

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

1 A BILL to amend and reenact § 2.2-3705.6 of the Code of Virginia, relating to the Virginia Freedom of  
 2 Information Act; removes the terms "proprietary" and "confidential." [DRAFTING NOTE: It  
 3 has been suggested that these terms could be removed from current law without substantive  
 4 effect. Note that the phrase "promise of confidentiality" has not been stricken.]

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

6 **1. That § 2.2-3705.6 of the Code of Virginia is amended and reenacted as follows:**

7 § 2.2-3705.6. Exclusions to application of chapter; ~~proprietary records and~~ trade  
 8 secrets. [DRAFTING NOTE: Question - whether to strike the word "proprietary" in the  
 9 catchline?]

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

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

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

18 3. ~~Proprietary information,~~ Information voluntarily provided by private business pursuant to a  
 19 promise of confidentiality from a public body, used by the public body for business, trade, and tourism  
 20 development or retention; and memoranda, working papers, or other information related to businesses  
 21 that are considering locating or expanding in Virginia, prepared by a public body, where competition or  
 22 bargaining is involved and where disclosure of such information would adversely affect the financial  
 23 interest of the public body.

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. [DRAFTING NOTE: It appears that specific  
26 criteria were necessary for information to be filed "as confidential" under this former Act.]

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~~ 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. ~~Proprietary information~~ Information related to inventory and sales, voluntarily provided by  
36 private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for  
37 energy contingency planning purposes or for developing consolidated statistical information on energy  
38 supplies.

39 8. ~~Confidential proprietary information~~ Information furnished to the Board of Medical  
40 Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§  
41 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

42 9. ~~Proprietary, commercial~~ Commercial or financial information, balance sheets, trade secrets,  
43 and revenue and cost projections provided by a private transportation business to the Virginia  
44 Department of Transportation and the Department of Rail and Public Transportation for the purpose of  
45 conducting transportation studies needed to obtain grants or other financial assistance under the  
46 Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects if disclosure of  
47 such information is exempt under the federal Freedom of Information Act or the federal Interstate  
48 Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad  
49 Administration with respect to data provided in confidence to the Surface Transportation Board and the

50 Federal Railroad Administration. However, the exclusion provided by this subdivision shall not apply to  
51 any wholly owned subsidiary of a public body.

52 10. ~~Confidential information~~ Information designated as provided in subsection F of § 2.2-4342 as  
53 trade secrets or proprietary information by any person in connection with a procurement transaction or  
54 by any person who has submitted to a public body an application for prequalification to bid on public  
55 construction projects in accordance with subsection B of § 2.2-4317. [DRAFTING NOTE: Section 2.2-  
56 4342 refers to "trade secrets or proprietary information" so the phrase was not stricken in this  
57 subdivision as it is a cross-reference.]

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

66 b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or  
67 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§  
68 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1  
69 et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity as defined in  
70 the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial information of the private entity,  
71 including balance sheets and financial statements, that are not generally available to the public through  
72 regulatory disclosure or otherwise; or (iii) other information submitted by the private entity where if  
73 such information was made public prior to the execution of an interim agreement or a comprehensive  
74 agreement, the financial interest or bargaining position of the public or private entity would be adversely  
75 affected. In order for the information specified in clauses (i), (ii), and (iii) to be excluded from the  
76 provisions of this chapter, the private entity shall make a written request to the responsible public entity:

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

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

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

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

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

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

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

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

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

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

127 | 14. Information ~~of a proprietary nature~~ furnished by a supplier of charitable gaming supplies to  
128 | the Department of Agriculture and Consumer Services pursuant to subsection E of § 18.2-340.34.

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

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. (Effective until October 1, 2016) Information relating to a grant or loan application, or~~  
135 ~~accompanying a grant or loan application, to the Innovation and Entrepreneurship Investment Authority~~  
136 ~~pursuant to Article 3 (§ 2.2-2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health~~  
137 ~~Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 if disclosure of such information~~  
138 ~~would (i) reveal proprietary business or research-related information produced or collected by the~~  
139 ~~applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific,~~  
140 ~~technical, technological, or scholarly issues, when such information has not been publicly released,~~  
141 ~~published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.~~

142 17. (Effective October 1, 2016) Information relating to a grant or loan application, or  
143 accompanying a grant or loan application, to the Innovation and Entrepreneurship Investment Authority  
144 pursuant to Article 3 (§ 2.2-2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health  
145 Research Board pursuant to Chapter 5.3 (§ 32.1-162.23 et seq.) of Title 32.1 if disclosure of such  
146 information would (i) reveal ~~proprietary~~ business or research-related information produced or collected  
147 by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific,  
148 technical, technological, or scholarly issues, when such information has not been publicly released,  
149 published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

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

154 In order for ~~confidential proprietary~~ information or trade secrets to be excluded from the  
155 provisions of this chapter, the locality in writing shall (a) invoke the protections of this subdivision, (b)

156 identify with specificity the information for which protection is sought, and (c) state the reasons why  
157 protection is necessary. However, the exemption provided by this subdivision shall not apply to any  
158 authority created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

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

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

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

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

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

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

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

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

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

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

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

211 c. Stating the reasons why protection is necessary.

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

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

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

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

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

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

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

233 The Authority shall determine whether the requested exclusion from disclosure is necessary to  
234 protect the trade secrets or financial information of the private entity. To protect other information  
235 submitted by the private entity from disclosure, the Authority shall determine whether public disclosure

236 would adversely affect the financial interest or bargaining position of the Authority or private entity. The  
237 Authority shall make a written determination of the nature and scope of the protection to be afforded by  
238 it under this subdivision.

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

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

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

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

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

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

259 c. Stating the reasons why protection is necessary.

260 ~~28. (Effective until October 1, 2016) Records submitted as a grant or loan application, or~~  
261 ~~accompanying a grant or loan application, for an award from the Virginia Research Investment Fund~~  
262 ~~pursuant to Chapter 28 (§ 23-304 et seq.) of Title 23, to the extent that such records contain proprietary~~

263 ~~business or research-related information produced or collected by the applicant in the conduct of or as a~~  
264 ~~result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly~~  
265 ~~issues, when such information has not been publicly released, published, copyrighted, or patented, if the~~  
266 ~~disclosure of such information would be harmful to the competitive position of the applicant.~~

267 28. (Effective October 1, 2016) Records submitted as a grant or loan application, or  
268 accompanying a grant or loan application, for an award from the Virginia Research Investment Fund  
269 pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title 23.1, to the extent that such records  
270 contain ~~proprietary~~ business or research-related information produced or collected by the applicant in  
271 the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical,  
272 technological, or scholarly issues, when such information has not been publicly released, published,  
273 copyrighted, or patented, if the disclosure of such information would be harmful to the competitive  
274 position of the applicant.