

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3705.6, 2.2-3711, 2.2-3713, 10.1-1458, and 15.2-2103.1 of the
2 Code of Virginia, relating to the Virginia Freedom of Information Act; general exclusion for
3 trade secrets submitted to a public body.

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

5 **1. That §§ 2.2-3705.6, 2.2-3711, 2.2-3713, 10.1-1458, and 15.2-2103.1 of the Code of Virginia are**
6 **amended and reenacted as follows:**

7 **§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.**

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

12 1. Information furnished to a public body by a submitting entity that qualifies as a trade secret of
13 the submitting entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.). In order for such
14 trade secret information to be excluded from the provisions of this subdivision, the submitting entity
15 shall make a written request to the public body (i) invoking such exclusion upon submission of the trade
16 secret information for which protection from disclosure is sought, (ii) identifying with specificity the
17 trade secret information for which protection is sought, and (iii) stating the reasons why protection is
18 necessary.

19 The provisions of this subdivision shall not be construed to authorize the withholding of such
20 information that no longer meets the definition of a trade secret under the Uniform Trade Secrets Act.

21 1a. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-
22 132.4 or 62.1-134.1.

23 2. Financial statements not publicly available filed with applications for industrial development
24 financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

25 3. Proprietary information, voluntarily provided by private business pursuant to a promise of
26 confidentiality from a public body, used by the public body for business, trade, and tourism development
27 or retention; and memoranda, working papers, or other information related to businesses that are
28 considering locating or expanding in Virginia, prepared by a public body, where competition or
29 bargaining is involved and where disclosure of such information would adversely affect the financial
30 interest of the public body.

31 4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-
32 239 et seq.), as such Act existed prior to July 1, 1992.

33 5. Fisheries data that would permit identification of any person or vessel, except when required
34 by court order as specified in § 28.2-204.

35 6. Confidential financial statements, balance sheets, ~~trade secrets~~, and revenue and cost
36 projections provided to the Department of Rail and Public Transportation, provided that such
37 information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce
38 Act or other laws administered by the Surface Transportation Board or the Federal Railroad
39 Administration with respect to data provided in confidence to the Surface Transportation Board and the
40 Federal Railroad Administration.

41 7. Proprietary information related to inventory and sales, voluntarily provided by private energy
42 suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy
43 contingency planning purposes or for developing consolidated statistical information on energy supplies.

44 8. Confidential proprietary information furnished to the Board of Medical Assistance Services or
45 the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of
46 Chapter 10 of Title 32.1.

47 9. Proprietary, commercial or financial information, balance sheets, ~~trade secrets~~, and revenue
48 and cost projections provided by a private transportation business to the Virginia Department of
49 Transportation and the Department of Rail and Public Transportation for the purpose of conducting
50 transportation studies needed to obtain grants or other financial assistance under the Transportation
51 Equity Act for the 21st Century (P.L. 105-178) for transportation projects if disclosure of such

52 information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce
53 Act or other laws administered by the Surface Transportation Board or the Federal Railroad
54 Administration with respect to data provided in confidence to the Surface Transportation Board and the
55 Federal Railroad Administration. However, the exclusion provided by this subdivision shall not apply to
56 any wholly owned subsidiary of a public body.

57 10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade
58 secrets or proprietary information by any person in connection with a procurement transaction or by any
59 person who has submitted to a public body an application for prequalification to bid on public
60 construction projects in accordance with subsection B of § 2.2-4317.

61 11. a. Memoranda, staff evaluations, or other information prepared by the responsible public
62 entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of
63 proposals filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-
64 Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where (i) if such
65 information was made public prior to or after the execution of an interim or a comprehensive agreement,
66 § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public
67 entity would be adversely affected and (ii) the basis for the determination required in clause (i) is
68 documented in writing by the responsible public entity; and

69 b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or
70 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§
71 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1
72 et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity as defined in
73 the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial information of the private entity,
74 including balance sheets and financial statements, that are not generally available to the public through
75 regulatory disclosure or otherwise; or (iii) other information submitted by the private entity where if
76 such information was made public prior to the execution of an interim agreement or a comprehensive
77 agreement, the financial interest or bargaining position of the public or private entity would be adversely

78 affected. In order for the information specified in clauses (i), (ii), and (iii) to be excluded from the
79 provisions of this chapter, the private entity shall make a written request to the responsible public entity:

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

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

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

84 The responsible public entity shall determine whether the requested exclusion from disclosure is
85 necessary to protect the trade secrets under this subdivision or financial information of the private entity.

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

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

101 For the purposes of this subdivision, ~~the terms~~ "affected jurisdiction," "affected local
102 jurisdiction," "comprehensive agreement," "interim agreement," "qualifying project," "qualifying
103 transportation facility," "responsible public entity," and "private entity" ~~shall~~ mean the same as those

104 terms are defined in the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or in the Public-
105 Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.).

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

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

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

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

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

134 15. Information related to Virginia apple producer sales provided to the Virginia State Apple
135 Board pursuant to § 3.2-1215.

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

139 ~~17.~~ Information relating to a grant or loan application, or accompanying a grant or loan
140 application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-
141 2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to
142 Chapter 5.3 (§ 32.1-162.23 et seq.) of Title 32.1 if disclosure of such information would (i) reveal
143 proprietary business or research-related information produced or collected by the applicant in the
144 conduct of or as a result of study or research on medical, rehabilitative, scientific, technical,
145 technological, or scholarly issues, when such information has not been publicly released, published,
146 copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

147 ~~18-17.~~ Confidential proprietary information and trade secrets developed and held by a local
148 public body (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable
149 television services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2 if
150 disclosure of such information would be harmful to the competitive position of the locality.

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

156 | ~~19.~~18. Confidential proprietary information and trade secrets developed by or for a local
157 authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et
158 seq.) to provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.)
159 of Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive
160 position of the authority, except that information required to be maintained in accordance with § 15.2-
161 2160 shall be released.

162 | ~~20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial~~
163 19. Financial information of a business, including balance sheets and financial statements, that are not
164 generally available to the public through regulatory disclosure or otherwise, provided to the Department
165 of Small Business and Supplier Diversity as part of an application for certification as a small, women-
166 owned, or minority-owned business in accordance with Chapter 16.1 (§ 2.2-1603 et seq.). In order for
167 such ~~trade secrets or~~ financial information to be excluded from the provisions of this chapter, the
168 business shall (i) invoke such exclusion upon submission of the data or other materials for which
169 protection from disclosure is sought, (ii) identify the data or other materials for which protection is
170 sought, and (iii) state the reasons why protection is necessary.

171 | ~~21.~~20. Information of a proprietary or confidential nature disclosed by a carrier to the State
172 Health Commissioner pursuant to ~~§§ 32.1-276.5:1 and §~~ 32.1-276.7:1.

173 | ~~22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including,~~
174 ~~but not limited to, financial~~21. Financial information, including balance sheets and financial statements,
175 that ~~are~~ is not generally available to the public through regulatory disclosure or otherwise, and revenue
176 and cost projections supplied by a private or nongovernmental entity to the State Inspector General for
177 the purpose of an audit, special investigation, or any study requested by the Office of the State Inspector
178 General in accordance with law.

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

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

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

190 ~~23.~~ 22. Information relating to a grant application, or accompanying a grant application,
191 submitted to the Tobacco Region Revitalization Commission that would (i) reveal (a) ~~trade secrets as~~
192 ~~defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.),~~ (b) financial information of a grant
193 applicant that is not a public body, including balance sheets and financial statements, that ~~are~~ is not
194 generally available to the public through regulatory disclosure or otherwise, or ~~(c)~~ (b) research-related
195 information produced or collected by the applicant in the conduct of or as a result of study or research
196 on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information
197 has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the
198 competitive position of the applicant; and memoranda, staff evaluations, or other information prepared
199 by the Commission or its staff exclusively for the evaluation of grant applications. The exclusion
200 provided by this subdivision shall apply to grants that are consistent with the powers of and in
201 furtherance of the performance of the duties of the Commission pursuant to § 3.2-3103.

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

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

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

213 ~~24-23.~~ a. Information held by the Commercial Space Flight Authority relating to rate structures
214 or charges for the use of projects of, the sale of products of, or services rendered by the Authority if
215 disclosure of such information would adversely affect the financial interest or bargaining position of the
216 Authority or a private entity providing the information to the Authority; or

217 b. Information provided by a private entity to the Commercial Space Flight Authority if
218 disclosure of such information would (i) reveal (a) ~~trade secrets of the private entity as defined in the~~
219 ~~Uniform Trade Secrets Act (§ 59.1-336 et seq.); (b)~~ financial information of the private entity, including
220 balance sheets and financial statements, that ~~are~~ is not generally available to the public through
221 regulatory disclosure or otherwise; or ~~(c)~~ (b) other information submitted by the private entity and (ii)
222 adversely affect the financial interest or bargaining position of the Authority or private entity.

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

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

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

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

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

236 ~~25-24.~~ Information of a proprietary nature furnished by an agricultural landowner or operator to
237 the Department of Conservation and Recreation, the Department of Environmental Quality, the
238 Department of Agriculture and Consumer Services, or any political subdivision, agency, or board of the
239 Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when required as part
240 of a state or federal regulatory enforcement action.

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

247 ~~27-25.~~ Information of a proprietary nature furnished by a licensed public-use airport to the
248 Department of Aviation for funding from programs administered by the Department of Aviation or the
249 Virginia Aviation Board, where if such information was made public, the financial interest of the public-
250 use airport would be adversely affected.

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

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

257 ~~28-26.~~ Information relating to a grant or loan application, or accompanying a grant or loan
258 application, submitted to the Virginia Research Investment Committee established pursuant to Article 8
259 (§ 23.1-3130 et seq.) of Chapter 31 of Title 23.1, to the extent that such records would (i) reveal (a) ~~trade~~
260 ~~secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (b)~~ financial information of a
261 party to a grant or loan application that is not a public body, including balance sheets and financial
262 statements, that ~~are~~ is not generally available to the public through regulatory disclosure or otherwise; or

263 ~~(e)~~ (b) research-related information produced or collected by a party to the application in the conduct of
264 or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or
265 scholarly issues, when such information has not been publicly released, published, copyrighted, or
266 patented, and (ii) be harmful to the competitive position of a party to a grant or loan application; and
267 memoranda, staff evaluations, or other information prepared by the Committee or its staff, or a
268 reviewing entity pursuant to subsection D of § 23.1-3133, exclusively for the evaluation of grant or loan
269 applications, including any scoring or prioritization documents prepared for and forwarded to the
270 Committee pursuant to subsection D of § 23.1-3133.

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

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

276 b. Identifying with specificity the data, information, or other materials for which protection is
277 sought; and

278 c. Stating the reasons why protection is necessary.

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

283 ~~29-27.~~ Proprietary information, voluntarily provided by a private business pursuant to a promise
284 of confidentiality from a public body, used by the public body for a solar services agreement, where
285 disclosure of such information would (i) reveal (a) ~~trade secrets of the private business as defined in the~~
286 ~~Uniform Trade Secrets Act (§ 59.1-336 et seq.);~~ (b) financial information of the private business,
287 including balance sheets and financial statements, that ~~are~~ is not generally available to the public
288 through regulatory disclosure or otherwise; or ~~(e)~~ (b) other information submitted by the private business

289 and (ii) adversely affect the financial interest or bargaining position of the public body or private
290 business.

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

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

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

296 c. Stating the reasons why protection is necessary.

297 ~~30-28.~~ Information contained in engineering and construction drawings and plans submitted for
298 the sole purpose of complying with the Building Code in obtaining a building permit if disclosure of
299 such information would identify ~~specific trade secrets or other~~ information that would be harmful to the
300 competitive position of the owner or lessee. However, such information shall be exempt only until the
301 building is completed. Information relating to the safety or environmental soundness of any building
302 shall not be exempt from disclosure.

303 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

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

305 1. Discussion, consideration, or interviews of prospective candidates for employment;
306 assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of
307 specific public officers, appointees, or employees of any public body; and evaluation of performance of
308 departments or schools of public institutions of higher education where such evaluation will necessarily
309 involve discussion of the performance of specific individuals. Any teacher shall be permitted to be
310 present during a closed meeting in which there is a discussion or consideration of a disciplinary matter
311 that involves the teacher and some student and the student involved in the matter is present, provided the
312 teacher makes a written request to be present to the presiding officer of the appropriate board. Nothing
313 in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body
314 or an elected school board to discuss compensation matters that affect the membership of such body or
315 board collectively.

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

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

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

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

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

333 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to
334 actual or probable litigation, where such consultation or briefing in open meeting would adversely affect
335 the negotiating or litigating posture of the public body. For the purposes of this subdivision, "probable
336 litigation" means litigation that has been specifically threatened or on which the public body or its legal
337 counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in
338 this subdivision shall be construed to permit the closure of a meeting merely because an attorney
339 representing the public body is in attendance or is consulted on a matter.

340 8. Consultation with legal counsel employed or retained by a public body regarding specific legal
341 matters requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be

342 construed to permit the closure of a meeting merely because an attorney representing the public body is
343 in attendance or is consulted on a matter.

344 9. Discussion or consideration by governing boards of public institutions of higher education of
345 matters relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or
346 work to be performed by such institution. However, the terms and conditions of any such gifts, bequests,
347 grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and
348 accepted by a public institution of higher education in the Commonwealth shall be subject to public
349 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
350 (i) "foreign government" means any government other than the United States government or the
351 government of a state or a political subdivision thereof, (ii) "foreign legal entity" means any legal entity
352 (a) created under the laws of the United States or of any state thereof if a majority of the ownership of
353 the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
354 membership of any such entity is composed of foreign persons or foreign legal entities or (b) created
355 under the laws of a foreign government, and (iii) "foreign person" means any individual who is not a
356 citizen or national of the United States or a trust territory or protectorate thereof.

357 10 Discussion or consideration by the boards of trustees of the Virginia Museum of Fine Arts,
358 the Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science
359 Museum of Virginia of matters relating to specific gifts, bequests, and grants from private sources.

360 11. Discussion or consideration of honorary degrees or special awards.

361 12. Discussion or consideration of tests, examinations, or other information used, administered,
362 or prepared by a public body and subject to the exclusion in subdivision 4 of § 2.2-3705.1.

363 13. Discussion, consideration, or review by the appropriate House or Senate committees of
364 possible disciplinary action against a member arising out of the possible inadequacy of the disclosure
365 statement filed by the member, provided the member may request in writing that the committee meeting
366 not be conducted in a closed meeting.

367 14. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement
368 or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the

369 governing body in open meeting finds that an open meeting will have an adverse effect upon the
370 negotiating position of the governing body or the establishment of the terms, conditions and provisions
371 of the siting agreement, or both. All discussions with the applicant or its representatives may be
372 conducted in a closed meeting.

373 15. Discussion by the Governor and any economic advisory board reviewing forecasts of
374 economic activity and estimating general and nongeneral fund revenues.

375 16. Discussion or consideration of medical and mental health records subject to the exclusion in
376 subdivision 1 of § 2.2-3705.5.

377 17. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant
378 to subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent;
379 and discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game
380 information and studies or investigations excluded from disclosure under subdivision 6 of § 2.2-3705.3
381 and subdivision 11 of § 2.2-3705.7.

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

387 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific
388 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-
389 enforcement or emergency service officials concerning actions taken to respond to such matters or a
390 related threat to public safety; discussion of information subject to the exclusion in subdivision 2 or 14
391 of § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of any person or the
392 security of any facility, building, structure, information technology system, or software program; or
393 discussion of reports or plans related to the security of any governmental facility, building or structure,
394 or the safety of persons using such facility, building or structure.

395 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-
396 124.30, or of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or
397 board of trustees of a trust established by one or more local public bodies to invest funds for
398 postemployment benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of
399 Chapter 15 of Title 15.2, or by the board of visitors of the University of Virginia, acting pursuant to §
400 23.1-2210, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706,
401 regarding the acquisition, holding or disposition of a security or other ownership interest in an entity,
402 where such security or ownership interest is not traded on a governmentally regulated securities
403 exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the board of
404 visitors of the University of Virginia, prepared by the retirement system, or a local finance board or
405 board of trustees, or the Virginia College Savings Plan or provided to the retirement system a local
406 finance board or board of trustees, or the Virginia College Savings Plan under a promise of
407 confidentiality, of the future value of such ownership interest or the future financial performance of the
408 entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held, or
409 disposed of by the retirement system, a local finance board or board of trustees, the board of visitors of
410 the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be
411 construed to prevent the disclosure of information relating to the identity of any investment held, the
412 amount invested or the present value of such investment.

413 21. Those portions of meetings in which individual child death cases are discussed by the State
414 Child Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which
415 individual child death cases are discussed by a regional or local child fatality review team established
416 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by
417 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in
418 which individual adult death cases are discussed by the state Adult Fatality Review Team established
419 pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are
420 discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

421 22. Those portions of meetings of the board of visitors of the University of Virginia or the
422 Eastern Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings
423 of any persons to whom management responsibilities for the University of Virginia Medical Center or
424 Eastern Virginia Medical School, as the case may be, have been delegated, in which there is discussed
425 proprietary, business-related information pertaining to the operations of the University of Virginia
426 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
427 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
428 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
429 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
430 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
431 Medical School, as the case may be.

432 23. Discussion or consideration by the Virginia Commonwealth University Health System
433 Authority or the board of visitors of Virginia Commonwealth University of any of the following: the
434 acquisition or disposition by the Authority of real property, equipment, or technology software or
435 hardware and related goods or services, where disclosure would adversely affect the bargaining position
436 or negotiating strategy of the Authority; matters relating to gifts or bequests to, and fund-raising
437 activities of, the Authority; grants and contracts for services or work to be performed by the Authority;
438 marketing or operational strategies plans of the Authority where disclosure of such strategies or plans
439 would adversely affect the competitive position of the Authority; and members of the Authority's
440 medical and teaching staffs and qualifications for appointments thereto.

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

444 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
445 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees
446 by or on behalf of individuals who have requested information about, applied for, or entered into prepaid

447 tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title
448 23.1 is discussed.

449 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee
450 created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-
451 336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of
452 wireless E-911 service.

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

459 28. Discussion or consideration of information subject to the exclusion in subdivision 11 of §
460 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are
461 defined in § 33.2-1800, or any independent review panel appointed to review information and advise the
462 responsible public entity concerning such records.

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

467 30. Discussion or consideration of grant or loan application information subject to the exclusion
468 in subdivision ~~17~~ 16 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the
469 Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment
470 Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

471 31. Discussion or consideration by the Commitment Review Committee of information subject
472 to the exclusion in subdivision 5 of § 2.2-3705.2 relating to individuals subject to commitment as
473 sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

474 32. Discussion or consideration of confidential proprietary information and trade secrets
475 developed and held by a local public body providing certain telecommunication services or cable
476 television services and subject to the exclusion in subdivision ~~18~~ 17 of § 2.2-3705.6. However, the
477 exemption provided by this subdivision shall not apply to any authority created pursuant to the BVU
478 Authority Act (§ 15.2-7200 et seq.).

479 33. Discussion or consideration by a local authority created in accordance with the Virginia
480 Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and
481 trade secrets subject to the exclusion in subdivision ~~19~~ 18 of § 2.2-3705.6.

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

484 35. Discussion or consideration by the Forensic Science Board or the Scientific Advisory
485 Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of criminal
486 investigative files subject to the exclusion in subdivision A 2 a of § 2.2-3706.

487 36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of
488 information or confidential matters subject to the exclusion in subdivision 3 of § 2.2-3705.4, and
489 meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and
490 consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or
491 recover scholarship awards.

492 37. Discussion or consideration by the Virginia Port Authority of information subject to the
493 exclusion in subdivision ~~1~~ 1a of § 2.2-3705.6 related to certain proprietary information gathered by or
494 for the Virginia Port Authority.

495 38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System
496 acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-
497 124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia
498 College Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's
499 Investment Advisory Committee appointed pursuant to § 23.1-702 of information subject to the
500 exclusion in subdivision 24 of § 2.2-3705.7.

501 39. Discussion or consideration of information subject to the exclusion in subdivision 3 of § 2.2-
502 3705.6 related to economic development.

503 40. Discussion or consideration by the Board of Education of information relating to the denial,
504 suspension, or revocation of teacher licenses subject to the exclusion in subdivision 11 of § 2.2-3705.3.

505 41. Those portions of meetings of the Virginia Military Advisory Council or any commission
506 created by executive order for the purpose of studying and making recommendations regarding
507 preventing closure or realignment of federal military and national security installations and facilities
508 located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs
509 organization appointed by a local governing body, during which there is discussion of information
510 subject to the exclusion in subdivision 8 of § 2.2-3705.2.

511 42. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
512 information subject to the exclusion in subdivision 28 of § 2.2-3705.7 related to personally identifiable
513 information of donors.

514 43. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of
515 information subject to the exclusion in subdivision ~~23~~ 22 of § 2.2-3705.6 related to certain information
516 contained in grant applications.

517 44. Discussion or consideration by the board of directors of the Commercial Space Flight
518 Authority of information subject to the exclusion in subdivision ~~24~~ 23 of § 2.2-3705.6 related to rate
519 structures or charges for the use of projects of, the sale of products of, or services rendered by the
520 Authority and certain proprietary information of a private entity provided to the Authority.

521 45. Discussion or consideration of personal and proprietary information related to the resource
522 management plan program and subject to the exclusion in (i) subdivision ~~25~~ 24 of § 2.2-3705.6 or (ii)
523 subsection E of § 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records
524 that contain information that has been certified for release by the person who is the subject of the
525 information or transformed into a statistical or aggregate form that does not allow identification of the
526 person who supplied, or is the subject of, the information.

527 46. (Effective January 15, 2018) Discussion or consideration by the Board of Directors of the
528 Virginia Alcoholic Beverage Control Authority of information subject to the exclusion in subdivision 1
529 of § 2.2-3705.3 related to investigations of applicants for licenses and permits and of licensees and
530 permittees.

531 47. Discussion or consideration of grant or loan application records subject to the exclusion in
532 subdivision ~~28~~ 26 of § 2.2-3705.6 related to the submission of an application for an award from the
533 Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title
534 23.1 or interviews of parties to an application by a reviewing entity pursuant to subsection D of § 23.1-
535 3133 or by the Virginia Research Investment Committee.

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

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

542 50. Discussion or consideration by the Board of the Virginia Economic Development Partnership
543 Authority, or any subcommittee thereof, of the portions of the strategic plan, marketing plan, or
544 operational plan exempt from disclosure pursuant to subdivision 33 of § 2.2-3705.7.

545 51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic
546 Development Partnership Authority established pursuant to subsection F of § 2.2-2237.3 to review and
547 discuss information received from the Virginia Employment Commission pursuant to subdivision C 2 of
548 § 60.2-114.

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

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

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

559 E. This section shall not be construed to (i) require the disclosure of any contract between the
560 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§
561 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to
562 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered
563 to issue industrial revenue bonds by general or special law, to identify a business or industry to which
564 subdivision A 5 applies. However, such business or industry shall be identified as a matter of public
565 record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such
566 bonds.

567 **§ 2.2-3713. Proceedings for enforcement of chapter.**

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

574 1. In a case involving a local public body, to the general district court or circuit court of the
575 county or city from which the public body has been elected or appointed to serve and in which such
576 rights and privileges were so denied;

577 2. In a case involving a regional public body, to the general district or circuit court of the county
578 or city where the principal business office of such body is located; and

579 3. In a case involving a board, bureau, commission, authority, district, institution, or agency of
580 the state government, including a public institution of higher education, or a standing or other committee
581 of the General Assembly, to the general district court or the circuit court of the residence of the
582 aggrieved party or of the City of Richmond.

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

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

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

601 E. If a public body withholds trade secret information pursuant to subdivision 1 of § 2.2-3705.6
602 and the requester brings an action under this chapter to challenge such withholding, the requester may
603 name the submitting entity or its successor in interest as an additional defendant in the action.
604 Additionally, upon request of the public body, the court, by order pursuant to the provisions of § 8.01-7,
605 may add the submitting entity as an additional defendant in the action. If, as a result of the action, the

606 court requires the public body to produce such information because it is not a trade secret as defined in
607 the Uniform Trade Secrets Act (§ 59.1-336 et seq.), any award of reasonable costs and attorney fees to
608 the requester pursuant to the provisions of this subsection shall be paid by the submitting entity or the
609 public body, or both, in the proportion deemed appropriate by the court.

610 F. In any action to enforce the provisions of this chapter, the public body shall bear the burden of
611 proof to establish an exclusion by a preponderance of the evidence. No court shall be required to accord
612 any weight to the determination of a public body as to whether an exclusion applies. Any failure by a
613 public body to follow the procedures established by this chapter shall be presumed to be a violation of
614 this chapter.

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

618 **§ 10.1-1458. Persons to provide plans, specifications, and information.**

619 Every person the Department has reason to believe is generating, storing, transporting, disposing
620 of, or treating waste shall, on request of the Department, furnish such plans, specifications, and
621 information as the Department may require in the discharge of its duties under this chapter. Trade secret
622 information included within any plans, specifications, or information submitted pursuant to this section
623 shall be excluded from the provisions of the Virginia Freedom of Information Act as provided in
624 subdivision ~~26~~ 1 of § 2.2-3705.6. At all times, the Department may disclose such trade secret
625 information to the appropriate officials of the Environmental Protection Agency pursuant to the
626 requirements of the federal Solid Waste Disposal Act, 42 U.S.C. § 3251, et seq., or as otherwise required
627 by law.

628 **§ 15.2-2103.1. Solar services agreements; nondisclosure of proprietary information.**

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

631 B. Nothing in this article shall be construed to require the disclosure of proprietary information
632 voluntarily provided by a private entity in connection with a franchise, lease, or use under a solar

633 | services agreement that is excluded from mandatory disclosure pursuant to subdivision ~~29~~ 27 of § 2.2-
634 3705.6 of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

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

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