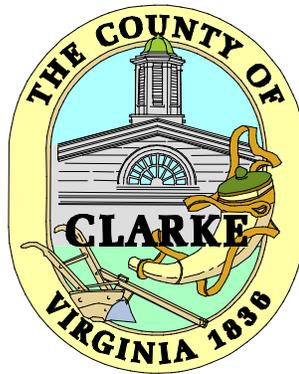


# Industrial Development Authority of the Clarke County Virginia Board of Directors



## 2018 Organizational and Quarterly Meeting Packet

January 25, 2018



## Industrial Development Authority of the County of Clarke Virginia

### Agenda

Thursday, January 25, 2018, 1:00 pm

Meeting Room AB, Berryville Clarke County Government Center  
101 Chalmers Court 2nd Floor, Berryville, Virginia

1. Call to Order
2. Adoption of Agenda
3. Organizational Items:
  - Elect Chair
  - Elect Vice Chair
  - Elect Secretary
  - Elect Treasurer
  - Set Meeting Date, Time and Location
  - Adopt Bylaws and Rules and Procedures of the Industrial Development Authority of the Clarke County, Virginia
4. Approval of October 26, 2018 Minutes
5. Economic Development Director Report
6. Treasurer's Report
7. Old Business:
  - Investment Options Review with Janice Kuhn
    - o Guiding Principles
8. New Business:
  - FY2019 Budget Discussion
  - Preliminary Notification of Potential Funding for the Town of Berryville
  - Potential Joint Meeting of the EDAC and IDA Discussion
9. Adjourn

#### Distributed in Packet

- Building Department YTD New Single Family Dwellings
- IDA Follow-up Items
- IDA 2017 Annual Report
- Annual Distribution:

101 Chalmers Court, Suite B  
Berryville, VA 22611

Telephone: [540] 955-5100  
Fax: [540] 955-5180

- Code of Clarke County, Virginia 1997 as amended Code of Clarke County, Virginia Chapter 36 Chapter 36 Industrial Development Authority
- Code of Virginia Title 15.2. Counties, Cities and Towns Chapter 49. Industrial Development and Revenue Bond Act
- Code of Virginia Title 2.2. Administration of Government Chapter 37. Virginia Freedom of Information Act
- Code of Virginia Title 42.1. Libraries Chapter 7. Virginia Public Records Act
- FY2017 Financial Report For Year Ended June 30, 2017 by Robinson Farmer Cox *[Attached to electronic packet. Hard copy to be distributed at meeting.]*

# Call to Order

# Adoption of Agenda

*Proposed motion: Move to adopt agenda as [presented] or [as amended - title of agenda item[s] not listed on the published agenda provided to the public.]*

# Industrial Development Authority of the Clarke County Virginia Board of Directors

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## Organizational Items:

- Elect Chair
  - o Lora Walburn, IDA Clerk, will call for nominations for 2018 Chair.  
*Action: Move to nominate and elect \_\_\_\_\_ to serve as 2018 Chair.*
  - o Lora Walburn, IDA Clerk, will call for vote on the motion to nominate and elect. Following vote, the meeting will be turned over to the newly elected 2018 Chair.
  
- Elect Vice Chair
  - o Chair will call for nominations for 2018 Vice Chair.  
*Action: Move to nominate and elect \_\_\_\_\_ to serve as 2018 Vice Chair.*
  - o Chair will call for vote on the motion to nominate and elect.
  
- Elect Secretary
  - o Chair will call for nominations for 2018 Secretary.  
*Action: Move to nominate and elect \_\_\_\_\_ to serve as 2018 Vice Chair.*
  - o Chair will call for vote on the motion to nominate and elect.
  
- Elect Treasurer
  - o Chair will call for nominations for 2018 Treasurer.  
*Action: Move to nominate and elect \_\_\_\_\_ to serve as 2018 Vice Chair.*
  - o Chair will call for vote on the motion to nominate and elect.
  
- Set Meeting Date, Time and Location
  - Action: Move to adopt the schedule as presented, or corrected, modified with specifics*
  
- Adopt Bylaws and Rules and Procedures of the Industrial Development Authority of the Clarke County, Virginia. *Staff recommends the following changes:*
  - o *Checks \$500 and greater require signature of Treasurer and Chair.*
  - o *Finance Subcommittee members: Chair, Treasurer, one member at large**Action: Move to adopt dated July 28, 2016 as presented or corrected, modified with specifics.*



## County of Clarke Industrial Development Authority

### 2018 Meeting Schedule

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January 25 – Organizational

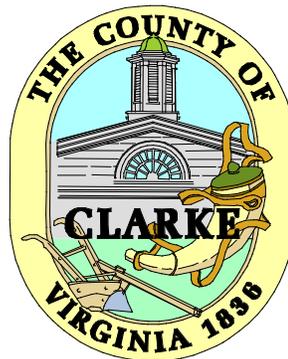
April 26

July 26

October 25

1:00 pm, 4th Thursday Quarterly  
Meeting Room AB

# Bylaws and Rules and Procedures of the Industrial Development Authority of the Clarke County, Virginia



## Bylaws Of The Industrial Development Authority Of The Clarke County, Virginia

Distribution: All Directors, County Administration, Director of Economic Development

### Record of Revision

Revision No.	Revision Date	Description
New	01/12/1999	New Document
1	07/28/2016	<p>Amend Section 204. Annual Meetings. The annual meeting of the Board of Directors shall be held in January of each year and meetings held once per quarter, or at such time as needed, throughout the year in the Berryville Clarke County Government Center, 101 Chalmers Court, Second Floor, Berryville, Virginia or at such location as the Board of Directors may designate.</p> <p>Add Section 209: Removal of Director Before Their Terms in Office Expires: Should the Executive Committee, by a majority vote, deem that the attendance pattern of a Director at properly scheduled meetings is unacceptable, or should the performance of a Director be deemed unacceptable for any other reason by a majority vote of the Executive Committee, then the Chair of the Authority shall solicit the resignation of such a Director.</p> <p>In the event that no resignation is forthcoming, then the Executive Committee shall recommend the termination of such Director to the Clarke County Board of Supervisors.</p> <p>Amend Section 403. Public Attendance at Meetings: Inspection of Records. All meetings of the Board of Directors at which formal action is taken shall be open to the public. The Board of Directors may hold executive or closed meetings in accordance with The Virginia Freedom of Information Act, <del>Chapter 21, Title 2.1,</del> Chapter 37 Title 2.2 Administration of Government Code of Virginia (1950, as amended), as may be in effect from time to time (the "Virginia Freedom of Information Act").</p> <p>Section 404. Rules Regulations and Procedure: Add to Format of Meeting Approval of agenda</p> <p>Correct name throughout to "Industrial Development Authority of the Clarke County, Virginia"</p> <p>Section 206. Notices. Strike telegraph. Add email.</p> <p>Add section 210</p>
2	01/26/2018	<p>Staff Recommendations:</p> <p>Section 304: Add Finance subcommittee section.</p> <p>Section 405: Add "All check or money transfers exceeding \$499 shall be countersigned by the Treasurer and Chair."</p>

Revision Date: ~~07-28-2016~~ Draft for Review 01-26-2018

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# Bylaws Of The Industrial Development Authority Of The Clarke County, Virginia

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# Bylaws Of The Industrial Development Authority Of The Clarke County, Virginia

## Industrial Development Authority Of The Clarke County, Virginia **Bylaws**

### Article I

#### **Name. Purpose And Powers.**

##### Section 101. Name.

The name of this body shall be the "Industrial Development Authority of the Clarke County, Virginia" (the "Authority").

##### Section 102. Purposes.

The purposes of the Authority shall be as set forth in Section 15.2-490 I of the Code of Virginia (1950, as amended) and all other purposes as are now or may hereafter be set forth in the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2 of the Code of Virginia (1950, as amended) (the "Act").

##### Section 103. Powers.

The Authority shall be vested with all powers as set forth in Section 15.2-4905 of the Code of Virginia (1950, as amended) and all other powers as are now or may hereafter be set forth in the Act.

### Article II

#### **Directors.**

##### Section 201. Board of Directors.

The Authority shall be governed by a Board of Directors in which all powers of the Authority shall be vested.

##### Section 202. Number, Appointment and Terms of Directors.

There shall be seven (7) Directors of the Authority who shall be appointed by the Board of Supervisors of Clarke County, Virginia (the "Board of Supervisors").

Directors shall be appointed for a term of four (4) years, except appointments to fill vacancies, which shall be for the remainder of such un-expired term.

## Bylaws Of The Industrial Development Authority Of The Clarke County, Virginia

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If at the end of any term of office of any Director or successor thereto has not been appointed, then the Director whose term of office has expired shall continue to hold office until a successor is appointed and qualified.

Each Director, upon his initial appointment and any reappointment, shall take and subscribe the oath prescribed by Section 49-1 of the Code of Virginia (1950, as amended).

No Director shall be an officer or employee of Clarke County, Virginia.

Every Director shall, at the time of his appointment and thereafter, reside in Clarke County, Virginia or in an adjoining locality.

### Section 203. Vacancies.

The Chairman of the Authority shall promptly notify the Board of Supervisors of any vacancy that may occur in the Board of Directors.

The Board of Supervisors shall make any appointments necessary to fill any vacancies upon the Board of Directors of the Authority in accordance with the Act.

In the event the term of any Director of the Authority shall expire without the Director being reappointed or a new Director being appointed by the Board of Supervisors, then the Director whose term has expired shall continue in office until his reappointment and qualification or until his successor shall have been appointed and qualified.

### Section 204. Annual Meetings.

The annual meeting of the Board of Directors shall be held in January of each year and meetings held once per quarter, or at such time as needed throughout the year in the Berryville Clarke County Government Center, 101 Chalmers Court, Second Floor, Berryville, Virginia or at such location as the Board of Directors may designate.

### Section 205. Special Meetings.

Special meetings of the Board of Directors may be called at any time by the Chairman of the Board of Directors or by any two Directors of the Authority, to be held at the time and place designated in the notice of the meeting.

### Section 206. Notices.

Notice specifying the time and place of any annual or special meeting of the Board of Directors shall be given to each Director of the Authority at least 24 hours before such meeting by delivering such notice to him or her or by telephoning, emailing or mailing

## Bylaws Of The Industrial Development Authority Of The Clarke County, Virginia

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such notice to him or her at least 24 hours before the meeting. Any notice postmarked the day before the meeting shall be deemed to have been mailed at least 24 hours before the meeting.

Notices of special meetings of the Board of Directors shall specify generally the purposes thereof.

The presence of any Director at a meeting shall be deemed an acknowledgment of the timely receipt of notice thereof or a waiver of any such notice, unless specific objection to the notice of such meeting shall be raised by any Director in attendance.

Meetings may be held without notice if all of the Directors are present or if those Directors not present waive notice prior to the meeting, which waiver shall be in writing, signed either before or after the meeting.

### Section 207. Quorum.

Four (4) members of the Board of Directors shall constitute a quorum of the Board of Directors for the purpose of conducting Authority business, exercising Authority powers and for all other purposes, except that no facilities owned by the Authority shall be leased or disposed of in any manner without a majority vote of the Directors of the Authority.

No vacancy in the membership of the Board of Directors shall impair the right of a quorum to exercise all the powers and perform all the duties of the Authority.

### Section 208. Voting.

Except as otherwise required in these Bylaws or by the Act, any question submitted to a vote of the Board of Directors shall be passed by simple majority of those Directors present and voting.

No Director shall be allowed to vote by proxy at any meeting of the Authority.

### Section 209: Removal of Directors Before Their Terms in Office Expires

Should the Executive Committee, by a majority vote, deem that the attendance pattern of a Director at properly scheduled meetings is unacceptable, or should the performance of a Director be deemed unacceptable for any other reason by a majority vote of the Executive Committee, then the Chair of the Authority shall solicit the resignation of such Director.

In the event that no resignation is forthcoming, then the Executive Committee shall recommend the termination of such Director to the Clarke County Board of Supervisors.

## Bylaws Of The Industrial Development Authority Of The Clarke County, Virginia

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### Section 210: Remuneration for Meeting Attendance

Each Director shall receive \$50 for attending a quarterly meeting. The Authority Treasurer shall be responsible for issuing payment.

There shall be no remuneration for special meetings.

## **Article III**

### **Officers**

#### Section 301. Officers.

The officers of the Authority shall be a Chairman, a Vice-Chairman, and from their membership or not, as they desire, Secretary and Treasurer, or a Secretary-Treasurer, who shall continue to hold office until their respective successors are elected and qualified.

#### Section 302. Duties of Officers.

The duties of the officers of the Authority shall include, but shall not be limited to, the following:

##### A. Chairman:

- Preside at all meetings of the Authority;
- Be responsible for notice of meetings to the Directors and officers of the Authority;
- Be responsible for all correspondence;
- Make committee appointments;
- May appoint members of the Authority as liaison to any other governmental agencies, authorities and commissions;
- Act as a signatory on behalf of the Authority when authorized; and,
- Perform such other duties as are incident to his office or may properly be required of him by the Board of Directors.

##### B. Vice Chairman shall, in the absence of the Chairman,

- Exercise all of the Chairman's powers and duties;
- In the event the office of Chairman shall become vacant, the Vice-Chairman shall immediately become the Chairman.

## Bylaws Of The Industrial Development Authority Of The Clarke County, Virginia

### C. Secretary:

- Transcribe detailed minutes of every meeting or proceeding of the Authority;
- Issue notices for all meetings;
- Keep the seal of the Authority and all books and records of the Authority; and
- Perform such other duties as may be directed by the Board of Directors.

### D. Treasurer:

- Custody of all funds and securities of the Authority and deposit the same in the name of the Authority in such bank or banks as the Directors may from time to time determine;
- Shall sign all checks, drafts, notes and orders for the payment of moneys and shall payout and dispose of the same under the direction of the Chairman.
- Keep suitable records of all financial transactions of the Authority and
- Arrange to have the same audited following the end of each fiscal year of the Authority, subject to the approval of the Board of Directors. Copies of each audit shall be furnished to the Board of Supervisors.

### Section 303. Elections.

Officers of the Authority shall be elected annually at the annual meeting of the Authority held in January of each year, shall commence their duties immediately upon election and shall continue in office thereafter until a successor shall have been elected and qualified.

The Directors may elect at any annual or special meeting such officers as may be necessary to fill any vacancy created by resignation, expiration of term of appointment as a Director, or otherwise. Any officer so elected shall serve until his successor shall have been elected at the next annual election and qualified.

### Section 304. Finance Subcommittee

*The Finance Subcommittee shall consist of:*

- *Chair*
- *Treasurer*
- *Member at large, as assigned by the Chair*

## Article IV.

### General Provisions

Revision Date: ~~07-28-2016~~ Draft for Review 01-26-2018

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## Bylaws Of The Industrial Development Authority Of The Clarke County, Virginia

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### Section 401. Seal.

The seal of the Authority shall be a flat-faced circular die with the name of the Authority engraved thereon and such other words and figures as may appear thereon as evidenced by a sample of such seal which appears on the margin of these Bylaws opposite this Section.

### Section 402. Compensation.

The Directors and officers of the Authority shall receive no salary but may be compensated such amount per regular, special or committee meeting or per each official representation as may be approved by the Board of Supervisors, not to exceed the amount as provided in the Act for each meeting or official representation, and shall be reimbursed for necessary traveling and other expenses incurred in the performance of their duties.

### Section 403. Public Attendance at Meetings: Inspection of Records.

All meetings of the Board of Directors at which formal action is taken shall be open to the public.

The Board of Directors may hold executive or closed meetings in accordance with The Virginia Freedom of Information Act, Chapter 37 Title 2.2 Administration of Government Code of Virginia (1950, as amended), as may be in effect from time to time (the "Virginia Freedom of Information Act").

All official records of the Authority shall be open for inspection and copying in accordance with the provisions of the Virginia Freedom of Information Act.

Directors and officers of the Authority may inspect all Authority records at any reasonable time.

### Section 404. Rules Regulations and Procedure.

- A. Roberts Rules of Order, Newly Revised, shall govern all matters of procedure not specifically set forth in these Bylaws or the Act.
- B. The format of meetings of the Board of Directors may be as follows:
  - (1) Call to order
  - (2) Recording of attendance
  - (3) Adoption of Agenda
  - (4) Reading, approval, and correction of the minutes of the last meeting.

## Bylaws Of The Industrial Development Authority Of The Clarke County, Virginia

- (5) Reports of officers and committee
- (6) Old Business
- (7) New Business
- (8) Adjournment

C. The Board of Directors may adopt, amend and alter from time to time such rules, regulations or forms, which it deems necessary or expedient from the management of the affairs of the Authority and which shall not be inconsistent with the Act.

The Secretary of the Authority shall maintain current copies of the Bylaws, and any rules, regulations and forms adopted by the Authority.

### Section 405. Authorized Signatures.

Checks, notes, drafts and other legal documents shall be signed by such Directors or officers of the Authority as may be specified in the act, these Bylaws, or as the Board of Directors may, from time to time, authorize by resolution.

***All check or money transfers exceeding \$499 shall be countersigned by the Chair.***

The signature of any officer or Director may be by facsimile when authorized by the Board of Directors.

## Article V

### Amendments

#### Section 501. Amendment of Bylaws.

These Bylaws may be amended, repealed or altered, in whole or in part, by a majority vote of the Board of Directors at any duly constituted meeting, provided notice of such amendment shall have been given to the Directors in the notice of such meeting.

# Rules and Procedures Of The Industrial Development Authority Of The Clarke County, Virginia

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## Industrial Development Authority Of The Clarke County, Virginia **Rules and Procedures**

### Article I

#### Purpose and Scope

##### Section 1.1 Purpose.

These Rules shall govern the submission of Applications to the Authority, application and administrative fees, consideration of matters to be brought to the attention of the Authority relating to the authorization, issuance and sale of its Bonds, the adoption of Financing Documents, reports to be submitted to the Authority, and such other matters as are contained herein.

##### Section 1.2 Scope.

These Rules are supplementary to the Authority's Bylaws and the Act. In the event of any conflict between the Authority's Bylaws, the Act and these Rules, the provisions of the Bylaws and the Act shall prevail.

### Article II

#### Definitions

##### Section 2.1 Definitions.

As used in these rules and procedures, the following terms shall have the meaning as set forth herein, unless the context clearly requires otherwise:

"Act" shall mean the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended.

"Applicant" shall mean any individual, person, firm, corporation, partnership or other entity applying for industrial development revenue bond financing, or for whose benefit the Authority has issued its Bonds, or who requests the Authority to take any action.

"Application" shall mean the Authority's application for industrial development revenue bond financing as in effect from time to time.

## Rules and Procedures Of The Industrial Development Authority Of The Clarke County, Virginia

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"Authority" shall mean the Industrial Development Authority of the Clarke County, Virginia, a political subdivision of the Commonwealth of Virginia.

"Bonds" shall mean any notes, bonds and other obligations authorized to be issued by the Authority pursuant to the Act.

"Code" shall mean the Code of Virginia of 1950, as amended.

"Financing Documents" shall mean any resolutions, instruments, documents, papers, elections, certificates or financing statements required to be adopted or authorized, executed and delivered by the Authority in connection with the authorization, issuance and sale of its Bonds.

"IRC" shall mean the Internal Revenue Code of 1986, as amended.

"Project" shall mean any land, improvements, machinery, equipment or property financed by the issuance and sale of the Authority's Bonds.

"Rules" shall mean these Rules and Procedures of the Authority, as may be in effect from time to time.

### Article III

#### General

##### Section 3.1 Copies to be Provided Applicants.

A copy of these rules and procedures shall be furnished by the Authority's Secretary to each prospective Applicant.

##### Section 3.2 Compliance with Rules and Procedures.

Each Applicant shall comply with these rules and procedures in the submission of its Application or any Financing Documents to the Authority and in requesting that the Authority take any action, including the adoption of Financing Documents.

Failure to comply with these rules and procedures shall constitute sufficient reason for the Authority to refuse to consider any Application, Financing Documents or any other matter to be brought before the Authority by or on behalf of any Applicant.

##### Section 3.3 Amendments.

These rules and procedures may be changed from time to time by the Authority by the  
Revision Date: 07-28-2016 Page 2

## Rules and Procedures Of The Industrial Development Authority Of The Clarke County, Virginia

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vote of a majority of its Directors present at any meeting of the Authority, provided notice of such change shall have been given to each Director before such meeting.

These rules and procedures may, notwithstanding the foregoing, be amended without prior notice upon the affirmative vote of all Directors of the Authority.

### Section 3.4 Preparation and Distribution of Agenda and Minutes.

- (a) A preliminary agenda for the Authority's meetings shall be prepared and distributed by the Authority's Secretary [no later than three (3) days] before the Authority's scheduled meeting date. The agenda may state that it is a preliminary agenda subject to change at or before the Authority's meeting.

*Failure to distribute the preliminary agenda as set forth above shall in no way affect the validity of any actions taken by the Authority at the meeting.*

- (b) Preliminary drafts of the minutes of the Authority's meeting shall, as soon as practicable following the meeting, be mailed or delivered to each officer and director of the Authority and the Authority's counsel. Each preliminary copy of the minutes so distributed shall be marked to indicate that it is a preliminary draft subject to additions or corrections at the Authority's next meeting.

## Article IV

### Applications Procedures, Fees and Requirements

#### Section 4.1 Applications.

At least twenty-one days before the Authority's meeting at which the Application is to be considered, each Applicant shall submit a fully and accurately completed Application to:

- each Director of the Authority,
- the Authority's Secretary and Counsel and
- the Economic Development Director of the County of Clarke,

Each Application shall include all requested exhibits. In the event all requested exhibits are not available or not to be made part of the public record, a statement of explanation will be attached to the Application.

The Authority recommends that each Applicant seek the advice of the Economic Development Director of the County of Clarke or the Authority's Counsel respecting completion of the Application before submitting it to the Authority.

## Rules and Procedures Of The Industrial Development Authority Of The Clarke County, Virginia

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### Section 4.2 Administrative Fees.

Each application submitted pursuant to Section 4.1 shall be accompanied with an application fee of \$5,000; provided, however, that if the amount of the application is \$1,000,000 or less, such fee shall be \$1,000.

The Authority also charges an annual administrative fee equal to:

- 1/10th of one percent for transactions of \$1,000,000 or less;
- 1/15th of one percent for transactions between \$1,000,001 and \$5,000,000; and
- 1/20th of one percent for transactions of more than \$5,000,000.

Such annual administrative fees shall be payable on the anniversary date of the closing of the transaction, and shall be computed by multiplying the applicable percentage by the outstanding principal balance of the bonds on such date.

The Authority reserves the right to modify the fees described in this section on a case-by-case basis, in the sole discretion of the Authority.

Fees, upon acceptance by the Authority, are non-refundable.

### Section 4.3 Costs and Expenses.

The Authority requires reimbursement of its costs and expenses incurred in connection with the issuance and sale of its Bonds and by virtue of its Bonds being outstanding. (See Section 5.2)

### Section 4.4 Modification Fee; Transaction Fee.

- (a) The Authority may, in its discretion, require payment of a \$1,000 modification fee by any Applicant requesting the Authority to approve any modification or amendment to its Bonds or the applicable Financing Documents.

The modification fee shall be due and payable on or before the date of execution and delivery of the modification or amendment.

- (b) The Authority may, in its discretion, charge a transaction fee in the amount of \$1,000 to any Applicant requesting the Authority to take any action, regardless of whether the Authority has Bonds outstanding for the benefit of the Applicant.

The transaction fee will be in addition to any other fees required hereunder.

### Section 4.5 Transcripts of Proceedings.

Each Applicant receiving Bond financing through the Authority shall furnish to the  
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## Rules and Procedures Of The Industrial Development Authority Of The Clarke County, Virginia

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Authority upon the sale and delivery of the Bonds, two complete transcripts of the Financing Documents relating to such Bonds. Bond transcripts shall be hardback bound in library standard quality binders at the cost and expense of the Applicant.

### Section 4.6 Bond Validation Proceedings.

The Authority may require that before issuance, its Bonds be validated by the Circuit Court of the County of Clarke, Virginia, pursuant to the requirements of Article 6, Chapter 26, Title 15.2 of the Code. The costs, expenses and fees incurred in connection with any bond validation proceedings required by the Authority, including attorneys' fees, shall be paid by the Applicant.

### Section 4.7 Additional Information Required of Applicants

- (a) The Authority may adopt an inducement resolution conditioned upon the subsequent furnishing of certain information satisfactory to the Authority. All required information shall be promptly furnished to the Authority and failure of any Applicant to furnish such information shall constitute a ground for rescission of any inducement resolution adopted pursuant to such conditions.
- (b) The Authority may, at its option, require the furnishing of appraisals, evaluations or reports respecting the Project or any portion thereof. The Authority may retain advisors and consultants to advise it regarding any Project or other action that it is requested to undertake by any Applicant. All costs, fees and expenses of such appraisals, reports, consultants and advisors incurred by the Authority after prior notification to the Applicant shall be paid by the Applicant.
- (c) Since the Authority usually acts based upon information furnished to it solely by the Applicant, the Authority reserves the right to require at any time the furnishing of additional information concerning the Applicant, its financial statements, and any other information deemed relevant by the Authority. In instances where the Applicant has undergone changes in form or management or where the security to be given for payment of the Bonds has changed, the Applicant shall report such changes promptly to the Authority.

### Section 4.8 Notice of Public Hearing

The Applicant shall publish a notice of public hearing with respect to each Application for which a public hearing is required by the Code once a week for two successive weeks, to be published in a newspaper having general circulation in the County of Clarke, Virginia and in such other newspapers as may be required.

The notice shall be in a form approved by the Authority's Counsel and Bond Counsel.

## Rules and Procedures Of The Industrial Development Authority Of The Clarke County, Virginia

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The second publication shall be not less than six nor more that twenty-one days before the Authority's meeting at which the Application is to be considered.

Persons who are interested in speaking at any public hearing held by the Authority are encouraged to submit their comments in writing.

The Authority shall publish such additional notice or notices and hold such additional public hearings with respect to each Application as may be required by law or recommended by Counsel to the Authority.

### Section 4.9 Projects Outside of the County of Clarke, Virginia

Any Applicant to finance a Project located outside the County of Clarke, Virginia shall be accompanied by evidence satisfactory to the Authority that the county, city or town in which the Project is proposed to be located approves the proposed financing of the Project by the Authority.

Following the adoption of an inducement resolution for such Project, the Applicant shall furnish to the Authority a certified copy of a resolution duly adopted by the governing body of such county, city or town stating that such governing body concurs with the inducement resolution adopted by the Authority evidence satisfactory to the Authority that the county, city or town in which the Project is proposed to be located approves the proposed financing of the Project by the Authority.

Following the adoption of an inducement resolution for such Project, the Applicant shall furnish to the Authority a certified copy of a resolution duly adopted by the governing body of such county, city or town stating that such governing body concurs with the inducement resolution adopted by the Authority.

The Authority may also require additional evidence concerning the impact or effect of the Project on the area where it will be located, whether the Project has received appropriate local approvals or permits, and whether the Project is acceptable to the inhabitants where it will be located

## Article V

### PROVISIONS TO BE INCORPORATED INTO RESOLUTIONS AND FINANCING DOCUMENTS

#### Section 5.1 Inducement Resolutions.

Each inducement resolution adopted by the Authority shall provide that it shall continue in full force and effect for a period of two years unless specifically extended by the Authority.

## Rules and Procedures Of The Industrial Development Authority Of The Clarke County, Virginia

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### Section 5.2 Payment of Authority Expenses.

The Financing Documents adopted by the Authority for the benefit of any Applicant shall provide that the Applicant agrees to pay all costs, fees and expenses incurred by the Authority (including attorney's fees) in connection with: where it will be located.

- (a) the authorization, issuance and sale of the Authority's Bonds;
- (b) the ownership, occupation, operation or use of the Project being financed, whether owned by the Authority or the Applicant;
- (c) prepayment or redemption of the Authority's Bonds;
- (d) administrative costs and expenses of the Authority, including the fees of attorneys, accountants, engineers, appraisers or consultants, paid or incurred by the Authority by reason of the Bonds being outstanding or pursuant to requirements of the Financing Documents; and
- (e) Such other fees and expenses of the Authority, not directly related to the Project being financed for the Applicant, but attributable to the Authority's financing of industrial or commercial Projects, including without limitation, a share of costs of the Authority's annual audit as required by Code Section 15.2-4904, determined as follows:
  - (1) All costs and fees relating to the annual audit and directly attributable to a particular Applicant or Project, shall be charged to such Applicant; and
  - (2) Any costs and fees of such audit not directly attributable to any Applicant or Project shall be allocated among all Applicants having Bonds outstanding, pro rata, as the amount of Bonds originally issued for such Applicant bears to the total face amount of Bonds issued by the Authority of which any portion of any issue remains outstanding and unpaid.

### Section 5.3 Indemnification of the Authority.

Each Applicant shall agree to indemnify and save harmless the Authority, the County, the Board of Supervisors and their officers, directors, employees and agents (hereinafter the "Indemnitees") from and against all liabilities, obligations, claims, damages, penalties, fines, losses, costs and expenses (hereinafter referred to as "Damages"), including without limitation:

- (a) all amounts paid in settlement of any litigation commenced or threatened against the Indemnitees, if such settlement is effected with the written consent of the Applicant;

## Rules and Procedures Of The Industrial Development Authority Of The Clarke County, Virginia

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- (b) all expenses reasonably incurred in the investigation of, preparation for or defense of any litigation, proceeding or investigation of any nature whatsoever, commenced or threatened against the Applicant, the Project or the Indemnitees;
- (c) any judgments, penalties, fines, damages, assessments, indemnities or contributions; and
- (c) the reasonable fees of attorneys, auditors, and consultants; provided that the damages arise out of:
  - (i) failure by the Applicant, or its officers, employees or agents, to comply with the terms of the Financing Documents and any agreements, covenants, obligations, or prohibitions set forth therein;
  - (ii) any action, suit, claim or demand contesting or affecting the title of the Project;
  - (iii) any breach of any representation or warranty set forth in the Financing Documents or any certificate delivered pursuant thereto, and any claim that any representation or warranty of the Applicant contains or contained any untrue or misleading statement of fact or omits or omitted to state any material facts necessary to make the statements made therein not misleading in light of the circumstances under which they were made;
  - (iv) any action, suit, claim, proceeding or investigation of a judicial, legislative, administrative or regulatory nature arising from or in connection with the construction, acquisition, ownership, operation, occupation or use of the Project; or
  - (v) any suit, action, administrative proceeding, enforcement action, or governmental or private action of any kind whatsoever commenced against the Applicant, the Project or the Indemnitees which might adversely affect the validity or enforceability of the Bonds, the Financing Documents, or the performance by the Applicant or any Indemnitee of any of their respective obligations thereunder.

### Section 5.4 Bond Counsel Opinion Required.

Before issuing and delivering any of its Bonds, the Authority shall receive an unqualified approving opinion of recognized bond counsel licensed to practice law in Virginia and approved by the Authority stating, among other things, that the Bonds have been duly authorized, executed, issued and delivered, that the interest thereon is exempt from Federal income taxation under IRC §103 (or other applicable provision of law) and

## Rules and Procedures Of The Industrial Development Authority Of The Clarke County, Virginia

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taxation by the Commonwealth of Virginia, and that the Bonds are exempt from registration requirements under applicable state and Federal securities laws.

### Section 5.5 Covenants to Preserve Tax Exempt Status of Bonds.

All Financing Documents presented for approval by the Authority shall contain appropriate covenants of the Applicant designed to insure compliance with the requirements of IRC §103 to preserve the tax exempt status of interest on the Bonds, including without limitation, "arbitrage" requirements, capital expenditure limitations and reporting requirements.

### Section 5.6 Payments in Lieu of Taxes.

In event title to the Project is held by any person or entity not subject to real or personal property taxes, the Applicant and any user of the Project, unless specifically exempted by the Authority, shall enter into an agreement to pay all taxes, levies, assessments, charges or other impositions which may be levied by any taxing authority on the Project as if such Applicant or user held title to the Project or any portion thereof.

### Section 5.7 Restriction on Advertising.

The Applicant and any purchaser or underwriter of the Authority's Bonds shall not publish any advertisement, tombstone or other information with respect to the Authority's Bonds unless:

- (a) such advertisement has been approved by the Chairman or Vice Chairman of the Authority and Counsel to the Authority and
- (b) (such advertisement contains the statement set forth below with respect to the limited nature of the obligations.

Any bond purchase agreement entered into in connection with the Authority's Bonds shall contain a covenant in substantially the following form which shall be binding on the Applicant, any purchaser and any underwriter of such bonds: The undersigned agree that no advertisement, tombstone or other information with respect to the Bonds shall be published in any newspaper or other publication unless such advertisement:

- (a) is approved by the Chairman or Vice Chairman of the Authority and Counsel to the Authority and
- (b) clearly states that the Bonds are limited obligations of the Authority payable solely from revenues and that neither the Commonwealth of Virginia nor any political subdivision thereof, including the Authority and the County of Clarke, Virginia, shall be obligated to pay the principal of or the interest or premium, if any, on the Bonds

## Rules and Procedures Of The Industrial Development Authority Of The Clarke County, Virginia

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and neither the faith and credit nor the taxing power of the Commonwealth of Virginia or any political subdivision thereof, including the Authority and the County of Clarke, is pledged to payment of the Bonds.

### Article VI

#### Reports

##### Section 6.1 Interim Reports by Applicants.

Each Applicant shall file with the Authority a written report describing the status of its proposed financing no later than ten (10) days after receipt of written request therefore. Such written report shall include the proposed purchaser of the Bonds, the proposed terms of the Bonds, the status of Financing Documents, and the current status of the Project. Each Applicant shall promptly notify the Authority of any significant or material changes to any information previously furnished by the Applicant to the Authority, including specific descriptions of new or changed plans for the placement of the bonds and the security to be offered.

##### Section 6.2 Annual Reports of Applicants.

Each Applicant, after the issuance and sale of the Authority's Bonds for the benefit of such Applicant, shall annually report to the Authority no later than June 30 the status of the Project, which shall include the outstanding and unpaid balance of Bonds issued for the Project, whether any event of default has occurred under the Financing Documents, and other information relating to the financing of the Project and benefits to the County of Clarke, Virginia.

##### Section 6.3 Reports by Authority Chairman Directors etc.

At each meeting of the Authority, the Chairman, each Director, the Secretary, the Treasurer and the Authority's Counsel shall report any action taken on behalf of the Authority since the last meeting, including receipt of reports required under Sections 4.7, 6.1 and 6.2.

### Article VII

#### Enforcement

##### Section 7.1 Enforcement of Provisions.

The Authority may refuse to consider or adopt any inducement resolutions, Financing  
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Documents or any other matters presented for its consideration if the Applicant has failed to comply with the requirements of these Rules.

### Section 7.2 Repeal of Actions Previously Taken.

The Authority may rescind or repeal any inducement resolution previously adopted by it or any other action taken by the Authority because of failure of the Applicant to comply with the provisions of these Rules or because of substantial changes in the management, ownership, Project plan or financial circumstances of the Applicant; provided, however, no inducement resolution or action taken by the Authority shall be repealed or rescinded unless prior written notice of such proposed action shall have been mailed to the Applicant at least three weeks before the date upon which such action is proposed to be taken. Notwithstanding the foregoing, no such action shall be taken by the Authority which will impair or adversely affect the interests of the holders of the Authority's Bonds.

## Article VIII

### Statements of Policy

#### Section 8.1 Construction, Operation and Effect of Rules.

These Rules are intended as guidelines to promote and insure the orderly and consistent consideration of Applications, Financing Documents and other matters brought before the Authority. For good cause, application of these Rules may be modified and waived upon a case by case basis upon the consent of the Authority. Any action taken by the Authority not in conformity with these Rules shall, nevertheless, be fully effective as if taken in compliance with these Rules. It is, however, the policy of the Authority that each Applicant comply fully and completely with these Rules, and failure to comply with these Rules may constitute grounds for refusal by the Authority to take any action requested.

#### Section 8.2 Approval of Inducement Resolution not to Constitute an Endorsement of Applicant.

The purpose of the Authority, as set forth in the Act, is to promote industry and develop trade by inducing manufacturing, industrial, governmental, commercial and non-profit enterprises to locate in or remain in the Commonwealth of Virginia. Pursuant to the Act, the Authority's powers shall be exercised for the benefit of the inhabitants of Virginia through the promotion of their safety, health, welfare, convenience or prosperity. Accordingly, the Authority's decision to adopt an inducement resolution or take other action will be based largely upon these factors. Further, the Act prohibits the Authority from operating any enterprise or Project. Since the Authority is a conduit for providing tax exempt financing to promote the commerce and industry of the Commonwealth of Virginia and the County of Clarke, Virginia, and given the express prohibition against

## Rules and Procedures Of The Industrial Development Authority Of The Clarke County, Virginia

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operating enterprises or Projects, the Authority believes it is improper for it to inquire into matters relating to the business judgment of the management of any Applicant not relevant to the foregoing factors. The Authority may, however, examine the business decisions and other aspects of management of the Applicant should it deem such matters relevant to the authorization, issuance and sale of its Bonds.

In view of the foregoing limitations, the adoption of an inducement resolution or any other action taken by the Authority is not to be used by any Applicant in any manner whatsoever as an endorsement or approval of the Applicant, its policies or its management.

### Section 8.3 Security for Payment of Bonds.

The Authority will require a showing that any issue of its Bonds is fully and adequately secured.

### Section 8.4 Compliance with Rules.

These Rules were adopted by the Authority to assist in the orderly and expeditious conduct of its business. As stated in Section 3.2 of these Rules, the Authority has reserved the right to require that any Applicant strictly conform to the requirements of the Rules. Among other things, the Rules require that each Applicant inform the Authority of any new developments or material changes in information which has been submitted to the Authority, either orally or in writing. Matters concerning the structure of the financing, the prospective purchasers of the Bonds and the security for payment of the Bonds are items of particular interest to the Authority; however, the Authority expects to be kept informed of all material changes to information submitted to it.

By submitting an Application to the Authority, the Applicant agrees to abide by these Rules. Thus, the burden is placed upon the Applicant to review and to comply with these Rules. The principal sanction which may be applied by the Authority against any Applicant for failure to comply with the Rules would be a refusal to take any action requested by the applicant. Such a refusal might result in embarrassment to or considerable financial expenses on the part of the Applicant. To avoid such embarrassment or expense, the Authority urges each Applicant to keep the Authority fully informed of any new developments or material changes to information previously submitted to the Authority, including in particular, changes in the contemplated financing structure or the proposed security for the Bonds. As noted above, the burden is upon the Applicant to convey this information to the Authority in a timely manner. What constitutes "timely" depends upon the circumstances of each case; however, each Applicant is urged to provide all such information before considerable time and expense is incurred upon matters which may prove unacceptable to the Authority. Any such communications should be made directly to the Authority's officers, directors and counsel.

# Approval of Minutes

## October 26, 2017, Regular Meeting

*Proposed Motion: I move to approve the minutes of October 26, 2017, as [presented] or [as amended citing specific amendment].*

Industrial Development Authority of the Clarke County Virginia  
Board of Directors  
October 26, 2017 Minutes

A meeting of the Board of Directors of the Industrial Development Authority of the Clarke County Virginia held in the Berryville/Clarke County Government Center, Berryville, Virginia, on Thursday, October 26, 2017, at 1:00 PM.

Directors Present: Mark Cochran, Brian Ferrell, Paul Jones. David Juday, English Koontz, Rodney Pierce

Directors Absent: Allan Frederickson

Board of Supervisors Liaison Present: David Weiss

County Staff Present: David Ash, Len Capelli, Christy Dunkle, Mike Legge, Lora Walburn

1. Call to Order

At 1:02 pm, Chairman David Juday called the meeting to order.

2. Adoption of Agenda

**Rod Pierce, seconded by English Koontz, moved to adopt the agenda as presented. The motion carried by the following vote:**

Mark Cochran	-	Aye
Brian Ferrell	-	Aye
Allan Frederickson	-	Absent
Paul Jones	-	Aye
David Juday	-	Aye
English Koontz	-	Aye
Rodney Pierce	-	Aye

3. Introduction of New Director William "Bill" Waite

David Juday introduced Bill Waite, Director assuming the position previously held by Allan Frederickson.

Mr. Waite added to his biography that he started building in Clarke County three years ago and moved to the County approximately eighteen months ago. He opined that in his career he was a jack of all trades working in and out of many pieces of the business. He stated that local

government was new for him but he did have some dealings with government in his corporate life. He expressed his appreciation for the opportunity to work with the Authority.

David Juday thanked Mr. Waite for his willingness to serve. Chairman Juday then asked if he would be willing to serve as interim treasurer until the organizational meeting in January 2018 to which Mr. Waite agreed.

Following this exchange, the individual Directors briefly introduced themselves to Mr. Waite.

William "Bill" Waite  
Board of Directors of the Industrial Development Authority of the Clarke County, Virginia  
Term: October 31, 2017 through October 30, 2021  
District: Millwood

Mr. Waite retired from ExxonMobil in March 2017 after 38 years. He held various management positions in:

- Treasurers: Cash management and major project financing
- Logistics: Fuel product movement scheduling and labor negotiations
- Retail: Buying and selling retail markets globally
- Planning: Develop five-year retail strategic plans
- Joint Ventures: Develop retail partnerships

In his last position as Global Payment and Loyalty Solutions Manager, he was responsible for credit cards programs and processing worldwide.

#### 4. Presentation Resolution of Appreciation and Recognition of Service Allan Frederickson

**English Koontz, seconded by Mark Cochran, moved to approve a resolution of appreciation and recognition of service for Allan Frederickson. The motion carried by the following vote:**

Mark Cochran	-	Aye
Brian Ferrell	-	Aye
Allan Frederickson	-	Absent
Paul Jones	-	Aye
David Juday	-	Aye
English Koontz	-	Aye
Rodney Pierce	-	Aye

The resolution of appreciation and recognition of service presented was adopted by acclamation.

#### **Resolution of Appreciation and Recognition of Service Allan Frederickson**

**WHEREAS** on December 15, 2009, the Clarke County Board of Supervisors first appointed Allan L. Frederickson to the Board of Directors for the Industrial Development Authority of the Clarke County Virginia; and,



**WHEREAS** Mr. Frederickson served the Authority as Vice Chair in 2011 and as Secretary / Treasurer from 2012 through the expiration of his term October 30, 2017; and,

**WHEREAS** during Mr. Frederickson’s tenure on the Authority, he promoted the work of the Authority, actively participating in the bonding process for Grafton School, Shenandoah University, Lord Fairfax Community College, and United Methodist Senior Housing, as well as the loan process for the Town of Berryville to provide grant funds to aid expansion of Berryville Graphics; and,

**WHEREAS**, he was also involved in the Authority’s development of its mission statement and investment policy, as well as development of the water and sewer subsidy program in conjunction with the Board of Supervisors and the Clarke County Sanitary Authority.

**NOW THEREFORE BE IT RESOLVED**, the Board of Directors of the Industrial Development Authority of the Clarke County Virginia publicly acknowledges his service and expresses appreciation to Mr. Frederickson for his efforts and dedication to the citizens of Clarke County, and;

**BE IT FURTHER RESOLVED** that this resolution of appreciation and recognition of service be entered into the official record of the actions of the Industrial Development Authority of the Clarke County Virginia and that a copy of this action be provided to Mr. Frederickson as a token of the esteem in which he is held by the Authority.



**APPROVED** by the unanimous vote of the Board of Directors for the Industrial Development Authority of the Clarke County Virginia assembled in regular session on the 26th day of October 2017.

**Attest:**

\_\_\_\_\_  
David Juday, Chair

5. Approval of Minutes

English Koontz, seconded by Rod Pierce, moved to approve the July 27, 2017, minutes as written. The motion carried as follows:

Mark Cochran	-	Aye
Brian Ferrell	-	Aye
Allan Frederickson	-	Absent
Paul Jones	-	Aye
David Juday	-	Aye
English Koontz	-	Aye
Rodney Pierce	-	Aye

6. Treasurer’s Report

First Quarter FY2018 July 1 through September 30, 2017

Accounts:

Brokerage Eagle Investment Group	
Beginning Balance July 1	\$35,267.86
Dividends, Interest and Other Income	94.49
Net Change In Portfolio	-29.13
Ending Balance September 30	<u>\$35,333.22</u>
<i>Estimated Annual Income</i>	<i>\$511.95</i>

Bank of Clarke County

Checking Beginning Balance 07-01-2017	\$66,061.93
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Income:

Bond Revenue [Grafton, Inc.]	\$18,322.50
Bond Revenue [LFCC]	<u>\$16,147.00</u>
Total Income:	\$34,469.50

Expense:

Meeting Attendance	\$550
Small Business Development Center	\$6,000
VACorp	<u>\$1,333</u>
Total Expense:	\$7,883

Checking Ending Balance 09-30-2017	\$92,648.43
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MMDA Beginning Balance 07-01-2017	\$1,532.00
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Income:

Interest MMDA	<u>\$0.15</u>
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MMDA Ending Balance 09-30-2017	\$1,532.15
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Total Public Deposits:	\$94,180.58
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In the absence of Allan Frederickson, IDA 2017 Treasurer, Lora Walburn, IDA Clerk, reviewed the 1<sup>st</sup> Quarter FY2018 Treasurer's Report.

**Paul Jones, seconded by Rod Pierce, moved to accept the 1st Quarter FY2018 Treasurer's Report as presented. The motion carried as follows:**

Mark Cochran	-	Aye
Brian Ferrell	-	Aye
Allan Frederickson	-	Absent
Paul Jones	-	Aye

David Juday - Aye  
English Koontz - Aye  
Rodney Pierce - Aye

Mark Cochran, seconded by English Koontz, moved to appoint William Waite to serve as interim Treasurer for the Industrial Development Authority of the Clarke County, Virginia until the annual organizational meeting scheduled for January 25, 2018. The motion carried as follows:

Mark Cochran - Aye  
Brian Ferrell - Aye  
Allan Frederickson - Absent  
Paul Jones - Aye  
David Juday - Aye  
English Koontz - Aye  
Rodney Pierce - Aye

Rod Pierce, seconded by Mark Cochran, moved to authorize Lora B. Walburn, Clerk to the Industrial Development Authority of the Clarke County, Virginia, to send to the Bank of Clarke County notice of appointment of William "Bill" Waite to the position of Treasurer with a copy of the draft minutes for the October 26, 2017, Regular Meeting. The motion carried as follows:

Mark Cochran - Aye  
Brian Ferrell - Aye  
Allan Frederickson - Absent  
Paul Jones - Aye  
David Juday - Aye  
English Koontz - Aye  
Rodney Pierce - Aye

Chairman Juday stated that he had obtained the IDA bank statements for July, August, and September and would bring deliver them to County Administration with the receipt for payment.

Further, Chairman Juday instructed staff to add to the January 2018 agenda modification of bylaws to include requirement for countersignature for checks of \$500 or greater.

English Koontz, seconded by Brian Ferrell, moved to reaffirm direction to the Treasurer to close the MMDA Public Fund and transfer remaining funds to Public Fund Chk. **The motion carried as follows:**

Mark Cochran - Aye  
Brian Ferrell - Aye

Allan Frederickson - Absent  
 Paul Jones - Aye  
 David Juday - Aye  
 English Koontz - Aye  
 Rodney Pierce - Aye

7. Bond Balance Report

**Closed Bonds**

<i>Organization Receiving Bonds</i>	<i>Bond Type</i>	<i>Original Amount</i>	<i>Date Closed</i>
Powhatan School	Educational Facility Revenue Bond Series 2002	\$3,500,000	2/11/2010
Winchester Medical Center, Inc.	Hospital Facility Revenue Bond Series 2000; <i>Refinanced thru Econ Dev Authority of Winchester 12/2013</i>	\$70,000,000	12/31/2013
Heritage Child Development Center, Inc.	Refunding Revenue Bond	\$450,000	6/30/2014
Mary Hardesty United Methodist Housing, LP	Multifamily Housing Revenue Bond Series 2014; <i>Bonds Approved – Project Dropped Bonds Not Issued</i>	\$4,300,000	8/25/2017
	Total Closed:	\$78,250,000	

**Outstanding Bonds**

<i>Organization Receiving Bonds</i>	<i>Bond Type</i>	<i>Date Issued / Resolution</i>	<i>Original Amount</i>	<i>Outstanding Amount</i>
BCCGC County of Clarke	Lease Revenue Bond	5/16/2007	\$4,822,000	\$4,167,233
BCCGC Town of Berryville	Lease Revenue Bond	5/16/2007	\$2,327,000	\$2,117,968
Grafton School, Inc.	Tax-exempt Educational Facilities Revenue Refunding Bonds Series 2010	5/1/2010; 12/3/2010	\$9,225,000	\$5,305,000
Lord Fairfax Community College Educational Foundation, Inc.	Educational Facilities Revenue Bond Series 2012A [Tax-exempt]	11/14/2012; 12/28/2012	\$8,400,000	\$7,714,039
Shenandoah University Project	Educational Facilities Revenue Bonds, Series 2011	12/27/2011	\$7,815,000	\$7,815,000
			\$32,589,000	\$27,119,240

In the absence of Allan Frederickson, Lora Walburn reviewed the bond report. Following review, by consensus the Authority instructed staff to seek from the County attorney written opinion, or conference call at the January meeting, on how to proceed with the Shenandoah University bonds.

Chairman Juday commented that the IDA had processed several bonds in rapid succession during the period from 2010 through 2013.

## 8. Economic Development Update

Highlights of Len Capelli's update include:

- Apprentice Program: working with the Workforce Development group on development through Lord Fairfax Community College.
- Commercial Gardening: C2M was nominated for and selected to receive funds to assist in increasing its marketing into Maryland, North Carolina, and West Virginia.
- Shenandoah Valley Tourism Partnership:
  - Working with a public relations firm, tied into magazines and blogs, that helps writers find things to write about.
  - First review was “pick your own” at Mackintosh Fruit Farm, which was distributed to several million persons throughout the country through multiple media sources.
  - The president of the public relations firm will be visiting Berryville on December 11 to meet with several area businesses and to tour local attractions and assets.
  - Focusing on leveraging through the Top of Virginia Artisan Trail, Spirits Trail, and Shenandoah Valley Tourism Partnership, to get visibility outside the area.
  - Reaching a large number of people; and over the last six months, the greatest number of persons looking at our websites are from the Ukraine followed by Canada, the United Kingdom, India, China, and Brazil.
  - Persons looking to vacation in the Shenandoah Valley are finding Clarke via its websites and Facebook.
- Agri-Tourism Revenue Reporting:
  - Discussed with persons and entities concerns about accuracy of agri-tourism revenue reporting.
  - The State asserts that tracking is difficult due to confidentiality.
  - State report includes towns within the County.
  - State suggests developing surveys for businesses and customers.
  - Would like to better determine the true dollars generated from agri-tourism.

## 9. New Business

### Investment Options Discussion

Chairman Juday informed the Directors:

- IDA Finance Committee [members English Koontz – Vice Chair, David Juday - Chair, and William Waite – Interim Treasurer] meeting scheduled with Janice Kuhn, Eagle Investments, on Thursday, November 16, 2017, at 10 am in the County Administration Conference Room.
- Discussed with Ms. Kuhn options that she will present as potential strategies to the IDA Finance Committee including something that is a little more aggressive with the new money.
- Considerations include how liquid does the IDA need to be and how many things might come up needing financial support.
- All Directors are welcome to attend the November 16 Finance Committee meeting.
- The Finance Committee will review the options presented at the January 2018 meeting.
- Bonds:
  - o The State assigns each jurisdiction a bond limit – Clarke’s is \$10 million annually.
  - o No defined percentage to remain in the locality.
  - o Entities may seek bonds from other jurisdictions.

## 10. Old Business

### Water and Sewer Subsidy Program Review

Chairman Juday requested update from Mike Legge, CCSA Clerk, and Len Capelli, Economic Development Director. Highlights include:

- Received the first inquiry for subsidy from a group of businesses on the corner including the market and ice cream stand.
- Requestor is having difficulty with water backing up in the septic system.
- Mike Legge has explained in detail what is necessary to hook up to the sewer system.
- Requestor is currently a commercial water customer.
- Requestor has advised the Sanitary Authority that it does not intend on changing the amount of water used.
- Currently using 10,000 to 20,000 gallons of water every two months.
- CCSA determines availability fees on usage not meter size.
- CCSA information is available on the County website.

- CCSA October 24 meeting:
  - Discussed technical aspects including connection to the lift station at McDonald's or a direct connection to the public sewer system.
  - CCSA directed Mr. Legge to contact Hurtt and Profitt, contract engineer for the CCSA, to evaluate the connection to determine the most efficient way to connect.
  - Rough cost to connect with pump or lift station: \$25,000
  - Hookup fee estimated: Up to \$20,000
  - Total estimate: \$50,000

Chairman Juday recapped the update opining that the requestor must define what it needs and seek assistance from the IDA.

Len Capelli remarked that he has not yet shared any program information but the requestor is aware that funding may be available for application.

Chairman Juday instructed staff to:

- Create an information sheet on the water and sewer fee subsidy program.
- Add program information to the IDA webpage on the County's website.
- Provide updated information to Mike Legge for review and forwarding / direction to the requestor.
- Designate staff contact for program inquiries and include with program information.

Chairman Juday remarked that water and sewer in Clarke was more expensive than surrounding jurisdictions for Clarke was one of the first to update its plant standards to meet State mandates for Chesapeake Bay initiatives.

Chairman Juday thanked Mr. Legge for meeting with the Directors and assured that the IDA would provide him details of its subsidy program.

#### Formal Notice of Handsome Brook Farms Withdrawal

Chairman Juday acknowledged the final disposition of the Handsome Brook Farms investments funds ending in withdrawal and return to the State of \$200,000.

October 28, 2016

Chauntele D. Taylor  
AFID Compliance Coordinator  
Virginia Department of Agriculture and Consumer Services  
Agriculture and Forestry Development Services  
102 Governor Street  
Richmond, Virginia 23219

RE: AFID 029-1451

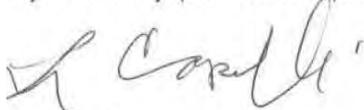
Chauntele,

On behalf of Clarke County Virginia, I am writing to notify you that Handsome Brook Farm will not be going ahead with the investment in Clarke County at this time.

There are several factors that when taken collectively, made this a difficult but necessary decision for the Company. Commodity egg market conditions are generally considered the worst in over thirty years; while Handsome Brook Farm is a specialty egg producer, present market conditions have placed tremendous pressure on the specialty egg market, in general, and is negatively impacting sales and margins. Handsome Brook Farm is presently party to two ongoing legal proceedings, serving as Plaintiff in the first action and Defendant in the other. Despite being confident in their position in both proceedings, these matters present a considerable strain on the time, financial resources, and availability of management. Finally, the Company's Chief Operating Officer has taken a leave of absence to support his three-year-old son in his battle with Leukemia. This is the most unfortunate factor for obvious reasons, but leaves Handsome Brook without a project leader to oversee an undertaking of considerable magnitude in both scope and capital investment.

A check in the amount of \$200,000.00 is being sent under separate cover to the State Treasurers Office as directed.

If you have any questions or require additional information, do not hesitate to contact me.



Len Capelli  
Director of Economic Development and Tourism Clarke County VA.

Director Rod Pierce left the meeting to attend funeral services for Edythe Pifer, Clarke County Treasurer from 1972 through 1991.

#### Set Date of 2018 Organizational Meeting

By consensus, the Directors set January 25, 2018, at 1:00 pm for its Organizational and 2<sup>nd</sup> Quarter FY2018 meeting,

### Miscellaneous

Board of Supervisor Chair David Weiss distributed a zoning ordinance recently approved by the Board of Supervisors pertaining to §3-A-1 (Agricultural-Open Space-Conservation District – AOC), §3-A-2 (Forestal-Open Space-Conservation District – FOC), §3-A-3 (Rural Residential District – RR), §3-A-12 (Neighborhood Commercial District – CN), §3-A-13 (Highway Commercial District – CH), §3-C (Supplementary Regulations), and Article 9 (Definitions) of the Zoning Ordinance primary highway intersections intended to encourage agricultural businesses in Clarke.

### Summary of Follow-up Items

<u>Item</u>	<u>Description</u>	<u>Responsibility</u>
1.	Forward resolution of appreciation to Allan Frederickson.	Lora B. Walburn
2.	Process approved minutes.	Lora B. Walburn
3.	To facilitate transition of banking authorization, provide Bank of Clarke County with copy of draft October 26, 2017, minutes.	Lora B. Walburn
4.	Execute signature cards at Bank of Clarke County.	William Waite
5.	Provide checkbook and other accounting documents to interim Treasurer.	Allan Frederickson
6.	Add January agenda by-law review of \$500 and greater countersignature requirement.	Lora B. Walburn
7.	Request copies of July, August, September 2016 bank statements from Bank of Clarke County and provide to IDA Clerk.	David Juday
8.	Close MMDA account at Bank of Clarke County.	William Waite
9.	Seek legal opinion - how to proceed with the Shenandoah University bonds.	Lora B. Walburn
10.	Book County Administration Conference Room for November 16 IDA Finance Committee meeting.	Lora B. Walburn
11.	Add review of options discussed at the November 16 Finance Committee meeting to January agenda.	Lora B. Walburn
12.	Create an information sheet on the water and sewer fee	Lora B. Walburn

<u>Item</u>	<u>Description</u>	<u>Responsibility</u>
	subsidy program.	
13.	Add program information to the IDA webpage on the County's website.	Lora B. Walburn
14.	Provide updated information to Mike Legge for review and forwarding / direction to the requestor.	Lora B. Walburn
15.	Designate staff contact for program inquiries and include with program information.	Len Capelli / Lora B. Walburn
16.	Coordinate scheduling of January organizational meeting with Central Reception.	Lora B. Walburn

11. Adjournment

At 1:58 pm, English Koontz, seconded by Paul Jones, moved to adjourn the meeting. The motion carried as follows:

Mark Cochran	-	Aye
Brian Ferrell	-	Aye
Allan Frederickson	-	Absent
Paul Jones	-	Aye
David Juday	-	Aye
English Koontz	-	Aye
Rodney Pierce	-	Absent

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Minutes recorded and transcribed by: Lora B. Walburn, Executive Assistant - County Administration

## Economic Development Director Report

## Treasurer's Report

# IDA Check Log

CY	Status	Check No.	Date	Description	Category	Credit	Debit	Balance	Additional Information
2017	Y	N/A	6/1/2017	Balance	Balance	\$ 66,061.93	\$ -	\$ 66,061.93	
2017	Y	536	6/28/2017	VACorp	Insurance	\$ -	\$ 1,333.00	\$ 64,728.93	
2017	Y	537	7/28/2017	Mark Cochran	Director Fees	\$ -	\$ 150.00	\$ 64,578.93	Meeting 02/20, 04/27, 7/27
2017	Y	538	7/28/2017	David Juday	Director Fees	\$ -	\$ 150.00	\$ 64,428.93	Meeting 02/20, 04/27, 7/27
2017	Y	539	7/28/2017	English Koontz	Director Fees	\$ -	\$ 100.00	\$ 64,328.93	Meeting 04/27, 7/27
2017	Y	540	7/28/2017	Rodney Pierce	Director Fees	\$ -	\$ 100.00	\$ 64,228.93	Meeting 02/20, 04/27
2017	Y	541	7/28/2017	Brian Ferrell	Director Fees	\$ -	\$ 100.00	\$ 64,128.93	Meeting 02/20, 07/27
2017	Y	542	7/28/2017	Allan Frederickson	Director Fees	\$ -	\$ 50.00	\$ 64,078.93	Meeting 07/27
2017	Y	543	8/14/2017	LFSBDC	Civic Contributions	\$ -	\$ 6,000.00	\$ 58,078.93	
2017	Y	Dep	9/13/2017	Grafton School	Bond Fees	\$ 18,322.50	\$ -	\$ 76,401.43	
2017	Y	Dep	9/18/2017	LFCC	Bond Fees	\$ 16,147.00	\$ -	\$ 92,548.43	
2017	Y	544	11/16/2017	Mark Cochran	Director Fees	\$ -	\$ 50.00	\$ 92,498.43	Meeting 10/26/2017
2017	Y	N/A	10/31/2017	Bank of Clarke County	Bank Fees	\$ -	\$ 18.00	\$ 92,480.43	Duplicate Bank Statements
2017	Y	545	11/16/2017	Robinson Farmer Cox	Audit	\$ -	\$ 1,635.00	\$ 90,845.43	FY16 Audit
2017	Y	546	11/16/2017	Brian Ferrell	Director Fees	\$ -	\$ 50.00	\$ 90,795.43	Meeting 10/26/2017
2017	Y	547	11/16/2017	Paul Jones	Director Fees	\$ -	\$ 50.00	\$ 90,745.43	Meeting 10/26/2017
2017	Y	548	11/16/2017	David Juday	Director Fees	\$ -	\$ 50.00	\$ 90,695.43	Meeting 10/26/2017
2017	Y	549	11/16/2017	English Koontz	Director Fees	\$ -	\$ 50.00	\$ 90,645.43	Meeting 10/26/2017
2017	Y	550	11/16/2017	Rodney Pierce	Director Fees	\$ -	\$ 50.00	\$ 90,595.43	Meeting 10/26/2017
2017	Y	Transfer	11/16/2017	Checking to Infinex Investments	Transfer	\$ -	\$ 50,000.00	\$ 40,595.43	
2017	Y	Dep	12/5/2017	Shenandoah University	Bond Fees	\$ 19,537.50	\$ -	\$ 60,132.93	Outstanding
2017	Y	Dep	12/29/2017	Shenandoah University	Bond Fees	\$ 3,907.50	\$ -	\$ 64,040.43	2017 Fees

1/22/2018  
 Status Y = Cleared

Lora B. Walburn, IDA Clerk

Industrial Development Authority of the Clarke County, Virginia  
Outstanding Bonds

<i>Borrower</i>	<i>Bond Type</i>	<i>Date Issued / Resolution</i>	<i>Original Amount \$MM</i>	<i>2017 Fees \$K</i>	<i>Outstanding Balance 2017 \$MM</i>	<i>Date OB</i>
BCCGC County of Clarke	Lease Revenue Bond	5/16/2007	\$4,822,000	N/A		6/30/2016
BCCGC Town of Berryville	Lease Revenue Bond	5/16/2007	\$2,327,000	N/A		6/30/2016
Grafton School, Inc.	Tax-exempt Educational Facilities Revenue Refunding Bonds Series 2010	Loan 5/1/2010; Issued 5/28/2010	\$9,225,000			12/3/2010
Lord Fairfax Community College Educational Foundation, Inc.	Educational Facilities Revenue Bond Series 2012A [Tax-exempt] \$8,400,000	11/14/2012; 12/28/2012	\$ 8,400,000			12/28/2016
Shenandoah University Project	Educational Facilities Revenue Bonds, Series 2011	12/08/2011; 12/15/2011; 12/27/2011; Issue Date 5/31/2012	\$7,815,000	\$3,908	\$7,815,000	12/27/2017
				<u>\$3,908</u>		

Investment Options Review  
with Janice Kuhn

## Guiding Principles



## County of Clarke Industrial Development Authority

*Draft Document – For Discussion Only – Revision Date 01-04-2017*

### CLARKE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY (IDA) INVESTMENT GUIDING PRINCIPLES

#### BACKGROUND:

The Clarke County Industrial Development Authority (IDA) issues bonds, refinances bonds, buys and sells property, and otherwise conducts appropriate and authorized business as set forth in the code of Virginia. These activities can and do generate funds that the IDA maintains generally in the following two ways:

- 1) A checking account with the Bank of Clarke County used primarily for financing annual operating costs, as well as the initial account for the receipt and distribution of funds.
- 2) An investment account with Eagle Investment Group, a subsidiary of Bank of Clarke County, to maximize total return with prudent levels of risk during the pursuit of investment opportunities to achieve the stated IDA mission. These funds are specifically endorsed by the IDA Finance Committee. Average risk tolerance consistent with other investments made in the name of Clarke County.

In order to fulfill its statutory mission to serve the citizens of Clarke County and the Commonwealth of Virginia “through the increase of the their commerce, or through the promotion of the safety, health, welfare, convenience or prosperity,” the IDA further considers reinvesting the proceeds from its activities to retain and recruit business and other qualifying enterprises, including manufacturing, industrial, governmental, nonprofit and commercial enterprises and institutions, and the further use of the County’s agricultural products and natural resources, the IDA follows certain investment guiding principles.

#### INVESTMENT GUIDING PRINCIPLES:

The amount of the funds vary according to distribution needs but are generally divided into 4 groups:

- 1) Account balances under \$50,000 of liquid funds in the checking account to provide flexibility for the IDA Committee to access funds promptly without penalty.
- 2) Account balances in excess of \$50,000 and less than \$100,000 should be invested in financial instruments that can be accessed within 6 months without penalty. This investment is intended to generate a satisfactory, safe return to focus on short term investment opportunities.

- 3) Account balances in excess of \$100,000 and less than \$150,000 should be invested in financial instruments that can be accessed within one year without penalty. This investment, due to the term of the investment, is to generate slightly higher but safe returns to meet longer high-value investment opportunities.
- 4) Account balances in excess of \$150,000 should be referred immediately to the IDA committee for discussion. Consistent with the mission of the IDA, special attention should be paid to distribute these funds as soon as possible to promote worthy opportunities aligned with the IDA mission.

In addition, the Authority's Board of Directors should target being self-sufficient by generating enough investment income to offset annual operating expenses.

## FY2019 Budget Discussion

**Industrial Development Authority of the Clarke County, Virginia - FY2019 Budget Preliminary Draft for Discussion**

Expenditures Category	Amount	
Advertising	\$ 400	Public Hearings
Audit	\$ 1,635	RFC
Civic Contributions	\$ 6,000	SBDC LFCC
Director Fees	\$ 1,400	Meeting Attendance
Insurance	\$ 1,333	VACorp
Postage	\$ 25	
Professional Services	\$ 1,000	Legal
	<u>\$ 11,793</u>	

Revenues	Estimated Amount	Bond Balance 12/2016
<b>Bonds:</b>		
Grafton School, Inc. Bond	\$ 1,758	\$ 3,515,000
LFCC Bond	\$ 3,857	\$ 7,714,039
Shenandoah University Bond	\$ 3,907	\$ 7,815,000
	<u>\$ 9,522</u>	

Investments - Infinex:	DIOI	Net Change
10/11/2016 thru 10/31/2016	\$ 22.88	\$ -
11/1/2016 thru 11/30/2016	\$ 42.61	\$ (43.29)
12/1/2016 thru 12/31/2016	\$ 81.49	\$ (28.74)
01/01/2017 thru 03/31/2017	\$ 174.11	\$ 57.73
04/1/2017 thru 06/30/2017	\$ 91.30	\$ (29.10)
	<u>\$ 412</u>	

# Preliminary Notification of Potential Funding for the Town of Berryville

## Potential Joint Meeting of the EDAC and IDA Discussion

Industrial Development Authority of the Clarke County Virginia  
Board of Directors

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Adjourn

## Supporting Material:

- ✓ Building Department YTD New Single Family Dwellings  
September 2017
- ✓ IDA Follow-up Items
- ✓ 2017 Annual Report
- ✓ FY2017 Financial Report by Robinson Farmer Cox
- ✓ Annual Distribution:
  - Code of Clarke County, Virginia 1997 as amended Code of  
Clarke County, Virginia Chapter 36 Chapter 36 Industrial  
Development Authority
  - Code of Virginia Title 15.2. Counties, Cities and Towns  
Chapter 49. Industrial Development and Revenue Bond Act
  - Title 2.2. Administration of Government Chapter 37. Virginia  
Freedom of Information Act
  - Title 42.1. Libraries Chapter 7. Virginia Public Records Act.

Clarke County Building Department Monthly Report Single-family Dwellings Thru December 2018

	Battletown	Berryville	Boyce	Chapel	Greenway	Longmarsh	TOTAL	COMMENTS
January		3					3	
February		2		1	2	2	7	
March	1			2	1	1	5	
April	1	2		2			5	
May	1	1			3	1	6	
June		2		1	1	1	5	Longmarsh house is a 576sf In-law-suite
July				1		1	2	Longmarsh house is a 591 sf Accessory Structure
August		6					6	
September		1		1	1	1	4	
October	1	2		1		1	5	
November	1				1	1	3	
December	1	1					2	
TOTAL	6	20		9	9	9	53	

IDA Board of Directors  
Follow Up Items Status Report

<i>Meeting Date</i>	<i>Item</i>	<i>Description</i>	<i>Follow Up</i>	<i>Status</i>	<i>Date Complete</i>
7/27/2017	1	Schedule meeting Janice Kuhn, Eagle Investment	David Juday	10/6 schedule for October 23; Meeting held November 16	11/16/2017
7/27/2017	6	Farm grants - actively pursue inquiries into the programs.	Len Capelli		
7/27/2017	7	Develop email list from persons signing up at the Fair booth.	Len Capelli		
7/27/2017	8	Follow up on contact with railroad commission re grant to repair the infrastructure to facilitate bulk transport.	Len Capelli		
10/26/2017	9	Forward resolution of appreciation to Allan Frederickson.	Lora B. Walburn	Given to Brandon Stidham to deliver.	10/27/2017
10/26/2017	10	Process approved minutes.	Lora B. Walburn	Complete	10/30/2017
10/26/2017	11	To facilitate transition of banking authorization, provide Bank of Clarke County with copy of draft October 26, 2017, minutes.	Lora B. Walburn	Complete	10/30/2017
10/26/2017	12	Execute signature cards at Bank of Clarke County.	William Waite	Complete	11/1/2017
10/26/2017	13	Provide checkbook and other accounting documents to interim Treasurer.	Allan Frederickson	Complete	10/30/2017
10/26/2017	14	Add January agenda by-law review of \$500 and greater countersignature requirement.	Lora B. Walburn	Complete	11/3/2017
10/26/2017	15	Request copies of July, August, September 2016 bank statements from Bank of Clarke County and provide to IDA Clerk.	David Juday	Complete delivered 11/3, lbow emailed to RFC	11/3/2017
10/26/2017	16	Close MMDA account at Bank of Clarke County.	William Waite	Waiting on chair signature at BCC	
10/26/2017	17	Seek legal opinion - how to proceed with the Shenandoah University bonds.	Lora B. Walburn	Update: 10/30 SU Jarrett new asked for addl time for review; Received	12/4/2018
10/26/2017	18	Book County Administration Conference Room for November 16 IDA Finance Committee meeting.	Lora B. Walburn	Complete	10/30/2017
10/26/2017	19	Add review of options discussed at the November 16 Finance Committee meeting to January agenda.	Lora B. Walburn	Added	11/3/2017
10/26/2017	20	Create an information sheet on the water and sewer fee subsidy program.	Lora B. Walburn	Complete	10/27/2017
10/26/2017	21	Add program information to the IDA webpage on the County's website.	Lora B. Walburn	Complete	10/30/2017
10/26/2017	22	Provide updated information to Mike Legge for review and forwarding / direction to the requestor.	Lora B. Walburn	Complete	10/30/2017
10/26/2017	23	Designate staff contact for program inquiries and include with program information.	Len Capelli / Lora B. Walburn	Sfaff representatives as listed on webpage	10/30/2017
10/26/2017	24	Coordinate scheduling of January organizational meeting with Central Reception.	Lora B. Walburn	Complete - email sent	10/30/2017

## 2017 Industrial Development Authority of the Clarke County Virginia

Meetings	2/2/2017	4/19/2017	7/27/2017	10/26/2017	
Cochran, Mark	Yes	Yes	Yes	Yes	4 of 4
Ferrell, Brian	Yes	No	Yes	Yes	3 of 4
Frederickson, Allan	No	No	Yes	No	1 of 4
Jones, Paul	No	No	No	Yes	1 of 4
Juday, David	Yes	Yes	Yes	Yes	4 of 4
Koontz, English	No	Yes	Yes	Yes	3 of 4
Pierce, Rodney	Yes	Yes	Yes	Yes	4 of 4
Waite, William	N/A	N/A	N/A	Yes	N/A *
Weiss, David	No	Yes	No	Yes	2 of 4
Capelli, Len	Yes	Yes	Yes	Yes	4 of 4

### Highlights:

April - Dale Maza Lord Fairfax Community College Small Business Development Corp

July - C. Wayne Armbrust Resolution of Appreciation and Recognition of Service

October - Bond Revenue Payments Recvd \$34,469.50

October - William Waite joins Authority and appointed interim Treasurer

November - Allan Frederickson Resolution of Appreciation and Recognition of Service

November - Finance Subcommittee Meeting November 16, 2017

December - Bond Revenue Payment Recvd \$19,537.50

\*Term begins October 31, 2017

## Chapter 36 Industrial Development Authority

[History June 6, 1972, adopted an ordinance creating the Industrial Development Authority of Clarke County, Virginia]

### Code of Virginia References

§ 15.2-4900. Industrial Development and Revenue Bond Act

### § 36-1 Name

The name of the authority shall be the Industrial Development authority of Clarke County, Virginia.

### § 36-2 Definitions

All terms used herein shall have the meanings given them in the Act.

### § 36-3 Powers

The authority shall have all the powers set forth in and permitted by the Act, including, without limitation, all powers incidental thereto or necessary for the performance of those hereinafter stated:

- A) To sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;
- B) To adopt and use a corporate seal and to alter the same at pleasure;
- C) To enter into contracts;
- D) To acquire, whether by purchase, exchange, gift, lease or otherwise, and to improve, maintain, equip and furnish one or more authority facilities including all real and personal properties which the board of directors of the authority may deem necessary in connection therewith and regardless of whether any such facilities shall then be in existence;
- E) To lease to others any or all of its facilities and to charge and collect rent therefor and to terminate any such lease upon the failure of the lessee to comply with any of the obligations thereof; and to include in any such lease, if desired, a provision that the lessee thereof shall have options to renew such lease or to purchase any or all of the leased facilities, or that upon payment of all of the indebtedness of the authority it may lease or convey any or all of its facilities to the lessee thereof with or without consideration;
- F) To sell, exchange, donate, and convey any or all of its facilities or properties whenever its board of directors shall find any such action to be in furtherance of the purposes for which the authority was organized;

- G) To issue its bonds for the purpose of carrying out any of its powers, including specifically, but without intending to limit any power conferred by this ordinance, the issuance of bonds to provide long-term financing of any pollution control facility, whether any such facility was constructed prior to or after the enactment hereof or the receipt of a commitment from the authority to undertake financing pursuant hereto, subject to limitations set forth in the Act;
- H) As security for the payment of the principal of and interest on any bonds so issued and any agreements made in connection therewith, to mortgage and pledge any or all of its facilities or any part or parts thereof, whether then owned or thereafter acquired, and to pledge the revenues therefrom or from any part thereof or from any loans made by the authority;
- I) To employ and pay compensation to such employees and agents, including attorneys and real estate brokers, whether engaged by the authority or otherwise, as the board of directors shall deem necessary in carrying on the business of the authority;
- J) To exercise all powers expressly given the authority by the Board of Supervisors, or its successor, and to establish bylaws and make all rules and regulations, not inconsistent with the provisions of this ordinance or of the Act, as it may be amended from time to time, deemed expedient for the management of the authority's affairs;
- K) To appoint an industrial advisory committee or similar committee or committees to advise the authority, consisting of such number of persons as it may deem advisable. Such persons may be compensated and reimbursed for expenses as permitted by the Act;
- L) To borrow money and to accept contributions, grants and other financial assistance from the United States of America and agencies or instrumentalities thereof, the Commonwealth of Virginia (the "Commonwealth"), or any political subdivision, agency, or public instrumentality of the Commonwealth, for or in aid of the construction, acquisition, ownership, maintenance or repair of the authority facilities, for the payment of principal of any bond of the authority, interest thereon, or other cost incident thereto, or in order to make loans in furtherance of the purposes of the Act of such money, contributions, grants, and other financial assistance, and to this end the authority shall have the power to comply with such conditions and to execute such agreements, trust indentures and other legal instruments as may

be necessary, convenient or desirable and to agree to such terms and conditions as may be imposed; and

- M) To make loans or grants to any person, partnership, association, corporation, business, or governmental entity in furtherance of the purposes of the Act, including for the purposes of promoting economic development, subject to the restrictions set forth in the Act and to enter into such contracts, instruments, and agreements as may be expedient to provide for such loans and any security therefore. The authority is also permitted to forgive loans or other obligations, if it is deemed to further economic development.

**§ 36-4 Other Matters**

All matters regarding the authority, including, without limitation, the membership of its board of directors, its governance, the issuance by it of bonds, notes and other obligations, and the liability of the Commonwealth, its political subdivisions and the officers and directors of the authority with respect to bonds issued by the authority, shall be governed by the terms of the Act, subject to any restrictions set forth in the bylaws of the authority, as such bylaws may be amended from time to time.

**§ 36-5 Effective Date**

This ordinance shall take effect immediately upon its passage by the Board of Supervisors.

**Amendments Chapter  
36**

*1999-10-22*

Reestablish the Industrial Development Authority. Number assigned by staff for consistency with other localities. .

## **Chapter 49. Industrial Development and Revenue Bond Act**

### **§ 15.2-4900. Short title.**

This chapter shall be known and may be cited as the "Industrial Development and Revenue Bond Act."

1966, c. 651, § 15.1-1373; 1997, c. 587.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

### **§ 15.2-4901. Purpose of chapter.**

It is the intent of the legislature by the passage of this chapter to authorize the creation of industrial development authorities by the localities in the Commonwealth so that such authorities may acquire, own, lease, and dispose of properties and make loans to the end that such authorities may be able to promote industry and develop trade by inducing manufacturing, industrial, governmental, nonprofit and commercial enterprises and institutions of higher education to locate in or remain in the Commonwealth and further the use of its agricultural products and natural resources, and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth, either through the increase of their commerce, or through the promotion of their safety, health, welfare, convenience or prosperity. Such authority shall not itself be authorized to operate any such manufacturing, industrial, nonprofit or commercial enterprise or any facility of an institution of higher education.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to pollution control facilities to the end that such authorities may protect and promote the health of the inhabitants of the Commonwealth and the conservation, protection and improvement of its natural resources by exercising such powers for the control or abatement of land, sewer, water, air, noise and general environmental pollution derived from the operation of any industrial or medical facility and to vest such authorities with all powers that may be necessary to enable them to accomplish such purpose, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth, either through the increase of their commerce, or through the promotion of their safety, health, welfare, convenience or prosperity.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to medical facilities and facilities for the residence or care of the aged to the end that such authorities may protect and promote the health and welfare of the inhabitants of the Commonwealth by assisting in the acquisition, construction, equipping, expansion, enlargement and improvement of medical facilities and facilities for the residence or care of the aged in order to provide modern and efficient medical services to the inhabitants of the Commonwealth and care of the aged of the Commonwealth in accordance with their special needs and also by assisting in the refinancing of medical facilities and facilities for the residence or care of the aged owned and operated by organizations which are exempt from taxation pursuant to § 501(c)(3) of the Internal Revenue Code of 1954, as amended, in order to reduce the costs to residents of the Commonwealth of utilizing such facilities and to vest such

authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth and for the promotion of their health and welfare. It is not intended hereby that any such authority shall itself be authorized to operate any such medical facility or facility for the residence or care of the aged.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to facilities for use by organizations (other than institutions organized and operated exclusively for religious purposes) which are described in § 501(c)(3) of the Internal Revenue Code of 1954, as amended, and which are exempt from federal income taxation pursuant to § 501(a) of the Internal Revenue Code of 1954, as amended, to the end that such authorities may protect or promote the safety, health, welfare, convenience, and prosperity of the inhabitants of the Commonwealth by assisting in the acquisition, construction, equipping, expansion, enlargement, improvement, financing, and refinancing of such facilities of the aforesaid entities and organizations in order to provide operations, recreational, activity centers, and other facilities for the use of the inhabitants of the Commonwealth and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth and for the promotion of their safety, health, welfare, convenience or prosperity. It is not intended hereby that any such authority shall itself be authorized to operate any such facility.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to facilities for accredited nonprofit private institutions of higher education in the Commonwealth whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education to the end that such authorities may protect and promote the health and welfare of the inhabitants of the Commonwealth by assisting in the acquisition, construction, equipping, expansion, enlargement, and improvement of facilities of aforesaid institutions in order to provide improved educational facilities for the use of the inhabitants of the Commonwealth and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth and for the promotion of their health, welfare, convenience or prosperity. It is not intended hereby that any such authority shall itself be authorized to operate any such educational facility.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant industrial development authorities the powers contained herein with respect to facilities for a locality, the Commonwealth and its agencies, and governmental and nonprofit organizations and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth and for the promotion of their health, welfare, convenience or prosperity.

It is further the intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to facilities for museums and historical education, demonstration and interpretation, together with any and all buildings, structures or other facilities necessary or desirable in connection with the foregoing, for use by nonprofit organizations in order to promote tourism and economic development in the Commonwealth, to promote the knowledge of and appreciation by the citizens of the Commonwealth of the historical and cultural development and heritage of the Commonwealth and the United States and to promote thereby their health, welfare, convenience and prosperity. It is not intended hereby that any such authority shall itself be authorized to operate any such facility.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial

development authorities the powers contained herein with respect to facilities devoted to the staging of equine events and activities (other than racing) for use by governmental or nonprofit, nonreligious organizations and operated by such governmental or nonprofit, nonreligious organizations in order to promote the equine industry and equine-related activities (other than racing) which are integral to the Commonwealth's economy and heritage and to promote thereby the safety, health, welfare, convenience, and prosperity of the inhabitants of the Commonwealth.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to acquiring, developing, owning and operating an industrial park and any utilities that are intended primarily to serve the park and to issue bonds for such purposes. The bonds may be secured by revenues generated by the industrial park or the utilities being financed or by any other funds of the authority.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities created by one or more municipalities whose housing authorities have not been activated as provided by §§ [36-4](#) and [36-4.1](#), in addition to the powers previously or hereafter granted in this chapter, the powers contained herein with respect to facilities used primarily for single or multi-family residences in order to promote safe and affordable housing in the Commonwealth and to benefit thereby the safety, health, welfare and prosperity of the inhabitants of the Commonwealth. It is not intended hereby that any such authority shall itself be authorized to operate any such facility or exercise any powers of eminent domain set forth in § [36-27](#).

In any instance in this chapter where an industrial development authority may issue bonds through its authority to finance, the authority may also refinance such bonds.

This chapter shall be liberally construed in conformity with these intentions.

1966, c. 651, § 15.1-1375; 1972, c. 783; 1975, c. 489; 1977, c. 619; 1978, cc. 276, 526; 1984, c. 700; 1985, c. 317, § 15.1-1392; 1986, c. 473; 1988, c. 211; 1990, c. 312; 1991, c. 6; 1997, cc. [587](#), [758](#), [763](#); 2002, cc. [680](#), [725](#); 2005, c. [928](#); 2012, c. [498](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

## **§ 15.2-4902. Definitions.**

Wherever used in this chapter, unless a different meaning clearly appears in the context:

"Authority" means any political subdivision, a body politic and corporate, created, organized and operated pursuant to the provisions of this chapter, or if the authority is abolished, the board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers given by this chapter are given by law.

"Authority facilities" or "facilities" means any or all (i) medical (including, but not limited to, office and treatment facilities), pollution control or industrial facilities; (ii) facilities for the residence or care of the aged; (iii) multi-state regional or national headquarters offices or operations centers; (iv) facilities for private, accredited and nonprofit institutions of collegiate, elementary, or secondary education in the Commonwealth whose primary purpose is to provide collegiate, elementary, secondary, or graduate education and not to provide religious training or theological education, such facilities being for use as academic or administration buildings or any other structure or application usual and customary to a college, elementary or secondary

school campus other than chapels and their like; (v) parking facilities, including parking structures; (vi) facilities for use as office space by nonprofit, nonreligious organizations; (vii) facilities for museums and historical education, demonstration and interpretation, together with buildings, structures or other facilities necessary or desirable in connection with the foregoing, for use by nonprofit organizations; (viii) facilities for use by an organization (other than an organization organized and operated exclusively for religious purposes) which is described in § 501(c) (3) of the Internal Revenue Code of 1986, as amended, and which is exempt from federal income taxation pursuant to § 501 (a) of such Internal Revenue Code; (ix) facilities for use by a locality, the Commonwealth and its agencies, or other governmental organizations, provided that any such facilities owned by a locality, the Commonwealth or its agencies or other public bodies subject to the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.) shall not be exempt from competitive procurement requirements, under the exception granted in subsection B of § [2.2-4344](#); (x) facilities devoted to the staging of equine events and activities (other than racing events); however, such facilities must be owned by a governmental or nonprofit, nonreligious organization and operated by any such governmental or nonprofit, nonreligious organization; (xi) facilities for commercial enterprises that are not enterprise zone facilities (as defined in § 1394 (b) of the Internal Revenue Code of 1986, as amended) now existing or hereafter acquired, constructed or installed by or for the authority pursuant to the terms of this chapter; however, facilities for commercial enterprise that are not enterprise zone facilities but which are taxable authority facilities shall constitute authority facilities only if the interest on any bonds issued to finance such facilities is not exempt from federal income taxation; (xii) enterprise zone facilities; and (xiii) facilities used primarily for single or multi-family residences. Clause (xiii) applies only to industrial development authorities created by one or more localities whose housing authorities have not been activated as provided by §§ [36-4](#) and [36-4.1](#). Any facility may be located within or outside or partly within or outside the locality creating the authority. Any facility may consist of or include any or all buildings, improvements, additions, extensions, replacements, machinery or equipment, and may also include appurtenances, lands, rights in land, water rights, franchises, furnishings, landscaping, utilities, approaches, roadways and other facilities necessary or desirable in connection therewith or incidental thereto, acquired, constructed, or installed by or on behalf of the authority. A pollution control facility shall include any facility acquired, constructed or installed or any expenditure made, including the reconstruction, modernization or modification of any existing building, improvement, addition, extension, replacement, machinery or equipment, and which is designed to further the control or abatement of land, sewer, water, air, noise or general environmental pollution derived from the operation of any industrial or medical facility. Any facility may be constructed on or installed in or upon lands, structures, rights-of-way, easements, air rights, franchises or other property rights or interests whether owned by the authority or others.

"Bonds" or "revenue bonds" embraces notes, bonds and other obligations authorized to be issued by the authority pursuant to the provisions of this chapter.

"Cost" means, as applied to authority facilities, the cost of construction; the cost of acquisition of all lands, structures, rights-of-way, franchises, easements and other property rights and interests; the cost of demolishing, removing or relocating any buildings or structures on lands acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated; the cost of all labor, materials, machinery and equipment; financing charges and interest on all bonds prior to and during construction and, if deemed advisable by the authority, for a period not exceeding one year after completion of such construction; cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, and other expenses necessary or incident to determining the feasibility or practicability of constructing the authority facilities; administrative expenses, provisions for working capital, reserves for interest and for extensions, enlargements, additions and improvements; and such other expenses as may be necessary or incident to the construction of the authority facilities, the financing of such construction and the placing of the authority facilities in operation. Any obligation or expense incurred by the

Commonwealth or any agency thereof, with the approval of the authority, for studies, surveys, borings, preparation of plans and specifications or other work or materials in connection with the construction of the authority facilities may be regarded as a part of the cost of the authority facilities and may be reimbursed to the Commonwealth or any agency thereof out of the proceeds of the bonds issued for such authority facilities as hereinafter authorized.

"Enterprise" means any industry for manufacturing, processing, assembling, storing, warehousing, distributing, or selling any products of agriculture, mining, or industry and for research and development or scientific laboratories, including, but not limited to, the practice of medicine and all other activities related thereto or for such other businesses or activities as will be in the furtherance of the public purposes of this chapter.

"Loans" means any loans made by the authority in furtherance of the purposes of this chapter from the proceeds of the issuance and sale of the authority's bonds and from any of its revenues or other moneys available to it as provided herein.

"Revenues" means any or all fees, rates, rentals and receipts collected by, payable to or otherwise derived by the authority from, and all other moneys and income of whatsoever kind or character collected by, payable to or otherwise derived by the authority in connection with the ownership, leasing or sale of the authority facilities or in connection with any loans made by the authority under this chapter.

"Taxable authority facilities" means any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard and ice skating), racquet sports facility, suntan facility, race track, or facility the primary purpose of which is one of the following: (i) retail food and beverage services (excluding grocery stores), (ii) automobile sales and service, (iii) recreation or entertainment, or (iv) banks, savings and loan institutions or mortgage loan companies. The foregoing sentence notwithstanding, no facility financed as an enterprise zone facility using tax-exempt "enterprise zone facility bonds" (as such term is used in § 1394 of the Internal Revenue Code ) shall constitute a taxable authority facility.

"Trust indenture" means any trust agreement or mortgage under which bonds authorized pursuant to this chapter may be secured.

1966, c. 651, § 15.1-1374; 1968, c. 687; 1970, c. 725; 1972, c. 783; 1973, c. 528; 1977, cc. 238, 619, 673; 1978, c. 526; 1980, c. 372; 1983, c. 514; 1984, c. 700; 1986, c. 473; 1988, c. 211; 1990, cc. 312, 469; 1991, c. 6; 1994, c. [737](#); 1997, cc. 587, [758](#), [763](#); 1999, c. [379](#); 2005, c. [928](#); 2006, c. [324](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

### **§ 15.2-4903. Creation of industrial development authorities.**

A. The governing body of any locality in the Commonwealth is hereby authorized to create by ordinance a political subdivision of the Commonwealth, with such public and corporate powers as are set forth in this chapter. Any such ordinance may limit the type and number of facilities that the authority may otherwise finance under this chapter, which ordinance of limitation may, from time to time, be amended. Louisa County may, by ordinance, authorize an authority created or established under this chapter to acquire, own, operate, and regulate the use of airports, landing fields, and facilities, and other property incident thereto, including such facilities and property necessary for the servicing of aircraft. In the absence of any such limitation, an

authority shall have all powers granted under this chapter.

B. The name of the authority shall be the Industrial Development Authority of (the blank spaces to be filled in with the name of the locality which created the authority, including the proper designation thereof as a county, city or town).

C. Notwithstanding subsection B, for any authority authorized by this section, the name of the authority may be the Economic Development Authority of (the blank space to be filled in with the name of the locality that created the authority), if the governing body of such locality so chooses.

D. The authority jointly created by the Town of South Boston and Halifax County pursuant to § [15.2-4916](#) may be named the Economic Development Authority of Halifax, Virginia, or such other name as the governing bodies of the Town of South Boston and Halifax County shall choose in the concurrent resolutions creating such authority.

1966, c. 651, § 15.1-1376; 1975, c. 254; 1997, c. [587](#); 1999, c. [157](#); 2000, c. [398](#); 2001, cc. [5](#), [6](#), [730](#); 2002, cc. [169](#), [680](#), [725](#); 2003, cc. [159](#), [343](#), [345](#), [350](#), [357](#); 2004, cc. [292](#), [782](#), [933](#); 2016, cc. [164](#), [312](#); 2017, c. [560](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 15.2-4904. Directors; qualifications; terms; vacancies; compensation and expenses; quorum; records; certification and distribution of report concerning bond issuance.**

A. The authority shall be governed by a board of directors in which all powers of the authority shall be vested and which board shall be composed of seven directors, appointed by the governing body of the locality. The seven directors shall be appointed initially for terms of one, two, three and four years; two being appointed for one-year terms; two being appointed for two-year terms; two being appointed for three-year terms and one being appointed for a four-year term. Subsequent appointments shall be for terms of four years, except appointments to fill vacancies which shall be for the unexpired terms. All terms of office shall be deemed to commence upon the date of the initial appointment to the authority, and thereafter, in accordance with the provisions of the immediately preceding sentence. If at the end of any term of office of any director a successor thereto has not been appointed, then the director whose term of office has expired shall continue to hold office until his successor is appointed and qualified.

Notwithstanding the provisions of this subsection, the board of supervisors of Wise County may appoint eight members to serve on the board of the authority, with terms staggered as agreed upon by the board of supervisors, the board of supervisors of Henrico County may appoint 10 members to serve on the board of the authority, two from each magisterial district, with terms staggered as agreed upon by the board of supervisors, the board of supervisors of Roanoke County may appoint 10 members to serve on the board of the authority, two from each magisterial district, with terms staggered as agreed upon by the board of supervisors, the board of supervisors of Mathews County may appoint from five to seven members to serve on the board of the authority, the town council of the Town of Saint Paul may appoint 10 members to serve on the board of the authority, with terms staggered as agreed upon by the town council, however, the town council may at its option return to a seven member board by removing the last three members appointed, the board of supervisors of Russell County may appoint nine members, two of whom shall come from a town that has used its borrowing capacity to borrow \$2 million or more for industrial development, with terms staggered as agreed upon by the board of supervisors and the town council of the Town of South Boston shall

appoint two at-large members, Page County may appoint nine members, with one member from each incorporated town, one member from each magisterial district, and one at-large, with terms staggered as agreed upon by the board of supervisors, Halifax County shall appoint five at-large members to serve on the board of the authority jointly created by the Town of South Boston and Halifax County pursuant to § [15.2-4916](#), with terms staggered as agreed upon by the governing bodies of the Town of South Boston and Halifax County in the concurrent resolutions creating such authority, the town council of the Town of Coeburn may appoint five members to serve on the board of the authority, with terms staggered as agreed upon by the town council, the city council of Suffolk may appoint eight members to serve on the board of the authority, with one member from each of the boroughs, and one at-large member, with terms staggered as agreed upon by the city council, the City of Chesapeake may appoint nine members, with terms staggered as agreed upon by the city council; however, in the City of Chesapeake, after July 1, 2017, no member shall serve more than two consecutive terms. Any person who has served more than one and one-half terms as a member of the Chesapeake Economic Development Authority as of July 1, 2017, shall not be eligible for reappointment for another consecutive term. A member of the Chesapeake Economic Development Authority shall serve at the pleasure of the city council of the City of Chesapeake. No Chesapeake Economic Development Authority member shall work for the Authority within one year after serving as a member. The city council of the City of Norfolk may appoint 11 members, with terms staggered as agreed upon by the city council, and the board of supervisors of Louisa County may appoint directors to serve on the board of the authority for terms coincident with members of the board of supervisors.

A member of the board of directors of the authority may be removed from office by the local governing body without limitation in the event that the board member is absent from any three consecutive meetings of the authority or is absent from any four meetings of the authority within any 12-month period or upon unanimous vote of the board of supervisors. In any such event, a successor shall be appointed by the governing body for the unexpired portion of the term of the member who has been removed.

B. Each director shall, upon appointment or reappointment, before entering upon his duties take and subscribe the oath prescribed by § [49-1](#).

C. No director shall be an officer or employee of the locality except (i) in a town with a population of less than 3,500 where members of the town governing body may serve as directors provided they do not constitute a majority of the board, (ii) in Buchanan County where a constitutional officer who has previously served on the board of directors may serve as a director provided the governing body of such county approves, and (iii) in Frederick County where the board of supervisors may appoint one of its members to the Economic Development Authority of the County of Frederick, Virginia. Every director shall, at the time of his appointment and thereafter, reside in a locality within which the authority operates or in an adjoining locality. When a director ceases to be a resident of such locality, the director's office shall be vacant and a new director may be appointed for the remainder of the term.

D. The directors shall elect from their membership a chairman, a vice-chairman, and from their membership or not, as they desire, a secretary and a treasurer, or a secretary-treasurer, who shall continue to hold such office until their respective successors are elected. The directors shall receive no salary but may be compensated such amount per regular, special, or committee meeting or per each official representation as may be approved by the appointing authority, not to exceed \$200 per meeting or official representation, and shall be reimbursed for necessary traveling and other expenses incurred in the performance of their duties.

E. Four members of the board of directors shall constitute a quorum of the board for the purposes of conducting its business and exercising its powers and for all other purposes, except that no facilities owned by the authority shall be leased or disposed of in any manner without a majority vote of the members of the

board of directors. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the powers and perform all the duties of the board.

F. The board shall keep detailed minutes of its proceedings, which shall be open to public inspection at all times. It shall keep suitable records of its financial transactions and, unless exempted by § [30-140](#), it shall arrange to have the records audited annually. Copies of each such audit shall be furnished to the governing body of the locality and shall be open to public inspection.

Two copies of the report concerning issuance of bonds required to be filed with the United States Internal Revenue Service shall be certified as true and correct copies by the secretary or assistant secretary of the authority. One copy shall be furnished to the governing body of the locality and the other copy mailed to the Department of Small Business and Supplier Diversity.

1966, c. 651, § 15.1-1377; 1979, c. 35; 1980, c. 304; 1982, c. 463; 1983, c. 514; 1984, c. 750; 1987, c. 368; 1990, c. 87; 1993, c. 896; 1996, cc. [589](#), [599](#); 1997, c. [587](#); 1999, cc. [337](#), [408](#), [414](#); 2000, c. [963](#); 2001, c. [121](#); 2003, cc. [347](#), [357](#); 2006, c. [687](#); 2007, cc. [283](#), [338](#); 2008, c. [619](#); 2009, cc. [199](#), [200](#), [460](#), [597](#); 2012, cc. [337](#), [352](#); 2013, c. [482](#); 2014, cc. [381](#), [382](#); 2016, c. [414](#); 2017, cc. [541](#), [557](#), [560](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

#### **§ 15.2-4905. Powers of authority.**

The authority shall have the following powers together with all powers incidental thereto or necessary for the performance of those hereinafter stated:

1. To sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;
2. To adopt and use a corporate seal and to alter the same at pleasure;
3. To enter into contracts; however, any written contract of the authority shall contain provisions addressing the issue of whether attorney's fees shall be recoverable by the prevailing party in the event the contract is subject to litigation;
4. To acquire, whether by purchase, exchange, gift, lease or otherwise, and to improve, maintain, equip and furnish one or more authority facilities including all real and personal properties which the board of directors of the authority may deem necessary in connection therewith and regardless of whether any such facilities shall then be in existence;
5. To lease to others any or all of its facilities and to charge and collect rent therefor and to terminate any such lease upon the failure of the lessee to comply with any of the obligations thereof; and to include in any such lease, if desired, a provision that the lessee thereof shall have options to renew such lease or to purchase any or all of the leased facilities, or that upon payment of all of the indebtedness of the authority it may lease or convey any or all of its facilities to the lessee thereof with or without consideration;
6. To sell, exchange, donate, and convey any or all of its facilities or properties whenever its board of directors shall find any such action to be in furtherance of the purposes for which the authority was organized;

7. To issue its bonds for the purpose of carrying out any of its powers including specifically, but without intending to limit any power conferred by this section or this chapter, the issuance of bonds to provide long-term financing of any pollution control facility, whether any such facility was constructed prior to or after the enactment hereof or the receipt of a commitment from an authority to undertake financing pursuant hereto, unless the major part of the proceeds of such bonds will be used to redeem any prior long-term financing of such facility other than financings pursuant to this chapter or any similar law;

8. As security for the payment of the principal of and interest on any bonds so issued and any agreements made in connection therewith, to mortgage and pledge any or all of its facilities or any part or parts thereof, whether then owned or thereafter acquired, and to pledge the revenues therefrom or from any part thereof or from any loans made by the authority;

9. To employ and pay compensation to such employees and agents, including attorneys, and real estate brokers whether engaged by the authority or otherwise, as the board of directors shall deem necessary in carrying on the business of the authority;

10. To exercise all powers expressly given the authority by the governing body of the locality which established the authority and to establish bylaws and make all rules and regulations, not inconsistent with the provisions of this chapter, deemed expedient for the management of the authority's affairs;

11. To appoint an industrial advisory committee or similar committee or committees to advise the authority, consisting of such number of persons as it may deem advisable. Such persons may be compensated such amount per regular, special, or committee meeting as may be approved by the appointing authority, not to exceed \$50 per meeting day, and may be reimbursed for necessary traveling and other expenses incurred while on the business of the authority;

12. To borrow money and to accept contributions, grants and other financial assistance from the United States of America and agencies or instrumentalities thereof, the Commonwealth, or any political subdivision, agency, or public instrumentality of the Commonwealth, for or in aid of the construction, acquisition, ownership, maintenance or repair of the authority facilities, for the payment of principal of any bond of the authority, interest thereon, or other cost incident thereto, or in order to make loans in furtherance of the purposes of this chapter of such money, contributions, grants, and other financial assistance, and to this end the authority shall have the power to comply with such conditions and to execute such agreements, trust indentures, and other legal instruments as may be necessary, convenient or desirable and to agree to such terms and conditions as may be imposed; and

13. To make loans or grants to any person, partnership, association, corporation, business, or governmental entity in furtherance of the purposes of this chapter including for the purposes of promoting economic development, provided that such loans or grants shall be made only from revenues of the authority which have not been pledged or assigned for the payment of any of the authority's bonds, and to enter into such contracts, instruments, and agreements as may be expedient to provide for such loans and any security therefor. An authority may also be permitted to forgive loans or other obligations if it is deemed to further economic development. The word "revenues" as used in this subdivision includes contributions, grants and other financial assistance, as set out in subdivision 12.

The authority shall not have power to operate any facility as a business other than as lessor and shall not have the power to operate any single or multi-family housing facilities. However, the authority shall have the power to apply for, establish, operate and maintain a foreign-trade zone in accordance with the provisions of Chapter 14 (§ [62.1-159](#) et seq.) of Title 62.1. Any meeting held by the board of directors at which formal

action is taken shall be open to the public.

If a locality has created an industrial development authority pursuant to this chapter or any other provision of law, no other such authority, not created by such locality, shall finance facilities, except pollution control facilities, within the boundaries of such locality, unless the governing body of such locality in which the facilities are located or are proposed to be located, concurs with the inducement resolution adopted by the authority, and shows such concurrence in a duly adopted resolution. Notwithstanding the foregoing, nothing contained herein shall be deemed to invalidate or otherwise impair any existing financing by an authority or the financing of any facilities for which application has been made to an authority prior to July 1, 1981.

1966, c. 651, § 15.1-1378; 1970, c. 598; 1972, c. 783; 1973, c. 528; 1981, c. 3; 1991, c. 6; 1993, c. 896; 1994, c. [317](#); 1997, cc. 587, [758](#), [763](#); 1998, c. [728](#); 2005, c. [575](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

### **§ 15.2-4906. Public hearing and approval.**

A. Whenever federal law requires public hearings and public approval as a prerequisite to obtaining federal tax exemption for the interest paid on industrial development bonds, unless otherwise specified by federal law or regulation, the public hearing shall be conducted by the authority and the procedure for the public hearing and public approval shall be in accordance with this section.

B. For a public hearing by the authority, notice of the hearing shall be published once a week for two successive weeks in a newspaper having general circulation in the locality in which the facility to be financed is to be located of intention to provide financing for a named individual or business entity. The applicant shall pay the cost of publication. The notice shall specify the time and place of hearing at which persons may appear and present their views. The hearing shall be held not less than six days nor more than twenty-one days after the second notice shall appear in such newspaper.

The notice shall contain: (i) the name and address of the authority; (ii) the name and address (principal place of business, if any) of the party seeking financing; (iii) the maximum dollar amount of financing sought; and (iv) the type of business and purpose and specific location, if known, of the facility to be financed.

If after the hearing has been held the authority approves the financing, a reasonably detailed summary of the comments expressed at the hearing shall be conveyed promptly to the locality's governing body together with the recommendation of the authority.

C. For public approval, the governing body of the locality on behalf of which the bonds of the authority are issued shall within sixty calendar days from the public hearing held by the authority either approve or disapprove financing of any facility recommended by the authority.

Action of the governing body shall be by a majority of a quorum set out in a resolution. Such vote shall be recorded and disclose how each member voted.

In case of a joint authority the approval required by the governing body of the locality shall be that governing body of the area where the facility will be located, if permitted by federal law or regulation.

The provisions of this section shall not apply to bonds, notes or other obligations issued pursuant to hearings held and governmental approvals obtained prior to the effective date of this act in compliance with federal

law or regulation.

1983, c. 514, § 15.1-1378.1; 1997, c. 587.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 15.2-4907. Fiscal impact statement.**

Every request for industrial development (facility) financing when submitted to the governing body of the locality for approval shall be accompanied by a statement in the following form:

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Name of Applicant)

\_\_\_\_\_  
(Facility)

- 1. Maximum amount of financing sought \$ \_\_\_\_\_
- 2. Estimated taxable value of the facility's real property to be constructed in the locality \$ \_\_\_\_\_
- 3. Estimated real property tax per year using present tax rates \$ \_\_\_\_\_
- 4. Estimated personal property tax per year using present tax rates \$ \_\_\_\_\_
- 5. Estimated merchants' capital tax per year using present tax rates \$ \_\_\_\_\_
- 6. a. Estimated dollar value per year of goods that will be purchased from Virginia companies within the locality \$ \_\_\_\_\_
- b. Estimated dollar value per year of goods that will be purchased from non-Virginia companies within the locality \$ \_\_\_\_\_
- c. Estimated dollar value per year of services that will be purchased from Virginia companies within the locality \$ \_\_\_\_\_
- d. Estimated dollar value per year of services that will be purchased from non-Virginia companies within the locality \$ \_\_\_\_\_
- 7. Estimated number of regular employees on year round basis \$ \_\_\_\_\_
- 8. Average annual salary per employee \$ \_\_\_\_\_

Signature

\_\_\_\_\_  
Authority Chairman

\_\_\_\_\_  
Name of Authority

If one or more of the above questions do not apply to the facility indicate by writing N/A (not applicable) on the appropriate line.

The provisions of this section shall not apply to bonds, notes or other obligations issued pursuant to hearings

held and governmental approvals obtained prior to the effective date of this act in compliance with federal law or regulation.

1983, c. 514, § 15.1-1378.2; 1997, c. 587; 1998, c. [728](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 15.2-4908. Issuance of bonds, notes and other obligations of authority.**

A. Subject to the limitations of Chapter 50 (§ [15.2-5000](#) et seq.) of this title, the authority may issue bonds from time to time in its discretion, for any of its purposes, including the payment of all or any part of the cost of authority facilities and including the payment or retirement of bonds previously issued by it. All bonds issued by the authority shall be payable solely from the revenues and receipts derived from the leasing or sale by the authority of its facilities or any part thereof or from payments received by the authority in connection with its loans, and the authority may issue such types of bonds as it may determine, including, without limiting the generality of the foregoing, bonds payable, both as to principal and interest: (i) from its revenues and receipts generally; (ii) exclusively from the revenues and receipts of a particular facility or loan; or (iii) exclusively from the revenues and receipts of certain designated facilities or loans whether or not they are financed in whole or in part from the proceeds of such bonds. Unless otherwise provided in the proceeding authorizing the issuance of the bonds, or in the trust indenture securing the bonds, all bonds shall be payable solely and exclusively from the revenues and receipts of a particular facility or loan. Bonds may be executed and delivered by the authority at any time and from time to time, may be in such form and denominations and of such terms and maturities, may be in registered or bearer form either as to principal or interest or both, may be payable in such installments and at such time or times not exceeding 40 years from the date thereof, may be payable at such place or places whether within or outside the Commonwealth, may bear interest at such rate or rates, may be payable at such time or times, may be evidenced in such manner, and may contain such provisions not inconsistent herewith, all as shall be determined by the board of directors. If deemed advisable by the board of directors, there may be retained in the proceedings under which any bonds of the authority are authorized to be issued an option to redeem all or any part thereof, at such price or prices and after such notice or notices and on such terms and conditions as may be determined by the board of directors and as may be briefly recited on the face of the bonds, but nothing herein contained shall be construed to confer on the authority any right or option to redeem any bonds except as may be provided in the proceedings under which they shall be issued. Any bonds of the authority may be sold at public or private sale in such manner and from time to time as may be determined by the board of directors of the authority to be most advantageous, and the authority may pay all costs, premiums and commissions which its board of directors may deem necessary or advantageous in connection with the issuance thereof. Issuance by the authority of one or more series of bonds for one or more purposes shall not preclude it from issuing other bonds in connection with the same facility or any other facility, but the proceedings whereunder any subsequent bonds may be issued shall recognize and protect any prior pledge or mortgage made for any prior issue of bonds. Any bonds of the authority at any time outstanding may from time to time be refunded by the authority by the issuance of its refunding bonds in such amount as the board of directors may deem necessary, but not exceeding an amount sufficient to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon and any costs, premiums or commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof to the payment of the bonds to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby, with the consent of the holders of the bonds so to be refunded, and regardless of whether

the bonds to be refunded were issued in connection with the same facilities or separate facilities, and regardless of whether the bonds proposed to be refunded are payable on the same date or on different dates or are due serially or otherwise. The determination of the form, denominations, maturities, redemption provisions, places of payment, interest rate or rates, payment installations, dates and all other terms and provisions of bonds as authorized in this section may be made by the board of directors in such manner as the board may provide, including the determination by reference to indices and formulas or by agents designated by the board of directors under guidelines established by it.

B. All bonds shall be signed by the chairman or vice-chairman of the authority or shall bear his facsimile signature, and the corporate seal of the authority or a facsimile thereof shall be impressed or imprinted thereon and attested by the signature of the secretary (or the secretary-treasurer) or the assistant secretary (or assistant secretary-treasurer) of the authority or shall bear his facsimile signature, and any coupons attached thereto shall bear the facsimile signature of the chairman. In case any officer whose signature or a facsimile signature appears on any bonds or coupons ceases to be an officer before delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. When the signatures of both the chairman or the vice-chairman and the secretary (or the secretary-treasurer) or the assistant secretary (or the assistant secretary-treasurer) are facsimiles, the bonds shall be authenticated by a corporate trustee or other authenticating agent approved by the authority.

C. If the proceeds derived from a particular bond issue, due to error of estimates or otherwise, are less than the cost of the authority facilities for which such bonds were issued, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in the proceedings authorizing the issuance of the bonds of such issue or in the trust indenture securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds of the first issue. If the proceeds of the bonds of any issue shall exceed such cost, the surplus may be deposited to the credit of the sinking fund for such bonds or may be applied to the payment of the cost of any additions, improvements or enlargements of the authority facilities for which such bonds shall have been issued.

D. Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts or temporary bonds with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The authority may also provide for the replacement of any bonds which are mutilated, destroyed or lost. Bonds may be issued under the provisions of this chapter without obtaining the consent of any department, division, commission, board, bureau or agency of the Commonwealth, and without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions or things which are specifically required by this chapter; however, nothing contained in this chapter shall be construed as affecting the powers and duties now conferred by law upon the State Corporation Commission.

E. All bonds issued under the provisions of this chapter shall have and are hereby declared to have all the qualities and incidents of and shall be and are hereby made negotiable instruments under the Uniform Commercial Code of Virginia (§ [8.1A-101](#) et seq.), subject only to provisions respecting registration of the bonds.

F. In addition to all other powers granted to the authority by this chapter, the authority may issue, from time to time, notes or other obligations of the authority for any of its authorized purposes. The provisions of this chapter which relate to bonds or revenue bonds shall apply to such notes or other obligations insofar as such provisions may be appropriate.

1966, c. 651, § 15.1-1379; 1968, c. 687; 1983, c. 514; 1991, c. 6; 1997, c. 587; 2003, cc. [353](#), [683](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 15.2-4909. Liability of Commonwealth, political subdivisions, directors and officers.**

A. Bonds issued pursuant to this chapter shall not be deemed to constitute a debt or a pledge of the faith and credit of the Commonwealth, or any political subdivision thereof, including the locality which created the authority issuing such bonds, but such bonds shall be payable solely from the funds provided therefor as herein authorized. All such bonds shall contain on the face thereof a statement to the effect that neither the Commonwealth, nor any political subdivision thereof, nor the authority shall be obligated to pay the same or the interest thereon or other costs incident thereto except from the revenues and moneys pledged therefor and that neither the faith and credit nor the taxing power of the Commonwealth, or any political subdivision thereof, is pledged to the payment of the principal of such bonds or the interest thereon or other costs incident thereto.

B. Neither the directors of the authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

C. All expenses incurred in carrying out the provisions of this chapter shall be payable solely from the funds of the authority and no liability or obligation shall be incurred by the authority hereunder beyond the extent to which moneys shall be available to the authority.

D. Bonds issued pursuant to the provisions of this chapter shall not constitute an indebtedness within the meaning of any debt limitation or restriction.

1966, c. 651, § 15.1-1380; 1997, c. 587.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 15.2-4910. Security for payment of bonds; default.**

The principal of and interest on any bonds issued by the authority shall be secured by a pledge of the revenues and receipts out of which the same shall be made payable, and may be secured by a trust indenture covering all or any part of the authority facilities from which revenues or receipts so pledged may be derived, including any enlargements of and additions to any such projects thereafter made. The resolution under which the bonds are authorized to be issued and any such trust indenture may contain any agreements and provisions respecting the maintenance of the projects covered thereby, the fixing and collection of rents for any portions thereof leased by the authority to others, the creation and maintenance of special funds from such revenues and the rights and remedies available in the event of default, all as the board of directors shall deem advisable not in conflict with the provisions hereof. Each pledge, agreement and trust indenture made for the benefit or security of any of the bonds of the authority shall continue effective until the principal of and interest on such bonds have been fully paid. In the event of default in such payment or in any agreements of the authority made as a part of the contract under which the bonds were issued, whether contained in the proceedings authorizing the bonds or in any trust indenture executed as security therefor, such payment or agreements may be enforced by writ of mandamus, or by a suit, action or proceeding at law or in equity to compel the authority and the directors, officers, agents or employees thereof to perform the terms, provisions, and covenants contained in any trust indenture of the authority, by the appointment of a receiver in equity or

by foreclosure of any such trust indenture or any one or more of said remedies.

1966, c. 651, § 15.1-1381; 1997, c. 587.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 15.2-4911. Rents, fees and other charges.**

The authority shall fix and revise from time to time the rents, fees and other charges to be paid to it in connection with the lease or sale of various authority facilities and for any other services furnished or provided by the authority. Such rents, fees and charges shall provide at least sufficient funds to pay the cost of maintaining, repairing and operating such projects and the principal and interest of any bonds issued by the authority or other debts contracted as the bonds become due and payable. The authority and the political subdivision in which all or any part of a particular authority facility is located may agree on payment by the authority on account of governmental services to be rendered by the political subdivision in such amounts as the authority may find to be consistent with the purposes of this chapter. A reserve may be accumulated and maintained out of the revenues and receipts of the authority for extraordinary repairs and expenses and for such other purposes as may be provided in any resolution authorizing a bond issue or in any trust indenture securing the authority's bonds. Subject to such provisions and restrictions as may be set forth in the resolution or in the trust indenture authorizing or securing any of the bonds or other obligations hereunder, the authority shall have exclusive control of the revenues and receipts derived from the lease or sale of any authority facility and the right to use the revenues and receipts in the exercise of its powers and duties set forth in this chapter.

1966, c. 651, § 15.1-1382; 1968, c. 687; 1973, c. 528; 1997, c. 587.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 15.2-4912. Exemption from taxation.**

The authority is hereby declared to be performing a public function in behalf of the locality with respect to which the authority is created and to be a public instrumentality of such locality. Accordingly, the income, including any profit made on the sale thereof from all bonds issued by the authority, shall at all times be exempt from all taxation by the Commonwealth or any political subdivision thereof.

1966, c. 651, § 15.1-1383; 1997, c. 587.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 15.2-4913. Authority to be nonprofit; excess earnings.**

The authority shall be nonprofit and no part of its net earnings remaining after payment of its expenses shall enure to the benefit of any individual, firm or corporation, except that if the board of directors of the authority determines that sufficient provision has been made for the full payment of the expenses, bonds and other obligations of the authority then any net earnings of the authority thereafter accruing shall be paid to the locality with respect to which the authority was created. However, nothing herein contained shall prevent the board of directors from transferring all or any part of its facilities or properties in accordance with the terms

of any contract entered into by the authority.

1966, c. 651, § 15.1-1384; 1973, c. 528; 1997, c. 587.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 15.2-4914. Dissolution of authority; disposition of property.**

Whenever the board of directors of the authority by resolution determines that the purposes for which the authority was formed have been substantially complied with and all bonds theretofore issued and all obligations theretofore incurred by the authority have been fully paid, the then members of the board of directors of the authority shall thereupon execute and file for record with the governing body of the locality which created the authority, a resolution declaring such facts. If the governing body of the locality which created the authority is of the opinion that the facts stated in the authority's resolution are true and that the authority should be dissolved, it shall so resolve and the authority shall stand dissolved. Upon such dissolution, the title to all funds and properties owned by the authority at the time of such dissolution shall vest in the locality creating the authority and possession of such funds and properties shall forthwith be delivered to such locality.

1966, c. 651, § 15.1-1385; 1997, c. 587.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 15.2-4915. Bonds as legal investments and lawful security.**

The bonds issued pursuant to this chapter shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians and for all public funds of the Commonwealth or other political corporations or subdivisions of the Commonwealth. Such bonds shall be eligible to secure the deposit of public funds of the Commonwealth, localities, school districts or other political corporations or subdivisions of the Commonwealth, and shall be security for such deposits to the extent of their value when accompanied by all unmatured coupons appertaining thereto.

1966, c. 651, § 15.1-1386; 1997, c. 587.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 15.2-4916. Authorities acting jointly.**

The powers herein conferred upon authorities created under this chapter may be exercised by two or more authorities acting jointly. Two or more localities may jointly create an authority, in which case each of the directors of such authority shall be appointed by the governing body of the respective locality which the director represents.

1966, c. 651, § 15.1-1387; 1982, c. 463; 1997, c. 587.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not

constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 15.2-4917. Facility sites.**

Any locality may acquire, pursuant to § [15.2-1800](#), but not by condemnation, a facility site and may likewise transfer any facility site to an authority. Such transfer may be authorized by a resolution of the governing body of the locality without submission of the question to the voters and without regard to the requirements, restrictions, limitations or other provisions contained in any other general, special or local law. Such facility sites may be located within or outside or partially within or outside the locality creating the authority. If a real estate broker licensed under § [54.1-2100](#) represents a party in a transaction through which a facility site is acquired, the locality may pay a reasonable brokerage fee to such real estate broker.

1966, c. 651, § 15.1-1388; 1997, c. 587; 1998, c. [728](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 15.2-4918. Provisions of chapter cumulative; construction.**

This chapter neither limits nor restricts any powers which the authority might otherwise have under any laws of this Commonwealth. No proceedings, notice or approval shall be required for the organization of the authority or the issuance of any bonds or any instrument as security therefor, except as herein provided. However, nothing herein shall be construed to deprive the Commonwealth and its political subdivisions of their respective police powers over properties of the authority or to impair any power thereover of any official or agency of the Commonwealth and its political subdivisions which may be otherwise provided by law. Nothing contained in this chapter shall be deemed to authorize the authority to occupy or use any land, streets, buildings, structures or other property of any kind, owned or used by any political subdivision within its jurisdiction, or any public improvement or facility maintained by such political subdivision for the use of its inhabitants, without first obtaining the consent of the governing body thereof.

1966, c. 651, § 15.1-1389; 1997, c. 587.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 15.2-4919. Provisions of chapter controlling over other statutes and charters.**

Any provision of this chapter which is found to be in conflict with any other statute or charter shall be controlling and shall supersede such other statute or charter to the extent of such conflict.

1966, c. 651, § 15.1-1390; 1997, c. 587; 2015, c. [709](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 15.2-4920. Validation of creation of authorities, appointment of directors and proceedings; curative resolutions.**

All proceedings heretofore taken with respect to the creation of authorities by any locality pursuant to this chapter are hereby validated and confirmed and all such authorities are declared to be legally created. All

incumbent directors of authorities are declared to be and are lawfully appointed directors of authorities, notwithstanding any failure to conform to the requirements of this chapter, and all such appointments are hereby ratified, validated and confirmed. However, all terms of incumbent directors shall conform to § [15.2-4904](#). The governing body of any locality is hereby authorized to adopt such corrective resolutions as may be necessary to carry out the requirements of the immediately preceding sentence. All proceedings heretofore taken to provide for or with respect to the authorization, issuance, sale, execution or delivery of bonds by or on behalf of any authority are hereby validated, ratified, approved and confirmed, and any such bonds so issued shall be valid, legal, binding and enforceable obligations of such authority.

1980, c. 304, § 15.1-1391; 1997, c. 587.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

## Chapter 37. Virginia Freedom of Information Act

### § 2.2-3700. Short title; policy.

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

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

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

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

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

1968, c. 479, § 2.1-340; 1976, c. 467, § 2.1-340.1; 1989, c. 358; 1990, c. 538; 1999, cc. [703](#), [726](#); 2001, c. [844](#); 2002, c. [393](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

### § 2.2-3701. Definitions.

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

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

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

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

"Information" as used in the exclusions established by §§ [2.2-3705.1](#) through [2.2-3705.7](#), means the content

within a public record that references a specifically identified subject matter, and shall not be interpreted to require the production of information that is not embodied in a public record.

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

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

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

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

"Public records" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.

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

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

1968, c. 479, § 2.1-341; 1970, c. 456; 1974, c. 332; 1975, c. 307; 1977, c. 677; 1978, cc. 573, 826; 1979, cc. 369, 687; 1980, c. 754; 1984, c. 252; 1989, c. 358; 1990, c. 538; 1993, cc. 270, 720; 1994, cc. [845](#), [931](#); 1996, c. [609](#); 1997, c. [641](#); 1999, cc. [703](#), [726](#); 2001, c. [844](#); 2002, c. [393](#); 2003, c. [897](#); 2007, c. [945](#); 2008, cc. [233](#), [789](#); 2010, c. [706](#); 2011, c. [242](#); 2015, cc. [131](#), [195](#), [224](#); 2016, cc. [620](#), [716](#); 2017, cc. [616](#), [778](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

### **§ 2.2-3702. Notice of chapter.**

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

1976, c. 467, § 2.1-341.1; 1999, cc. [703](#), [726](#); 2001, c. [844](#); 2002, c. [393](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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

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

1. The Virginia Parole Board, except that (i) information from the Virginia Parole Board providing the number of inmates considered by the Board for discretionary parole, the number of inmates granted or denied parole, and the number of parolees returned to the custody of the Department of Corrections solely as a result of a determination by the Board of a violation of parole shall be open to inspection and available for release, on a monthly basis, as provided by § [2.2-3704](#); (ii) all guidance documents, as defined in § [2.2-4101](#), shall be public records and subject to the provisions of this chapter; and (iii) all records concerning the finances of the Virginia Parole Board shall be public records and subject to the provisions of this chapter. The information required by clause (i) shall be furnished by offense, sex, race, age of the inmate, and the locality in which the conviction was obtained, upon the request of the party seeking the information. The information required by clause (ii) shall include all documents establishing the policy of the Board or any change in or clarification of such policy with respect to grant, denial, deferral, revocation, or supervision of parole or geriatric release or the process for consideration thereof, and shall be clearly and conspicuously posted on the Board's website. However, such information shall not include any portion of any document reflecting the application of any policy or policy change or clarification of such policy to an individual inmate;

2. Petit juries and grand juries;

3. Family assessment and planning teams established pursuant to § [2.2-5207](#);

4. The Virginia State Crime Commission; and

5. The records required by law to be maintained by the clerks of the courts of record, as defined in § [1-212](#), and courts not of record, as defined in § [16.1-69.5](#). However, other records maintained by the clerks of such courts shall be public records and subject to the provisions of this chapter.

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

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

1999, cc. [703](#), [726](#), § 2.1-341.2; 2001, c. [844](#); 2003, cc. [989](#), [1018](#); 2004, cc. [398](#), [690](#); 2007, cc. [438](#), [548](#), [626](#); 2017, c. [620](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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

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

2014, c. [319](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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

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

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

1. The requested records are being entirely withheld. Such response shall identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.

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

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

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

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

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

G. Public records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data shall be made available to a requester at a reasonable cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases are combined or contain exempt and nonexempt records, the public body may provide access to the exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided by this chapter.

Public bodies shall produce nonexempt records maintained in an electronic database in any tangible medium identified by the requester, including, where the public body has the capability, the option of posting the records on a website or delivering the records through an electronic mail address provided by the requester, if that medium is used by the public body in the regular course of business. No public body shall be required to

produce records from an electronic database in a format not regularly used by the public body. However, the public body shall make reasonable efforts to provide records in any format under such terms and conditions as agreed between the requester and public body, including the payment of reasonable costs. The excision of exempt fields of information from a database or the conversion of data from one available format to another shall not be deemed the creation, preparation, or compilation of a new public record.

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

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

J. In the event a public body has transferred possession of public records to any entity, including but not limited to any other public body, for storage, maintenance, or archiving, the public body initiating the transfer of such records shall remain the custodian of such records for purposes of responding to requests for public records made pursuant to this chapter and shall be responsible for retrieving and supplying such public records to the requester. In the event a public body has transferred public records for storage, maintenance, or archiving and such transferring public body is no longer in existence, any public body that is a successor to the transferring public body shall be deemed the custodian of such records. In the event no successor entity exists, the entity in possession of the public records shall be deemed the custodian of the records for purposes of compliance with this chapter, and shall retrieve and supply such records to the requester. Nothing in this subsection shall be construed to apply to records transferred to the Library of Virginia for permanent archiving pursuant to the duties imposed by the Virginia Public Records Act (§ [42.1-76](#) et seq.). In accordance with § [42.1-79](#), the Library of Virginia shall be the custodian of such permanently archived records and shall be responsible for responding to requests for such records made pursuant to this chapter.

1968, c. 479, § 2.1-342; 1973, c. 461; 1974, c. 332; 1975, cc. 307, 312; 1976, cc. 640, 709; 1977, c. 677; 1978, c. 810; 1979, cc. 682, 684, 686, 689; 1980, cc. 678, 754; 1981, cc. 456, 464, 466, 589; 1982, cc. 225, 449, 452, 560, 635; 1983, cc. 372, 462, 607; 1984, cc. 85, 395, 433, 513, 532; 1985, cc. 81, 155, 502, 618; 1986, cc. 273, 291, 383, 469, 592; 1987, cc. 401, 491, 581; 1988, cc. 39, 151, 395, 411, 891, 902; 1989, cc. 56, 358, 478; 1990, cc. 217, 538, 721, 819, 968; 1991, cc. 213, 561; 1992, cc. 40, 150, 167, 200, 203, 207, 593, 612; 1993, cc. 205, 270, 296, 537, 552, 638, 750, 883; 1994, cc. [485](#), [532](#), [606](#), [839](#), [853](#), [918](#); 1995, cc. [299](#), [362](#), [499](#), [562](#), [638](#), [722](#), [812](#), [837](#); 1996, cc. [168](#), [469](#), [589](#), [599](#), [783](#), [786](#), [794](#), [855](#), [862](#), [902](#), [905](#), [1001](#), [1046](#); 1997, cc. [198](#), [295](#), [439](#), [567](#), [636](#), [641](#), [777](#), [782](#), [785](#), [838](#), [861](#); 1998, cc. [427](#), [891](#); 1999, cc. [438](#), [703](#), [726](#); 2001, c. [844](#); 2002, cc. [715](#), [830](#); 2003, cc. [275](#), [981](#), [1021](#); 2007, c. [439](#); 2009, c. [626](#); 2010, c. [627](#); 2011, c. [604](#); 2016, cc. [620](#), [716](#); 2017, c. [778](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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

No provision of this chapter is intended, nor shall it be construed or applied, to authorize a public body to withhold a public record in its entirety on the grounds that some portion of the public record is excluded from disclosure by this chapter or by any other provision of law. A public record may be withheld from disclosure

in its entirety only to the extent that an exclusion from disclosure under this chapter or other provision of law applies to the entire content of the public record. Otherwise, only those portions of the public record containing information subject to an exclusion under this chapter or other provision of law may be withheld, and all portions of the public record that are not so excluded shall be disclosed.

2016, cc. [620](#), [716](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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

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

1. A plain English explanation of the rights of a requester under this chapter, the procedures to obtain public records from the public body, and the responsibilities of the public body in complying with this chapter. For purposes of this section, "plain English" means written in nontechnical, readily understandable language using words of common everyday usage and avoiding legal terms and phrases or other terms and words of art whose usage or special meaning primarily is limited to a particular field or profession;
2. Contact information for the FOIA officer designated by the public body pursuant to § [2.2-3704.2](#) to (i) assist a requester in making a request for records or (ii) respond to requests for public records;
3. A general description, summary, list, or index of the types of public records maintained by such public body;
4. A general description, summary, list, or index of any exemptions in law that permit or require such public records to be withheld from release;
5. Any policy the public body has concerning the type of public records it routinely withholds from release as permitted by this chapter or other law; and
6. The following statement: "A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen as set forth in subsection F of § [2.2-3704](#) of the Code of Virginia."

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

C. The Freedom of Information Advisory Council, created pursuant to § [30-178](#), shall assist in the

development and implementation of the provisions of subsection A, upon request.

2004, c. [730](#); 2009, c. [626](#); 2014, c. [421](#); 2016, c. [748](#); 2017, cc. [645](#), [778](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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

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

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

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

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

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

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

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

2016, c. [748](#); 2017, cc. [290](#), [778](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 2.2-3705. Repealed.**

Repealed by Acts 2004, c. [690](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not

constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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

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

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

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

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

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

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

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

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

5. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to § [2.2-3711](#). However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.
6. Vendor proprietary information software that may be in the public records of a public body. For the purpose of this subdivision, "vendor proprietary information software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.
7. Computer software developed by or for a state agency, public institution of higher education in the Commonwealth, or political subdivision of the Commonwealth.
8. Appraisals and cost estimates of real property subject to a proposed purchase, sale, or lease, prior to the completion of such purchase, sale, or lease.
9. Information concerning reserves established in specific claims administered by the Department of the Treasury through its Division of Risk Management as provided in Article 5 (§ [2.2-1832](#) et seq.) of Chapter 18, or by any county, city, or town; and investigative notes, correspondence and information furnished in confidence with respect to an investigation of a claim or a potential claim against a public body's insurance policy or self-insurance plan. However, nothing in this subdivision shall prevent the disclosure of information taken from inactive reports upon expiration of the period of limitations for the filing of a civil suit.
10. Personal contact information furnished to a public body for the purpose of receiving electronic mail from the public body, provided that the electronic mail recipient has requested that the public body not disclose such information. However, access shall not be denied to the person who is the subject of the record. As used in this subdivision, "personal contact information" means the information provided to the public body for the purpose of receiving electronic mail from the public body and includes home or business (i) address, (ii) email address, or (iii) telephone number or comparable number assigned to any other electronic communication device.
11. Communications and materials required to be kept confidential pursuant to § [2.2-4119](#) of the Virginia Administrative Dispute Resolution Act (§ [2.2-4115](#) et seq.).
12. Information relating to the negotiation and award of a specific contract where competition or bargaining is involved and where the release of such information would adversely affect the bargaining position or negotiating strategy of the public body. Such information shall not be withheld after the public body has made a decision to award or not to award the contract. In the case of procurement transactions conducted pursuant to the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.), the provisions of this subdivision shall not apply, and any release of information relating to such transactions shall be governed by the Virginia Public Procurement Act.
13. Account numbers or routing information for any credit card, debit card, or other account with a financial institution of any person or public body. However, access shall not be denied to the person who is the subject of the information. For the purposes of this subdivision, "financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, savings and loan companies or associations, and credit unions.

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705;

2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, c. [690](#); 2010, c. [553](#); 2016, cc. [620](#), [716](#), [729](#); 2017, cc. [140](#), [778](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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

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

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

Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the effectiveness of security plans after (i) any school building or property has been subjected to fire, explosion, natural disaster, or other catastrophic event or (ii) any person on school property has suffered or been threatened with any personal injury.

5. Information concerning the mental health assessment of an individual subject to commitment as a sexually violent predator under Chapter 9 (§ [37.2-900](#) et seq.) of Title 37.2 held by the Commitment Review Committee; except that in no case shall information identifying the victims of a sexually violent predator be disclosed.
6. Subscriber data provided directly or indirectly by a communications services provider to a public body that operates a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system if the data is in a form not made available by the communications services provider to the public generally. Nothing in this subdivision shall prevent the disclosure of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

For the purposes of this subdivision:

"Communications services provider" means the same as that term is defined in § [58.1-647](#).

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

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

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

For the purposes of this subdivision:

"Communications services provider" means the same as that term is defined in § [58.1-647](#).

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

8. Information held by the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, that would (i) reveal strategies under consideration or development by the Council or such commission or organizations to prevent the closure or realignment of federal military installations located in Virginia or the relocation of national security facilities located in Virginia, to limit the adverse economic effect of such realignment, closure, or relocation, or to seek additional tenant activity growth from the Department of Defense or federal government or (ii) disclose trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), provided to the Council or such commission or organizations in connection with their work.

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

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

Legislative Audit and Review Commission from reporting internal control deficiencies discovered during the course of an audit.

10. Information relating to the Statewide Agencies Radio System (STARS) or any other similar local or regional public safety communications system that (i) describes the design, function, programming, operation, or access control features of the overall system, components, structures, individual networks, and subsystems of the STARS or any other similar local or regional communications system or (ii) relates to radio frequencies assigned to or utilized by STARS or any other similar local or regional communications system, code plugs, circuit routing, addressing schemes, talk groups, fleet maps, encryption, or programming maintained by or utilized by STARS or any other similar local or regional public safety communications system.

11. Information concerning a salaried or volunteer Fire/EMS company or Fire/EMS department if disclosure of such information would reveal the telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to its personnel for use in the performance of their official duties.

12. Information concerning the disaster recovery plans or the evacuation plans in the event of fire, explosion, natural disaster, or other catastrophic event for hospitals and nursing homes regulated by the Board of Health pursuant to Chapter 5 (§ [32.1-123](#) et seq.) of Title 32.1 provided to the Department of Health. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the effectiveness of executed evacuation plans after the occurrence of fire, explosion, natural disaster, or other catastrophic event.

13. Records received by the Department of Criminal Justice Services pursuant to §§ [9.1-184](#), [22.1-79.4](#), and [22.1-279.8](#) or for purposes of evaluating threat assessment teams established by a public institution of higher education pursuant to § [23.1-805](#) or by a private nonprofit institution of higher education, to the extent such records reveal security plans, walk-through checklists, or vulnerability and threat assessment components.

14. Information contained in (i) engineering, architectural, or construction drawings; (ii) operational, procedural, tactical planning, or training manuals; (iii) staff meeting minutes; or (iv) other records that reveal any of the following, the disclosure of which would jeopardize the safety or security of any person; governmental facility, building, or structure or persons using such facility, building, or structure; or public or private commercial office, multifamily residential, or retail building or its occupants:

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

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

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

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

The same categories of records of any person or entity submitted to a public body for the purpose of

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

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

Nothing in this subdivision 14 shall prevent the disclosure of records relating to (1) the structural or environmental soundness of any such facility, building, or structure or (2) an inquiry into the performance of such facility, building, or structure after it has been subjected to fire, explosion, natural disaster, or other catastrophic event.

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

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, cc. [398](#), [482](#), [690](#), [770](#); 2005, c. [410](#); 2008, c. [721](#); 2009, c. [418](#); 2010, c. [672](#); 2011, cc. [111](#), [536](#); 2012, cc. [617](#), [803](#), [835](#); 2013, c. [600](#); 2015, c. [183](#); 2016, cc. [554](#), [620](#), [716](#), [717](#); 2017, c. [778](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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

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

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

1. (Effective January 15, 2018) Information relating to investigations of applicants for licenses and permits, and of all licensees and permittees, made by or submitted to the Virginia Alcoholic Beverage Control Authority, the Virginia Lottery, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ [18.2-340.15](#) et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.

2. Records of active investigations being conducted by the Department of Health Professions or by any health

regulatory board in the Commonwealth pursuant to § [54.1-108](#).

3. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management, to such personnel of any local public body, including local school boards, as are responsible for conducting such investigations in confidence, or to any public institution of higher education. However, nothing in this subdivision shall prevent the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information, or other individuals involved in the investigation.
4. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ [32.1-323](#) et seq.) of Title 32.1.
5. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ [2.2-3900](#) et seq.) or under any local ordinance adopted in accordance with the authority specified in § [2.2-524](#), or adopted pursuant to § [15.2-965](#), or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this subdivision shall prevent the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.
6. Information relating to studies and investigations by the Virginia Lottery of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ [58.1-4014](#) through [58.1-4018](#), (iv) defects in the law or regulations that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such information has not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv), and (v) shall be open to inspection and copying upon completion of the study or investigation.
7. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority as defined in § [2.2-3010](#) with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ [2.2-3009](#) et seq.); (iv) the Office of the State Inspector General with respect to an investigation initiated through the Fraud, Waste and Abuse Hotline or an investigation initiated pursuant to Chapter 3.2 (§ [2.2-307](#) et seq.); (v) internal auditors appointed by the head of a state agency or by any public institution of higher education; (vi) the committee or the auditor with respect to an investigation or audit conducted pursuant to § [15.2-825](#); or (vii) the auditors, appointed by the local governing body of any county, city, or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department, or program of such body. Information contained in completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is excluded by this subdivision, the information disclosed shall include the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.
8. The names, addresses, and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints or complaints relating to the Uniform Statewide

Building Code (§ [36-97](#) et seq.) or the Statewide Fire Prevention Code (§ [27-94](#) et seq.) made to a local governing body.

9. Records of active investigations being conducted by the Department of Criminal Justice Services pursuant to Article 4 (§ [9.1-138](#) et seq.), Article 4.1 (§ [9.1-150.1](#) et seq.), Article 11 (§ [9.1-185](#) et seq.), and Article 12 (§ [9.1-186](#) et seq.) of Chapter 1 of Title 9.1.

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

11. Information contained in (i) an application for licensure or renewal of a license for teachers and other school personnel, including transcripts or other documents submitted in support of an application, and (ii) an active investigation conducted by or for the Board of Education related to the denial, suspension, cancellation, revocation, or reinstatement of teacher and other school personnel licenses including investigator notes and other correspondence and information, furnished in confidence with respect to such investigation. However, this subdivision shall not prohibit the disclosure of such (a) application information to the applicant at his own expense or (b) investigation information to a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee. Information contained in completed investigations shall be disclosed in a form that does not reveal the identity of any complainant or person supplying information to investigators. The completed investigation information disclosed shall include information regarding the school or facility involved, the identity of the person who was the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a complaint or does not lead to corrective action, the identity of the person who was the subject of the complaint may be released only with the consent of the subject person. No personally identifiable information regarding a current or former student shall be released except as permitted by state or federal law.

12. Information provided in confidence and related to an investigation by the Attorney General under Article 1 (§ [3.2-4200](#) et seq.) or Article 3 (§ [3.2-4204](#) et seq.) of Chapter 42 of Title 3.2, Article 10 (§ [18.2-246.6](#) et seq.) of Chapter 6 or Chapter 13 (§ [18.2-512](#) et seq.) of Title 18.2, or Article 1 (§ [58.1-1000](#)) of Chapter 10 of Title 58.1. However, information related to an investigation that has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is not otherwise prohibited by law and does not reveal the identity of charging parties, complainants, persons supplying information, witnesses, or other individuals involved in the investigation.

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, cc. [605](#), [690](#), [766](#); 2005, c. [601](#); 2006, cc. [25](#), [95](#); 2008, cc. [387](#), [668](#), [689](#), [758](#); 2009, cc. [237](#), [326](#), [340](#); 2011, cc. [798](#), [871](#); 2012, cc. [476](#), [507](#), [803](#), [835](#); 2013, cc. [571](#), [572](#), [690](#), [717](#), [723](#); 2014, cc. [225](#), [414](#), [609](#), [788](#); 2015, cc. [38](#), [730](#); 2016, cc. [272](#), [620](#), [716](#); 2017, c. [778](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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

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

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

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

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

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

3. Information held by the Brown v. Board of Education Scholarship Committee that would reveal personally identifiable information, including scholarship applications, personal financial information, and confidential correspondence and letters of recommendation.

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

5. Information held by the University of Virginia or the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, that contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if

disclosure of such information would be harmful to the competitive position of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be.

6. Personal information, as defined in § [2.2-3801](#), provided to the Board of the Virginia College Savings Plan or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ [23.1-700](#) et seq.) of Title 23.1, including personal information related to (i) qualified beneficiaries as that term is defined in § [23.1-700](#), (ii) designated survivors, or (iii) authorized individuals. Nothing in this subdivision shall be construed to prevent disclosure or publication of information in a statistical or other form that does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

For purposes of this subdivision:

"Authorized individual" means an individual who may be named by the account owner to receive information regarding the account but who does not have any control or authority over the account.

"Designated survivor" means the person who will assume account ownership in the event of the account owner's death.

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

8. Information held by a threat assessment team established by a local school board pursuant to § [22.1-79.4](#) or by a public institution of higher education pursuant to § [23.1-805](#) relating to the assessment or intervention with a specific individual. However, in the event an individual who has been under assessment commits an act, or is prosecuted for the commission of an act that has caused the death of, or caused serious bodily injury, including any felony sexual assault, to another person, such information of the threat assessment team concerning the individual under assessment shall be made available as provided by this chapter, with the exception of any criminal history records obtained pursuant to § [19.2-389](#) or [19.2-389.1](#), health records obtained pursuant to § [32.1-127.1:03](#), or scholastic records as defined in § [22.1-289](#). The public body providing such information shall remove personally identifying information of any person who provided information to the threat assessment team under a promise of confidentiality.

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, c. [690](#); 2006, c. [518](#); 2008, cc. [561](#), [665](#); 2010, cc. [456](#), [524](#); 2014, c. [313](#); 2016, cc. [554](#), [620](#), [716](#); 2017, c. [778](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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

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

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

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

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

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

2. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants; information required to be provided to the Department of Health Professions by certain licensees pursuant to § [54.1-2506.1](#); information held by the Health Practitioners' Monitoring Program Committee within the Department of Health Professions that identifies any practitioner who may be, or who is actually, impaired to the extent that disclosure is prohibited by § [54.1-2517](#); and information relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such information that are in the possession of the Prescription Monitoring Program (Program) pursuant to Chapter 25.2 (§ [54.1-2519](#) et seq.) of Title 54.1 and any material relating to the operation or security of the Program.

3. Reports, documentary evidence, and other information as specified in §§ [51.5-122](#) and [51.5-141](#) and Chapter 1 (§ [63.2-100](#) et seq.) of Title 63.2 and information and statistical registries required to be kept confidential pursuant to Chapter 1 (§ [63.2-100](#) et seq.) of Title 63.2.

4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ [63.2-1700](#) et seq.) and 18 (§ [63.2-1800](#) et seq.) of Title 63.2; and information furnished to the Office of the Attorney General in connection with an investigation or litigation pursuant to Article 19.1 (§ [8.01-216.1](#) et seq.) of Chapter 3 of Title 8.01 and Chapter 9 (§ [32.1-310](#) et seq.) of Title 32.1. However, nothing in this subdivision shall prevent the disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.
5. Information collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ [32.1-111.1](#) et seq.) of Chapter 4 of Title 32.1.
6. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § [37.2-818](#).
7. Information acquired (i) during a review of any child death conducted by the State Child Fatality Review team established pursuant to § [32.1-283.1](#) or by a local or regional child fatality review team to the extent that such information is made confidential by § [32.1-283.2](#); (ii) during a review of any death conducted by a family violence fatality review team to the extent that such information is made confidential by § [32.1-283.3](#); or (iii) during a review of any adult death conducted by the Adult Fatality Review Team to the extent made confidential by § [32.1-283.5](#) or by a local or regional adult fatality review team to the extent that such information is made confidential by § [32.1-283.6](#).
8. Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § [32.1-276.9](#), to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to § [32.1-276.4](#).
9. Information relating to a grant application, or accompanying a grant application, submitted to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ [51.5-178](#) et seq.) of Chapter 14 of Title 51.5 that would (i) reveal (a) medical or mental health records or other data identifying individual patients or (b) proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.
10. Any information copied, recorded, or received by the Commissioner of Health in the course of an examination, investigation, or review of a managed care health insurance plan licensee pursuant to §§ [32.1-137.4](#) and [32.1-137.5](#), including books, records, files, accounts, papers, documents, and any or all computer or other recordings.
11. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be kept confidential pursuant to § [38.2-5002.2](#).
12. Information held by the State Health Commissioner relating to the health of any person subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ [32.1-48.05](#) et seq.) of Chapter 2 of Title 32.1. However, nothing in this subdivision shall be construed to prevent the disclosure of statistical

summaries, abstracts, or other information in aggregate form.

13. The names and addresses or other contact information of persons receiving transportation services from a state or local public body or its designee under Title II of the Americans with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created under § [63.2-600](#).

14. Information held by certain health care committees and entities that may be withheld from discovery as privileged communications pursuant to § [8.01-581.17](#).

15. Data and information specified in § [37.2-308.01](#) relating to proceedings provided for in Article 16 (§ [16.1-335](#) et seq.) of Chapter 11 of Title 16.1 and Chapter 8 (§ [37.2-800](#) et seq.) of Title 37.2.

16. (For contingent effective date, see Editor's note.) Records of and information held by the Emergency Department Care Coordination Program required to be kept confidential pursuant to § [32.1-372](#).

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, cc. [65](#), [666](#), [690](#), [773](#), [1014](#), [1021](#); 2005, cc. [181](#), [227](#), [716](#); 2008, c. [539](#); 2009, cc. [472](#), [813](#), [840](#); 2011, cc. [110](#), [175](#), [535](#); 2012, cc. [476](#), [479](#), [507](#), [803](#), [835](#); 2015, cc. [22](#), [108](#), [127](#); 2016, cc. [620](#), [716](#); 2017, cc. [188](#), [475](#), [600](#), [719](#), [778](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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

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

1. Proprietary information gathered by or for the Virginia Port Authority as provided in § [62.1-132.4](#) or [62.1-134.1](#).
2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ [15.2-4900](#) et seq.) of Title 15.2.
3. Proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body.
4. Information that was filed as confidential under the Toxic Substances Information Act (§ [32.1-239](#) et seq.), as such Act existed prior to July 1, 1992.
5. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § [28.2-204](#).

6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.
7. Proprietary information related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.
8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ [32.1-331.12](#) et seq.) of Chapter 10 of Title 32.1.
9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects if disclosure of such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exclusion provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.
10. Confidential information designated as provided in subsection F of § [2.2-4342](#) as trade secrets or proprietary information by any person in connection with a procurement transaction or by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § [2.2-4317](#).
11. a. Memoranda, staff evaluations, or other information prepared by the responsible public entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under the Public-Private Transportation Act of 1995 (§ [33.2-1800](#) et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.) where (i) if such information was made public prior to or after the execution of an interim or a comprehensive agreement, § [33.2-1820](#) or [56-575.17](#) notwithstanding, the financial interest or bargaining position of the public entity would be adversely affected and (ii) the basis for the determination required in clause (i) is documented in writing by the responsible public entity; and
- b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§ [33.2-1800](#) et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.); (ii) financial information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity where if such information was made public prior to the execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining position of the public or private entity would be adversely affected. In order for the information specified in clauses (i), (ii), and (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the responsible public entity:

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

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

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

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

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

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

In order for trade secrets or confidential proprietary information to be excluded from the provisions of this chapter, the bidder, applicant, or franchisee shall (a) invoke such exclusion upon submission of the data or

other materials for which protection from disclosure is sought, (b) identify the data or other materials for which protection is sought, and (c) state the reason why protection is necessary.

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

14. Information of a proprietary or confidential nature furnished by a supplier or manufacturer of charitable gaming supplies to the Department of Agriculture and Consumer Services (i) pursuant to subsection E of § [18.2-340.34](#) and (ii) pursuant to regulations promulgated by the Charitable Gaming Board related to approval of electronic and mechanical equipment.

15. Information related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to § [3.2-1215](#).

16. Trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.) of Title 59.1, submitted by CMRS providers as defined in § [56-484.12](#) to the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § [56-484.15](#), relating to the provision of wireless E-911 service.

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

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

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

19. Confidential proprietary information and trade secrets developed by or for a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ [15.2-5431.1](#) et seq.) to provide qualifying communications services as authorized by Article 5.1 (§ [56-484.7:1](#) et seq.) of Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive position of the authority, except that information required to be maintained in accordance with § [15.2-2160](#) shall be released.

20. Trade secrets as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.) or financial information of a business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, provided to the Department of Small Business and Supplier Diversity as part of an application for certification as a small, women-owned, or minority-owned business in

accordance with Chapter 16.1 (§ [2.2-1603](#) et seq.). In order for such trade secrets or financial information to be excluded from the provisions of this chapter, the business shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reasons why protection is necessary.

21. Information of a proprietary or confidential nature disclosed by a carrier to the State Health Commissioner pursuant to §§ [32.1-276.5:1](#) and [32.1-276.7:1](#).

22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), including, but not limited to, financial information, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the State Inspector General for the purpose of an audit, special investigation, or any study requested by the Office of the State Inspector General in accordance with law.

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

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

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

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

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

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

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

24. a. Information held by the Commercial Space Flight Authority relating to rate structures or charges for the use of projects of, the sale of products of, or services rendered by the Authority if disclosure of such information would adversely affect the financial interest or bargaining position of the Authority or a private entity providing the information to the Authority; or
- b. Information provided by a private entity to the Commercial Space Flight Authority if disclosure of such information would (i) reveal (a) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.); (b) financial information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) other information submitted by the private entity and (ii) adversely affect the financial interest or bargaining position of the Authority or private entity.

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

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

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

25. Information of a proprietary nature furnished by an agricultural landowner or operator to the Department of Conservation and Recreation, the Department of Environmental Quality, the Department of Agriculture and Consumer Services, or any political subdivision, agency, or board of the Commonwealth pursuant to §§ [10.1-104.7](#), [10.1-104.8](#), and [10.1-104.9](#), other than when required as part of a state or federal regulatory enforcement action.

26. Trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), provided to the Department of Environmental Quality pursuant to the provisions of § [10.1-1458](#). In order for such trade secrets to be excluded from the provisions of this chapter, the submitting party shall (i) invoke this exclusion upon submission of the data or materials for which protection from disclosure is sought, (ii) identify the data or materials for which protection is sought, and (iii) state the reasons why protection is necessary.

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

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

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

28. Information relating to a grant or loan application, or accompanying a grant or loan application, submitted to the Virginia Research Investment Committee established pursuant to Article 8 (§ [23.1-3130](#) et seq.) of Chapter 31 of Title 23.1, to the extent that such records would (i) reveal (a) trade secrets as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.); (b) financial information of a party to a grant or loan application that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) research-related information produced or collected by a party to the application in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of a party to a grant or loan application; and memoranda, staff evaluations, or other information prepared by the Committee or its staff, or a reviewing entity pursuant to subsection D of § [23.1-3133](#), exclusively for the evaluation of grant or loan applications, including any scoring or prioritization documents prepared for and forwarded to the Committee pursuant to subsection D of § [23.1-3133](#).

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

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

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

29. Proprietary information, voluntarily provided by a private business pursuant to a promise of confidentiality from a public body, used by the public body for a solar services agreement, where disclosure of such information would (i) reveal (a) trade secrets of the private business as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.); (b) financial information of the private business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) other information submitted by the private business and (ii) adversely affect the financial interest or bargaining position of the public body or private business.

In order for the information specified in clauses (i)(a), (b), and (c) to be excluded from the provisions of this chapter, the private business shall make a written request to the public body:

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

30. Information contained in engineering and construction drawings and plans submitted for the sole purpose of complying with the Building Code in obtaining a building permit if disclosure of such information would identify specific trade secrets or other information that would be harmful to the competitive position of the owner or lessee. However, such information shall be exempt only until the building is completed. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure.

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, cc. [593](#), [690](#); 2005, cc. [258](#), [411](#); 2006, cc. [73](#), [76](#), [467](#), [831](#), [921](#), [936](#); 2006, Sp. Sess. I, c. [1](#); 2007, cc. [374](#), [693](#); 2008, cc. [71](#), [102](#), [266](#), [387](#), [633](#), [689](#), [736](#), [743](#); 2009, cc. [246](#), [311](#), [325](#), [765](#), [810](#), [869](#); 2010, cc. [310](#), [808](#); 2011, cc. [541](#), [781](#), [798](#), [871](#); 2012, cc. [693](#), [709](#); 2013, cc. [54](#), [482](#), [574](#); 2015, cc. [696](#), [697](#); 2016, cc. [620](#), [716](#), [724](#), [725](#), [775](#); 2017, cc. [662](#), [737](#), [778](#), [796](#), [816](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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

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

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

As used in this subdivision:

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

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

"Working papers" means those records prepared by or for a public official identified in this subdivision for his personal or deliberative use.

3. Information contained in library records that can be used to identify (i) both (a) any library patron who has borrowed material from a library and (b) the material such patron borrowed or (ii) any library patron under 18 years of age. For the purposes of clause (ii), access shall not be denied to the parent, including a noncustodial parent, or guardian of such library patron.

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

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

6. Information furnished by a member of the General Assembly to a meeting of a standing committee, special committee, or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under § [30-110](#) or of formulating advisory opinions to members on standards of conduct, or both.

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

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

9. Information regarding the siting of hazardous waste facilities, except as provided in § [10.1-1441](#), if disclosure of such information would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions, and provisions of the siting agreement.

10. Information on the site-specific location of rare, threatened, endangered, or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion

of the public body that has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exclusion shall not apply to requests from the owner of the land upon which the resource is located.

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

12. Information held by the Virginia Retirement System, acting pursuant to § [51.1-124.30](#), or a local retirement system, acting pursuant to § [51.1-803](#), or by a local finance board or board of trustees of a trust established by one or more local public bodies to invest funds for post-retirement benefits other than pensions, acting pursuant to Article 8 (§ [15.2-1544](#) et seq.) of Chapter 15 of Title 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § [23.1-2210](#), or by the Virginia College Savings Plan, acting pursuant to § [23.1-704](#), relating to the acquisition, holding, or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, if disclosure of such information would (i) reveal confidential analyses prepared for the board of visitors of the University of Virginia, prepared by the retirement system, a local finance board or board of trustees, or the Virginia College Savings Plan, or provided to the retirement system, a local finance board or board of trustees, or the Virginia College Savings Plan under a promise of confidentiality of the future value of such ownership interest or the future financial performance of the entity and (ii) have an adverse effect on the value of the investment to be acquired, held, or disposed of by the retirement system, a local finance board or board of trustees, the board of visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested, or the present value of such investment.

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

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

with a governmental body or a private concern, when such information has not been publicly released, published, copyrighted, or patented. This exclusion shall also apply when such information is in the possession of Virginia Commonwealth University.

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

16. Information related to the operation of toll facilities that identifies an individual, vehicle, or travel itinerary, including vehicle identification data or vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

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

18. Information held by the Board for Branch Pilots relating to the chemical or drug testing of a person regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary action by the Board for a positive test result.

19. Information pertaining to the planning, scheduling, and performance of examinations of holder records pursuant to the Uniform Disposition of Unclaimed Property Act (§ [55-210.1](#) et seq.) prepared by or for the State Treasurer or his agents or employees or persons employed to perform an audit or examination of holder records.

20. Information held by the Virginia Department of Emergency Management or a local governing body relating to citizen emergency response teams established pursuant to an ordinance of a local governing body that reveal the name, address, including e-mail address, telephone or pager numbers, or operating schedule of an individual participant in the program.

21. Information held by state or local park and recreation departments and local and regional park authorities concerning identifiable individuals under the age of 18 years. However, nothing in this subdivision shall operate to prevent the disclosure of information defined as directory information under regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out requirements provided by such regulations. Access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For such information of persons who are emancipated, the right of access may be asserted by the subject thereof. Any parent or emancipated person who is the subject of the information may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such information for inspection and copying.

22. Information submitted for inclusion in the Statewide Alert Network administered by the Department of Emergency Management that reveal names, physical addresses, email addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless or portable communications device information, or operating schedules of individuals or agencies, where the release of such information would compromise the security of the Statewide Alert Network or individuals participating in the Statewide Alert Network.

23. Information held by the Judicial Inquiry and Review Commission made confidential by § [17.1-913](#).

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

a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings Plan on the pursuit of particular investment strategies, or the selection or termination of investment managers, prior to the execution of such investment strategies or the selection or termination of such managers, if disclosure of such information would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan; and

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

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

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

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

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

25. Information held by the Department of Corrections made confidential by § [53.1-233](#).

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

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

28. Information maintained in connection with fundraising activities by the Veterans Services Foundation

pursuant to § [2.2-2716](#) that reveal the address, electronic mail address, facsimile or telephone number, social security number or other identification number appearing on a driver's license, or credit card or bank account data of identifiable donors, except that access shall not be denied to the person who is the subject of the information. Nothing in this subdivision, however, shall be construed to prevent the disclosure of information relating to the amount, date, purpose, and terms of the pledge or donation or the identity of the donor, unless the donor has requested anonymity in connection with or as a condition of making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the foundation for the performance of services or other work or (ii) the terms and conditions of such grants or contracts.

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

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

31. Information created or maintained by or on the behalf of the judicial performance evaluation program related to an evaluation of any individual justice or judge made confidential by § [17.1-100](#).

32. Information reflecting the substance of meetings in which (i) individual sexual assault cases are discussed by any sexual assault team established pursuant to § [15.2-1627.4](#) or (ii) individual child abuse or neglect cases or sex offenses involving a child are discussed by multidisciplinary child abuse teams established pursuant to § [15.2-1627.5](#). The findings of any such team may be disclosed or published in statistical or other aggregated form that does not disclose the identity of specific individuals.

33. Information contained in the strategic plan, marketing plan, or operational plan prepared by the Virginia Economic Development Partnership Authority pursuant to § [2.2-2237.1](#) regarding target companies, specific allocation of resources and staff for marketing activities, and specific marketing activities that would reveal to the Commonwealth's competitors for economic development projects the strategies intended to be deployed by the Commonwealth, thereby adversely affecting the financial interest of the Commonwealth. The executive summaries of the strategic plan, marketing plan, and operational plan shall not be redacted or withheld pursuant to this subdivision.

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, cc. [426](#), [690](#), [832](#); 2005, cc. [165](#), [508](#); 2007, cc. [406](#), [652](#), [660](#), [737](#), [739](#); 2008, cc. [16](#), [739](#); 2009, cc. [223](#), [827](#), [845](#); 2010, c. [300](#); 2011, cc. [827](#), [867](#); 2012, c. [726](#); 2013, cc. [199](#), [481](#), [554](#), [574](#); 2014, cc. [225](#), [808](#); 2015, cc. [38](#), [137](#), [549](#), [730](#); 2016, cc. [550](#), [620](#), [716](#), [729](#); 2017, cc. [587](#), [642](#), [778](#), [804](#), [824](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

### **§ 2.2-3705.8. Limitation on record exclusions.**

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

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, c. [690](#); 2017, c. [778](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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

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

1. Records required to be released:

a. Criminal incident information relating to felony offenses, which shall include:

- (1) A general description of the criminal activity reported;
- (2) The date the alleged crime was committed;
- (3) The general location where the alleged crime was committed;
- (4) The identity of the investigating officer or other point of contact; and
- (5) A general description of any injuries suffered or property damaged or stolen.

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

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

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

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

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

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

a. Criminal investigative files, defined as any documents and information, including complaints, court orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness statements, and evidence relating to a criminal investigation or prosecution, other than criminal incident information subject to release in accordance with subdivision 1 a;

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

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

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

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

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

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

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

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

confidential by law;

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

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

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

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

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

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

1999, cc. [703](#), [726](#), § 2.1-342.2; 2000, c. [227](#); 2001, c. [844](#); 2002, cc. [393](#), [715](#), [769](#), [830](#); 2004, cc. [685](#), [735](#); 2006, cc. [857](#), [914](#); 2007, c. [133](#); 2010, c. [627](#); 2011, cc. [798](#), [871](#); 2013, c. [695](#); 2016, cc. [184](#), [546](#); 2017, c. [828](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1968, c. 479, § 2.1-343; 1973, c. 461; 1976, c. 467; 1977, c. 677; 1982, c. 333; 1989, c. 358; 1990, c. 538; 1993, c. 720; 1995, c. [562](#); 1999, cc. [696](#), [703](#), [726](#); 2000, c. [227](#); 2001, c. [844](#); 2004, cc. [730](#), [768](#); 2005, c. [352](#); 2007, c. [300](#); 2009, c. [628](#); 2010, c. [309](#); 2015, c. [131](#); 2017, c. [616](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

### **§ 2.2-3707.01. Meetings of the General Assembly.**

A. Except as provided in subsection B, public access to any meeting of the General Assembly or a portion thereof shall be governed by rules established by the Joint Rules Committee and approved by a majority vote of each house at the next regular session of the General Assembly. At least 60 days before the adoption of such rules, the Joint Rules Committee shall (i) hold regional public hearings on such proposed rules and (ii) provide a copy of such proposed rules to the Virginia Freedom of Information Advisory Council.

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

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

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

2004, c. [768](#); 2005, c. [352](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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

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

2002, cc. [580](#), [618](#); 2006, cc. [474](#), [595](#); 2007, c. [300](#); 2017, c. [616](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

### **§ 2.2-3708. Electronic communication meetings; applicability; physical quorum required; exceptions;**

**notice; report.**

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

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

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

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

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

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

E. Three working days' notice shall not be required for meetings authorized under this section held in accordance with subsection G. Public bodies conducting emergency meetings through electronic communication means shall comply with the provisions of subsection D requiring minutes of the meeting. The nature of the emergency shall be stated in the minutes.

F. Any authorized public body that meets by electronic communication means shall make a written report of the following to the Virginia Freedom of Information Advisory Council by December 15 of each year:

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

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

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

1984, c. 252, § 2.1-343.1; 1989, c. 358; 1991, c. 473; 1992, c. 153; 1993, c. 270; 1995, c. [278](#); 1996, c. [289](#); 1999, cc. [703](#), [726](#); 2001, c. [844](#); 2003, cc. [981](#), [1021](#); 2005, c. [352](#); 2007, cc. [512](#), [945](#); 2008, cc. [233](#), [789](#); 2013, c. [694](#); 2017, c. [616](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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

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

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

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

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

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

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

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

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

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

2007, c. [945](#); 2013, cc. [119](#), [694](#); 2014, cc. [492](#), [524](#); 2017, c. [616](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

### **§ 2.2-3709. Expired.**

Expired.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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

A. Unless otherwise specifically provided by law, no vote of any kind of the membership, or any part thereof,

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

B. Notwithstanding the foregoing, nothing contained herein shall be construed to prohibit (i) separately contacting the membership, or any part thereof, of any public body for the purpose of ascertaining a member's position with respect to the transaction of public business, whether such contact is done in person, by telephone or by electronic communication, provided the contact is done on a basis that does not constitute a meeting as defined in this chapter or (ii) the House of Delegates or the Senate of Virginia from adopting rules relating to the casting of votes by members of standing committees. Nothing in this subsection shall operate to exclude any public record from the provisions of this chapter.

1987, c. 71, § 2.1-343.2; 1999, cc. [703](#), [726](#); 2000, c. [932](#); 2001, cc. [710](#), [844](#); 2002, c. [491](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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

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

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board. Nothing in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body or an elected school board to discuss compensation matters that affect the membership of such body or board collectively.
2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any public institution of higher education in the Commonwealth or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents, or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.
3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.
4. The protection of the privacy of individuals in personal matters not related to public business.
5. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.

6. Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.
7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.
8. Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.
9. Discussion or consideration by governing boards of public institutions of higher education of matters relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a public institution of higher education in the Commonwealth shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof, (ii) "foreign legal entity" means any legal entity (a) created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities or (b) created under the laws of a foreign government, and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.
10. Discussion or consideration by the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of Virginia of matters relating to specific gifts, bequests, and grants from private sources.
11. Discussion or consideration of honorary degrees or special awards.
12. Discussion or consideration of tests, examinations, or other information used, administered, or prepared by a public body and subject to the exclusion in subdivision 4 of § [2.2-3705.1](#).
13. Discussion, consideration, or review by the appropriate House or Senate committees of possible disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed by the member, provided the member may request in writing that the committee meeting not be conducted in a closed meeting.
14. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.

15. Discussion by the Governor and any economic advisory board reviewing forecasts of economic activity and estimating general and nongeneral fund revenues.
16. Discussion or consideration of medical and mental health records subject to the exclusion in subdivision 1 of § [2.2-3705.5](#).
17. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to subsection D of § [58.1-4007](#) regarding the denial or revocation of a license of a lottery sales agent; and discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game information and studies or investigations excluded from disclosure under subdivision 6 of § [2.2-3705.3](#) and subdivision 11 of § [2.2-3705.7](#).
18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity of, or information tending to identify, any prisoner who (i) provides information about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.
19. Discussion of plans to protect public safety as it relates to terrorist activity or specific cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such matters or a related threat to public safety; discussion of information subject to the exclusion in subdivision 2 or 14 of § [2.2-3705.2](#), where discussion in an open meeting would jeopardize the safety of any person or the security of any facility, building, structure, information technology system, or software program; or discussion of reports or plans related to the security of any governmental facility, building or structure, or the safety of persons using such facility, building or structure.
20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § [51.1-124.30](#), or of any local retirement system, acting pursuant to § [51.1-803](#), or by a local finance board or board of trustees of a trust established by one or more local public bodies to invest funds for postemployment benefits other than pensions, acting pursuant to Article 8 (§ [15.2-1544](#) et seq.) of Chapter 15 of Title 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § [23.1-2210](#), or by the Board of the Virginia College Savings Plan, acting pursuant to § [23.1-706](#), regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the board of visitors of the University of Virginia, prepared by the retirement system, or a local finance board or board of trustees, or the Virginia College Savings Plan or provided to the retirement system, a local finance board or board of trustees, or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held, or disposed of by the retirement system, a local finance board or board of trustees, the board of visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.
21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review team established pursuant to § [32.1-283.1](#), those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § [32.1-283.2](#), those portions of meetings in which individual death cases are discussed by family violence fatality review

teams established pursuant to § [32.1-283.3](#), those portions of meetings in which individual adult death cases are discussed by the state Adult Fatality Review Team established pursuant to § [32.1-283.5](#), and those portions of meetings in which individual adult death cases are discussed by a local or regional adult fatality review team established pursuant to § [32.1-283.6](#).

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

23. Discussion or consideration by the Virginia Commonwealth University Health System Authority or the board of visitors of Virginia Commonwealth University of any of the following: the acquisition or disposition by the Authority of real property, equipment, or technology software or hardware and related goods or services, where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; matters relating to gifts or bequests to, and fund-raising activities of, the Authority; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies plans of the Authority where disclosure of such strategies or plans would adversely affect the competitive position of the Authority; and members of the Authority's medical and teaching staffs and qualifications for appointments thereto.

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

25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § [2.2-3801](#), which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ [23.1-700](#) et seq.) of Title 23.1 is discussed.

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

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

28. Discussion or consideration of information subject to the exclusion in subdivision 11 of § [2.2-3705.6](#) by a responsible public entity or an affected locality or public entity, as those terms are defined in § [33.2-1800](#), or any independent review panel appointed to review information and advise the responsible public entity concerning such records.

29. Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.
30. Discussion or consideration of grant or loan application information subject to the exclusion in subdivision 17 of § [2.2-3705.6](#) by (i) the Commonwealth Health Research Board or (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.
31. Discussion or consideration by the Commitment Review Committee of information subject to the exclusion in subdivision 5 of § [2.2-3705.2](#) relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ [37.2-900](#) et seq.) of Title 37.2.
32. Discussion or consideration of confidential proprietary information and trade secrets developed and held by a local public body providing certain telecommunication services or cable television services and subject to the exclusion in subdivision 18 of § [2.2-3705.6](#). However, the exemption provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ [15.2-7200](#) et seq.).
33. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ [15.2-5431.1](#) et seq.) of confidential proprietary information and trade secrets subject to the exclusion in subdivision 19 of § [2.2-3705.6](#).
34. Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § [24.2-625.1](#).
35. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ [9.1-1109](#) et seq.) of Chapter 11 of Title 9.1 of criminal investigative files subject to the exclusion in subdivision A 2 a of § [2.2-3706](#).
36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of information or confidential matters subject to the exclusion in subdivision 3 of § [2.2-3705.4](#), and meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.
37. Discussion or consideration by the Virginia Port Authority of information subject to the exclusion in subdivision 1 of § [2.2-3705.6](#) related to certain proprietary information gathered by or for the Virginia Port Authority.
38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § [51.1-124.30](#), by the Investment Advisory Committee appointed pursuant to § [51.1-124.26](#), by any local retirement system, acting pursuant to § [51.1-803](#), by the Board of the Virginia College Savings Plan acting pursuant to § [23.1-706](#), or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § [23.1-702](#) of information subject to the exclusion in subdivision 24 of § [2.2-3705.7](#).
39. Discussion or consideration of information subject to the exclusion in subdivision 3 of § [2.2-3705.6](#) related to economic development.
40. Discussion or consideration by the Board of Education of information relating to the denial, suspension, or revocation of teacher licenses subject to the exclusion in subdivision 11 of § [2.2-3705.3](#).

41. Those portions of meetings of the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, during which there is discussion of information subject to the exclusion in subdivision 8 of § [2.2-3705.2](#).
42. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of information subject to the exclusion in subdivision 28 of § [2.2-3705.7](#) related to personally identifiable information of donors.
43. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of information subject to the exclusion in subdivision 23 of § [2.2-3705.6](#) related to certain information contained in grant applications.
44. Discussion or consideration by the board of directors of the Commercial Space Flight Authority of information subject to the exclusion in subdivision 24 of § [2.2-3705.6](#) related to rate structures or charges for the use of projects of, the sale of products of, or services rendered by the Authority and certain proprietary information of a private entity provided to the Authority.
45. Discussion or consideration of personal and proprietary information related to the resource management plan program and subject to the exclusion in (i) subdivision 25 of § [2.2-3705.6](#) or (ii) subsection E of § [10.1-104.7](#). This exclusion shall not apply to the discussion or consideration of records that contain information that has been certified for release by the person who is the subject of the information or transformed into a statistical or aggregate form that does not allow identification of the person who supplied, or is the subject of, the information.
46. (Effective January 15, 2018) Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control Authority of information subject to the exclusion in subdivision 1 of § [2.2-3705.3](#) related to investigations of applicants for licenses and permits and of licensees and permittees.
47. Discussion or consideration of grant or loan application records subject to the exclusion in subdivision 28 of § [2.2-3705.6](#) related to the submission of an application for an award from the Virginia Research Investment Fund pursuant to Article 8 (§ [23.1-3130](#) et seq.) of Chapter 31 of Title 23.1 or interviews of parties to an application by a reviewing entity pursuant to subsection D of § [23.1-3133](#) or by the Virginia Research Investment Committee.
48. Discussion or development of grant proposals by a regional council established pursuant to Article 26 (§ [2.2-2484](#) et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth and Opportunity Board.
49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault team established pursuant to § [15.2-1627.4](#) or (ii) individual child abuse or neglect cases or sex offenses involving a child by a child abuse team established pursuant to § [15.2-1627.5](#).
50. Discussion or consideration by the Board of the Virginia Economic Development Partnership Authority, or any subcommittee thereof, of the portions of the strategic plan, marketing plan, or operational plan exempt from disclosure pursuant to subdivision 33 of § [2.2-3705.7](#).
51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic Development

Partnership Authority established pursuant to subsection F of § [2.2-2237.3](#) to review and discuss information received from the Virginia Employment Commission pursuant to subdivision C 2 of § [60.2-114](#).

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

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

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

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

1968, c. 479, § 2.1-344; 1970, c. 456; 1973, c. 461; 1974, c. 332; 1976, cc. 467, 709; 1979, cc. 369, 684; 1980, cc. 221, 475, 476, 754; 1981, cc. 35, 471; 1982, cc. 497, 516; 1984, cc. 473, 513; 1985, c. 277; 1988, c. 891; 1989, cc. 56, 358, 478; 1990, cc. 435, 538; 1991, c. 708; 1992, c. 444; 1993, cc. 270, 499; 1995, c. [499](#); 1996, cc. [855](#), [862](#), [902](#), [905](#), [1046](#); 1997, cc. [439](#), [641](#), [785](#), [861](#); 1999, cc. [485](#), [518](#), [703](#), [726](#), [849](#), [867](#), [868](#); 2000, cc. [382](#), [400](#), [720](#), [1064](#); 2001, cc. [231](#), [844](#); 2002, cc. [87](#), [393](#), [455](#), [478](#), [499](#), [655](#), [715](#), [830](#); 2003, cc. [274](#), [291](#), [332](#), [618](#), [703](#); 2004, cc. [398](#), [690](#), [770](#); 2005, cc. [258](#), [411](#), [568](#); 2006, cc. [430](#), [499](#), [518](#), [560](#); 2007, cc. [133](#), [374](#), [566](#), [739](#); 2008, cc. [626](#), [633](#), [668](#), [721](#), [743](#); 2009, cc. [223](#), [325](#), [472](#), [765](#), [810](#), [827](#), [845](#); 2010, cc. [310](#), [630](#), [808](#); 2011, cc. [89](#), [111](#), [147](#), [536](#), [541](#), [816](#), [874](#); 2012, cc. [476](#), [507](#), [803](#), [835](#); 2013, cc. [571](#), [580](#), [695](#); 2014, c. [225](#); 2015, cc. [27](#), [38](#), [108](#), [169](#), [182](#), [549](#), [730](#); 2016, cc. [544](#), [620](#), [716](#), [724](#), [725](#), [775](#), [778](#), [779](#); 2017, cc. [587](#), [616](#), [778](#), [796](#), [804](#), [816](#), [824](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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

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

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

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

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

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

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

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

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

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

1989, c. 358, § 2.1-344.1; 1999, cc. [703](#), [726](#); 2001, c. [844](#); 2012, c. [428](#); 2017, c. [616](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

### **§ 2.2-3713. Proceedings for enforcement of chapter.**

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

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

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

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

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

E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of proof to establish an exclusion by a preponderance of the evidence. No court shall be required to accord any weight to the determination of a public body as to whether an exclusion applies. Any failure by a public body to follow the procedures established by this chapter shall be presumed to be a violation of this chapter.

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

1968, c. 479, § 2.1-346; 1976, c. 709; 1978, c. 826; 1989, c. 358; 1990, c. 217; 1996, c. [578](#); 1999, cc. [703](#), [726](#); 2001, c. [844](#); 2007, c. [560](#); 2009, c. [634](#); 2010, c. [299](#); 2011, cc. [133](#), [783](#); 2016, cc. [620](#), [716](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 2.2-3714. Violations and penalties.**

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

1976, c. 467, § 2.1-346.1; 1978, c. 826; 1984, c. 252; 1989, c. 358; 1996, c. [578](#); 1999, cc. [703](#), [726](#); 2001, c. [844](#); 2003, c. [319](#); 2004, c. [690](#); 2008, cc. [233](#), [789](#); 2011, c. [327](#); 2017, c. [778](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia  
Title 42.1. Libraries

## Chapter 7. Virginia Public Records Act

### § 42.1-76. Legislative intent; title of chapter.

The General Assembly intends by this chapter to establish a single body of law applicable to all public officers and employees on the subject of public records management and preservation and to ensure that the procedures used to manage and preserve public records will be uniform throughout the Commonwealth.

This chapter may be cited as the Virginia Public Records Act.

1976, c. 746.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

### § 42.1-76.1. Notice of Chapter.

Any person elected, reelected, appointed, or reappointed to the governing body of any agency subject to this chapter shall (i) be furnished by the agency or public body's administrator or legal counsel with a copy of this chapter within two weeks following election, reelection, appointment, or reappointment and (ii) read and become familiar with the provisions of this chapter.

2006, c. [60](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

### § 42.1-77. Definitions.

As used in this chapter:

"Agency" means all boards, commissions, departments, divisions, institutions, authorities, or parts thereof, of the Commonwealth or its political subdivisions and includes the offices of constitutional officers.

"Archival quality" means a quality of reproduction consistent with established standards specified by state and national agencies and organizations responsible for establishing such standards, such as the Association for Information and Image Management, the American National Standards Institute, and the National Institute of Standards and Technology.

"Archival record" means a public record of continuing and enduring value useful to the citizens of the Commonwealth and necessary to the administrative functions of public agencies in the conduct of services and activities mandated by law that is identified on a Library of Virginia approved records retention and disposition schedule as having sufficient informational value to be permanently maintained by the Commonwealth.

"Archives" means the program administered by The Library of Virginia for the preservation of archival

records.

"Board" means the State Library Board.

"Conversion" means the act of moving electronic records to a different format, especially data from an obsolete format to a current format.

"Custodian" means the public official in charge of an office having public records.

"Disaster plan" means the information maintained by an agency that outlines recovery techniques and methods to be followed in case of an emergency that impacts the agency's records.

"Electronic record" means a public record whose creation, storage, and access require the use of an automated system or device. Ownership of the hardware, software, or media used to create, store, or access the electronic record has no bearing on a determination of whether such record is a public record.

"Essential public record" means records that are required for recovery and reconstruction of any agency to enable it to resume its core operations and functions and to protect the rights and interests of persons.

"Librarian of Virginia" means the State Librarian of Virginia or his designated representative.

"Lifecycle" means the creation, use, maintenance, and disposition of a public record.

"Metadata" means data describing the context, content, and structure of records and their management through time.

"Migration" means the act of moving electronic records from one information system or medium to another to ensure continued access to the records while maintaining the records' authenticity, integrity, reliability, and usability.

"Original record" means the first generation of the information and is the preferred version of a record. Archival records should to the maximum extent possible be original records.

"Preservation" means the processes and operations involved in ensuring the technical and intellectual survival of authentic records through time.

"Private record" means a record that does not relate to or affect the carrying out of the constitutional, statutory, or other official ceremonial duties of a public official, including the correspondence, diaries, journals, or notes that are not prepared for, utilized for, circulated, or communicated in the course of transacting public business.

"Public official" means all persons holding any office created by the Constitution of Virginia or by any act of the General Assembly, the Governor and all other officers of the executive branch of the state government, and all other officers, heads, presidents or chairmen of boards, commissions, departments, and agencies of the state government or its political subdivisions.

"Public record" or "record" means recorded information that documents a transaction or activity by or with any public officer, agency or employee of an agency. Regardless of physical form or characteristic, the recorded information is a public record if it is produced, collected, received or retained in pursuance of law or in connection with the transaction of public business. The medium upon which such information is recorded has no bearing on the determination of whether the recording is a public record.

For purposes of this chapter, "public record" shall not include nonrecord materials, meaning materials made or acquired and preserved solely for reference use or exhibition purposes, extra copies of documents preserved only for convenience or reference, and stocks of publications.

"Records retention and disposition schedule" means a Library of Virginia-approved timetable stating the required retention period and disposition action of a records series. The administrative, fiscal, historical, and legal value of a public record shall be considered in appraising its appropriate retention schedule. The terms "administrative," "fiscal," "historical," and "legal" value shall be defined as:

1. "Administrative value": Records shall be deemed of administrative value if they have continuing utility in the operation of an agency.
2. "Fiscal value": Records shall be deemed of fiscal value if they are needed to document and verify financial authorizations, obligations, and transactions.
3. "Historical value": Records shall be deemed of historical value if they contain unique information, regardless of age, that provides understanding of some aspect of the government and promotes the development of an informed and enlightened citizenry.
4. "Legal value": Records shall be deemed of legal value if they document actions taken in the protection and proving of legal or civil rights and obligations of individuals and agencies.

1976, c. 746; 1977, c. 501; 1981, c. 637; 1987, c. 217; 1990, c. 778; 1994, cc. [390](#), [955](#); 1998, cc. [427](#), [470](#); 2005, c. [787](#); 2006, c. [60](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

#### **§ 42.1-78. Confidentiality safeguarded.**

Any records made confidential by law shall be so treated. Records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this chapter. Records in the custody of The Library of Virginia which are required to be closed to the public shall be open for public access 75 years after the date of creation of the record. No provision of this chapter shall be construed to authorize or require the opening of any records ordered to be sealed by a court. All records deposited in the archives that are not made confidential by law shall be open to public access.

1976, c. 746; 1979, c. 110; 1990, c. 778; 1994, c. [64](#); 2006, c. [60](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

#### **§ 42.1-79. Records management function vested in The Library of Virginia.**

A. The archival and records management function shall be vested in The Library of Virginia. The Library of Virginia shall be the official custodian and trustee for the Commonwealth of all public records of whatever kind, and regardless of physical form or characteristics, that are transferred to it from any agency. As the Commonwealth's official repository of public records, The Library of Virginia shall assume ownership and administrative control of such records on behalf of the Commonwealth. The Library of Virginia shall own and operate any equipment necessary to manage and retain control of electronic archival records in its

custody, but may, at its discretion, contract with third-party entities to provide any or all services related to managing archival records on equipment owned by the contractor, by other third parties, or by The Library of Virginia.

B. The Librarian of Virginia shall name a State Archivist who shall perform such functions as the Librarian of Virginia assigns.

C. Whenever legislation affecting public records management and preservation is under consideration, The Library of Virginia shall review the proposal and advise the General Assembly on the effects of its proposed implementation.

1976, c. 746; 1986, c. 565; 1990, c. 778; 1994, c. [64](#); 1998, c. [427](#); 2005, c. [787](#); 2006, c. [60](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

#### **§ 42.1-79.1. Repealed.**

Repealed by Acts 2005, c. [787](#), cl. 2.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

#### **§§ 42.1-80, 42.1-81. Repealed.**

Repealed by Acts 2003, c. [177](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

#### **§ 42.1-82. Duties and powers of Library Board.**

A. The State Library Board shall:

1. Issue regulations concerning procedures for the disposal, physical destruction or other disposition of public records containing social security numbers. The procedures shall include all reasonable steps to destroy such documents by (i) shredding, (ii) erasing, or (iii) otherwise modifying the social security numbers in those records to make them unreadable or undecipherable by any means.

2. Issue regulations and guidelines designed to facilitate the creation, preservation, storage, filing, reformatting, management, and destruction of public records by agencies. Such regulations shall mandate procedures for records management and include recommendations for the creation, retention, disposal, or other disposition of public records.

B. The State Library Board may establish advisory committees composed of persons with expertise in the matters under consideration to assist the Library Board in developing regulations and guidelines.

1976, c. 746; 1977, c. 501; 1981, c. 637; 1990, c. 778; 1994, cc. [64](#), [955](#); 2003, cc. [914](#), [918](#); 2005, c. [787](#); 2006, c. [60](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not

constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 42.1-83. Repealed.**

Repealed by Acts 2006, c. [60](#), cl. 2.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 42.1-84. Repealed.**

Repealed by Acts 2005, c. [787](#), cl. 2.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 42.1-85. Records Management Program; agencies to cooperate; agencies to designate records officer.**

A. The Library of Virginia shall administer a records management program for the application of efficient and economical methods for managing the lifecycle of public records consistent with regulations and guidelines promulgated by the State Library Board, including operation of a records center or centers. The Library of Virginia shall establish procedures and techniques for the effective management of public records, make continuing surveys of records and records keeping practices, and recommend improvements in current records management practices, including the use of space, equipment, software, and supplies employed in creating, maintaining, and servicing records.

B. Any agency with public records shall cooperate with The Library of Virginia in conducting surveys. Each agency shall establish and maintain an active, continuing program for the economical and efficient management of the records of such agency. The agency shall be responsible for ensuring that its public records are preserved, maintained, and accessible throughout their lifecycle, including converting and migrating electronic records as often as necessary so that information is not lost due to hardware, software, or media obsolescence or deterioration. Any public official who converts or migrates an electronic record shall ensure that it is an accurate copy of the original record. The converted or migrated record shall have the force of the original.

C. Each state agency and political subdivision of this Commonwealth shall designate as many as appropriate, but at least one, records officer to serve as a liaison to The Library of Virginia for the purposes of implementing and overseeing a records management program, and coordinating legal disposition, including destruction, of obsolete records. Designation of state agency records officers shall be by the respective agency head. Designation of a records officer for political subdivisions shall be by the governing body or chief administrative official of the political subdivision. Each entity responsible for designating a records officer shall provide The Library of Virginia with the name and contact information of the designated records officer, and shall ensure that such information is updated in a timely manner in the event of any changes.

D. The Library of Virginia shall develop and make available training and education opportunities concerning the requirements of and compliance with this chapter for records officers in the Commonwealth.

1976, c. 746; 1990, c. 778; 1994, c. [64](#); 1998, c. [427](#); 2006, c. [60](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not

constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 42.1-86. Essential public records; security recovery copies; disaster plans.**

A. In cooperation with the head of each agency, The Library of Virginia shall establish and maintain a program for the selection and preservation of essential public records. The program shall provide for preserving, classifying, arranging, and indexing essential public records so that such records are made available to the public. The program shall provide for making recovery copies or designate as recovery copies existing copies of such essential public records.

B. Recovery copies shall meet quality standards established by The Library of Virginia and shall be made by a process that accurately reproduces the record and forms a durable medium. A recovery copy may also be made by creating a paper or electronic copy of an original electronic record. Recovery copies shall have the same force and effect for all purposes as the original record and shall be as admissible in evidence as the original record whether the original record is in existence or not. Recovery copies shall be preserved in the place and manner prescribed by the State Library Board and the Governor.

C. The Library of Virginia shall develop a plan to ensure preservation of public records in the event of disaster or emergency as defined in § [44-146.16](#). This plan shall be coordinated with the Department of Emergency Management and copies shall be distributed to all agency heads. The plan shall be reviewed and updated at least once every five years. The personnel of the Library shall be responsible for coordinating emergency recovery operations when public records are affected. Each agency shall ensure that a plan for the protection and recovery of public records is included in its comprehensive disaster plan.

1976, c. 746; 1980, c. 365; 1990, c. 778; 1994, c. [64](#); 1998, c. [427](#); 2005, c. [787](#); 2006, c. [60](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 42.1-86.1. Disposition of public records.**

A. No agency shall sell or give away public records. No agency shall destroy or discard a public record unless (i) the record appears on a records retention and disposition schedule approved pursuant to § [42.1-82](#) and the record's retention period has expired; (ii) a certificate of records destruction, as designated by the Librarian of Virginia, has been properly completed and approved by the agency's designated records officer; and (iii) there is no litigation, audit, investigation, request for records pursuant to the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.), or renegotiation of the relevant records retention and disposition schedule pending at the expiration of the retention period for the applicable records series. After a record is destroyed or discarded, the agency shall forward the original certificate of records destruction to The Library of Virginia.

B. No agency shall destroy any public record created before 1912 without first offering it to The Library of Virginia.

C. Each agency shall ensure that records created after July 1, 2006 and authorized to be destroyed or discarded in accordance with subsection A, are destroyed or discarded in a timely manner in accordance with the provisions of this chapter; provided, however, such records that contain identifying information as defined in clauses (iii) through (ix), or clause (xii) of subsection C of § [18.2-186.3](#), shall be destroyed within six months of the expiration of the records retention period.

1990, c. 778; 1998, c. [427](#); 2005, c. [787](#); 2006, cc. [60](#), [909](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 42.1-87. Archival public records.**

A. Custodians of archival public records shall keep them in fire-resistant, environmentally controlled, physically secure rooms designed to ensure proper preservation and in such arrangement as to be easily accessible. Current public records should be kept in the buildings in which they are ordinarily used. It shall be the duty of each agency to consult with The Library of Virginia to determine the best manner in which to store long-term or archival electronic records. In entering into a contract with a third-party storage provider for the storage of public records, an agency shall require the third-party to cooperate with The Library of Virginia in complying with rules and regulations promulgated by the Board.

B. Public records deemed unnecessary for the transaction of the business of any state agency, yet deemed to be of archival value, may be transferred with the consent of the Librarian of Virginia to the custody of the Library of Virginia.

C. Public records deemed unnecessary for the transaction of the business of any county, city, or town, yet deemed to be of archival value, shall be stored either in The Library of Virginia or in the locality, at the decision of the local officials responsible for maintaining public records. Archival public records shall be returned to the locality upon the written request of the local officials responsible for maintaining local public records. Microfilm shall be stored in The Library of Virginia but the use thereof shall be subject to the control of the local officials responsible for maintaining local public records.

D. Record books deemed archival should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever the public records of any public official are in need of repair, restoration or rebinding, a judge of the court of record or the head of such agency or political subdivision of the Commonwealth may authorize that the records in need of repair be removed from the building or office in which such records are ordinarily kept, for the length of time necessary to repair, restore or rebind them, provided such restoration and rebinding preserves the records without loss or damage to them. Before any restoration or repair work is initiated, a treatment proposal from the contractor shall be submitted and reviewed in consultation with The Library of Virginia. Any public official who causes a record book to be copied shall attest it and shall certify an oath that it is an accurate copy of the original book. The copy shall then have the force of the original.

E. Nothing in this chapter shall be construed to divest agency heads of the authority to determine the nature and form of the records required in the administration of their several departments or to compel the removal of records deemed necessary by them in the performance of their statutory duty.

1976, c. 746; 1994, cc. [64](#), [955](#); 2005, c. [787](#); 2006, c. [60](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 42.1-88. Custodians to deliver all records at expiration of term; penalty for noncompliance.**

Any custodian of any public records shall, at the expiration of his term of office, appointment or employment, deliver to his successor, or, if there be none, to The Library of Virginia, all books, writings, letters,

documents, public records, or other information, recorded on any medium kept or received by him in the transaction of his official business; and any such person who shall refuse or neglect for a period of ten days after a request is made in writing by the successor or Librarian of Virginia to deliver the public records as herein required shall be guilty of a Class 3 misdemeanor.

1976, c. 746; 1994, c. [64](#); 1998, c. [427](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

#### **§ 42.1-89. Petition and court order for return of public records not in authorized possession.**

The Librarian of Virginia or his designated representative such as the State Archivist or any public official who is the custodian of public records in the possession of a person or agency not authorized by the custodian or by law to possess such public records shall petition the circuit court in the city or county in which the person holding such records resides or in which the materials in issue, or any part thereof, are located for the return of such records. The court shall order such public records be delivered to the petitioner upon finding that the materials in issue are public records and that such public records are in the possession of a person not authorized by the custodian of the public records or by law to possess such public records. If the order of delivery does not receive compliance, the plaintiff shall request that the court enforce such order through its contempt power and procedures.

1975, c. 180; 1976, c. 746; 1998, c. [427](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

#### **§ 42.1-90. Seizure of public records not in authorized possession.**

A. At any time after the filing of the petition set out in § [42.1-89](#) or contemporaneous with such filing, the person seeking the return of the public records may by ex parte petition request the judge or the court in which the action was filed to issue an order directed at the sheriff or other proper officer, as the case may be, commanding him to seize the materials which are the subject of the action and deliver the same to the court under the circumstances hereinafter set forth.

B. The judge aforesaid shall issue an order of seizure upon receipt of an affidavit from the petitioner which alleges that the material at issue may be sold, secreted, removed out of this Commonwealth or otherwise disposed of so as not to be forthcoming to answer the final judgment of the court respecting the same; or that such property may be destroyed or materially damaged or injured if permitted to remain out of the petitioner's possession.

C. The aforementioned order of seizure shall issue without notice to the respondent and without the posting of any bond or other security by the petitioner.

1975, c. 180; 1976, c. 746.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

#### **§ 42.1-90.1. Auditing.**

The Librarian may, in his discretion, conduct an audit of the records management practices of any agency. Any agency subject to the audit shall cooperate and provide the Library with any records or assistance that it requests. The Librarian shall compile a written summary of the findings of the audit and any actions necessary to bring the agency into compliance with this chapter. The summary shall be a public record, and shall be made available to the agency subject to the audit, the Governor, and the chairmen of the House and Senate Committees on General Laws and the House Appropriations and Senate Finance Committees of the General Assembly.

2006, c. [60](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**§ 42.1-91. Repealed.**

Repealed by Acts 2006, c. [60](#), cl. 2.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.