

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-Memoranda, staff evaluations, or other records prepared by
54 or for the responsible public entity for the evaluation and negotiation of proposals filed under the Public-
55 Private Transportation Act of 1995 (§ 56-556 et seq.) or the Public Private Education Facilities and
56 Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (a) if such records were made public prior to their
57 disclosure as required by § 56-573.1:1 or 56-575.17, the financial interest or bargaining position of the
58 public or private entity would be adversely affected, and (b) the basis for the determination required in
59 clause (a) is documented in writing by the responsible public entity; and records provided by a private
60 entity to a responsible public entity, affected jurisdiction, or affected local jurisdiction pursuant to the
61 provisions of the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or the Public-Private
62 Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), to the extent that such records
63 contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et
64 seq.); (ii) financial records of the private entity, including balance sheets and financial statements, that
65 are not generally available to the public through regulatory disclosure or otherwise; or (iii) other
66 information submitted by the private entity, where, if the records were made public prior to the
67 execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining
68 position of the public or private entity would be adversely affected. In order for the records specified in
69 clauses (i), (ii) and (iii) to be excluded from the provisions of this chapter, the private entity shall make a
70 written request to the responsible public entity:

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

75 The responsible public entity shall determine whether the requested exclusion from disclosure is
76 necessary to protect the trade secrets or financial records of the private entity. To protect other records

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

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

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

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

103 13. Confidential proprietary records that are provided by a franchisee under Article 1.2 (§ 15.2-
104 2108.19 et seq.) of Chapter 21 of Title 15.2 to its franchising authority pursuant to a promise of
105 confidentiality from the franchising authority that relates to the franchisee's potential provision of new
106 services, adoption of new technologies or implementation of improvements, where such new services,
107 technologies or improvements have not been implemented by the franchisee on a nonexperimental scale
108 in the franchise area, and where, if such records were made public, the competitive advantage or
109 financial interests of the franchisee would be adversely affected. In order for confidential proprietary
110 information to be excluded from the provisions of this chapter, the franchisee shall (i) invoke such
111 exclusion upon submission of the data or other materials for which protection from disclosure is sought,
112 (ii) identify the data or other materials for which protection is sought, and (iii) state the reason why
113 protection is necessary.

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

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

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

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

128 18. Confidential proprietary records and trade secrets developed and held by a local public body
129 (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television

130 services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2, to the extent that
 131 disclosure of such records would be harmful to the competitive position of the locality. In order for
 132 confidential proprietary information or trade secrets to be excluded from the provisions of this chapter,
 133 the locality in writing shall (i) invoke the protections of this subdivision, (ii) identify with specificity the
 134 records or portions thereof for which protection is sought, and (iii) state the reasons why protection is
 135 necessary.

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

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

153 § 2.2-3711. Closed meetings authorized for certain limited purposes.

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

- 155 1. Discussion, consideration, or interviews of prospective candidates for employment;
- 156 assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of

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

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

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

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

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

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

180 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to
181 actual or probable litigation, where such consultation or briefing in open meeting would adversely affect
182 the negotiating or litigating posture of the public body; and consultation with legal counsel employed or
183 retained by a public body regarding specific legal matters requiring the provision of legal advice by such

184 counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been
185 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe
186 will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit
187 the closure of a meeting merely because an attorney representing the public body is in attendance or is
188 consulted on a matter.

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

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

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

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

208 12. Discussion, consideration, or review by the appropriate House or Senate committees of
209 possible disciplinary action against a member arising out of the possible inadequacy of the disclosure

210 statement filed by the member, provided the member may request in writing that the committee meeting
211 not be conducted in a closed meeting.

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

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

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

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

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

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

233 19. Those portions of meetings in which the Board of Corrections discusses or discloses the
234 identity of, or information tending to identify, any prisoner who (i) provides information about crimes or
235 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the

236 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders
237 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

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

241 21. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-
242 124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of
243 the University of Virginia, acting pursuant to § 23-76.1, regarding the acquisition, holding or disposition
244 of a security or other ownership interest in an entity, where such security or ownership interest is not
245 traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns
246 confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the
247 retirement system or provided to the retirement system under a promise of confidentiality, of the future
248 value of such ownership interest or the future financial performance of the entity, and (ii) would have an
249 adverse effect on the value of the investment to be acquired, held or disposed of by the retirement
250 system or the Rector and Visitors of the University of Virginia. Nothing in this subdivision shall be
251 construed to prevent the disclosure of information relating to the identity of any investment held, the
252 amount invested or the present value of such investment.

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

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

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

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

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

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

286 27. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee
287 created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-
288 336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of
289 wireless E-911 service.

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

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

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

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

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

310 33. [Expired.]

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

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

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

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

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

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

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

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

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

338 E. This section shall not be construed to (i) require the disclosure of any contract between the
339 Intervention Program Committee within the Department of Health Professions and an impaired
340 practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the
341 board of directors of any authority created pursuant to the Industrial Development and Revenue Bond
342 Act (§ 15.2-4900 et seq.), or any public body empowered to issue industrial revenue bonds by general or

343 special law, to identify a business or industry to which subdivision A 5 applies. However, such business
344 or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the
345 board's authorization of the sale or issuance of such bonds.

346 § 56-573.1:1. Posting of conceptual proposals; public comment; public access to procurement
347 records.

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

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

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

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

367 B. In addition to the posting requirements of subsection A, for 30 days prior to entering into an
368 interim or comprehensive agreement, a responsible public entity shall provide an opportunity for public
369 comment on the proposals. The public comment period required by this subsection may include a public

370 hearing in the sole discretion of the responsible public entity. After the end of the public comment
371 period, no additional posting shall be required.

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

377 D. (Effective until July 1, 2007) Once an interim agreement or a comprehensive agreement has
378 been entered into and the process of bargaining of other interim agreements related to the qualifying
379 transportation facility or the process of bargaining of all phases or aspects of the comprehensive
380 agreement is complete, a responsible public entity shall make procurement records available for public
381 inspection, upon request. For the purposes of this subsection, procurement records shall not be
382 interpreted to include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act
383 (§ 59.1-336 et seq.) or (ii) financial records, including balance sheets or financial statements of the
384 private entity that are not generally available to the public through regulatory disclosure or otherwise.

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

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

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

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

398 | ~~H. (Effective until July 1, 2007) A responsible public entity and any independent review panel~~
399 | ~~appointed to review information and advise the responsible public entity may hold closed meetings to~~
400 | ~~discuss or consider records exempt from disclosure pursuant to subdivision 11 of § 2.2-3705.6, provided~~
401 | ~~such meetings are held in accordance with the procedural requirements of § 2.2-3712.~~

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