

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

1 A BILL to amend and reenact §§ 2.2-2240.1, 2.2-3705.6, 2.2-3711, 2.2-3713, 10.1-1458, 15.2-2103.1, 30-  
2 281, 33.2-1803, 33.2-1820, 56-575.4, and 56-575.17 of the Code of Virginia, relating to the  
3 Virginia Freedom of Information Act; general exclusion for trade secrets submitted to a public  
4 body.

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

6 **1. That §§ 2.2-2240.1, 2.2-3705.6, 2.2-3711, 2.2-3713, 10.1-1458, 15.2-2103.1, 30-281, 33.2-1803, 33.2-**  
7 **1820, 56-575.4, and 56-575.17 of the Code of Virginia are amended and reenacted as follows:**

8 **§ 2.2-2240.1. Grants paid to the Authority to promote research, development, and**  
9 **commercialization of products.**

10 A. The General Assembly may appropriate grants to the Authority for use by a nonprofit, public  
11 benefit research institute that (i) conducts research and development for government agencies, commercial  
12 businesses, foundations, and other organizations and (ii) commercializes technology.

13 B. The Authority is hereby authorized to create a nonprofit, nonstock corporation to receive such  
14 grants and to oversee the administration of the payment of the grants. As a condition to the payment of  
15 any grants to the Authority under this section, the General Assembly may require that such nonprofit,  
16 nonstock corporation be created.

17 C. Notwithstanding the provisions of § 2.2-2240, the Board of Directors of the nonprofit, nonstock  
18 corporation shall consist of nine voting members as follows: (i) the president of the University of Virginia,  
19 or his designee, (ii) the president of Virginia Polytechnic Institute and State University, or his designee,  
20 (iii) the president of James Madison University, or his designee, (iv) the president (or the designee of such  
21 president) of Virginia Commonwealth University, Christopher Newport University, the University of  
22 Mary Washington, Radford University, Virginia State University, Norfolk State University, Old  
23 Dominion University, George Mason University, or Longwood University, as appointed by the Governor,  
24 with appointments to this position rotated equally among such baccalaureate public institutions of higher  
25 education, (v) one citizen member who shall have substantial experience in research and development in

26 the fields of pharmaceuticals, engineering, energy, or similar sciences, appointed by the Governor, (vi) a  
27 representative of a nonprofit, public benefit research institute that has entered into a Memorandum of  
28 Agreement with the Commonwealth, (vii) the Secretary of Commerce and Trade, or his designee, (viii)  
29 the Secretary of Technology, or his designee, and (ix) a representative of a local government that has  
30 concluded a Memorandum of Agreement with such research institute. Citizen members appointed by the  
31 Governor shall serve for four-year terms, but no citizen member shall serve for more than two full  
32 successive terms. A vacancy for a citizen member shall be filled by the Governor for the unexpired term.

33 D. The Board is authorized to make grant payments only to those nonprofit, public benefit research  
34 institutes described in subsection A that have entered into a Memorandum of Agreement (MOA) with the  
35 Commonwealth. The MOA shall, at a minimum, (i) require the research institute to perform research,  
36 development, and commercialization activities that improve society and facilitate economic growth; (ii)  
37 require research to be conducted collaboratively with Virginia public and private institutions and that such  
38 collaborative research benefit the capabilities, facilities, and staff of all organizations involved; (iii)  
39 require the research institute to develop protocols for the commercialization efforts of the institute,  
40 including protocols addressing intellectual property rights; (iv) require the Board to evaluate fulfillment  
41 of key milestones for the research institute, which shall include but not be limited to milestones relating  
42 to job creation, research institute reinvestment goals, research proposals submissions, and royalties, and  
43 to annually evaluate the Commonwealth's investment in the research institute by reporting on the institute's  
44 progress in meeting such milestones; and (v) establish relationships and expectations between the research  
45 institutes and public institutions of higher education in the Commonwealth, including opportunities for  
46 principal investigators to serve as adjunct faculty and the creation of internships for students and  
47 postdoctoral appointees.

48 E. The maximum amount of grants awarded by the Board shall not exceed a total of \$22 million  
49 per recipient through June 30, 2013.

50 F. The Board of any nonprofit, nonstock corporation created under this section shall be established  
51 in the executive branch of state government. The records of the corporation, its Board members, and

52 employees that are deemed confidential or proprietary shall be exempt from disclosure pursuant to  
53 subdivision ~~3~~ 4 of § 2.2-3705.6 of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

54 **§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.**

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

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

65 The provisions of this subdivision shall not be construed to authorize the withholding of such  
66 information that no longer meets the definition of a trade secret under the Uniform Trade Secrets Act (§  
67 59.1-336 et seq.).

68 2. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-  
69 132.4 or 62.1-134.1.

70 ~~2-3.~~ Financial statements not publicly available filed with applications for industrial development  
71 financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

72 ~~3-4.~~ Proprietary information, voluntarily provided by private business pursuant to a promise of  
73 confidentiality from a public body, used by the public body for business, trade, and tourism development  
74 or retention; and memoranda, working papers, or other information related to businesses that are  
75 considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining  
76 is involved and where disclosure of such information would adversely affect the financial interest of the  
77 public body.

78 ~~4-5.~~ Information that was filed as confidential under the Toxic Substances Information Act (§  
79 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

80 ~~5-6.~~ Fisheries data that would permit identification of any person or vessel, except when required  
81 by court order as specified in § 28.2-204.

82 ~~6-7.~~ Confidential financial statements, balance sheets, ~~trade secrets~~, and revenue and cost  
83 projections provided to the Department of Rail and Public Transportation, provided that such information  
84 is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other  
85 laws administered by the Surface Transportation Board or the Federal Railroad Administration with  
86 respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad  
87 Administration.

88 ~~7-8.~~ Proprietary information related to inventory and sales, voluntarily provided by private energy  
89 suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy  
90 contingency planning purposes or for developing consolidated statistical information on energy supplies.

91 ~~8-9.~~ Confidential proprietary information furnished to the Board of Medical Assistance Services  
92 or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of  
93 Chapter 10 of Title 32.1.

94 ~~9-10.~~ Proprietary, commercial or financial information, balance sheets, ~~trade secrets~~, and revenue  
95 and cost projections provided by a private transportation business to the Virginia Department of  
96 Transportation and the Department of Rail and Public Transportation for the purpose of conducting  
97 transportation studies needed to obtain grants or other financial assistance under the Transportation Equity  
98 Act for the 21st Century (P.L. 105-178) for transportation projects if disclosure of such information is  
99 exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other  
100 laws administered by the Surface Transportation Board or the Federal Railroad Administration with  
101 respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad  
102 Administration. However, the exclusion provided by this subdivision shall not apply to any wholly owned  
103 subsidiary of a public body.

104 ~~10-11.~~ Confidential information designated as provided in subsection F of § 2.2-4342 as trade  
105 secrets or proprietary information by any person in connection with a procurement transaction or by any  
106 person who has submitted to a public body an application for prequalification to bid on public construction  
107 projects in accordance with subsection B of § 2.2-4317.

108 ~~11-12.~~ a. Memoranda, staff evaluations, or other information prepared by the responsible public  
109 entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals  
110 filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-Private  
111 Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where (i) if such information was  
112 made public prior to or after the execution of an interim or a comprehensive agreement, § 33.2-1820 or  
113 56-575.17 notwithstanding, the financial interest or bargaining position of the public entity would be  
114 adversely affected and (ii) the basis for the determination required in clause (i) is documented in writing  
115 by the responsible public entity; and

116 b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or  
117 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§  
118 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et  
119 seq.) if disclosure of such information would reveal (i) trade secrets of the private entity as defined in the  
120 Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial information of the private entity, including  
121 balance sheets and financial statements, that are not generally available to the public through regulatory  
122 disclosure or otherwise; or (iii) other information submitted by the private entity where if such information  
123 was made public prior to the execution of an interim agreement or a comprehensive agreement, the  
124 financial interest or bargaining position of the public or private entity would be adversely affected. In  
125 order for the information specified in clauses (i), (ii), and (iii) to be excluded from the provisions of this  
126 chapter, the private entity shall make a written request to the responsible public entity:

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

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

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

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

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

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

153 ~~12-13.~~ Confidential proprietary information ~~or trade secrets~~, not publicly available, provided by a  
154 private person or entity pursuant to a promise of confidentiality to the Virginia Resources Authority or to  
155 a fund administered in connection with financial assistance rendered or to be rendered by the Virginia  
156 Resources Authority where, if such information were made public, the financial interest of the private  
157 person or entity would be adversely affected.

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

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

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

176 ~~14.15.~~ Information of a proprietary or confidential nature furnished by a supplier or manufacturer  
177 of charitable gaming supplies to the Department of Agriculture and Consumer Services (i) pursuant to  
178 subsection E of § 18.2-340.34 and (ii) pursuant to regulations promulgated by the Charitable Gaming  
179 Board related to approval of electronic and mechanical equipment.

180 ~~15.16.~~ Information related to Virginia apple producer sales provided to the Virginia State Apple  
181 Board pursuant to § 3.2-1215.

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

185 17. Information relating to a grant or loan application, or accompanying a grant or loan application,  
186 to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.)  
187 of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 5.3 (§  
188 32.1-162.23 et seq.) of Title 32.1 if disclosure of such information would (i) reveal proprietary business  
189 or research-related information produced or collected by the applicant in the conduct of or as a result of  
190 study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when  
191 such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful  
192 to the competitive position of the applicant.

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

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

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

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



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

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

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

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

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

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

235 23. Information relating to a grant application, or accompanying a grant application, submitted to  
236 the Tobacco Region Revitalization Commission that would (i) reveal (a) ~~trade secrets as defined in the~~  
237 ~~Uniform Trade Secrets Act (§ 59.1-336 et seq.), (b)~~ financial information of a grant applicant that is not a  
238 public body, including balance sheets and financial statements, that ~~are~~ is not generally available to the

239 public through regulatory disclosure or otherwise, or ~~(e)~~ (b) research-related information produced or  
240 collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative,  
241 scientific, technical, technological, or scholarly issues, when such information has not been publicly  
242 released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the  
243 applicant; and memoranda, staff evaluations, or other information prepared by the Commission or its staff  
244 exclusively for the evaluation of grant applications. The exclusion provided by this subdivision shall apply  
245 to grants that are consistent with the powers of and in furtherance of the performance of the duties of the  
246 Commission pursuant to § 3.2-3103.

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

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

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

253 c. Stating the reasons why protection is necessary.

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

258 24. a. Information held by the Commercial Space Flight Authority relating to rate structures or  
259 charges for the use of projects of, the sale of products of, or services rendered by the Authority if disclosure  
260 of such information would adversely affect the financial interest or bargaining position of the Authority  
261 or a private entity providing the information to the Authority; or

262 b. Information provided by a private entity to the Commercial Space Flight Authority if disclosure  
263 of such information would (i) reveal (a) ~~trade secrets of the private entity as defined in the Uniform Trade~~  
264 ~~Secrets Act (§ 59.1-336 et seq.);~~ (b) financial information of the private entity, including balance sheets  
265 and financial statements, that ~~are~~ is not generally available to the public through regulatory disclosure or

266 otherwise; or ~~(e)~~ (b) other information submitted by the private entity and (ii) adversely affect the financial  
267 interest or bargaining position of the Authority or private entity.

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

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

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

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

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

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

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

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

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

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

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

301 c. Stating the reasons why protection is necessary.

302 ~~28.-27.~~ Information relating to a grant or loan application, or accompanying a grant or loan  
303 application, submitted to the Virginia Research Investment Committee established pursuant to Article 8  
304 (§ 23.1-3130 et seq.) of Chapter 31 of Title 23.1, to the extent that such records would (i) reveal (a) ~~trade~~  
305 ~~secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (b)~~ financial information of a  
306 party to a grant or loan application that is not a public body, including balance sheets and financial  
307 statements, that ~~are~~ is not generally available to the public through regulatory disclosure or otherwise; or  
308 ~~(e)~~ (b) research-related information produced or collected by a party to the application in the conduct of  
309 or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or  
310 scholarly issues, when such information has not been publicly released, published, copyrighted, or  
311 patented, and (ii) be harmful to the competitive position of a party to a grant or loan application; and  
312 memoranda, staff evaluations, or other information prepared by the Committee or its staff, or a reviewing  
313 entity pursuant to subsection D of § 23.1-3133, exclusively for the evaluation of grant or loan applications,  
314 including any scoring or prioritization documents prepared for and forwarded to the Committee pursuant  
315 to subsection D of § 23.1-3133.

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

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

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

322 c. Stating the reasons why protection is necessary.

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

327 ~~29-28.~~ Proprietary information, voluntarily provided by a private business pursuant to a promise  
328 of confidentiality from a public body, used by the public body for a solar services agreement, where  
329 disclosure of such information would (i) reveal (a) ~~trade secrets of the private business as defined in the~~  
330 ~~Uniform Trade Secrets Act (§ 59.1-336 et seq.); (b)~~ financial information of the private business, including  
331 balance sheets and financial statements, that ~~are~~ is not generally available to the public through regulatory  
332 disclosure or otherwise; or ~~(e) (b)~~ other information submitted by the private business and (ii) adversely  
333 affect the financial interest or bargaining position of the public body or private business.

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

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

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

339 c. Stating the reasons why protection is necessary.

340 ~~30-29.~~ Information contained in engineering and construction drawings and plans submitted for  
341 the sole purpose of complying with the Building Code in obtaining a building permit if disclosure of such  
342 information would identify ~~specific trade secrets or other~~ information that would be harmful to the  
343 competitive position of the owner or lessee. However, such information shall be exempt only until the

344 building is completed. Information relating to the safety or environmental soundness of any building shall  
345 not be exempt from disclosure.

346 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

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

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

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

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

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

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

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

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

382 8. Consultation with legal counsel employed or retained by a public body regarding specific legal  
383 matters requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be  
384 construed to permit the closure of a meeting merely because an attorney representing the public body is  
385 in attendance or is consulted on a matter.

386 9. Discussion or consideration by governing boards of public institutions of higher education of  
387 matters relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or  
388 work to be performed by such institution. However, the terms and conditions of any such gifts, bequests,  
389 grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and  
390 accepted by a public institution of higher education in the Commonwealth shall be subject to public  
391 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,  
392 (i) "foreign government" means any government other than the United States government or the  
393 government of a state or a political subdivision thereof, (ii) "foreign legal entity" means any legal entity  
394 (a) created under the laws of the United States or of any state thereof if a majority of the ownership of the  
395 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the

396 membership of any such entity is composed of foreign persons or foreign legal entities or (b) created under  
397 the laws of a foreign government, and (iii) "foreign person" means any individual who is not a citizen or  
398 national of the United States or a trust territory or protectorate thereof.

399 10 Discussion or consideration by the boards of trustees of the Virginia Museum of Fine Arts, the  
400 Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of  
401 Virginia of matters relating to specific gifts, bequests, and grants from private sources.

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

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

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

409 14. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or  
410 to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing  
411 body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position  
412 of the governing body or the establishment of the terms, conditions and provisions of the siting agreement,  
413 or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.

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

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

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



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

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

436 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30,  
437 or of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of  
438 trustees of a trust established by one or more local public bodies to invest funds for postemployment  
439 benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2,  
440 or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Board  
441 of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition, holding or  
442 disposition of a security or other ownership interest in an entity, where such security or ownership interest  
443 is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i)  
444 concerns confidential analyses prepared for the board of visitors of the University of Virginia, prepared  
445 by the retirement system, or a local finance board or board of trustees, or the Virginia College Savings  
446 Plan or provided to the retirement system a local finance board or board of trustees, or the Virginia College  
447 Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future  
448 financial performance of the entity, and (ii) would have an adverse effect on the value of the investment  
449 to be acquired, held, or disposed of by the retirement system, a local finance board or board of trustees,

450 the board of visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this  
451 subdivision shall be construed to prevent the disclosure of information relating to the identity of any  
452 investment held, the amount invested or the present value of such investment.

453 21. Those portions of meetings in which individual child death cases are discussed by the State  
454 Child Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which  
455 individual child death cases are discussed by a regional or local child fatality review team established  
456 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by  
457 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in  
458 which individual adult death cases are discussed by the state Adult Fatality Review Team established  
459 pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are  
460 discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

461 22. Those portions of meetings of the board of visitors of the University of Virginia or the Eastern  
462 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any  
463 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern  
464 Virginia Medical School, as the case may be, have been delegated, in which there is discussed proprietary,  
465 business-related information pertaining to the operations of the University of Virginia Medical Center or  
466 Eastern Virginia Medical School, as the case may be, including business development or marketing  
467 strategies and activities with existing or future joint venturers, partners, or other parties with whom the  
468 University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed,  
469 or forms, any arrangement for the delivery of health care, if disclosure of such information would  
470 adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as  
471 the case may be.

472 23. Discussion or consideration by the Virginia Commonwealth University Health System  
473 Authority or the board of visitors of Virginia Commonwealth University of any of the following: the  
474 acquisition or disposition by the Authority of real property, equipment, or technology software or  
475 hardware and related goods or services, where disclosure would adversely affect the bargaining position  
476 or negotiating strategy of the Authority; matters relating to gifts or bequests to, and fund-raising activities

477 of, the Authority; grants and contracts for services or work to be performed by the Authority; marketing  
478 or operational strategies plans of the Authority where disclosure of such strategies or plans would  
479 adversely affect the competitive position of the Authority; and members of the Authority's medical and  
480 teaching staffs and qualifications for appointments thereto.

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

484 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein  
485 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by  
486 or on behalf of individuals who have requested information about, applied for, or entered into prepaid  
487 tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title  
488 23.1 is discussed.

489 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee  
490 created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336  
491 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of wireless E-  
492 911 service.

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

499 28. Discussion or consideration of information subject to the exclusion in subdivision ~~11~~ 12 of §  
500 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are defined  
501 in § 33.2-1800, or any independent review panel appointed to review information and advise the  
502 responsible public entity concerning such records.

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

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

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

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

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

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

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

527 36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of  
528 information or confidential matters subject to the exclusion in subdivision 3 of § 2.2-3705.4, and meetings  
529 of the Committee to deliberate concerning the annual maximum scholarship award, review and consider

530 scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover  
531 scholarship awards.

532 37. Discussion or consideration by the Virginia Port Authority of information subject to the  
533 exclusion in subdivision ~~1~~2 of § 2.2-3705.6 related to certain proprietary information gathered by or for  
534 the Virginia Port Authority.

535 38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting  
536 pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26,  
537 by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College  
538 Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's Investment Advisory  
539 Committee appointed pursuant to § 23.1-702 of information subject to the exclusion in subdivision 24 of  
540 § 2.2-3705.7.

541 39. Discussion or consideration of information subject to the exclusion in subdivision ~~3~~4 of § 2.2-  
542 3705.6 related to economic development.

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

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

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

554 43. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of  
555 information subject to the exclusion in subdivision 23 of § 2.2-3705.6 related to certain information  
556 contained in grant applications.

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

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

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

571 47. Discussion or consideration of grant or loan application records subject to the exclusion in  
572 subdivision ~~28~~ 27 of § 2.2-3705.6 related to the submission of an application for an award from the  
573 Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title 23.1  
574 or interviews of parties to an application by a reviewing entity pursuant to subsection D of § 23.1-3133 or  
575 by the Virginia Research Investment Committee.

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

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

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

585           51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic  
586 Development Partnership Authority established pursuant to subsection F of § 2.2-2237.3 to review and  
587 discuss information received from the Virginia Employment Commission pursuant to subdivision C 2 of  
588 § 60.2-114.

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

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

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

599           E. This section shall not be construed to (i) require the disclosure of any contract between the  
600 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§  
601 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to  
602 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered  
603 to issue industrial revenue bonds by general or special law, to identify a business or industry to which  
604 subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record  
605 at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

606           **§ 2.2-3713. Proceedings for enforcement of chapter.**

607           A. Any person, including the attorney for the Commonwealth acting in his official or individual  
608 capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and

609 privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause.  
610 Such petition may be brought in the name of the person notwithstanding that a request for public records  
611 was made by the person's attorney in his representative capacity. Venue for the petition shall be addressed  
612 as follows:

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

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

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

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

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

631 D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights  
632 and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred  
633 by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be  
634 in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs,  
635 including costs and reasonable fees for expert witnesses, and attorneys' fees from the public body if the



636 petitioner substantially prevails on the merits of the case, unless special circumstances would make an  
637 award unjust. In making this determination, a court may consider, among other things, the reliance of a  
638 public body on an opinion of the Attorney General or a decision of a court that substantially supports the  
639 public body's position.

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

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

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

653 **§ 10.1-1458. Persons to provide plans, specifications, and information.**

654 Every person the Department has reason to believe is generating, storing, transporting, disposing  
655 of, or treating waste shall, on request of the Department, furnish such plans, specifications, and  
656 information as the Department may require in the discharge of its duties under this chapter. Trade secret  
657 information included within any plans, specifications, or information submitted pursuant to this section  
658 shall be excluded from the provisions of the Virginia Freedom of Information Act as provided in  
659 subdivision ~~26.1~~ of § 2.2-3705.6. At all times, the Department may disclose such trade secret information  
660 to the appropriate officials of the Environmental Protection Agency pursuant to the requirements of the  
661 federal Solid Waste Disposal Act, 42 U.S.C. § 3251, et seq., or as otherwise required by law.

662 **§ 15.2-2103.1. Solar services agreements; nondisclosure of proprietary information.**

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

665 B. Nothing in this article shall be construed to require the disclosure of proprietary information  
666 voluntarily provided by a private entity in connection with a franchise, lease, or use under a solar services  
667 agreement that is excluded from mandatory disclosure pursuant to subdivision ~~29~~ 28 of § 2.2-3705.6 of  
668 the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

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

671 **§ 30-281. Confidentiality of certain records submitted to the Commission.**

672 Records and information afforded the protection under subdivision ~~11~~ 12 of § 2.2-3705.6 that are  
673 provided by a responsible public entity to the Commission shall continue to be protected from disclosure  
674 when in the possession of the Commission.

675 **§ 33.2-1803. Approval by the responsible public entity.**

676 A. The private entity may request approval by the responsible public entity. Any such request shall  
677 be accompanied by the following material and information unless waived by the responsible public entity  
678 in its guidelines or other instructions given, in writing, to the private entity with respect to the  
679 transportation facility or facilities that the private entity proposes to develop and/or operate as a qualifying  
680 transportation facility:

681 1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the  
682 transportation facility or facilities;

683 2. A description of the transportation facility or facilities, including the conceptual design of such  
684 facility or facilities and all proposed interconnections with other transportation facilities;

685 3. The proposed date for development and/or operation of the transportation facility or facilities  
686 along with an estimate of the life-cycle cost of the transportation facility as proposed;

687 4. A statement setting forth the method by which the private entity proposes to secure any property  
688 interests required for the transportation facility or facilities;

689 5. Information relating to the current transportation plans, if any, of each affected locality or public  
690 entity;

691 6. A list of all permits and approvals required for developing and/or operating improvements to  
692 the transportation facility or facilities from local, state, or federal agencies and a projected schedule for  
693 obtaining such permits and approvals;

694 7. A list of public utility's, locality's, or political subdivision's facilities, if any, that will be crossed  
695 by the transportation facility or facilities and a statement of the plans of the private entity to accommodate  
696 such crossings;

697 8. A statement setting forth the private entity's general plans for developing and/or operating the  
698 transportation facility or facilities, including identification of any revenue, public or private, or proposed  
699 debt or equity investment or concession proposed by the private entity;

700 9. The names and addresses of the persons who may be contacted for further information  
701 concerning the request;

702 10. Information on how the private entity's proposal will address the needs identified in the  
703 appropriate state, regional, or local transportation plan by improving safety, reducing congestion,  
704 increasing capacity, enhancing economic efficiency, or any combination thereof;

705 11. A statement of the risks, liabilities, and responsibilities to be transferred, assigned, or assumed  
706 by the private entity for the development and/or operation of the transportation facility, including revenue  
707 risk and operations and maintenance; and

708 12. Such additional material and information as the responsible public entity may reasonably  
709 request pursuant to its guidelines or other written instructions.

710 B. The responsible public entity may request proposals from private entities for the development  
711 and/or operation of transportation facilities subject to the following:

712 1. For transportation facilities where the Department of Transportation or the Department of Rail  
713 and Public Transportation is the responsible public entity, the Transportation Public-Private Partnership  
714 Steering Committee established pursuant to § 33.2-1803.2 has determined that moving forward with the  
715 development and/or operation of the facility pursuant to this article serves the best interest of the public.

716 2. A finding of public interest pursuant to § 33.2-1803.1 has been issued by the responsible public  
717 entity.

718 3. The responsible public entity shall not charge a fee to cover the costs of processing, reviewing,  
719 and evaluating proposals received in response to such requests.

720 C. The responsible public entity may grant approval of the development and/or operation of the  
721 transportation facility or facilities as a qualifying transportation facility if the responsible public entity  
722 determines that it is in the best interest of the public. The responsible public entity may determine that the  
723 development and/or operation of the transportation facility or facilities as a qualifying transportation  
724 facility serves the best interest of the public if:

725 1. The private entity can develop and/or operate the transportation facility or facilities with a public  
726 contribution amount that is less than the maximum public contribution determined pursuant to subsection  
727 A of § 33.2-1803.1:1 for transportation facilities where the Department of Transportation or the  
728 Department of Rail and Public Transportation is the responsible public entity;

729 2. There is a public need for the transportation facility or facilities the private entity proposes to  
730 develop and/or operate as a qualifying transportation facility and for transportation facilities where the  
731 Department of Transportation or the Department of Rail and Public Transportation is the responsible  
732 public entity, such facility or facilities meet a need included in the plan developed pursuant to § 33.2-353;

733 3. The plan for the development and/or operation of the transportation facility or facilities is  
734 anticipated to have significant benefits as determined pursuant to subdivision B 1 of § 33.2-1803.1;

735 4. The private entity's plans will result in the timely development and/or operation of the  
736 transportation facility or facilities or their more efficient operation; and

737 5. The risks, liabilities, and responsibilities transferred, assigned, or assumed by the private entity  
738 provide sufficient benefits to the public to not proceed with the development and/or operation of the  
739 transportation facility through other means of procurement available to the responsible public entity.

740 In evaluating any request, the responsible public entity may rely upon internal staff reports  
741 prepared by personnel familiar with the operation of similar facilities or the advice of outside advisors or  
742 consultants having relevant experience.

743 D. The responsible public entity shall not enter into a comprehensive agreement unless the chief  
744 executive officer of the responsible public entity certifies in writing to the Governor and the General  
745 Assembly that:

746 1. The finding of public interest issued pursuant to § 33.2-1803.1 is still valid;

747 2. The transfer, assignment, and assumption of risks, liabilities, and permitting responsibilities and  
748 the mitigation of revenue risk by the private sector have not materially changed since the finding of public  
749 interest was issued pursuant to § 33.2-1803.1; and

750 3. The public contribution requested by the private entity does not exceed the maximum public  
751 contribution determined pursuant to subsection A of § 33.2-1803.1:1.

752 Changes to the project scope that do not impact the assignment of risks or liabilities or the  
753 mitigation of revenue risk shall not be considered material changes to the finding of public interest,  
754 provided that such changes were presented in a public meeting to the Commonwealth Transportation  
755 Board, other state board, or the governing body of a locality, as appropriate.

756 E. The responsible public entity may charge a reasonable fee to cover the costs of processing,  
757 reviewing, and evaluating the request submitted by a private entity pursuant to subsection A, including  
758 reasonable attorney fees and fees for financial and other necessary advisors or consultants. The responsible  
759 public entity shall also develop guidelines that establish the process for the acceptance and review of a  
760 proposal from a private entity pursuant to subsections A, B, C, and D. Such guidelines shall establish a  
761 specific schedule for review of the proposal by the responsible public entity, a process for alteration of  
762 that schedule by the responsible public entity if it deems that changes are necessary because of the scope  
763 or complexity of proposals it receives, the process for receipt and review of competing proposals, and the  
764 type and amount of information that is necessary for adequate review of proposals in each stage of review.  
765 For qualifying transportation facilities that have approved or pending state and federal environmental  
766 clearances, have secured significant right-of-way, have previously allocated significant state or federal  
767 funding, or exhibit other circumstances that could reasonably reduce the amount of time to develop and/or  
768 operate the qualifying transportation facility in accordance with the purpose of this chapter, the guidelines  
769 shall provide for a prioritized documentation, review, and selection process.

770 F. The approval of the responsible public entity shall be subject to the private entity's entering into  
771 an interim agreement or a comprehensive agreement with the responsible public entity. For any project  
772 with an estimated construction cost of over \$50 million, the responsible public entity also shall require the  
773 private entity to pay the costs for an independent audit of any and all traffic and cost estimates associated  
774 with the private entity's proposal, as well as a review of all public costs and potential liabilities to which  
775 taxpayers could be exposed (including improvements to other transportation facilities that may be needed  
776 as a result of the proposal, failure by the private entity to reimburse the responsible public entity for  
777 services provided, and potential risk and liability in the event the private entity defaults on the  
778 comprehensive agreement or on bonds issued for the project). This independent audit shall be conducted  
779 by an independent consultant selected by the responsible public entity, and all such information from such  
780 review shall be fully disclosed.

781 G. In connection with its approval of the development and/or operation of the transportation  
782 facility or facilities as a qualifying transportation facility, the responsible public entity shall establish a  
783 date for the acquisition of or the beginning of construction of or improvements to the qualifying  
784 transportation facility. The responsible public entity may extend such date.

785 H. The responsible public entity shall take appropriate action, as more specifically set forth in its  
786 guidelines, to protect confidential and proprietary information provided by the private entity pursuant to  
787 an agreement under subdivision ~~11~~ 12 of § 2.2-3705.6.

788 I. The responsible public entity may also apply for, execute, and/or endorse applications submitted  
789 by private entities to obtain federal credit assistance for qualifying projects developed and/or operated  
790 pursuant to this chapter.

791 **§ 33.2-1820. Posting of conceptual proposals; public comment; public access to procurement**  
792 **records.**

793 A. Conceptual proposals submitted in accordance with subsection A or B of § 33.2-1803 to a  
794 responsible public entity shall be posted by the responsible public entity within 10 working days after  
795 acceptance of such proposals as follows:

796 1. For responsible public entities that are state agencies, authorities, departments, institutions, and  
797 other units of state government, posting shall be on the Department of General Services' central electronic  
798 procurement website. For proposals submitted pursuant to subsection A of § 33.2-1803, the notice posted  
799 shall (i) provide for a period of 120 days for the submission of competing proposals; (ii) include specific  
800 information regarding the proposed nature, timing, and scope of the qualifying transportation facility; and  
801 (iii) outline the opportunities that will be provided for public comment during the review process; and

802 2. For responsible public entities that are local public bodies, posting shall be on the responsible  
803 public entity's website or on the Department of General Services' central electronic procurement website.  
804 In addition, such public bodies may publish in a newspaper of general circulation in the area in which the  
805 contract is to be performed a summary of the proposals and the location where copies of the proposals are  
806 available for public inspection. Such local public bodies are encouraged to utilize the Department of  
807 General Services' central electronic procurement website to provide the public with centralized visibility  
808 and access to the Commonwealth's procurement opportunities.

809 In addition to the posting requirements, at least one copy of the proposals shall be made available  
810 for public inspection. Nothing in this section shall be construed to prohibit the posting of the conceptual  
811 proposals by additional means deemed appropriate by the responsible public entity so as to provide  
812 maximum notice to the public of the opportunity to inspect the proposals. Trade secrets, financial records,  
813 or other records of the private entity excluded from disclosure under the provisions of subdivision ~~11~~ 12  
814 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the responsible public  
815 entity and the private entity.

816 B. In addition to the posting requirements of subsection A, the following shall apply:

817 1. For 30 days prior to entering into an interim agreement, a responsible public entity shall provide  
818 an opportunity for public comment on the proposals. The public comment period required by this  
819 subsection may include a public hearing at the sole discretion of the responsible public entity. After the  
820 end of the public comment period, no additional posting shall be required.

821 2. For 30 days prior to the planned issuance of a final request for proposals, a responsible public  
822 entity shall provide an opportunity for public comment on the draft comprehensive agreement. The public  
823 comment period may include a public hearing at the sole discretion of the responsible public entity.

824 C. Once the negotiation phase for the development of an interim or a comprehensive agreement is  
825 complete and a decision to award has been made by a responsible public entity, the responsible public  
826 entity shall (i) post the major business points of the interim or comprehensive agreement, including the  
827 projected use of any public funds, on the Department of General Services' central electronic procurement  
828 website; (ii) outline how the public can submit comments on those major business points; and (iii) present  
829 the major business points of the interim or comprehensive agreement, including the use of any public  
830 funds, to its oversight board at a regularly scheduled meeting of the board that is open to the public.

831 D. Once an interim agreement or a comprehensive agreement has been entered into, a responsible  
832 public entity shall make procurement records available for public inspection, in accordance with the  
833 Virginia Freedom of Information Act (§ 2.2-3700 et seq.). For the purposes of this subsection,  
834 procurement records shall not be interpreted to include (i) trade secrets of the private entity as defined in  
835 the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial records, including balance sheets or  
836 financial statements of the private entity that are not generally available to the public through regulatory  
837 disclosure or otherwise.

838 E. Cost estimates relating to a proposed procurement transaction prepared by or for a responsible  
839 public entity shall not be open to public inspection.

840 F. Any inspection of procurement transaction records under this section shall be subject to  
841 reasonable restrictions to ensure the security and integrity of the records.

842 G. The provisions of this section shall apply to accepted proposals regardless of whether the  
843 process of bargaining will result in an interim or a comprehensive agreement.

844 **§ 56-575.4. Approval of qualifying projects by the responsible public entity.**

845 A. A private entity may request approval of a qualifying project by the responsible public entity.  
846 Any such request shall be accompanied by the following material and information unless waived by the  
847 responsible public entity:



- 848 1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the qualifying  
849 project;
- 850 2. A description of the qualifying project, including the conceptual design of such facility or  
851 facilities or a conceptual plan for the provision of services or technology infrastructure, and a schedule for  
852 the initiation of and completion of the qualifying project to include the proposed major responsibilities  
853 and timeline for activities to be performed by both the public and private entity;
- 854 3. A statement setting forth the method by which the private entity proposes to secure necessary  
855 property interests required for the qualifying project;
- 856 4. Information relating to the current plans for development of facilities or technology  
857 infrastructure to be used by a public entity that are similar to the qualifying project being proposed by the  
858 private entity, if any, of each affected local jurisdiction;
- 859 5. A list of all permits and approvals required for the qualifying project from local, state, or federal  
860 agencies and a projected schedule for obtaining such permits and approvals;
- 861 6. A list of public utility facilities, if any, that will be crossed by the qualifying project and a  
862 statement of the plans of the private entity to accommodate such crossings;
- 863 7. A statement setting forth the private entity's general plans for financing the qualifying project  
864 including the sources of the private entity's funds and identification of any dedicated revenue source or  
865 proposed debt or equity investment on the behalf of the private entity;
- 866 8. The names and addresses of the persons who may be contacted for further information  
867 concerning the request;
- 868 9. User fees, lease payments, and other service payments over the term of the interim or  
869 comprehensive agreement pursuant to § 56-575.9 or 56-575.9:1 and the methodology and circumstances  
870 for changes to such user fees, lease payments, and other service payments over time; and
- 871 10. Such additional material and information as the responsible public entity may reasonably  
872 request.
- 873 B. The responsible public entity may request proposals or invite bids from private entities for the  
874 development or operation of qualifying projects.

875 C. The responsible public entity may grant approval of the development or operation of the  
876 education facility, technology infrastructure or other public infrastructure or government facility needed  
877 by a public entity as a qualifying project, or the design or equipping of a qualifying project so developed  
878 or operated, if the responsible public entity determines that the project serves the public purpose of this  
879 chapter. The responsible public entity may determine that the development or operation of the qualifying  
880 project as a qualifying project serves such public purpose if:

- 881 1. There is a public need for or benefit derived from the qualifying project of the type the private  
882 entity proposes as a qualifying project;
- 883 2. The estimated cost of the qualifying project is reasonable in relation to similar facilities; and
- 884 3. The private entity's plans will result in the timely development or operation of the qualifying  
885 project.

886 In evaluating any request, the responsible public entity may rely upon internal staff reports  
887 prepared by personnel familiar with the operation of similar facilities or the advice of outside advisors or  
888 consultants having relevant experience.

889 D. The responsible public entity may charge a reasonable fee to cover the costs of processing,  
890 reviewing and evaluating the request, including without limitation, reasonable attorney's fees and fees for  
891 financial, technical, and other necessary advisors or consultants.

892 E. The approval of the responsible public entity shall be subject to the private entity's entering into  
893 an interim or comprehensive agreement pursuant to § 56-575.9 with the responsible public entity.

894 F. In connection with its approval of the qualifying project, the responsible public entity shall  
895 establish a date for the commencement of activities related to the qualifying project. The responsible  
896 public entity may extend such date from time to time.

897 G. The responsible public entity shall take appropriate action to protect confidential and  
898 proprietary information provided by the private entity pursuant to an agreement under subdivision ~~H~~ 12  
899 of § 2.2-3705.6.

900 H. Nothing in this chapter or in an interim or comprehensive agreement entered into pursuant to  
901 this chapter shall be deemed to enlarge, diminish or affect the authority, if any, otherwise possessed by  
902 the responsible public entity to take action that would impact the debt capacity of the Commonwealth.

903 I. Prior to entering into the negotiation of an interim or comprehensive agreement, each responsible  
904 public entity that is an agency or institution of the Commonwealth shall submit copies of detailed  
905 proposals to the Public-Private Partnership Advisory Commission as provided by Chapter 42 (§ 30-278 et  
906 seq.) of Title 30.

907 J. Any proposed comprehensive agreement for a qualifying project where the responsible public  
908 entity is an agency or institution of the Commonwealth that (i) creates state tax-supported debt, (ii)  
909 requires a level of appropriation significantly beyond the appropriation received by the responsible public  
910 entity in the most recent appropriation act, or (iii) significantly alters the Commonwealth's discretion to  
911 change the level of services or the funding for such services over time, shall be reviewed by the  
912 appropriating body prior to execution.

913 **§ 56-575.17. Posting of conceptual proposals; public comment; public access to procurement**  
914 **records.**

915 A. Conceptual proposals submitted in accordance with subsection A or B of § 56-575.4 to a  
916 responsible public entity shall be posted by the responsible public entity within 10 working days after  
917 acceptance of such proposals as follows:

918 1. For responsible public entities that are state agencies, authorities, departments, institutions, and  
919 other units of state government, posting shall be on the Department of General Services' centralized  
920 electronic procurement website; and

921 2. For responsible public entities that are local bodies, posting shall be on the responsible public  
922 entity's website or on the Department of General Services' central electronic procurement website. In  
923 addition, such public bodies may publish in a newspaper of general circulation in the area in which the  
924 contract is to be performed a summary of the proposals and the location where copies of the proposals are  
925 available for public inspection. Such local public bodies are encouraged to utilize the Department of

926 General Services' central electronic procurement website to provide the public with centralized visibility  
927 and access to the Commonwealth's procurement opportunities.

928 In addition to the posting requirements, at least one copy of the proposals shall be made available  
929 for public inspection. Nothing in this section shall be construed to prohibit the posting of the conceptual  
930 proposals by additional means deemed appropriate by the responsible public entity so as to provide  
931 maximum notice to the public of the opportunity to inspect the proposals. Trade secrets, financial records,  
932 or other records of the private entity excluded from disclosure under the provisions of subdivision ~~11~~ 12  
933 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the responsible public  
934 entity and the private entity.

935 B. The responsible public entity shall hold a public hearing on the proposals during the proposal  
936 review process, but not later than 30 days prior to entering into an interim or comprehensive agreement.

937 C. Once the negotiation phase for the development of an interim or a comprehensive agreement is  
938 complete, but before an interim agreement or a comprehensive agreement is entered into, a responsible  
939 public entity shall make available the proposed agreement in a manner provided in subsection A.

940 D. Once an interim agreement or a comprehensive agreement has been entered into, a responsible  
941 public entity shall make procurement records available for public inspection, upon request. For the  
942 purposes of this subsection, procurement records shall not be interpreted to include (i) trade secrets of the  
943 private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial records,  
944 including balance sheets or financial statements of the private entity that are not generally available to the  
945 public through regulatory disclosure or otherwise.

946 E. Cost estimates relating to a proposed procurement transaction prepared by or for a responsible  
947 public entity shall not be open to public inspection.

948 F. Any inspection of procurement transaction records under this section shall be subject to  
949 reasonable restrictions to ensure the security and integrity of the records.

950 G. The provisions of this section shall apply to accepted proposals regardless of whether the  
951 process of bargaining will result in an interim or a comprehensive agreement.

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