

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3705.6, 56-573.1, and 56-575.16, of the Code of Virginia and to
 2 amend the Code of Virginia by adding a section number 56.573.1:1 and by adding in Chapter
 3 22.1 of Title 56 a section numbered 56-575.17, relating to disclosure of procurement records
 4 under the Public-Private Transportation Act of 1995 and the Public-Private Education Facilities
 5 and Infrastructure Act of 2002.

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

7 **1. That §§ 2.2-3705.6, 56-573.1, and 56-575.16 of the Code of Virginia are amended and**
 8 **reenacted and that the Code of Virginia is amended by adding a section number 56.573.1:1 and by**
 9 **adding in Chapter 22.1 of Title 56 a section numbered 56-575.17 as follows:**

10 § 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.

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

13 1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-
 14 132.4 or 62.1-134.1.

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

17 3. Confidential proprietary records, voluntarily provided by private business pursuant to a
 18 promise of confidentiality from the Department of Business Assistance, the Virginia Economic
 19 Development Partnership, the Virginia Tourism Authority, or local or regional industrial or economic
 20 development authorities or organizations, used by the Department, the Partnership, the Authority, or
 21 such entities for business, trade and tourism development; and memoranda, working papers or other
 22 records related to businesses that are considering locating or expanding in Virginia, prepared by such
 23 entities, where competition or bargaining is involved and where, if such records are made public, the
 24 financial interest of the governmental unit would be adversely affected.

25 4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-
26 239 et seq.), as such Act existed prior to July 1, 1992.

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

29 6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost
30 projections provided to the Department of Rail and Public Transportation, provided such information is
31 exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other
32 laws administered by the Surface Transportation Board or the Federal Railroad Administration with
33 respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad
34 Administration.

35 7. Confidential proprietary records related to inventory and sales, voluntarily provided by private
36 energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy
37 contingency planning purposes or for developing consolidated statistical information on energy supplies.

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

41 9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue
42 and cost projections provided by a private transportation business to the Virginia Department of
43 Transportation and the Department of Rail and Public Transportation for the purpose of conducting
44 transportation studies needed to obtain grants or other financial assistance under the Transportation
45 Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information is
46 exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other
47 laws administered by the Surface Transportation Board or the Federal Railroad Administration with
48 respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad
49 Administration. However, the exemption provided by this subdivision shall not apply to any wholly
50 owned subsidiary of a public body.

51 10. Confidential information designated as provided in subsection D of § 2.2-4342 as trade
52 secrets or proprietary information by any person who has submitted to a public body an application for
53 prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

54 ~~11. Confidential proprietary records that are voluntarily provided by a private entity pursuant to a~~
55 ~~proposal filed with a public entity or an affected local jurisdiction under the Public-Private~~
56 ~~Transportation Act of 1995 (§ 56-556 et seq.) or the Public-Private Education Facilities and~~
57 ~~Infrastructure Act of 2002 (§ 56-575.1 et seq.), pursuant to a promise of confidentiality from the~~
58 ~~responsible public entity or affected local jurisdiction, used by the responsible public entity or affected~~
59 ~~local jurisdiction for purposes related to the development of a qualifying transportation facility or~~
60 ~~qualifying project; and memoranda, working papers or other records related to proposals filed under the~~
61 ~~Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure~~
62 ~~Act of 2002, where, if such records were made public, the financial interest of the public or private~~
63 ~~entity involved with such proposal or the process of competition or bargaining would be adversely~~
64 ~~affected. In order for confidential proprietary information to be excluded from the provisions of this~~
65 ~~chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other materials~~
66 ~~for which protection from disclosure is sought, (ii) identify the data or other materials for which~~
67 ~~protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of this~~
68 ~~subdivision, the terms "affected local jurisdiction," "public entity" and "private entity" shall be defined~~
69 ~~as they are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education~~
70 ~~Facilities and Infrastructure Act of 2002. However, nothing in this subdivision shall be construed to~~
71 ~~prohibit the release of procurement records as required by § 56-573.1 or 56-575.16. Procurement records~~
72 ~~shall not be interpreted to include proprietary, commercial or financial information, balance sheets,~~
73 ~~financial statements, or trade secrets that may be provided by the private entity as evidence of its~~
74 ~~qualifications. Records provided by a private entity to a responsible public entity, affected jurisdiction,~~
75 ~~or affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995~~
76 ~~(§ 56-556 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1~~
77 ~~et seq.), to the extent that such records contain (i) trade secrets of the private entity as defined in the~~

78 Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial records of the private entity, including
79 balance sheets and financial statements, that are not generally available to the public through regulatory
80 disclosure or otherwise; or (iii) other records submitted by the private entity, where, if the records were
81 made public prior to the execution of an interim agreement or a comprehensive agreement, the financial
82 interest or bargaining position of the public or private entity would be adversely affected. In order for
83 such records to be excluded from the provisions of this chapter, the private entity shall make a written
84 request to the responsible public entity:

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

89 The responsible public entity shall determine whether the requested exclusion from disclosure is
90 necessary to protect the trade secrets or financial records of the private entity. To protect other records
91 submitted by the private entity from disclosure, the responsible public entity shall determine whether
92 public disclosure prior to the execution of an interim agreement or a comprehensive agreement would
93 adversely affect the financial interest or bargaining position of the public or private entity. The
94 responsible public entity shall make a written determination of the nature and scope of the protection to
95 be afforded by the responsible public entity under this subdivision. Once a written determination is made
96 by the responsible public body, the records afforded protection under this subdivision shall continue to
97 be protected from disclosure when in the possession of any affected jurisdiction or affected local
98 jurisdiction to which such records are provided by the responsible public entity.

99 Nothing in this subdivision shall be construed to authorize the withholding of (a) procurement
100 records as required by § 56-573.1:1 or 56-575.17; (b) information concerning the terms and conditions
101 of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any
102 kind entered into by the responsible public entity and the private entity; (c) information concerning the
103 terms and conditions of any financing arrangement that involves the use of any public funds; or (d)

104 information concerning the performance of any private entity developing or operating a qualifying
105 transportation facility or a qualifying project.

106 For the purposes of this subdivision, the terms "affected jurisdiction," "affected local
107 jurisdiction," "comprehensive agreement," "interim agreement," "qualifying project," "qualifying
108 transportation facility," "responsible public entity," and "private entity" shall mean the same as those
109 terms are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education
110 Facilities and Infrastructure Act of 2002.

111 12. Confidential proprietary information or trade secrets, not publicly available, provided by a
112 private person or entity to the Virginia Resources Authority or to a fund administered in connection with
113 financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such
114 information were made public, the financial interest of the private person or entity would be adversely
115 affected, and, after June 30, 1997, where such information was provided pursuant to a promise of
116 confidentiality.

117 13. Confidential proprietary records that are provided by a franchisee under § 15.2-2108 to its
118 franchising authority pursuant to a promise of confidentiality from the franchising authority that relates
119 to the franchisee's potential provision of new services, adoption of new technologies or implementation
120 of improvements, where such new services, technologies or improvements have not been implemented
121 by the franchisee on a nonexperimental scale in the franchise area, and where, if such records were made
122 public, the competitive advantage or financial interests of the franchisee would be adversely affected. In
123 order for confidential proprietary information to be excluded from the provisions of this chapter, the
124 franchisee shall (i) invoke such exclusion upon submission of the data or other materials for which
125 protection from disclosure is sought, (ii) identify the data or other materials for which protection is
126 sought, and (iii) state the reason why protection is necessary.

127 14. Documents and other information of a proprietary nature furnished by a supplier of charitable
128 gaming supplies to the Department of Charitable Gaming pursuant to subsection E of § 18.2-340.34.

129 15. Records and reports related to Virginia apple producer sales provided to the Virginia State
130 Apple Board pursuant to §§ 3.1-622 and 3.1-624.

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

134 17. Records submitted as a grant application, or accompanying a grant application, to the
135 Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 to the
136 extent such records contain proprietary business or research-related information produced or collected
137 by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific,
138 technical or scholarly issues, when such information has not been publicly released, published,
139 copyrighted or patented, if the disclosure of such information would be harmful to the competitive
140 position of the applicant.

141 18. Confidential proprietary records and trade secrets developed and held by a local public body
142 (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television
143 services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 2 of Title 15.2, to the extent that
144 disclosure of such records would be harmful to the competitive position of the locality. In order for
145 confidential proprietary information or trade secrets to be excluded from the provisions of this chapter,
146 the locality in writing shall (i) invoke the protections of this subdivision, (ii) identify with specificity the
147 records or portions thereof for which protection is sought, and (iii) state the reasons why protection is
148 necessary.

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

155 § 56-573.1. Procurement.

156 The Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to this chapter;
157 however, a responsible public entity may enter into an interim or a comprehensive agreement only in
158 accordance with guidelines adopted by it as follows:

159 1. A responsible public entity may enter into an interim or a comprehensive agreement in
160 accordance with guidelines adopted by it that are consistent with procurement through "competitive
161 sealed bidding" as defined in § 2.2-4301 and subsection B of § 2.2-4310.

162 2. A responsible public entity may enter into an interim or a comprehensive agreement in
163 accordance with guidelines adopted by it that are consistent with the procurement of "other than
164 professional services" through competitive negotiation as defined in § 2.2-4301 and subsection B of §
165 2.2-4310. Such responsible public entity shall not be required to select the proposal with the lowest price
166 offer, but may consider price as one factor in evaluating the proposals received. Other factors that may
167 be considered include (i) the proposed cost of the qualifying transportation facility; (ii) the general
168 reputation, qualifications, industry experience, and financial capacity of the private entity; (iii) the
169 proposed design, operation, and feasibility of the qualifying transportation facility; (iv) the eligibility of
170 the facility for priority selection, review, and documentation timelines under the responsible public
171 entity's guidelines; (v) local citizen and public entity comments; (vi) benefits to the public; (vii) the
172 private entity's compliance with a minority business enterprise participation plan or good faith effort to
173 comply with the goals of such plan; (viii) the private entity's plans to employ local contractors and
174 residents; (ix) the safety record of the private entity; (x) the ability of the facility to address the needs
175 identified in the appropriate state, regional or local transportation plan by improving safety, reducing
176 congestion, increasing capacity, and/or enhancing economic efficiency; and (xi) other criteria that the
177 responsible public entity deems appropriate.

178 A responsible public entity shall proceed in accordance with the guidelines adopted by it
179 pursuant to subdivision 1 unless it determines that proceeding in accordance with the guidelines adopted
180 by it pursuant to this subdivision is likely to be advantageous to the responsible public entity and the
181 public, based on (i) the probable scope, complexity, or urgency of a project; (ii) risk sharing including
182 guaranteed cost or completion guarantees, added value, or debt or equity investments proposed by the

183 private entity; or (iii) an increase in funding, dedicated revenue source or other economic benefit that
 184 would not otherwise be available. When the responsible public entity determines to proceed according to
 185 the guidelines adopted by it pursuant to this subdivision, it shall state the reasons for its determination in
 186 writing. If a state agency is the responsible public entity, the approval of the Secretary of Transportation
 187 shall be required as more specifically set forth in the guidelines before the comprehensive agreement is
 188 signed.

189 3. Interim or comprehensive agreements for maintenance or asset management services for a
 190 transportation facility that is a highway, bridge, tunnel or overpass, and any amendment or change order
 191 thereto that increases the highway lane-miles receiving services under such an agreement shall be
 192 procured in accordance with guidelines that are consistent with procurement through "competitive
 193 sealed bidding" as defined in § 2.2-4301 and subsection B of § 2.2-4310. Furthermore, such contracts
 194 shall be of a size and scope to encourage maximum competition and participation by agency
 195 prequalified contractors and otherwise qualified contractors.

196 4. The provisions of subdivision 3 shall not apply to maintenance or asset management services
 197 agreed to as part of the initial provisions of any interim or comprehensive agreement entered into for the
 198 original construction, reconstruction, or improvement of any highway pursuant to Chapter 22 (§ 56-556
 199 et seq.) of Title 56.

200 5. ~~Once a comprehensive agreement has been entered into, and the process of bargaining of all~~
 201 ~~phases or aspects of the comprehensive agreement is complete, a responsible public entity shall make~~
 202 ~~available, upon request, procurement records in accordance with § 2.2-4342.~~

203 6. ~~Nothing in this section shall require that professional services be procured by any method~~
 204 ~~other than competitive negotiation in accordance with the Virginia Public Procurement Act (§ 2.2-4300~~
 205 ~~et seq.).~~

206 § 56-573.1:1 Posting of conceptual proposals; public comment; public access to procurement
 207 records.

208 A. Conceptual proposals submitted in accordance with subsection A or B of § 56-560 to a
209 responsible public entity shall be posted by the responsible public entity within 10 working days after
210 acceptance of such proposals as follows:

211 1. For responsible public entities that are state agencies, departments and institutions, posting
212 shall be on the Department of General Service's web-based electronic procurement program commonly
213 known as "eVA;" and

214 2. For responsible public entities that are local public bodies, posting shall be on the responsible
215 public entity's website or by publication, in a newspaper of general circulation in the area in which the
216 contract is to be performed, of a summary of the proposals and the location where copies of the
217 proposals are available for public inspection. Posting may also be on the Department of General
218 Service's web-based electronic procurement program commonly known as "eVA," in the discretion of
219 the local responsible public entity.

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

227 B. In addition to the posting requirements of subsection A, for 30 days prior to entering into an
228 interim or comprehensive agreement, a responsible public entity shall provide an opportunity for public
229 comment on the proposals. The public comment period required by this subsection may include a public
230 hearing in the sole discretion of the responsible public entity. After the end of the public comment
231 period, no additional posting shall be required.

232 C. Once the negotiation phase for the development of an interim or a comprehensive agreement
233 is complete and a decision to award has been made by a responsible public entity, the responsible public
234 entity shall present the major business points of the interim or comprehensive agreement, including the

235 use of any public funds, to its oversight board at a regularly scheduled meeting of the board that is open
236 to the public.

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

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

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

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

249 § 56-575.16. Procurement.

250 The Virginia Public Procurement Act (§ 2.2-4300 et seq.) and any interpretations, regulations, or
251 guidelines of the Division of Engineering and Buildings of the Department of General Services or the
252 Virginia Information Technologies Agency, including the Capital Outlay Manual and those
253 interpretations, regulations or guidelines developed pursuant to §§ 2.2-1131, 2.2-1132, 2.2-1133, 2.2-
254 1149, and 2.2-1502, except those developed by the Division or the Virginia Information Technologies
255 Agency in accordance with this chapter when the Commonwealth is the responsible public entity, shall
256 not apply to this chapter. However, a responsible public entity may enter into a comprehensive
257 agreement only in accordance with guidelines adopted by it as follows:

258 1. A responsible public entity may enter into a comprehensive agreement in accordance with
259 guidelines adopted by it that are consistent with procurement through competitive sealed bidding as
260 defined in § 2.2-4301 and subsection B of § 2.2-4310.

261 2. A responsible public entity may enter into a comprehensive agreement in accordance with
262 guidelines adopted by it that are consistent with the procurement of "other than professional services"
263 through competitive negotiation as defined in § 2.2-4301 and subsection B of § 2.2-4310. Such
264 responsible public entity shall not be required to select the proposal with the lowest price offer, but may
265 consider price as one factor in evaluating the proposals received. Other factors that may be considered
266 include (i) the proposed cost of the qualifying facility; (ii) the general reputation, industry experience,
267 and financial capacity of the private entity; (iii) the proposed design of the qualifying project; (iv) the
268 eligibility of the facility for accelerated selection, review, and documentation timelines under the
269 responsible public entity's guidelines; (v) local citizen and government comments; (vi) benefits to the
270 public; (vii) the private entity's compliance with a minority business enterprise participation plan or
271 good faith effort to comply with the goals of such plan; (viii) the private entity's plans to employ local
272 contractors and residents; and (ix) other criteria that the responsible public entity deems appropriate.

273 A responsible public entity shall proceed in accordance with the guidelines adopted by it
274 pursuant to subdivision 1 unless it determines that proceeding in accordance with the guidelines adopted
275 by it pursuant to this subdivision is likely to be advantageous to the responsible public entity and the
276 public, based on (i) the probable scope, complexity or priority of the project; (ii) risk sharing including
277 guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the
278 private entity; or (iii) an increase in funding, dedicated revenue source or other economic benefit that
279 would not otherwise be available. When the responsible public entity determines to proceed according to
280 the guidelines adopted by it pursuant to this subdivision, it shall state the reasons for its determination in
281 writing. If a state agency is the responsible public entity, the approval of the responsible Governor's
282 Secretary, or the Governor, shall be required before the responsible public entity may enter into a
283 comprehensive agreement pursuant to this subdivision.

284 3. Nothing in this chapter shall authorize or require that a responsible public entity obtain
285 professional services through any process except in accordance with guidelines adopted by it that are
286 consistent with the procurement of "professional services" through competitive negotiation as defined in
287 § 2.2-4301 and subsection B of § 2.2-4310.

288 4. A responsible public entity shall not proceed to consider any request by a private entity for
289 approval of a qualifying project pursuant to subsection A of § 56-575.4 until the responsible public
290 entity has adopted and made publicly available guidelines that are sufficient to enable the responsible
291 public entity to comply with this chapter. Such guidelines shall:

292 a. If the responsible public entity is not an agency or authority of the Commonwealth, require the
293 responsible public entity to engage the services of qualified professionals, which may include an
294 architect, professional engineer or certified public accountant, not employed by the responsible public
295 entity to provide to the responsible public entity independent analysis regarding the specifics,
296 advantages, disadvantages, and the long- and short-term costs of any request by a private entity for
297 approval of a qualifying project, unless the governing body of the responsible public entity determines
298 that such analysis of a request by a private entity for approval of a qualifying project shall be performed
299 by employees of the responsible public entity.

300 b. Provide for the posting and publishing of public notice of a private entity's request for
301 approval of a qualifying project pursuant to subsection A of § 56-575.4 and a reasonable time period,
302 determined by the responsible public entity to be appropriate to encourage competition and public-
303 private partnerships pursuant to the goals of this chapter, such reasonable period not to be less than 45
304 days, during which the responsible public entity will receive competing proposals pursuant to that
305 subsection.

306 Such guidelines shall also require advertising the public notice in the Virginia Business
307 Opportunities publication and posting a notice on the Commonwealth's electronic procurement website.

308 ~~5. Once a comprehensive agreement has been entered into, and the process of bargaining of all~~
309 ~~phases or aspects of the comprehensive agreement is complete, a responsible public entity shall make~~
310 ~~available, upon request, procurement records in accordance with § 2.2-4342.~~

311 ~~6.~~A responsible public entity that is a school board or a county, city or town may enter into an
312 interim or comprehensive agreement under this chapter only with the approval of the local governing
313 body.

314 § 56-575.17. Posting of conceptual proposals; public comment; public access to procurement
315 records.

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

319 1. For responsible public entities that are state agencies, departments and institutions, posting
320 shall be on the Department of General Service's web-based electronic procurement program commonly
321 known as "eVA;" and

322 2. For responsible public entities that are local bodies, posting shall be on the responsible public
323 entity's website or by publication, in a newspaper of general circulation in the area in which the contract
324 is to be performed, of a summary of the proposals and the location where copies of the proposals are
325 available for public inspection. Posting may also be on the Department of General Service's web-based
326 electronic procurement program commonly known as "eVA," in the discretion of the local responsible
327 public entity.

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

335 B. In addition to the posting requirements of subsection A, for 30 days prior to entering into an
336 interim or comprehensive agreement, a responsible public entity shall provide an opportunity for public
337 comment on the proposals. The public comment period required by this subsection may include a public
338 hearing in the sole discretion of the responsible public entity. After the end of the public comment
339 period, no additional posting shall be required.

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

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

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

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

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

356 **2. That the Chairs of the Senate and House Committees on General Laws and Transportation,**
357 **respectively, shall convene a working group consisting of representatives of public and private**
358 **entities to revise the current model guidelines to incorporate amendments to the Public-Private**
359 **Transportation Act of 1995 (§ 56-556 et seq. of the Code of Virginia) and the Public-Private**
360 **Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) in accordance with this act.**
361 **The working groups shall make their recommendations available to the responsible public entities**
362 **by September 30, 2006.**

363 **3. That the provisions of this act shall apply only to qualifying transportation facilities and**
364 **qualifying project filed on or after July 1, 2006.**

365 #