

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.

