

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3705.6 and 2.2-3711 of the Code of Virginia, relating to the
2 Virginia Freedom of Information Act; removal of certain uses of the terms "proprietary" and
3 "confidential."

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

5 **1. That §§ 2.2-3705.6 and 2.2-3711 of the Code of Virginia is amended and reenacted as follows:**

6 **§ 2.2-3705.6. Exclusions to application of chapter; trade secrets and certain commercial**
7 **information.**

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

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

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

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

22 4. Information that was filed ~~as confidential~~ under the Toxic Substances Information Act (§ 32.1-
23 239 et seq.), as such Act existed prior to July 1, 1992. [DRAFTING NOTE: It appears that specific
24 criteria were necessary for information to be filed "as confidential" under this former Act.]

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

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

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

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

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

50 10. ~~Confidential information~~ Information designated as provided in subsection F of § 2.2-4342-~~as~~
51 ~~trade secrets or proprietary information by any person~~ in connection with a procurement transaction or

52 by any person who has submitted to a public body an application for prequalification to bid on public
53 construction projects in accordance with subsection B of § 2.2-4317.

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

62 b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or
63 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§
64 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1
65 et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity as defined in
66 the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial information of the private entity,
67 including balance sheets and financial statements, that are not generally available to the public through
68 regulatory disclosure or otherwise; or (iii) other information submitted by the private entity where if
69 such information was made public prior to the execution of an interim agreement or a comprehensive
70 agreement, the financial interest or bargaining position of the public or private entity would be adversely
71 affected. In order for the information specified in clauses (i), (ii), and (iii) to be excluded from the
72 provisions of this chapter, the private entity shall make a written request to the responsible public entity:

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

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

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

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

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

87 Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed
88 to authorize the withholding of (a) procurement records as required by § 33.2-1820 or 56-575.17; (b)
89 information concerning the terms and conditions of any interim or comprehensive agreement, service
90 contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity
91 and the private entity; (c) information concerning the terms and conditions of any financing arrangement
92 that involves the use of any public funds; or (d) information concerning the performance of any private
93 entity developing or operating a qualifying transportation 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 (§ 33.2-1800 et seq.) or in the Public-
98 Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.).

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

104 13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or
105 ~~confidential proprietary~~ information that is not generally available to the public through regulatory

106 disclosure or otherwise, provided by a (i) bidder or applicant for a franchise or (ii) franchisee under
107 Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a
108 promise of confidentiality from the franchising authority, to the extent the information relates to the
109 bidder's, applicant's, or franchisee's financial capacity or provision of new services, adoption of new
110 technologies or implementation of improvements, where such new services, technologies, or
111 improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise
112 area, and where, if such information were made public, the competitive advantage or financial interests
113 of the franchisee would be adversely affected.

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

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

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

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

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

132 17. Information relating to a grant or loan application, or accompanying a grant or loan
133 application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-
134 2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to
135 Chapter 5.3 (§ 32.1-162.23 et seq.) of Title 32.1 if disclosure of such information would (i) reveal
136 ~~proprietary~~ business or research-related information produced or collected by the applicant in the
137 conduct of or as a result of study or research on medical, rehabilitative, scientific, technical,
138 technological, or scholarly issues, when such information has not been publicly released, published,
139 copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

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

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

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

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

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

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

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

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

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

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

183 23. Information relating to a grant application, or accompanying a grant application, submitted to
184 the Tobacco Region Revitalization Commission that would (i) reveal (a) trade secrets as defined in the
185 Uniform Trade Secrets Act (§ 59.1-336 et seq.), (b) financial information of a grant applicant that is not

186 a public body, including balance sheets and financial statements, that are not generally available to the
187 public through regulatory disclosure or otherwise, or (c) research-related information produced or
188 collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative,
189 scientific, technical, technological, or scholarly issues, when such information has not been publicly
190 released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the
191 applicant; and memoranda, staff evaluations, or other information prepared by the Commission or its
192 staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision
193 shall apply to grants that are consistent with the powers of and in furtherance of the performance of the
194 duties of the Commission pursuant to § 3.2-3103.

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

- 197 a. Invoking such exclusion upon submission of the data or other materials for which protection
198 from disclosure is sought;
- 199 b. Identifying with specificity the data, information or other materials for which protection is
200 sought; and
- 201 c. Stating the reasons why protection is necessary.

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

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

210 b. Information provided by a private entity to the Commercial Space Flight Authority if
211 disclosure of such information would (i) reveal (a) trade secrets of the private entity as defined in the
212 Uniform Trade Secrets Act (§ 59.1-336 et seq.); (b) financial information of the private entity, including

213 balance sheets and financial statements, that are not generally available to the public through regulatory
214 disclosure or otherwise; or (c) other information submitted by the private entity and (ii) adversely affect
215 the financial interest or bargaining position of the Authority or private entity.

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

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

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

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

223 The Authority shall determine whether the requested exclusion from disclosure is necessary to
224 protect the trade secrets or financial information of the private entity. To protect other information
225 submitted by the private entity from disclosure, the Authority shall determine whether public disclosure
226 would adversely affect the financial interest or bargaining position of the Authority or private entity. The
227 Authority shall make a written determination of the nature and scope of the protection to be afforded by
228 it under this subdivision.

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

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

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

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

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

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

249 c. Stating the reasons why protection is necessary.

250 28. Information relating to a grant or loan application, or accompanying a grant or loan
251 application, submitted to the Virginia Research Investment Committee established pursuant to Article 8
252 (§ 23.1-3130 et seq.) of Chapter 31 of Title 23.1, to the extent that such records would (i) reveal (a) trade
253 secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (b) financial information of a
254 party to a grant or loan application that is not a public body, including balance sheets and financial
255 statements, that are not generally available to the public through regulatory disclosure or otherwise; or
256 (c) research-related information produced or collected by a party to the application in the conduct of or
257 as a result of study or research on medical, rehabilitative, scientific, technical, technological, or
258 scholarly issues, when such information has not been publicly released, published, copyrighted, or
259 patented, and (ii) be harmful to the competitive position of a party to a grant or loan application; and
260 memoranda, staff evaluations, or other information prepared by the Committee or its staff, or a
261 reviewing entity pursuant to subsection D of § 23.1-3133, exclusively for the evaluation of grant or loan
262 applications, including any scoring or prioritization documents prepared for and forwarded to the
263 Committee pursuant to subsection D of § 23.1-3133.

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

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

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

271 c. Stating the reasons why protection is necessary.

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

276 29. ~~Proprietary information, Information~~ voluntarily provided by a private business pursuant to a
277 promise of confidentiality from a public body, and which is used by the public body for a solar services
278 agreement, where disclosure of such information would (i) reveal (a) trade secrets of the private business
279 as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (b) financial information of the private
280 business, including balance sheets and financial statements, that are not generally available to the public
281 through regulatory disclosure or otherwise; or (c) other information submitted by the private business
282 and (ii) adversely affect the financial interest or bargaining position of the public body or private
283 business.

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

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

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

289 c. Stating the reasons why protection is necessary.

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

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

296 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

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

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

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

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

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

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

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

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

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

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

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

350 10 Discussion or consideration by the boards of trustees of the Virginia Museum of Fine Arts,
351 the Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science
352 Museum of Virginia of matters relating to specific gifts, bequests, and grants from private sources.

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

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

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

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

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

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

370 17. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant
371 to subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent;
372 and discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game

373 information and studies or investigations excluded from disclosure under subdivision 6 of § 2.2-3705.3
374 and subdivision 11 of § 2.2-3705.7.

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

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

388 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-
389 124.30, or of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or
390 board of trustees of a trust established by one or more local public bodies to invest funds for
391 postemployment benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of
392 Chapter 15 of Title 15.2, or by the board of visitors of the University of Virginia, acting pursuant to §
393 23.1-2210, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706,
394 regarding the acquisition, holding or disposition of a security or other ownership interest in an entity,
395 where such security or ownership interest is not traded on a governmentally regulated securities
396 exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the board of
397 visitors of the University of Virginia, prepared by the retirement system, or a local finance board or
398 board of trustees, or the Virginia College Savings Plan or provided to the retirement system a local
399 finance board or board of trustees, or the Virginia College Savings Plan under a promise of

400 confidentiality, of the future value of such ownership interest or the future financial performance of the
401 entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held, or
402 disposed of by the retirement system, a local finance board or board of trustees, the board of visitors of
403 the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be
404 construed to prevent the disclosure of information relating to the identity of any investment held, the
405 amount invested or the present value of such investment.

406 21. Those portions of meetings in which individual child death cases are discussed by the State
407 Child Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which
408 individual child death cases are discussed by a regional or local child fatality review team established
409 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by
410 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in
411 which individual adult death cases are discussed by the state Adult Fatality Review Team established
412 pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are
413 discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

414 22. Those portions of meetings of the board of visitors of the University of Virginia or the
415 Eastern Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings
416 of any persons to whom management responsibilities for the University of Virginia Medical Center or
417 Eastern Virginia Medical School, as the case may be, have been delegated, in which there is discussed
418 proprietary, business-related information pertaining to the operations of the University of Virginia
419 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
420 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
421 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
422 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
423 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
424 Medical School, as the case may be.

425 23. Discussion or consideration by the Virginia Commonwealth University Health System
426 Authority or the board of visitors of Virginia Commonwealth University of any of the following: the

427 acquisition or disposition by the Authority of real property, equipment, or technology software or
428 hardware and related goods or services, where disclosure would adversely affect the bargaining position
429 or negotiating strategy of the Authority; matters relating to gifts or bequests to, and fund-raising
430 activities of, the Authority; grants and contracts for services or work to be performed by the Authority;
431 marketing or operational strategies plans of the Authority where disclosure of such strategies or plans
432 would adversely affect the competitive position of the Authority; and members of the Authority's
433 medical and teaching staffs and qualifications for appointments thereto.

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

437 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
438 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees
439 by or on behalf of individuals who have requested information about, applied for, or entered into prepaid
440 tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title
441 23.1 is discussed.

442 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee
443 created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-
444 336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of
445 wireless E-911 service.

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

452 28. Discussion or consideration of information subject to the exclusion in subdivision 11 of §
453 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are

454 defined in § 33.2-1800, or any independent review panel appointed to review information and advise the
455 responsible public entity concerning such records.

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

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

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

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

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

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

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

480 36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of
481 information or confidential matters subject to the exclusion in subdivision 3 of § 2.2-3705.4, and
482 meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and
483 consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or
484 recover scholarship awards.

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

488 38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System
489 acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-
490 124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia
491 College Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's
492 Investment Advisory Committee appointed pursuant to § 23.1-702 of information subject to the
493 exclusion in subdivision 24 of § 2.2-3705.7.

494 39. Discussion or consideration of information subject to the exclusion in subdivision 3 of § 2.2-
495 3705.6 related to economic development.

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

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

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

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

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

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

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

524 47. Discussion or consideration of grant or loan application records subject to the exclusion in
525 subdivision 28 of § 2.2-3705.6 related to the submission of an application for an award from the
526 Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title
527 23.1 or interviews of parties to an application by a reviewing entity pursuant to subsection D of § 23.1-
528 3133 or by the Virginia Research Investment Committee.

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

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

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

538 51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic
539 Development Partnership Authority established pursuant to subsection F of § 2.2-2237.3 to review and
540 discuss information received from the Virginia Employment Commission pursuant to subdivision C 2 of
541 § 60.2-114.

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

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

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

552 E. This section shall not be construed to (i) require the disclosure of any contract between the
553 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§
554 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to
555 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered
556 to issue industrial revenue bonds by general or special law, to identify a business or industry to which
557 subdivision A 5 applies. However, such business or industry shall be identified as a matter of public

558 record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such
559 bonds.

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