
180 § 2.2-4602.

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

184 29. Records maintained in connection with fundraising activities by the Veterans Services  
185 Foundation pursuant to § 2.2-2716 to the extent that such records reveal the address, electronic mail  
186 address, facsimile or telephone number, social security number or other identification number appearing

187 on a driver's license, or credit card or bank account data of identifiable donors, except that access shall  
188 not be denied to the person who is the subject of the record. Nothing in this subdivision, however, shall  
189 be construed to authorize the withholding of records relating to the amount, date, purpose, and terms of  
190 the pledge or donation or the identity of the donor. The exclusion provided by this subdivision shall not  
191 apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the  
192 foundation for the performance of services or other work or (ii) the terms and conditions of such grants  
193 or contracts.

194 30. Names, physical addresses, telephone numbers, and email addresses contained in  
195 correspondence between an individual and a member of the governing body, school board, or other  
196 public body of the locality in which the individual is a resident, unless the correspondence relates to the  
197 transaction of public business. However, no record that is otherwise open to inspection under this  
198 chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within  
199 any such correspondence.

200 31. Records of the Commonwealth's Attorneys' Services Council, to the extent such records are  
201 prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state  
202 prosecutors or law-enforcement personnel, where such records are not otherwise available to the public  
203 and the release of such records would reveal confidential strategies, methods or procedures to be  
204 employed in law-enforcement activities, or materials created for the investigation and prosecution of a  
205 criminal case.

206 32. Records provided to the Department of Aviation by other entities of the Commonwealth in  
207 connection with the operation of aircraft, where the records would not be subject to disclosure by the  
208 entity providing the records. The entity providing the records to the Department of Aviation shall  
209 identify the specific portion of the records to be protected and the applicable provision of this chapter  
210 that exempts the record or portions thereof from mandatory disclosure.

211 33. Records created or maintained by or on the behalf of the judicial performance evaluation  
212 program related to an evaluation of any individual justice or judge made confidential by § 17.1-100.

213 #

**DRAFT**

SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

1 A BILL to amend and reenact § 2.2-3705.7 of the Code of Virginia, relating to the Virginia Freedom of  
2 Information Act; record exemption for Virginia Wildlife magazine.

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

4 **1. That § 2.2-3705.7 of the Code of Virginia is amended and reenacted as follows:**

5 **§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and**  
6 **certain other limited exemptions.**

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

9 1. State income, business, and estate tax returns, personal property tax returns, scholastic and  
10 confidential records held pursuant to § 58.1-3.

11 2. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the  
12 Attorney General; the members of the General Assembly, the Division of Legislative Services, or the  
13 Clerks of the House of Delegates and the Senate of Virginia; the mayor or chief executive officer of any  
14 political subdivision of the Commonwealth; or the president or other chief executive officer of any  
15 public institution of higher education in Virginia. However, no record, which is otherwise open to  
16 inspection under this chapter, shall be deemed exempt by virtue of the fact that it has been attached to or  
17 incorporated within any working paper or correspondence.

18 As used in this subdivision:

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

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

24 "Working papers" means those records prepared by or for an above-named public official for his  
25 personal or deliberative use.

26 3. Library records that can be used to identify both (i) any library patron who has borrowed  
27 material from a library and (ii) the material such patron borrowed.

28 4. Contract cost estimates prepared for the confidential use of the Department of Transportation  
29 in awarding contracts for construction or the purchase of goods or services, and records and automated  
30 systems prepared for the Department's Bid Analysis and Monitoring Program.

31 5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth,  
32 whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by  
33 the political subdivision.

34 6. Records and writings furnished by a member of the General Assembly to a meeting of a  
35 standing committee, special committee or subcommittee of his house established solely for the purpose  
36 of reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of  
37 formulating advisory opinions to members on standards of conduct, or both.

38 7. Customer account information of a public utility affiliated with a political subdivision of the  
39 Commonwealth, including the customer's name and service address, but excluding the amount of utility  
40 service provided and the amount of money paid for such utility service.

41 8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing  
42 Development Authority concerning individuals who have applied for or received loans or other housing  
43 assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise  
44 assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or  
45 persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local  
46 redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or  
47 persons on the waiting list for housing assistance programs funded by local governments or by any such  
48 authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or  
49 any other local government agency concerning persons who have applied for occupancy or who have  
50 occupied affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access  
51 to one's own information shall not be denied.

52           9. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441,  
53 if disclosure of them would have a detrimental effect upon the negotiating position of a governing body  
54 or on the establishment of the terms, conditions and provisions of the siting agreement.

55           10. Records containing information on the site specific location of rare, threatened, endangered  
56 or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and  
57 archaeological sites if, in the opinion of the public body that has the responsibility for such information,  
58 disclosure of the information would jeopardize the continued existence or the integrity of the resource.  
59 This exemption shall not apply to requests from the owner of the land upon which the resource is  
60 located.

61           11. Records, memoranda, working papers, graphics, video or audio tapes, production models,  
62 data and information of a proprietary nature produced by or for or collected by or for the Virginia  
63 Lottery relating to matters of a specific lottery game design, development, production, operation, ticket  
64 price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of  
65 winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or  
66 marketing, where such official records have not been publicly released, published, copyrighted or  
67 patented. Whether released, published or copyrighted, all game-related information shall be subject to  
68 public disclosure under this chapter upon the first day of sales for the specific lottery game to which it  
69 pertains.

70           12. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local  
71 retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of  
72 Virginia, acting pursuant to § 23-76.1, or of the Virginia College Savings Plan, acting pursuant to § 23-  
73 38.77, relating to the acquisition, holding or disposition of a security or other ownership interest in an  
74 entity, where such security or ownership interest is not traded on a governmentally regulated securities  
75 exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and  
76 Visitors of the University of Virginia, prepared by the retirement system or the Virginia College Savings  
77 Plan, or provided to the retirement system or the Virginia College Savings Plan under a promise of  
78 confidentiality, of the future value of such ownership interest or the future financial performance of the

79 entity; and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the  
80 investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the  
81 University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be  
82 construed to prevent the disclosure of records relating to the identity of any investment held, the amount  
83 invested, or the present value of such investment.

84 ~~13. Names and addresses of subscribers to Virginia Wildlife magazine, published by the~~  
85 ~~Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing~~  
86 ~~that the Department not release such information.~~

87 ~~14. Financial, medical, rehabilitative and other personal information concerning applicants for or~~  
88 ~~recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority~~  
89 ~~under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.~~

90 15.14. Records of the Virginia Commonwealth University Health System Authority pertaining to  
91 any of the following: an individual's qualifications for or continued membership on its medical or  
92 teaching staffs; proprietary information gathered by or in the possession of the Authority from third  
93 parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in  
94 awarding contracts for construction or the purchase of goods or services; data, records or information of  
95 a proprietary nature produced or collected by or for the Authority or members of its medical or teaching  
96 staffs; financial statements not publicly available that may be filed with the Authority from third parties;  
97 the identity, accounts or account status of any customer of the Authority; consulting or other reports paid  
98 for by the Authority to assist the Authority in connection with its strategic planning and goals; the  
99 determination of marketing and operational strategies where disclosure of such strategies would be  
100 harmful to the competitive position of the Authority; and data, records or information of a proprietary  
101 nature produced or collected by or for employees of the Authority, other than the Authority's financial or  
102 administrative records, in the conduct of or as a result of study or research on medical, scientific,  
103 technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a  
104 governmental body or a private concern, when such data, records or information have not been publicly  
105 released, published, copyrighted or patented.

106 | ~~16.15.~~ Records of the Department of Environmental Quality, the State Water Control Board,  
107 | State Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal  
108 | environmental enforcement actions that are considered confidential under federal law and (ii)  
109 | enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such  
110 | records shall be disclosed after a proposed sanction resulting from the investigation has been proposed  
111 | to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records  
112 | related to inspection reports, notices of violation, and documents detailing the nature of any  
113 | environmental contamination that may have occurred or similar documents.

114 | ~~17.16.~~ As it pertains to any person, records related to the operation of toll facilities that identify  
115 | an individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle  
116 | enforcement system information; video or photographic images; Social Security or other identification  
117 | numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone  
118 | numbers; or records of the date or time of toll facility use.

119 | ~~18.17.~~ Records of the Virginia Lottery pertaining to (i) the social security number, tax  
120 | identification number, state sales tax number, home address and telephone number, personal and lottery  
121 | banking account and transit numbers of a retailer, and financial information regarding the nonlottery  
122 | operations of specific retail locations; and (ii) individual lottery winners, except that a winner's name,  
123 | hometown, and amount won shall be disclosed.

124 | ~~19.18.~~ Records of the Board for Branch Pilots relating to the chemical or drug testing of a person  
125 | regulated by the Board, where such person has tested negative or has not been the subject of a  
126 | disciplinary action by the Board for a positive test result.

127 | ~~20.19.~~ Records, investigative notes, correspondence, and information pertaining to the planning,  
128 | scheduling and performance of examinations of holder records pursuant to the Uniform Disposition of  
129 | Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer, his agents,  
130 | employees or persons employed to perform an audit or examination of holder records.

131 | ~~21.20.~~ Records of the Virginia Department of Emergency Management or a local governing  
132 | body relating to citizen emergency response teams established pursuant to an ordinance of a local

133 governing body, to the extent that such records reveal the name, address, including e-mail address,  
134 telephone or pager numbers, or operating schedule of an individual participant in the program.

135 22-21. Records of state or local park and recreation departments and local and regional park  
136 authorities to the extent such records contain information identifying a person under the age of 18 years.  
137 However, nothing in this subdivision shall operate to prohibit the disclosure of information defined as  
138 directory information under regulations implementing the Family Educational Rights and Privacy Act,  
139 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out  
140 requirements provided by such regulations. Access shall not be denied to the parent, including a  
141 noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated  
142 or a court of competent jurisdiction has restricted or denied such access. For records of such persons  
143 who are emancipated, the right of access may be asserted by the subject thereof. Any parent or  
144 emancipated person who is the subject of the record may waive, in writing, the protections afforded by  
145 this subdivision. If the protections are so waived, the public body shall open such records for inspection  
146 and copying.

147 23-22. Records submitted for inclusion in the Statewide Alert Network administered by the  
148 Department of Emergency Management, to the extent that they reveal names, physical addresses, email  
149 addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless  
150 or portable communications device information, or operating schedules of individuals or agencies,  
151 where the release of such information would compromise the security of the Statewide Alert Network or  
152 individuals participating in the Statewide Alert Network.

153 24-23. Records of the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

154 25-24. Records of the Virginia Retirement System acting pursuant to § 51.1-124.30, of a local  
155 retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement  
156 system), or of the Virginia College Savings Plan, acting pursuant to § 23-38.77 relating to:

157 a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings  
158 Plan on the pursuit of particular investment strategies, or the selection or termination of investment  
159 managers, prior to the execution of such investment strategies or the selection or termination of such



160 managers, to the extent that disclosure of such records would have an adverse impact on the financial  
161 interest of the retirement system or the Virginia College Savings Plan; and

162 b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a  
163 private entity to the retirement system or the Virginia College Savings Plan, to the extent disclosure of  
164 such records would have an adverse impact on the financial interest of the retirement system or the  
165 Virginia College Savings Plan.

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

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

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

171 (3) Stating the reasons why protection is necessary.

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

174 Nothing in this subdivision shall be construed to authorize the withholding of the identity or  
175 amount of any investment held or the present value and performance of all asset classes and subclasses.

176 ~~26-25.~~ Records of the Department of Corrections made confidential by § 53.1-233.

177 ~~27-26.~~ Records maintained by the Department of the Treasury or participants in the Local  
178 Government Investment Pool (§ 2.2-4600 et seq.), to the extent such records relate to information  
179 required to be provided by such participants to the Department to establish accounts in accordance with  
180 § 2.2-4602.

181 ~~28-27.~~ Personal information, as defined in § 2.2-3801, contained in the Veterans Care Center  
182 Resident Trust Funds concerning residents or patients of the Department of Veterans Services Care  
183 Centers, except that access shall not be denied to the person who is the subject of the record.

184 ~~29-28.~~ Records maintained in connection with fundraising activities by the Veterans Services  
185 Foundation pursuant to § 2.2-2716 to the extent that such records reveal the address, electronic mail  
186 address, facsimile or telephone number, social security number or other identification number appearing

187 on a driver's license, or credit card or bank account data of identifiable donors, except that access shall  
188 not be denied to the person who is the subject of the record. Nothing in this subdivision, however, shall  
189 be construed to authorize the withholding of records relating to the amount, date, purpose, and terms of  
190 the pledge or donation or the identity of the donor. The exclusion provided by this subdivision shall not  
191 apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the  
192 foundation for the performance of services or other work or (ii) the terms and conditions of such grants  
193 or contracts.

194 ~~30.29.~~ Names, physical addresses, telephone numbers, and email addresses contained in  
195 correspondence between an individual and a member of the governing body, school board, or other  
196 public body of the locality in which the individual is a resident, unless the correspondence relates to the  
197 transaction of public business. However, no record that is otherwise open to inspection under this  
198 chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within  
199 any such correspondence.

200 ~~31.30.~~ Records of the Commonwealth's Attorneys' Services Council, to the extent such records  
201 are prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state  
202 prosecutors or law-enforcement personnel, where such records are not otherwise available to the public  
203 and the release of such records would reveal confidential strategies, methods or procedures to be  
204 employed in law-enforcement activities, or materials created for the investigation and prosecution of a  
205 criminal case.

206 ~~32.31.~~ Records provided to the Department of Aviation by other entities of the Commonwealth  
207 in connection with the operation of aircraft, where the records would not be subject to disclosure by the  
208 entity providing the records. The entity providing the records to the Department of Aviation shall  
209 identify the specific portion of the records to be protected and the applicable provision of this chapter  
210 that exempts the record or portions thereof from mandatory disclosure.

211 ~~33.32.~~ Records created or maintained by or on the behalf of the judicial performance evaluation  
212 program related to an evaluation of any individual justice or judge made confidential by § 17.1-100.

213 #

**DRAFT**  
 SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

1 A BILL to amend and reenact § 2.2-3705.7 of the Code of Virginia, relating to the Virginia Freedom of  
 2 Information Act; record exemption for certain correspondence.

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

4 **1. That § 2.2-3705.7 of the Code of Virginia is amended and reenacted as follows:**

5 **§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and**  
 6 **certain other limited exemptions.**

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

9 1. State income, business, and estate tax returns, personal property tax returns, scholastic and  
 10 confidential records held pursuant to § 58.1-3.

11 2. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the  
 12 Attorney General; the members of the General Assembly, the Division of Legislative Services, or the  
 13 Clerks of the House of Delegates and the Senate of Virginia; the mayor or chief executive officer of any  
 14 political subdivision of the Commonwealth; or the president or other chief executive officer of any  
 15 public institution of higher education in Virginia. However, no record, which is otherwise open to  
 16 inspection under this chapter, shall be deemed exempt by virtue of the fact that it has been attached to or  
 17 incorporated within any working paper or correspondence.

18 As used in this subdivision:

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

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

24 "Working papers" means those records prepared by or for an above-named public official for his  
 25 personal or deliberative use.

26           3. Library records that can be used to identify both (i) any library patron who has borrowed  
27 material from a library and (ii) the material such patron borrowed.

28           4. Contract cost estimates prepared for the confidential use of the Department of Transportation  
29 in awarding contracts for construction or the purchase of goods or services, and records and automated  
30 systems prepared for the Department's Bid Analysis and Monitoring Program.

31           5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth,  
32 whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by  
33 the political subdivision.

34           6. Records and writings furnished by a member of the General Assembly to a meeting of a  
35 standing committee, special committee or subcommittee of his house established solely for the purpose  
36 of reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of  
37 formulating advisory opinions to members on standards of conduct, or both.

38           7. Customer account information of a public utility affiliated with a political subdivision of the  
39 Commonwealth, including the customer's name and service address, but excluding the amount of utility  
40 service provided and the amount of money paid for such utility service.

41           8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing  
42 Development Authority concerning individuals who have applied for or received loans or other housing  
43 assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise  
44 assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or  
45 persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local  
46 redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or  
47 persons on the waiting list for housing assistance programs funded by local governments or by any such  
48 authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or  
49 any other local government agency concerning persons who have applied for occupancy or who have  
50 occupied affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access  
51 to one's own information shall not be denied.

52           9. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441,  
53 if disclosure of them would have a detrimental effect upon the negotiating position of a governing body  
54 or on the establishment of the terms, conditions and provisions of the siting agreement.

55           10. Records containing information on the site specific location of rare, threatened, endangered  
56 or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and  
57 archaeological sites if, in the opinion of the public body that has the responsibility for such information,  
58 disclosure of the information would jeopardize the continued existence or the integrity of the resource.  
59 This exemption shall not apply to requests from the owner of the land upon which the resource is  
60 located.

61           11. Records, memoranda, working papers, graphics, video or audio tapes, production models,  
62 data and information of a proprietary nature produced by or for or collected by or for the Virginia  
63 Lottery relating to matters of a specific lottery game design, development, production, operation, ticket  
64 price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of  
65 winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or  
66 marketing, where such official records have not been publicly released, published, copyrighted or  
67 patented. Whether released, published or copyrighted, all game-related information shall be subject to  
68 public disclosure under this chapter upon the first day of sales for the specific lottery game to which it  
69 pertains.

70           12. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local  
71 retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of  
72 Virginia, acting pursuant to § 23-76.1, or of the Virginia College Savings Plan, acting pursuant to § 23-  
73 38.77, relating to the acquisition, holding or disposition of a security or other ownership interest in an  
74 entity, where such security or ownership interest is not traded on a governmentally regulated securities  
75 exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and  
76 Visitors of the University of Virginia, prepared by the retirement system or the Virginia College Savings  
77 Plan, or provided to the retirement system or the Virginia College Savings Plan under a promise of  
78 confidentiality, of the future value of such ownership interest or the future financial performance of the

79 entity; and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the  
80 investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the  
81 University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be  
82 construed to prevent the disclosure of records relating to the identity of any investment held, the amount  
83 invested, or the present value of such investment.

84 13. Names and addresses of subscribers to Virginia Wildlife magazine, published by the  
85 Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing  
86 that the Department not release such information.

87 14. Financial, medical, rehabilitative and other personal information concerning applicants for or  
88 recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority  
89 under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

90 15. Records of the Virginia Commonwealth University Health System Authority pertaining to  
91 any of the following: an individual's qualifications for or continued membership on its medical or  
92 teaching staffs; proprietary information gathered by or in the possession of the Authority from third  
93 parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in  
94 awarding contracts for construction or the purchase of goods or services; data, records or information of  
95 a proprietary nature produced or collected by or for the Authority or members of its medical or teaching  
96 staffs; financial statements not publicly available that may be filed with the Authority from third parties;  
97 the identity, accounts or account status of any customer of the Authority; consulting or other reports paid  
98 for by the Authority to assist the Authority in connection with its strategic planning and goals; the  
99 determination of marketing and operational strategies where disclosure of such strategies would be  
100 harmful to the competitive position of the Authority; and data, records or information of a proprietary  
101 nature produced or collected by or for employees of the Authority, other than the Authority's financial or  
102 administrative records, in the conduct of or as a result of study or research on medical, scientific,  
103 technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a  
104 governmental body or a private concern, when such data, records or information have not been publicly  
105 released, published, copyrighted or patented.

106           16. Records of the Department of Environmental Quality, the State Water Control Board, State  
107 Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal  
108 environmental enforcement actions that are considered confidential under federal law and (ii)  
109 enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such  
110 records shall be disclosed after a proposed sanction resulting from the investigation has been proposed  
111 to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records  
112 related to inspection reports, notices of violation, and documents detailing the nature of any  
113 environmental contamination that may have occurred or similar documents.

114           17. As it pertains to any person, records related to the operation of toll facilities that identify an  
115 individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle  
116 enforcement system information; video or photographic images; Social Security or other identification  
117 numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone  
118 numbers; or records of the date or time of toll facility use.

119           18. Records of the Virginia Lottery pertaining to (i) the social security number, tax identification  
120 number, state sales tax number, home address and telephone number, personal and lottery banking  
121 account and transit numbers of a retailer, and financial information regarding the nonlottery operations  
122 of specific retail locations; and (ii) individual lottery winners, except that a winner's name, hometown,  
123 and amount won shall be disclosed.

124           19. Records of the Board for Branch Pilots relating to the chemical or drug testing of a person  
125 regulated by the Board, where such person has tested negative or has not been the subject of a  
126 disciplinary action by the Board for a positive test result.

127           20. Records, investigative notes, correspondence, and information pertaining to the planning,  
128 scheduling and performance of examinations of holder records pursuant to the Uniform Disposition of  
129 Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer, his agents,  
130 employees or persons employed to perform an audit or examination of holder records.

131           21. Records of the Virginia Department of Emergency Management or a local governing body  
132 relating to citizen emergency response teams established pursuant to an ordinance of a local governing

133 body, to the extent that such records reveal the name, address, including e-mail address, telephone or  
134 pager numbers, or operating schedule of an individual participant in the program.

135 22. Records of state or local park and recreation departments and local and regional park  
136 authorities to the extent such records contain information identifying a person under the age of 18 years.  
137 However, nothing in this subdivision shall operate to prohibit the disclosure of information defined as  
138 directory information under regulations implementing the Family Educational Rights and Privacy Act,  
139 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out  
140 requirements provided by such regulations. Access shall not be denied to the parent, including a  
141 noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated  
142 or a court of competent jurisdiction has restricted or denied such access. For records of such persons  
143 who are emancipated, the right of access may be asserted by the subject thereof. Any parent or  
144 emancipated person who is the subject of the record may waive, in writing, the protections afforded by  
145 this subdivision. If the protections are so waived, the public body shall open such records for inspection  
146 and copying.

147 23. Records submitted for inclusion in the Statewide Alert Network administered by the  
148 Department of Emergency Management, to the extent that they reveal names, physical addresses, email  
149 addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless  
150 or portable communications device information, or operating schedules of individuals or agencies,  
151 where the release of such information would compromise the security of the Statewide Alert Network or  
152 individuals participating in the Statewide Alert Network.

153 24. Records of the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

154 25. Records of the Virginia Retirement System acting pursuant to § 51.1-124.30, of a local  
155 retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement  
156 system), or of the Virginia College Savings Plan, acting pursuant to § 23-38.77 relating to:

157 a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings  
158 Plan on the pursuit of particular investment strategies, or the selection or termination of investment  
159 managers, prior to the execution of such investment strategies or the selection or termination of such



160 managers, to the extent that disclosure of such records would have an adverse impact on the financial  
161 interest of the retirement system or the Virginia College Savings Plan; and

162 b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a  
163 private entity to the retirement system or the Virginia College Savings Plan, to the extent disclosure of  
164 such records would have an adverse impact on the financial interest of the retirement system or the  
165 Virginia College Savings Plan.

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

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

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

171 (3) Stating the reasons why protection is necessary.

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

174 Nothing in this subdivision shall be construed to authorize the withholding of the identity or  
175 amount of any investment held or the present value and performance of all asset classes and subclasses.

176 26. Records of the Department of Corrections made confidential by § 53.1-233.

177 27. Records maintained by the Department of the Treasury or participants in the Local  
178 Government Investment Pool (§ 2.2-4600 et seq.), to the extent such records relate to information  
179 required to be provided by such participants to the Department to establish accounts in accordance with  
180 § 2.2-4602.

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

184 29. Records maintained in connection with fundraising activities by the Veterans Services  
185 Foundation pursuant to § 2.2-2716 to the extent that such records reveal the address, electronic mail  
186 address, facsimile or telephone number, social security number or other identification number appearing

187 on a driver's license, or credit card or bank account data of identifiable donors, except that access shall  
188 not be denied to the person who is the subject of the record. Nothing in this subdivision, however, shall  
189 be construed to authorize the withholding of records relating to the amount, date, purpose, and terms of  
190 the pledge or donation or the identity of the donor. The exclusion provided by this subdivision shall not  
191 apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the  
192 foundation for the performance of services or other work or (ii) the terms and conditions of such grants  
193 or contracts.

194 ~~30. Names, physical addresses, telephone numbers, and email addresses contained in~~  
195 ~~correspondence between an individual and a member of the governing body, school board, or other~~  
196 ~~public body of the locality in which the individual is a resident, unless the correspondence relates to the~~  
197 ~~transaction of public business. However, no record that is otherwise open to inspection under this~~  
198 ~~chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within~~  
199 ~~any such correspondence.~~

200 ~~31. Records of the Commonwealth's Attorneys' Services Council, to the extent such records are~~  
201 ~~prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state~~  
202 ~~prosecutors or law-enforcement personnel, where such records are not otherwise available to the public~~  
203 ~~and the release of such records would reveal confidential strategies, methods or procedures to be~~  
204 ~~employed in law-enforcement activities, or materials created for the investigation and prosecution of a~~  
205 ~~criminal case.~~

206 ~~32.~~ 31. Records provided to the Department of Aviation by other entities of the Commonwealth  
207 in connection with the operation of aircraft, where the records would not be subject to disclosure by the  
208 entity providing the records. The entity providing the records to the Department of Aviation shall  
209 identify the specific portion of the records to be protected and the applicable provision of this chapter  
210 that exempts the record or portions thereof from mandatory disclosure.

211 ~~33.~~ 32. Records created or maintained by or on the behalf of the judicial performance evaluation  
212 program related to an evaluation of any individual justice or judge made confidential by § 17.1-100.

213

#

**DRAFT**

SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

1 A BILL to amend and reenact § 2.2-3705.7 of the Code of Virginia, relating to the Virginia Freedom of  
2 Information Act; working papers and correspondence.

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

4 **1. That § 2.2-3705.7 of the Code of Virginia is amended and reenacted as follows:**

5 **§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and**  
6 **certain other limited exemptions.**

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

9 1. State income, business, and estate tax returns, personal property tax returns, scholastic and  
10 confidential records held pursuant to § 58.1-3.

11 2. Working papers and correspondence of the Office of the Governor; the Lieutenant Governor;  
12 the Attorney General; the members of the General Assembly, the Division of Legislative Services, or  
13 the Clerks of the House of Delegates and or the Senate of Virginia; the mayor or chief executive officer  
14 of any political subdivision of the Commonwealth; or the president or other chief executive officer of  
15 any public institution of higher education in Virginia. However, no record, ~~which~~ that is otherwise open  
16 to inspection under this chapter, shall be deemed exempt by virtue of the fact that it has been attached to  
17 or incorporated within any working paper or correspondence.

18 As used in this subdivision:

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

21 "Office of the Governor" means the Governor; ~~his,~~ the Governor's chief of staff, counsel, director  
22 of policy, and Cabinet Secretaries, ~~and~~ the Assistant to the Governor for Intergovernmental Affairs; and  
23 those individuals to whom the Governor has delegated his authority pursuant to § 2.2-104.

24 "Working papers" means those records, including correspondence, prepared by or for an above-  
25 named public official for his personal or deliberative use.

26 3. Library records that can be used to identify both (i) any library patron who has borrowed  
27 material from a library and (ii) the material such patron borrowed.

28 4. Contract cost estimates prepared for the confidential use of the Department of Transportation  
29 in awarding contracts for construction or the purchase of goods or services, and records and automated  
30 systems prepared for the Department's Bid Analysis and Monitoring Program.

31 5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth,  
32 whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by  
33 the political subdivision.

34 6. Records and writings furnished by a member of the General Assembly to a meeting of a  
35 standing committee, special committee or subcommittee of his house established solely for the purpose  
36 of reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of  
37 formulating advisory opinions to members on standards of conduct, or both.

38 7. Customer account information of a public utility affiliated with a political subdivision of the  
39 Commonwealth, including the customer's name and service address, but excluding the amount of utility  
40 service provided and the amount of money paid for such utility service.

41 8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing  
42 Development Authority concerning individuals who have applied for or received loans or other housing  
43 assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise  
44 assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or  
45 persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local  
46 redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or  
47 persons on the waiting list for housing assistance programs funded by local governments or by any such  
48 authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or  
49 any other local government agency concerning persons who have applied for occupancy or who have  
50 occupied affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access  
51 to one's own information shall not be denied.

52 9. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441,  
53 if disclosure of them would have a detrimental effect upon the negotiating position of a governing body  
54 or on the establishment of the terms, conditions and provisions of the siting agreement.

55 10. Records containing information on the site specific location of rare, threatened, endangered  
56 or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and  
57 archaeological sites if, in the opinion of the public body that has the responsibility for such information,  
58 disclosure of the information would jeopardize the continued existence or the integrity of the resource.  
59 This exemption shall not apply to requests from the owner of the land upon which the resource is  
60 located.

61 11. Records, memoranda, working papers, graphics, video or audio tapes, production models,  
62 data and information of a proprietary nature produced by or for or collected by or for the Virginia  
63 Lottery relating to matters of a specific lottery game design, development, production, operation, ticket  
64 price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of  
65 winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or  
66 marketing, where such official records have not been publicly released, published, copyrighted or  
67 patented. Whether released, published or copyrighted, all game-related information shall be subject to  
68 public disclosure under this chapter upon the first day of sales for the specific lottery game to which it  
69 pertains.

70 12. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local  
71 retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of  
72 Virginia, acting pursuant to § 23-76.1, or of the Virginia College Savings Plan, acting pursuant to § 23-  
73 38.77, relating to the acquisition, holding or disposition of a security or other ownership interest in an  
74 entity, where such security or ownership interest is not traded on a governmentally regulated securities  
75 exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and  
76 Visitors of the University of Virginia, prepared by the retirement system or the Virginia College Savings  
77 Plan, or provided to the retirement system or the Virginia College Savings Plan under a promise of  
78 confidentiality, of the future value of such ownership interest or the future financial performance of the

79 entity; and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the  
80 investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the  
81 University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be  
82 construed to prevent the disclosure of records relating to the identity of any investment held, the amount  
83 invested, or the present value of such investment.

84 13. Names and addresses of subscribers to Virginia Wildlife magazine, published by the  
85 Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing  
86 that the Department not release such information.

87 14. Financial, medical, rehabilitative and other personal information concerning applicants for or  
88 recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority  
89 under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

90 15. Records of the Virginia Commonwealth University Health System Authority pertaining to  
91 any of the following: an individual's qualifications for or continued membership on its medical or  
92 teaching staffs; proprietary information gathered by or in the possession of the Authority from third  
93 parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in  
94 awarding contracts for construction or the purchase of goods or services; data, records or information of  
95 a proprietary nature produced or collected by or for the Authority or members of its medical or teaching  
96 staffs; financial statements not publicly available that may be filed with the Authority from third parties;  
97 the identity, accounts or account status of any customer of the Authority; consulting or other reports paid  
98 for by the Authority to assist the Authority in connection with its strategic planning and goals; the  
99 determination of marketing and operational strategies where disclosure of such strategies would be  
100 harmful to the competitive position of the Authority; and data, records or information of a proprietary  
101 nature produced or collected by or for employees of the Authority, other than the Authority's financial or  
102 administrative records, in the conduct of or as a result of study or research on medical, scientific,  
103 technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a  
104 governmental body or a private concern, when such data, records or information have not been publicly

105 released, published, copyrighted or patented. This exemption shall also apply when such records are in  
106 the possession of the Virginia Commonwealth University.

107 16. Records of the Department of Environmental Quality, the State Water Control Board, State  
108 Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal  
109 environmental enforcement actions that are considered confidential under federal law and (ii)  
110 enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such  
111 records shall be disclosed after a proposed sanction resulting from the investigation has been proposed  
112 to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records  
113 related to inspection reports, notices of violation, and documents detailing the nature of any  
114 environmental contamination that may have occurred or similar documents.

115 17. As it pertains to any person, records related to the operation of toll facilities that identify an  
116 individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle  
117 enforcement system information; video or photographic images; Social Security or other identification  
118 numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone  
119 numbers; or records of the date or time of toll facility use.

120 18. Records of the Virginia Lottery pertaining to (i) the social security number, tax identification  
121 number, state sales tax number, home address and telephone number, personal and lottery banking  
122 account and transit numbers of a retailer, and financial information regarding the nonlottery operations  
123 of specific retail locations; and (ii) individual lottery winners, except that a winner's name, hometown,  
124 and amount won shall be disclosed.

125 19. Records of the Board for Branch Pilots relating to the chemical or drug testing of a person  
126 regulated by the Board, where such person has tested negative or has not been the subject of a  
127 disciplinary action by the Board for a positive test result.

128 20. Records, investigative notes, correspondence, and information pertaining to the planning,  
129 scheduling and performance of examinations of holder records pursuant to the Uniform Disposition of  
130 Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer, his agents,  
131 employees or persons employed to perform an audit or examination of holder records.

132 21. Records of the Virginia Department of Emergency Management or a local governing body  
133 relating to citizen emergency response teams established pursuant to an ordinance of a local governing  
134 body, to the extent that such records reveal the name, address, including e-mail address, telephone or  
135 pager numbers, or operating schedule of an individual participant in the program.

136 22. Records of state or local park and recreation departments and local and regional park  
137 authorities to the extent such records contain information identifying a person under the age of 18 years.  
138 However, nothing in this subdivision shall operate to prohibit the disclosure of information defined as  
139 directory information under regulations implementing the Family Educational Rights and Privacy Act,  
140 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out  
141 requirements provided by such regulations. Access shall not be denied to the parent, including a  
142 noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated  
143 or a court of competent jurisdiction has restricted or denied such access. For records of such persons  
144 who are emancipated, the right of access may be asserted by the subject thereof. Any parent or  
145 emancipated person who is the subject of the record may waive, in writing, the protections afforded by  
146 this subdivision. If the protections are so waived, the public body shall open such records for inspection  
147 and copying.

148 23. Records submitted for inclusion in the Statewide Alert Network administered by the  
149 Department of Emergency Management, to the extent that they reveal names, physical addresses, email  
150 addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless  
151 or portable communications device information, or operating schedules of individuals or agencies,  
152 where the release of such information would compromise the security of the Statewide Alert Network or  
153 individuals participating in the Statewide Alert Network.

154 24. Records of the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

155 25. Records of the Virginia Retirement System acting pursuant to § 51.1-124.30, of a local  
156 retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement  
157 system), or of the Virginia College Savings Plan, acting pursuant to § 23-38.77 relating to:



158 a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings  
159 Plan on the pursuit of particular investment strategies, or the selection or termination of investment  
160 managers, prior to the execution of such investment strategies or the selection or termination of such  
161 managers, to the extent that disclosure of such records would have an adverse impact on the financial  
162 interest of the retirement system or the Virginia College Savings Plan; and

163 b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a  
164 private entity to the retirement system or the Virginia College Savings Plan, to the extent disclosure of  
165 such records would have an adverse impact on the financial interest of the retirement system or the  
166 Virginia College Savings Plan.

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

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

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

172 (3) Stating the reasons why protection is necessary.

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

175 Nothing in this subdivision shall be construed to authorize the withholding of the identity or  
176 amount of any investment held or the present value and performance of all asset classes and subclasses.

177 26. Records of the Department of Corrections made confidential by § 53.1-233.

178 27. Records maintained by the Department of the Treasury or participants in the Local  
179 Government Investment Pool (§ 2.2-4600 et seq.), to the extent such records relate to information  
180 required to be provided by such participants to the Department to establish accounts in accordance with  
181 § 2.2-4602.

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

185           29. Records maintained in connection with fundraising activities by the Veterans Services  
186 Foundation pursuant to § 2.2-2716 to the extent that such records reveal the address, electronic mail  
187 address, facsimile or telephone number, social security number or other identification number appearing  
188 on a driver's license, or credit card or bank account data of identifiable donors, except that access shall  
189 not be denied to the person who is the subject of the record. Nothing in this subdivision, however, shall  
190 be construed to authorize the withholding of records relating to the amount, date, purpose, and terms of  
191 the pledge or donation or the identity of the donor, unless the donor has requested anonymity in  
192 connection with or as a condition of making a pledge or donation. The exclusion provided by this  
193 subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or  
194 contracting with the foundation for the performance of services or other work or (ii) the terms and  
195 conditions of such grants or contracts.

196           30. Names, physical addresses, telephone numbers, and email addresses contained in  
197 correspondence between an individual and a member of the governing body, school board, or other  
198 public body of the locality in which the individual is a resident, unless the correspondence relates to the  
199 transaction of public business. However, no record that is otherwise open to inspection under this  
200 chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within  
201 any such correspondence.

202           31. Records of the Commonwealth's Attorneys' Services Council, to the extent such records are  
203 prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state  
204 prosecutors or law-enforcement personnel, where such records are not otherwise available to the public  
205 and the release of such records would reveal confidential strategies, methods or procedures to be  
206 employed in law-enforcement activities, or materials created for the investigation and prosecution of a  
207 criminal case.

208           32. Records provided to the Department of Aviation by other entities of the Commonwealth in  
209 connection with the operation of aircraft, where the records would not be subject to disclosure by the  
210 entity providing the records. The entity providing the records to the Department of Aviation shall

211 identify the specific portion of the records to be protected and the applicable provision of this chapter  
212 that exempts the record or portions thereof from mandatory disclosure.

213 33. Records created or maintained by or on the behalf of the judicial performance evaluation  
214 program related to an evaluation of any individual justice or judge made confidential by § 17.1-100.

215 34. (Effective July 1, 2018) Records of the Virginia Alcoholic Beverage Control Authority to the  
216 extent such records contain (i) information of a proprietary nature gathered by or in the possession of the  
217 Authority from a private entity pursuant to a promise of confidentiality; (ii) trade secrets, as defined in  
218 the Uniform Trade Secrets Act (§ 59.1-336 et seq.), of any private entity; (iii) financial records of a  
219 private entity, including balance sheets and financial statements, that are not generally available to the  
220 public through regulatory disclosure or otherwise; (iv) contract cost estimates prepared for the (a)  
221 confidential use in awarding contracts for construction or (b) purchase of goods or services; or (v) the  
222 determination of marketing and operational strategies where disclosure of such strategies would be  
223 harmful to the competitive position of the Authority.

224 In order for the records identified in clauses (i) through (iii) to be excluded from the provisions  
225 of this chapter, the private entity shall make a written request to the Authority:

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

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

229 c. Stating the reasons why protection is necessary.

230 The Authority shall determine whether the requested exclusion from disclosure is necessary to  
231 protect such records of the private entity. The Authority shall make a written determination of the nature  
232 and scope of the protection to be afforded by it under this subdivision.

233

#

**SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_**

1 A BILL to amend and reenact §§ 2.2-3705.3, 2.2-3711, and 22.1-253.13:3 of the Code of Virginia,  
2 relating to the Virginia Freedom of Information Act; records of administrative investigations by  
3 the Department of Human Resource Management.

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

5 **1. That §§ 2.2-3705.3, 2.2-3711, and 22.1-253.13:3 of the Code of Virginia are amended and**  
6 **reenacted as follows:**

7 **§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative**  
8 **investigations.**

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

11 1. (Effective until July 1, 2018) Confidential records of all investigations of applications for  
12 licenses and permits, and of all licensees and permittees, made by or submitted to the Alcoholic  
13 Beverage Control Board, the Virginia Lottery, the Virginia Racing Commission, the Department of  
14 Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1  
15 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the  
16 Department of Criminal Justice Services.

17 1. (Effective July 1, 2018) Confidential records of all investigations of applications for licenses  
18 and permits, and of all licensees and permittees, made by or submitted to the Virginia Alcoholic  
19 Beverage Control Authority, the Virginia Lottery, the Virginia Racing Commission, the Department of  
20 Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1  
21 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the  
22 Department of Criminal Justice Services.

23 2. Records of active investigations being conducted by the Department of Health Professions or  
24 by any health regulatory board in the Commonwealth.

25 3. Investigator notes, and other correspondence and information, furnished in confidence with  
26 respect to an active investigation of individual employment discrimination complaints made to the  
27 Department of Human Resource Management, to such personnel of any local public body, including  
28 local school boards, as are responsible for conducting such investigations in confidence, or to any public  
29 institution of higher education. However, nothing in this section shall prohibit the disclosure of  
30 information taken from inactive reports in a form that does not reveal the identity of charging parties,  
31 persons supplying the information, or other individuals involved in the investigation.

32 4. Records of active investigations being conducted by the Department of Medical Assistance  
33 Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

34 5. Investigative notes and other correspondence and information furnished in confidence with  
35 respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice  
36 under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in  
37 accordance with the authority specified in § 2.2-524, or adopted pursuant to § 15.2-965, or adopted prior  
38 to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations  
39 commissions. However, nothing in this section shall prohibit the distribution of information taken from  
40 inactive reports in a form that does not reveal the identity of the parties involved or other persons  
41 supplying information.

42 6. Records of studies and investigations by the Virginia Lottery of (i) lottery agents, (ii) lottery  
43 vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations  
44 that cause abuses in the administration and operation of the lottery and any evasions of such provisions,  
45 or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such official  
46 records have not been publicly released, published or copyrighted. All studies and investigations  
47 referred to under clauses (iii), (iv), and (v) shall be open to inspection and copying upon completion of  
48 the study or investigation.

49 7. Investigative notes, correspondence and information furnished in confidence, and records  
50 otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the  
51 Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate

52 authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud  
53 and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) the Office of the State Inspector  
54 General with respect to an investigation initiated through the Fraud, Waste and Abuse Hotline or an  
55 investigation initiated pursuant to Chapter 3.2 (§ 2.2-307 et seq.); (v) internal auditors appointed by the  
56 head of a state agency or by any public institution of higher education; (vi) the committee or the auditor  
57 with respect to an investigation or audit conducted pursuant to § 15.2-825; or (vii) the auditors,  
58 appointed by the local governing body of any county, city, or town or a school board, who by charter,  
59 ordinance, or statute have responsibility for conducting an investigation of any officer, department, or  
60 program of such body. Records of completed investigations shall be disclosed in a form that does not  
61 reveal the identity of the complainants or persons supplying information to investigators. Unless  
62 disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the  
63 agency involved, the identity of the person who is the subject of the complaint, the nature of the  
64 complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective  
65 action, the identity of the person who is the subject of the complaint may be released only with the  
66 consent of the subject person. Local governing bodies shall adopt guidelines to govern the disclosure  
67 required by this subdivision.

68 ~~8. Information furnished in confidence to the Department of Human Resource Management with~~  
69 ~~respect to an investigation, consultation, or mediation under § 2.2-1202.1, and memoranda,~~  
70 ~~correspondence and other records resulting from any such investigation, consultation or mediation.~~  
71 ~~However, nothing in this section shall prohibit the distribution of information taken from inactive~~  
72 ~~reports in a form that does not reveal the identity of the parties involved or other persons supplying~~  
73 ~~information.~~

74 ~~9.~~The names, addresses and telephone numbers of complainants furnished in confidence with  
75 respect to an investigation of individual zoning enforcement complaints or complaints relating to the  
76 Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et  
77 seq.) made to a local governing body.

78 | ~~10.9.~~ Records of active investigations being conducted by the Department of Criminal Justice  
79 Services pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185  
80 et seq.), and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

81 | ~~11.10.~~ Records furnished to or prepared by the Board of Education pursuant to subsection D of §  
82 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security,  
83 unauthorized alteration, or improper administration of tests by local school board employees responsible  
84 for the distribution or administration of the tests. However, this section shall not prohibit the disclosure  
85 of records to (i) a local school board or division superintendent for the purpose of permitting such board  
86 or superintendent to consider or to take personnel action with regard to an employee or (ii) any  
87 requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity  
88 of any person making a complaint or supplying information to the Board on a confidential basis and (b)  
89 does not compromise the security of any test mandated by the Board.

90 | ~~12.11.~~ Investigator notes, and other correspondence and information, furnished in confidence  
91 with respect to an active investigation conducted by or for the Board of Education related to the denial,  
92 suspension, or revocation of teacher licenses. However, this subdivision shall not prohibit the disclosure  
93 of records to a local school board or division superintendent for the purpose of permitting such board or  
94 superintendent to consider or to take personnel action with regard to an employee. Records of completed  
95 investigations shall be disclosed in a form that does not reveal the identity of any complainant or person  
96 supplying information to investigators. The records disclosed shall include information regarding the  
97 school or facility involved, the identity of the person who was the subject of the complaint, the nature of  
98 the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a  
99 complaint or does not lead to corrective action, the identity of the person who was the subject of the  
100 complaint may be released only with the consent of the subject person. No personally identifiable  
101 information in the records regarding a current or former student shall be released except as permitted by  
102 state or federal law.

103 | ~~13.12.~~ Records, notes and information provided in confidence and related to an investigation by  
104 the Attorney General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42

105 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  
106 18.2, or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, records related to an investigation  
107 that has been inactive for more than six months shall, upon request, be disclosed provided such  
108 disclosure is not otherwise prohibited by law and does not reveal the identity of charging parties,  
109 complainants, persons supplying information, witnesses, or other individuals involved in the  
110 investigation.

111 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

112 A. Public bodies may hold closed meetings only for the following purposes:

113 1. Discussion, consideration, or interviews of prospective candidates for employment;  
114 assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of  
115 specific public officers, appointees, or employees of any public body; and evaluation of performance of  
116 departments or schools of public institutions of higher education where such evaluation will necessarily  
117 involve discussion of the performance of specific individuals. Any teacher shall be permitted to be  
118 present during a closed meeting in which there is a discussion or consideration of a disciplinary matter  
119 that involves the teacher and some student and the student involved in the matter is present, provided the  
120 teacher makes a written request to be present to the presiding officer of the appropriate board.

121 2. Discussion or consideration of admission or disciplinary matters or any other matters that  
122 would involve the disclosure of information contained in a scholastic record concerning any student of  
123 any Virginia public institution of higher education or any state school system. However, any such  
124 student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be  
125 permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if  
126 such student, parents, or guardians so request in writing and such request is submitted to the presiding  
127 officer of the appropriate board.

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

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



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

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

138 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to  
139 actual or probable litigation, where such consultation or briefing in open meeting would adversely affect  
140 the negotiating or litigating posture of the public body; and consultation with legal counsel employed or  
141 retained by a public body regarding specific legal matters requiring the provision of legal advice by such  
142 counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been  
143 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe  
144 will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit  
145 the closure of a meeting merely because an attorney representing the public body is in attendance or is  
146 consulted on a matter.

147 8. In the case of boards of visitors of public institutions of higher education, discussion or  
148 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts  
149 for services or work to be performed by such institution. However, the terms and conditions of any such  
150 gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign  
151 person and accepted by a public institution of higher education in Virginia shall be subject to public  
152 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,  
153 (i) "foreign government" means any government other than the United States government or the  
154 government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity  
155 created under the laws of the United States or of any state thereof if a majority of the ownership of the  
156 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the  
157 membership of any such entity is composed of foreign persons or foreign legal entities, or any legal

158 entity created under the laws of a foreign government; and (iii) "foreign person" means any individual  
159 who is not a citizen or national of the United States or a trust territory or protectorate thereof.

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

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

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

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

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

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

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

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

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

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

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

201 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-  
202 124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of  
203 the University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings  
204 Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or  
205 other ownership interest in an entity, where such security or ownership interest is not traded on a  
206 governmentally regulated securities exchange, to the extent that such discussion (i) concerns  
207 confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the  
208 retirement system or by the Virginia College Savings Plan or provided to the retirement system or the  
209 Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership  
210 interest or the future financial performance of the entity, and (ii) would have an adverse effect on the  
211 value of the investment to be acquired, held or disposed of by the retirement system, the Rector and

212 Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision  
213 shall be construed to prevent the disclosure of information relating to the identity of any investment  
214 held, the amount invested or the present value of such investment.

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

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

234 23. In the case of the Virginia Commonwealth University Health System Authority, discussion  
235 or consideration of any of the following: the acquisition or disposition of real or personal property where  
236 disclosure would adversely affect the bargaining position or negotiating strategy of the Authority;  
237 operational plans that could affect the value of such property, real or personal, owned or desirable for  
238 ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and

239 contracts for services or work to be performed by the Authority; marketing or operational strategies  
240 where disclosure of such strategies would adversely affect the competitive position of the Authority;  
241 members of its medical and teaching staffs and qualifications for appointments thereto; and  
242 qualifications or evaluations of other employees. This exemption shall also apply when the foregoing  
243 discussions occur at a meeting of the Virginia Commonwealth University Board of Visitors.

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

247 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein  
248 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees  
249 by or on behalf of individuals who have requested information about, applied for, or entered into prepaid  
250 tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title  
251 23 is discussed.

252 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee  
253 created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-  
254 336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of  
255 wireless E-911 service.

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

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

266 29. Discussion of the award of a public contract involving the expenditure of public funds,  
267 including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where  
268 discussion in an open session would adversely affect the bargaining position or negotiating strategy of  
269 the public body.

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

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

277 32. [Expired.]

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

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

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

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

288 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program  
289 Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision  
290 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum  
291 scholarship award, review and consider scholarship applications and requests for scholarship award  
292 renewal, and cancel, rescind, or recover scholarship awards.

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

295 39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System  
296 acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-  
297 124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia  
298 College Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's  
299 Investment Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this  
300 chapter pursuant to subdivision 25 of § 2.2-3705.7.

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

303 41. Discussion or consideration by the Board of Education of records relating to the denial,  
304 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision ~~12~~ 11 of  
305 § 2.2-3705.3.

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

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

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

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

318 46. Discussion or consideration of personal and proprietary information that are excluded from  
319 the provisions of this chapter pursuant to (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of §

320 10.1-104.7. This exemption shall not apply to the discussion or consideration of records that contain  
321 information that has been certified for release by the person who is the subject of the information or  
322 transformed into a statistical or aggregate form that does not allow identification of the person who  
323 supplied, or is the subject of, the information.

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

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

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

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

337 E. This section shall not be construed to (i) require the disclosure of any contract between the  
338 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§  
339 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to  
340 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered  
341 to issue industrial revenue bonds by general or special law, to identify a business or industry to which  
342 subdivision A 5 applies. However, such business or industry shall be identified as a matter of public  
343 record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such  
344 bonds.

345 **§ 22.1-253.13:3. Standard 3. Accreditation, other standards, assessments, and releases from**  
346 **state regulations.**



347 A. The Board of Education shall promulgate regulations establishing standards for accreditation  
348 pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), which shall include, but not be limited  
349 to, student outcome measures, requirements and guidelines for instructional programs and for the  
350 integration of educational technology into such instructional programs, administrative and instructional  
351 staffing levels and positions, including staff positions for supporting educational technology, student  
352 services, auxiliary education programs such as library and media services, course and credit  
353 requirements for graduation from high school, community relations, and the philosophy, goals, and  
354 objectives of public education in Virginia.

355 The Board of Education shall promulgate regulations establishing standards for accreditation of  
356 public virtual schools under the authority of the local school board that enroll students full time.

357 The Board shall review annually the accreditation status of all schools in the Commonwealth.  
358 However, the Board may review the accreditation status of a school once every three years if the school  
359 has been fully accredited for three consecutive years. Upon such triennial review, the Board shall review  
360 the accreditation status of the school for each individual year within that triennial review period. If the  
361 Board finds that the school would have been accredited every year of that triennial review period the  
362 Board may accredit the school for another three years. The Board shall review the accreditation status of  
363 any school that (i) in any individual year within the triennial review period would have failed to achieve  
364 full accreditation or (ii) in the previous year has had an adjustment of its boundaries by a school board  
365 pursuant to subdivision 4 of § 22.1-79 that affects at least 10 percent of the student population of the  
366 school.

367 Each local school board shall maintain schools that are fully accredited pursuant to the standards  
368 for accreditation as prescribed by the Board of Education. Each local school board shall review the  
369 accreditation status of all schools in the local school division annually in public session. Within the time  
370 specified by the Board of Education, each school board shall submit corrective action plans for any  
371 schools within its school division that have been designated as not meeting the standards as approved by  
372 the Board.

373           When the Board of Education has obtained evidence through the school academic review process  
374 that the failure of schools within a division to achieve full accreditation status is related to division level  
375 failure to implement the Standards of Quality, the Board may require a division level academic review.  
376 After the conduct of such review and within the time specified by the Board of Education, each school  
377 board shall submit for approval by the Board a corrective action plan, consistent with criteria established  
378 by the Board and setting forth specific actions and a schedule designed to ensure that schools within its  
379 school division achieve full accreditation status. Such corrective action plans shall be part of the relevant  
380 school division's comprehensive plan pursuant to § 22.1-253.13:6.

381           With such funds as are appropriated or otherwise received for this purpose, the Board shall adopt  
382 and implement an academic review process, to be conducted by the Department of Education, to assist  
383 schools that are accredited with warning. The Department shall forward a report of each academic  
384 review to the relevant local school board, and such school board shall report the results of such academic  
385 review and the required annual progress reports in public session. The local school board shall  
386 implement any actions identified through the academic review and utilize them for improvement  
387 planning.

388           B. The Superintendent of Public Instruction shall develop and the Board of Education shall  
389 approve criteria for determining and recognizing educational performance in the Commonwealth's  
390 public school divisions and schools. Such criteria, when approved, shall become an integral part of the  
391 accreditation process and shall include student outcome measurements. The Superintendent of Public  
392 Instruction shall annually identify to the Board those school divisions and schools that exceed or do not  
393 meet the approved criteria. Such identification shall include an analysis of the strengths and weaknesses  
394 of public education programs in the various school divisions in Virginia and recommendations to the  
395 General Assembly for further enhancing student learning uniformly across the Commonwealth. In  
396 recognizing educational performance in the school divisions, the Board shall include consideration of  
397 special school division accomplishments, such as numbers of dual enrollments and students in Advanced  
398 Placement and International Baccalaureate courses, and participation in academic year Governor's  
399 Schools.

400 The Superintendent of Public Instruction shall assist local school boards in the implementation of  
401 action plans for increasing educational performance in those school divisions and schools that are  
402 identified as not meeting the approved criteria. The Superintendent of Public Instruction shall monitor  
403 the implementation of and report to the Board of Education on the effectiveness of the corrective actions  
404 taken to improve the educational performance in such school divisions and schools.

405 C. With such funds as are available for this purpose, the Board of Education shall prescribe  
406 assessment methods to determine the level of achievement of the Standards of Learning objectives by all  
407 students. Such assessments shall evaluate knowledge, application of knowledge, critical thinking, and  
408 skills related to the Standards of Learning being assessed. The Board shall, with the assistance of  
409 independent testing experts, conduct a regular analysis and validation process for these assessments. The  
410 Department of Education shall make available to school divisions Standards of Learning assessments  
411 typically administered by the middle and high schools by December 1 of the school year in which such  
412 assessments are to be administered or when newly developed assessments are available, whichever is  
413 later.

414 The Board shall also provide the option of industry certification and state licensure examinations  
415 as a student-selected verified credit.

416 The Board of Education shall make publicly available such assessments in a timely manner and  
417 as soon as practicable following the administration of such tests, so long as the release of such  
418 assessments does not compromise test security or deplete the bank of assessment questions necessary to  
419 construct subsequent tests, or limit the ability to test students on demand and provide immediate results  
420 in the web-based assessment system.

421 The Board shall include in the student outcome measures that are required by the Standards for  
422 Accreditation end-of-course or end-of-grade assessments for various grade levels and classes, including  
423 the completion of the alternative assessments implemented by each local school board, in accordance  
424 with the Standards of Learning. These assessments shall include end-of-course or end-of-grade tests for  
425 English, mathematics, science, and history and social science and may be integrated to include multiple  
426 subject areas.

427 The Standards of Learning assessments administered to students in grades three through eight  
428 shall not exceed (a) reading and mathematics in grades three and four; (b) reading, mathematics, and  
429 science in grade five; (c) reading and mathematics in grades six and seven; (d) reading, writing, and  
430 mathematics in grade eight; (e) science after the student receives instruction in the grade six science, life  
431 science, and physical science Standards of Learning and before the student completes grade eight; and  
432 (f) Virginia Studies and Civics and Economics once each at the grade levels deemed appropriate by each  
433 local school board.

434 Each school board shall annually certify that it has provided instruction and administered an  
435 alternative assessment, consistent with Board guidelines, to students in grades three through eight in  
436 each Standards of Learning subject area in which a Standards of Learning assessment was not  
437 administered during the school year. Such guidelines shall (1) incorporate options for age-appropriate,  
438 authentic performance assessments and portfolios with rubrics and other methodologies designed to  
439 ensure that students are making adequate academic progress in the subject area and that the Standards of  
440 Learning content is being taught; (2) permit and encourage integrated assessments that include multiple  
441 subject areas; and (3) emphasize collaboration between teachers to administer and substantiate the  
442 assessments and the professional development of teachers to enable them to make the best use of  
443 alternative assessments.

444 Local school divisions shall provide targeted mathematics remediation and intervention to  
445 students in grades six through eight who show computational deficiencies as demonstrated by their  
446 individual performance on any diagnostic test or grade-level Standards of Learning mathematics test that  
447 measures non-calculator computational skills.

448 In addition, to assess the educational progress of students, the Board of Education shall (A)  
449 develop appropriate assessments, which may include criterion-referenced tests and other assessment  
450 instruments that may be used by classroom teachers; (B) select appropriate industry certification and  
451 state licensure examinations; and (C) prescribe and provide measures, which may include nationally  
452 normed tests to be used to identify students who score in the bottom quartile at selected grade levels. An  
453 annual justification that includes evidence that the student meets the participation criteria defined by the

454 Virginia Department of Education shall be provided for each student considered for the Virginia Grade  
455 Level Alternative. Each Individual Education Program team shall review such justification and make the  
456 final determination as to whether or not the Virginia Grade Level Alternative is appropriate for the  
457 student. The superintendent and the school board chairman shall certify to the Board of Education, as a  
458 part of certifying compliance with the Standards of Quality, that there is a justification in the Individual  
459 Education Program for every student who takes the Virginia Grade Level Alternative. Compliance with  
460 this requirement shall be monitored as a part of the special education monitoring process conducted by  
461 the Department of Education. The Board shall report to the Governor and General Assembly in its  
462 annual reports pursuant to § 22.1-18 any school division that is not in compliance with this requirement.

463 The Standards of Learning requirements, including all related assessments, shall be waived for  
464 any student awarded a scholarship under the Brown v. Board of Education Scholarship Program,  
465 pursuant to § 30-231.2, who is enrolled in a preparation program for a high school equivalency  
466 examination approved by the Board of Education or in an adult basic education program or an adult  
467 secondary education program to obtain the high school diploma or a high school equivalency certificate.

468 The Department of Education shall develop processes for informing school divisions of changes  
469 in the Standards of Learning.

470 The Board of Education may adopt special provisions related to the administration and use of  
471 any Standards of Learning test or tests in a content area as applied to accreditation ratings for any period  
472 during which the Standards of Learning content or assessments in that area are being revised and phased  
473 in. Prior to statewide administration of such tests, the Board of Education shall provide notice to local  
474 school boards regarding such special provisions.

475 D. The Board of Education may pursue all available civil remedies pursuant to § 22.1-19.1 or  
476 administrative action pursuant to § 22.1-292.1 for breaches in test security and unauthorized alteration of  
477 test materials or test results.

478 The Board may initiate or cause to be initiated a review or investigation of any alleged breach in  
479 security, unauthorized alteration, or improper administration of tests, including the exclusion of students

480 from testing who are required to be assessed, by local school board employees responsible for the  
481 distribution or administration of the tests.

482 Records and other information furnished to or prepared by the Board during the conduct of a  
483 review or investigation may be withheld pursuant to subdivision ~~11~~ 10 of § 2.2-3705.3. However, this  
484 section shall not prohibit the disclosure of records to (i) a local school board or division superintendent  
485 for the purpose of permitting such board or superintendent to consider or to take personnel action with  
486 regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form  
487 that (a) does not reveal the identity of any person making a complaint or supplying information to the  
488 Board on a confidential basis and (b) does not compromise the security of any test mandated by the  
489 Board. Any local school board or division superintendent receiving such records or other information  
490 shall, upon taking personnel action against a relevant employee, place copies of such records or  
491 information relating to the specific employee in such person's personnel file.

492 Notwithstanding any other provision of state law, no test or examination authorized by this  
493 section, including the Standards of Learning assessments, shall be released or required to be released as  
494 minimum competency tests, if, in the judgment of the Board, such release would breach the security of  
495 such test or examination or deplete the bank of questions necessary to construct future secure tests.

496 E. With such funds as may be appropriated, the Board of Education may provide, through an  
497 agreement with vendors having the technical capacity and expertise to provide computerized tests and  
498 assessments, and test construction, analysis, and security, for (i) web-based computerized tests and  
499 assessments, including computer-adaptive Standards of Learning assessments, for the evaluation of  
500 student progress during and after remediation and (ii) the development of a remediation item bank  
501 directly related to the Standards of Learning.

502 F. To assess the educational progress of students as individuals and as groups, each local school  
503 board shall require the use of Standards of Learning assessments, alternative assessments, and other  
504 relevant data, such as industry certification and state licensure examinations, to evaluate student  
505 progress and to determine educational performance. Each local school shall require the administration of  
506 appropriate assessments to students, which may include criterion-referenced tests and teacher-made tests

507 and shall include the Standards of Learning assessments, the local school board's alternative  
508 assessments, and the National Assessment of Educational Progress state-by-state assessment. Each  
509 school board shall analyze and report annually, in compliance with any criteria that may be established  
510 by the Board of Education, the results from the Stanford Achievement Test Series, Ninth Edition  
511 (Stanford Nine) assessment, if administered, industry certification examinations, and the Standards of  
512 Learning Assessments to the public.

513         The Board of Education shall not require administration of the Stanford Achievement Test  
514 Series, Ninth Edition (Stanford Nine) assessment, except as may be selected to facilitate compliance  
515 with the requirements for home instruction pursuant to § 22.1-254.1.

516         The Board shall include requirements for the reporting of the Standards of Learning assessment  
517 scores and averages for each year, regardless of accreditation frequency, as part of the Board's  
518 requirements relating to the School Performance Report Card. Such scores shall be disaggregated for  
519 each school by student subgroups on the Virginia assessment program as appropriate and shall be  
520 reported to the public within three months of their receipt. These reports (i) shall be posted on the  
521 portion of the Department of Education's website relating to the School Performance Report Card, in a  
522 format and in a manner that allows year-to-year comparisons, and (ii) may include the National  
523 Assessment of Educational Progress state-by-state assessment.

524         G. Each local school division superintendent shall regularly review the division's submission of  
525 data and reports required by state and federal law and regulations to ensure that all information is  
526 accurate and submitted in a timely fashion. The Superintendent of Public Instruction shall provide a list  
527 of the required reports and data to division superintendents annually. The status of compliance with this  
528 requirement shall be included in the Board of Education's annual report to the Governor and the General  
529 Assembly as required by § 22.1-18.

530         H. Any school board may request the Board of Education for release from state regulations or, on  
531 behalf of one or more of its schools, for approval of an Individual School Accreditation Plan for the  
532 evaluation of the performance of one or more of its schools as authorized for certain other schools by the  
533 Standards of Accreditation pursuant to 8VAC20-131-280 C of the Virginia Administrative Code.

