

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3705.6, 2.2-3711, and 56-573.1:1 of the Code of Virginia, relating
2 to public access to procurement records and certain discussions thereof under the Public-Private
3 Transportation Act of 1995 and the Public-Private Education Facilities and Infrastructure Act of
4 2002.

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

6 **1. That §§ 2.2-3705.6, 2.2-3711, and 56-573.1:1 of the Code of Virginia are amended and**
7 **reenacted as follows:**

8 § 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.

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

11 1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-
12 132.4 or 62.1-134.1.

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

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

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

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

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

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

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

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

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

53 11. ~~(Effective July 1, 2007) Records~~ A. Memoranda, staff evaluations, or other records prepared
54 by the responsible public entity, its staff, outside advisors, or consultants exclusively for the evaluation
55 and negotiation of proposals filed under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.)
56 or the Public Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (a)
57 if such records were made public after the execution an interim or a comprehensive agreement, § 56-
58 573.1:1 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public entity
59 would be adversely affected, and (b) the basis for the determination required in clause (a) is documented
60 in writing by the responsible public entity; and

61 B. Records provided by a private entity to a responsible public entity, affected jurisdiction, or
62 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (~~§~~
63 ~~56-556 et seq.~~) or the Public-Private Education Facilities and Infrastructure Act of 2002 (~~§ 56-575.1 et~~
64 ~~seq.~~), to the extent that such records contain (i) trade secrets of the private entity as defined in the
65 Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial records of the private entity, including
66 balance sheets and financial statements, that are not generally available to the public through regulatory
67 disclosure or otherwise; or (iii) other information submitted by the private entity, where, if the records
68 were made public prior to the execution of an interim agreement or a comprehensive agreement, the
69 financial interest or bargaining position of the public or private entity would be adversely affected. In
70 order for the records specified in clauses (i), (ii) and (iii) to be excluded from the provisions of this
71 chapter, the private entity shall make a written request to the responsible public entity:

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

76 The responsible public entity shall determine whether the requested exclusion from disclosure is
77 necessary to protect the trade secrets or financial records of the private entity. To protect other records
78 submitted by the private entity from disclosure, the responsible public entity shall determine whether
79 public disclosure prior to the execution of an interim agreement or a comprehensive agreement would
80 adversely affect the financial interest or bargaining position of the public or private entity. The
81 responsible public entity shall make a written determination of the nature and scope of the protection to
82 be afforded by the responsible public entity under this subdivision. Once a written determination is made
83 by the responsible public body, the records afforded protection under this subdivision shall continue to
84 be protected from disclosure when in the possession of any affected jurisdiction or affected local
85 jurisdiction to which such records are provided by the responsible public entity.

86 ~~Nothing~~ Except as specifically provided in subsection A of this subdivision, nothing in this
87 subdivision shall be construed to authorize the withholding of (a) procurement records as required by §
88 56-573.1:1 or 56-575.17; (b) information concerning the terms and conditions of any interim or
89 comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered
90 into by the responsible public entity and the private entity; (c) information concerning the terms and
91 conditions of any financing arrangement that involves the use of any public funds; or (d) information
92 concerning the performance of any private entity developing or operating a qualifying transportation
93 facility or a qualifying project.

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

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

103 affected, and, after June 30, 1997, where such information was provided pursuant to a promise of
104 confidentiality.

105 13. Confidential proprietary records that are provided by a franchisee under Article 1.2 (§ 15.2-
106 2108.19 et seq.) of Chapter 21 of Title 15.2 to its franchising authority pursuant to a promise of
107 confidentiality from the franchising authority that relates to the franchisee's potential provision of new
108 services, adoption of new technologies or implementation of improvements, where such new services,
109 technologies or improvements have not been implemented by the franchisee on a nonexperimental scale
110 in the franchise area, and where, if such records were made public, the competitive advantage or
111 financial interests of the franchisee would be adversely affected. In order for confidential proprietary
112 information to be excluded from the provisions of this chapter, the franchisee shall (i) invoke such
113 exclusion upon submission of the data or other materials for which protection from disclosure is sought,
114 (ii) identify the data or other materials for which protection is sought, and (iii) state the reason why
115 protection is necessary.

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

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

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

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

130 18. Confidential proprietary records and trade secrets developed and held by a local public body
131 (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television
132 services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2, to the extent that
133 disclosure of such records would be harmful to the competitive position of the locality. In order for
134 confidential proprietary information or trade secrets to be excluded from the provisions of this chapter,
135 the locality in writing shall (i) invoke the protections of this subdivision, (ii) identify with specificity the
136 records or portions thereof for which protection is sought, and (iii) state the reasons why protection is
137 necessary.

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

144 20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial
145 records of a business, including balance sheets and financial statements, that are not generally available
146 to the public through regulatory disclosure or otherwise, provided to the Department of Minority
147 Business Enterprise as part of an application for (i) certification as a small, women- or minority-owned
148 business in accordance with Chapter 14 (§ 2.2-1400 et seq.) of this title or (ii) a claim made by a
149 disadvantaged business or an economically disadvantaged individual against the Capital Access Fund
150 for Disadvantaged Businesses created pursuant to § 2.2-2311. In order for such trade secrets or financial
151 records to be excluded from the provisions of this chapter, the business shall (a) invoke such exclusion
152 upon submission of the data or other materials for which protection from disclosure is sought, (b)
153 identify the data or other materials for which protection is sought, and (c) state the reasons why
154 protection is necessary.

155 § 2.2-3711. Closed meetings authorized for certain limited purposes.

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

157 1. Discussion, consideration, or interviews of prospective candidates for employment;
158 assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of
159 specific public officers, appointees, or employees of any public body; and evaluation of performance of
160 departments or schools of public institutions of higher education where such evaluation will necessarily
161 involve discussion of the performance of specific individuals. Any teacher shall be permitted to be
162 present during a closed meeting in which there is a discussion or consideration of a disciplinary matter
163 that involves the teacher and some student and the student involved in the matter is present, provided the
164 teacher makes a written request to be present to the presiding officer of the appropriate board.

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

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

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

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

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

182 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to
183 actual or probable litigation, where such consultation or briefing in open meeting would adversely affect

184 the negotiating or litigating posture of the public body; and consultation with legal counsel employed or
185 retained by a public body regarding specific legal matters requiring the provision of legal advice by such
186 counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been
187 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe
188 will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit
189 the closure of a meeting merely because an attorney representing the public body is in attendance or is
190 consulted on a matter.

191 8. In the case of boards of visitors of public institutions of higher education, discussion or
192 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts
193 for services or work to be performed by such institution. However, the terms and conditions of any such
194 gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign
195 person and accepted by a public institution of higher education in Virginia shall be subject to public
196 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
197 (i) "foreign government" means any government other than the United States government or the
198 government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity
199 created under the laws of the United States or of any state thereof if a majority of the ownership of the
200 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
201 membership of any such entity is composed of foreign persons or foreign legal entities, or any legal
202 entity created under the laws of a foreign government; and (iii) "foreign person" means any individual
203 who is not a citizen or national of the United States or a trust territory or protectorate thereof.

204 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia
205 Museum of Natural History, and The Science Museum of Virginia, discussion or consideration of
206 matters relating to specific gifts, bequests, and grants.

207 10. Discussion or consideration of honorary degrees or special awards.

208 11. Discussion or consideration of tests, examinations, or other records excluded from this
209 chapter pursuant to subdivision 4 of § 2.2-3705.1.

210 12. Discussion, consideration, or review by the appropriate House or Senate committees of
211 possible disciplinary action against a member arising out of the possible inadequacy of the disclosure
212 statement filed by the member, provided the member may request in writing that the committee meeting
213 not be conducted in a closed meeting.

214 13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement
215 or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the
216 governing body in open meeting finds that an open meeting will have an adverse effect upon the
217 negotiating position of the governing body or the establishment of the terms, conditions and provisions
218 of the siting agreement, or both. All discussions with the applicant or its representatives may be
219 conducted in a closed meeting.

220 14. Discussion by the Governor and any economic advisory board reviewing forecasts of
221 economic activity and estimating general and nongeneral fund revenues.

222 15. Discussion or consideration of medical and mental records excluded from this chapter
223 pursuant to subdivision 1 of § 2.2-3705.5.

224 16. Deliberations of the State Lottery Board in a licensing appeal action conducted pursuant to
225 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
226 discussion, consideration or review of State Lottery Department matters related to proprietary lottery
227 game information and studies or investigations exempted from disclosure under subdivision 6 of § 2.2-
228 3705.3 and subdivision 11 of § 2.2-3705.7.

229 17. Those portions of meetings by local government crime commissions where the identity of, or
230 information tending to identify, individuals providing information about crimes or criminal activities
231 under a promise of anonymity is discussed or disclosed.

232 18. Discussion, consideration, review, and deliberations by local community corrections
233 resources boards regarding the placement in community diversion programs of individuals previously
234 sentenced to state correctional facilities.

235 19. Those portions of meetings in which the Board of Corrections discusses or discloses the
236 identity of, or information tending to identify, any prisoner who (i) provides information about crimes or

237 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the
238 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders
239 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

240 20. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by
241 staff members, legal counsel, or law-enforcement or emergency service officials concerning actions
242 taken to respond to such activity or a related threat to public safety.

243 21. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-
244 124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of
245 the University of Virginia, acting pursuant to § 23-76.1, regarding the acquisition, holding or disposition
246 of a security or other ownership interest in an entity, where such security or ownership interest is not
247 traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns
248 confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the
249 retirement system or provided to the retirement system under a promise of confidentiality, of the future
250 value of such ownership interest or the future financial performance of the entity, and (ii) would have an
251 adverse effect on the value of the investment to be acquired, held or disposed of by the retirement
252 system or the Rector and Visitors of the University of Virginia. Nothing in this subdivision shall be
253 construed to prevent the disclosure of information relating to the identity of any investment held, the
254 amount invested or the present value of such investment.

255 22. Those portions of meetings in which individual child death cases are discussed by the State
256 Child Fatality Review team established pursuant to § 32.1-283.1, and those portions of meetings in
257 which individual child death cases are discussed by a regional or local child fatality review team
258 established pursuant to § 32.1-283.2, and those portions of meetings in which individual death cases are
259 discussed by family violence fatality review teams established pursuant to § 32.1-283.3.

260 23. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern
261 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
262 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
263 Virginia Medical School, as the case may be, have been delegated, in which there is discussed

264 proprietary, business-related information pertaining to the operations of the University of Virginia
265 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
266 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
267 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
268 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
269 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
270 Medical School, as the case may be.

271 24. In the case of the Virginia Commonwealth University Health System Authority, discussion
272 or consideration of any of the following: the acquisition or disposition of real or personal property where
273 disclosure would adversely affect the bargaining position or negotiating strategy of the Authority;
274 operational plans that could affect the value of such property, real or personal, owned or desirable for
275 ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and
276 contracts for services or work to be performed by the Authority; marketing or operational strategies
277 where disclosure of such strategies would adversely affect the competitive position of the Authority;
278 members of its medical and teaching staffs and qualifications for appointments thereto; and
279 qualifications or evaluations of other employees.

280 25. Those portions of the meetings of the Intervention Program Committee within the
281 Department of Health Professions to the extent such discussions identify any practitioner who may be,
282 or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

283 26. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
284 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees
285 by or on behalf of individuals who have requested information about, applied for, or entered into prepaid
286 tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title
287 23 is discussed.

288 27. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee
289 created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-

290 336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of
291 wireless E-911 service.

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

298 29. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11
299 of § 2.2-3705.6 by a responsible public entity or an affected local jurisdiction, as those terms are defined
300 in § 56-557, ~~of confidential proprietary records excluded from this chapter pursuant to subdivision 11 of~~
301 ~~§ 2.2-3705.6 or any independent review panel appointed to review information and advise the~~
302 responsible public entity concerning such records.

303 30. Discussion of the award of a public contract involving the expenditure of public funds,
304 including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where
305 discussion in an open session would adversely affect the bargaining position or negotiating strategy of
306 the public body.

307 31. Discussion or consideration by the Commonwealth Health Research Board of grant
308 application records excluded from this chapter pursuant to subdivision 17 of § 2.2-3705.6.

309 32. Discussion or consideration by the Commitment Review Committee of records excluded
310 from this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to
311 commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

312 33. [Expired.]

313 34. Discussion or consideration of confidential proprietary records and trade secrets excluded
314 from this chapter pursuant to subdivision 18 of § 2.2-3705.6.

315 35. Discussion or consideration by a local authority created in accordance with the Virginia
316 Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade
317 secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

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

320 37. Discussion or consideration by the Forensic Science Board or the Scientific Advisory
321 Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records
322 excluded from this chapter pursuant to subdivision F 1 of § 2.2-3706.

323 38. Discussion or consideration by the Brown v. Board of Education Scholarship Program
324 Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision
325 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum
326 scholarship award, review and consider scholarship applications and requests for scholarship award
327 renewal, and cancel, rescind, or recover scholarship awards.

328 39. Discussion or consideration by the Virginia Port Authority of records excluded from this
329 chapter pursuant to subdivision 1 of § 2.2-3705.6.

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

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

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

340 E. This section shall not be construed to (i) require the disclosure of any contract between the
341 Intervention Program Committee within the Department of Health Professions and an impaired

342 practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the
343 board of directors of any authority created pursuant to the Industrial Development and Revenue Bond
344 Act (§ 15.2-4900 et seq.), or any public body empowered to issue industrial revenue bonds by general or
345 special law, to identify a business or industry to which subdivision A 5 applies. However, such business
346 or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the
347 board's authorization of the sale or issuance of such bonds.

348 § 56-573.1:1. Posting of conceptual proposals; public comment; public access to procurement
349 records.

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

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

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

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

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

374 C. Once the negotiation phase for the development of an interim or a comprehensive agreement
 375 is complete and a decision to award has been made by a responsible public entity, the responsible public
 376 entity shall present the major business points of the interim or comprehensive agreement, including the
 377 use of any public funds, to its oversight board at a regularly scheduled meeting of the board that is open
 378 to the public.

379 D. ~~(Effective July 1, 2007)~~ Once an interim agreement or a comprehensive agreement has been
 380 entered into, a responsible public entity shall make procurement records available for public inspection,
 381 upon request in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). For the
 382 purposes of this subsection, procurement records shall not be interpreted to include (i) trade secrets of
 383 the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) ~~or~~; (ii) financial
 384 records, including balance sheets or financial statements of the private entity that are not generally
 385 available to the public through regulatory disclosure or otherwise; or (iii) cost estimates relating to a
 386 proposed procurement transaction prepared by or for a responsible public entity.

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

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

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

393 #