

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; general exclusion for trade secrets submitted to a public
3 body.

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 are amended and reenacted as follows:**

6 **§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.**

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

11 1. A record delivered or transmitted to a public body by a submitting entity that is not a public
12 body to the extent that:

13 a. The record contains information in which the submitting entity has an ownership interest;

14 b. The submitted information qualifies as a "trade secret" of the submitting entity as defined in
15 the Uniform Trade Secrets Act (§ 59.1-336 et seq.);

16 c. The submitting entity delivered or transmitted the record to the public body (i) in compliance
17 with a statute, regulation, or other law of the United States or the Commonwealth or (ii) as a required
18 component of a submission made in connection with a public procurement, public financing, or
19 economic development transaction; and

20 d. The information that the submitting entity seeks to protect was clearly and specifically
21 identified by the submitting entity as a trade secret at the time of its delivery or transmission to the
22 public body, such identification being a representation by the submitting entity that it has made a good
23 faith effort to designate as trade secrets only those portions of the submitted information that are entitled
24 to protection under the Uniform Trade Secrets Act (§ 59.1-336 et seq.).

25 In the event a public body, in response to a request under this chapter, denies access to a public
26 record or a portion of a public record on the grounds that the requested information has been identified
27 by the submitting entity as a trade secret and the requester challenges the characterization of the
28 withheld information as a trade secret, the public body shall notify the submitting entity within two
29 working days of the challenge made by the requester. If the submitting entity and the requester are
30 unable, after conferring, to reach an agreement on the proper designation of the material in dispute, or
31 the submitting entity refuses to confer with the requester, the requester may bring an action under this
32 chapter to require the public body to produce the requested material and shall name the submitting entity
33 as an additional defendant in the action. If, as a result of the action, the court requires the public body to
34 produce material that has been improperly designated as a trade secret by the submitting entity, any
35 award of reasonable costs and attorney fees to the requester pursuant to § 2.2-3713 shall be paid by the
36 submitting entity and not by the public body.

37 1a. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-
38 132.4 or 62.1-134.1.

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

41 3. Proprietary information, voluntarily provided by private business pursuant to a promise of
42 confidentiality from a public body, used by the public body for business, trade, and tourism development
43 or retention; and memoranda, working papers, or other information related to businesses that are
44 considering locating or expanding in Virginia, prepared by a public body, where competition or
45 bargaining is involved and where disclosure of such information would adversely affect the financial
46 interest of the public body.

47 4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-
48 239 et seq.), as such Act existed prior to July 1, 1992.

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

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

57 7. Proprietary information related to inventory and sales, voluntarily provided by private energy
58 suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy
59 contingency planning purposes or for developing consolidated statistical information on energy supplies.

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

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

73 10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade
74 secrets or proprietary information by any person in connection with a procurement transaction or by any
75 person who has submitted to a public body an application for prequalification to bid on public
76 construction projects in accordance with subsection B of § 2.2-4317.

77 11. a. Memoranda, staff evaluations, or other information prepared by the responsible public
78 entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of
79 proposals filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-
80 Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where (i) if such
81 information was made public prior to or after the execution of an interim or a comprehensive agreement,
82 § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public
83 entity would be adversely affected and (ii) the basis for the determination required in clause (i) is
84 documented in writing by the responsible public entity; and

85 b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or
86 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§
87 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1
88 et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity as defined in
89 the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial information of the private entity,
90 including balance sheets and financial statements, that are not generally available to the public through
91 regulatory disclosure or otherwise; or (iii) other information submitted by the private entity where if
92 such information was made public prior to the execution of an interim agreement or a comprehensive
93 agreement, the financial interest or bargaining position of the public or private entity would be adversely
94 affected. In order for the information specified in clauses (i), (ii), and (iii) to be excluded from the
95 provisions of this chapter, the private entity shall make a written request to the responsible public entity:

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

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

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

100 The responsible public entity shall determine whether the requested exclusion from disclosure is
101 necessary to protect the trade secrets or financial information of the private entity. To protect other
102 information submitted by the private entity from disclosure, the responsible public entity shall determine
103 whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement

104 would adversely affect the financial interest or bargaining position of the public or private entity. The
105 responsible public entity shall make a written determination of the nature and scope of the protection to
106 be afforded by the responsible public entity under this subdivision. Once a written determination is made
107 by the responsible public entity, the information afforded protection under this subdivision shall
108 continue to be protected from disclosure when in the possession of any affected jurisdiction or affected
109 local jurisdiction.

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

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

122 12. Confidential proprietary information or trade secrets, not publicly available, provided by a
123 private person or entity pursuant to a promise of confidentiality to the Virginia Resources Authority or
124 to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia
125 Resources Authority where, if such information were made public, the financial interest of the private
126 person or entity would be adversely affected.

127 13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or
128 confidential proprietary information that is not generally available to the public through regulatory
129 disclosure or otherwise, provided by a (i) bidder or applicant for a franchise or (ii) franchisee under
130 Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a

131 promise of confidentiality from the franchising authority, to the extent the information relates to the
132 bidder's, applicant's, or franchisee's financial capacity or provision of new services, adoption of new
133 technologies or implementation of improvements, where such new services, technologies, or
134 improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise
135 area, and where, if such information were made public, the competitive advantage or financial interests
136 of the franchisee would be adversely affected.

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

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

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

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

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

153 17. Information relating to a grant or loan application, or accompanying a grant or loan
154 application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-
155 2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to
156 Chapter 5.3 (§ 32.1-162.23 et seq.) of Title 32.1 if disclosure of such information would (i) reveal
157 proprietary business or research-related information produced or collected by the applicant in the

158 conduct of or as a result of study or research on medical, rehabilitative, scientific, technical,
159 technological, or scholarly issues, when such information has not been publicly released, published,
160 copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

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

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

170 19. Confidential proprietary information and trade secrets developed by or for a local authority
171 created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to
172 provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of
173 Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive
174 position of the authority, except that information required to be maintained in accordance with § 15.2-
175 2160 shall be released.

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

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

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

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

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

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

199 c. Stating the reasons why protection is necessary.

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

204 23. Information relating to a grant application, or accompanying a grant application, submitted to
205 the Tobacco Region Revitalization Commission that would (i) reveal (a) trade secrets as defined in the
206 Uniform Trade Secrets Act (§ 59.1-336 et seq.), (b) financial information of a grant applicant that is not
207 a public body, including balance sheets and financial statements, that are not generally available to the
208 public through regulatory disclosure or otherwise, or (c) research-related information produced or
209 collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative,
210 scientific, technical, technological, or scholarly issues, when such information has not been publicly
211 released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the

212 applicant; and memoranda, staff evaluations, or other information prepared by the Commission or its
213 staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision
214 shall apply to grants that are consistent with the powers of and in furtherance of the performance of the
215 duties of the Commission pursuant to § 3.2-3103.

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

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

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

222 c. Stating the reasons why protection is necessary.

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

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

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

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

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

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

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

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

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

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

261 27. Information of a proprietary nature furnished by a licensed public-use airport to the
262 Department of Aviation for funding from programs administered by the Department of Aviation or the

263 Virginia Aviation Board, where if such information was made public, the financial interest of the public-
264 use airport would be adversely affected.

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

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 or other materials for which protection is sought; and

270 c. Stating the reasons why protection is necessary.

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

278 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

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

280 1. Discussion, consideration, or interviews of prospective candidates for employment;
281 assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of
282 specific public officers, appointees, or employees of any public body; and evaluation of performance of
283 departments or schools of public institutions of higher education where such evaluation will necessarily
284 involve discussion of the performance of specific individuals. Any teacher shall be permitted to be
285 present during a closed meeting in which there is a discussion or consideration of a disciplinary matter
286 that involves the teacher and some student and the student involved in the matter is present, provided the
287 teacher makes a written request to be present to the presiding officer of the appropriate board. Nothing
288 in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body

289 or an elected school board to discuss compensation matters that affect the membership of such body or
290 board collectively.

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

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

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

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

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

308 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to
309 actual or probable litigation, where such consultation or briefing in open meeting would adversely affect
310 the negotiating or litigating posture of the public body; and consultation with legal counsel employed or
311 retained by a public body regarding specific legal matters requiring the provision of legal advice by such
312 counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been
313 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe
314 will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit

315 the closure of a meeting merely because an attorney representing the public body is in attendance or is
316 consulted on a matter.

317 8. In the case of boards of visitors of public institutions of higher education, discussion or
318 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts
319 for services or work to be performed by such institution. However, the terms and conditions of any such
320 gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign
321 person and accepted by a public institution of higher education in Virginia shall be subject to public
322 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
323 (i) "foreign government" means any government other than the United States government or the
324 government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity
325 created under the laws of the United States or of any state thereof if a majority of the ownership of the
326 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
327 membership of any such entity is composed of foreign persons or foreign legal entities, or any legal
328 entity created under the laws of a foreign government; and (iii) "foreign person" means any individual
329 who is not a citizen or national of the United States or a trust territory or protectorate thereof.

330 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia
331 Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of
332 Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

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

334 11. Discussion or consideration of tests, examinations, or other information excluded from this
335 chapter pursuant to subdivision 4 of § 2.2-3705.1.

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

340 13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement
341 or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the

342 governing body in open meeting finds that an open meeting will have an adverse effect upon the
343 negotiating position of the governing body or the establishment of the terms, conditions and provisions
344 of the siting agreement, or both. All discussions with the applicant or its representatives may be
345 conducted in a closed meeting.

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

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

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

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

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

363 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific
364 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-
365 enforcement or emergency service officials concerning actions taken to respond to such matters or a
366 related threat to public safety; discussion of information excluded from this chapter pursuant to
367 subdivision 3 or 4 of § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of
368 any person or the security of any facility, building, structure, information technology system, or software

369 program; or discussion of reports or plans related to the security of any governmental facility, building
370 or structure, or the safety of persons using such facility, building or structure.

371 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-
372 124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of
373 the University of Virginia, acting pursuant to § 23.1-2210, or by the Board of the Virginia College
374 Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition, holding or disposition of a
375 security or other ownership interest in an entity, where such security or ownership interest is not traded
376 on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns
377 confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the
378 retirement system or by the Virginia College Savings Plan or provided to the retirement system or the
379 Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership
380 interest or the future financial performance of the entity, and (ii) would have an adverse effect on the
381 value of the investment to be acquired, held or disposed of by the retirement system, the Rector and
382 Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision
383 shall be construed to prevent the disclosure of information relating to the identity of any investment
384 held, the amount invested or the present value of such investment.

385 21. Those portions of meetings in which individual child death cases are discussed by the State
386 Child Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which
387 individual child death cases are discussed by a regional or local child fatality review team established
388 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by
389 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in
390 which individual adult death cases are discussed by the state Adult Fatality Review Team established
391 pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are
392 discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

393 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern
394 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
395 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern

396 Virginia Medical School, as the case may be, have been delegated, in which there is discussed
397 proprietary, business-related information pertaining to the operations of the University of Virginia
398 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
399 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
400 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
401 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
402 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
403 Medical School, as the case may be.

404 23. In the case of the Virginia Commonwealth University Health System Authority, discussion
405 or consideration of any of the following: the acquisition or disposition of real or personal property where
406 disclosure would adversely affect the bargaining position or negotiating strategy of the Authority;
407 operational plans that could affect the value of such property, real or personal, owned or desirable for
408 ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and
409 contracts for services or work to be performed by the Authority; marketing or operational strategies
410 where disclosure of such strategies would adversely affect the competitive position of the Authority;
411 members of its medical and teaching staffs and qualifications for appointments thereto; and
412 qualifications or evaluations of other employees. This exclusion shall also apply when the foregoing
413 discussions occur at a meeting of the Virginia Commonwealth University Board of Visitors.

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

417 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
418 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees
419 by or on behalf of individuals who have requested information about, applied for, or entered into prepaid
420 tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title
421 23.1 is discussed.

422 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee
423 created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-
424 336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of
425 wireless E-911 service.

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

432 28. Discussion or consideration of information excluded from this chapter pursuant to
433 subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as
434 those terms are defined in § 33.2-1800, or any independent review panel appointed to review
435 information and advise the responsible public entity concerning such records.

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

440 30. Discussion or consideration of grant or loan application information excluded from this
441 chapter pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or
442 (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology
443 Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment
444 Authority.

445 31. Discussion or consideration by the Commitment Review Committee of information excluded
446 from this chapter pursuant to subdivision 8 of § 2.2-3705.2 relating to individuals subject to
447 commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

448 32. [Expired.]

449 33. Discussion or consideration of confidential proprietary information and trade secrets
450 excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6. However, the exemption
451 provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act
452 (§ 15.2-7200 et seq.).

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

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

458 36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory
459 Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records
460 excluded from this chapter pursuant to subdivision A 2 a of § 2.2-3706.

461 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program
462 Awards Committee of information or confidential matters excluded from this chapter pursuant to
463 subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual
464 maximum scholarship award, review and consider scholarship applications and requests for scholarship
465 award renewal, and cancel, rescind, or recover scholarship awards.

466 38. Discussion or consideration by the Virginia Port Authority of information excluded from this
467 chapter pursuant to subdivision ~~1~~ 1a of § 2.2-3705.6.

468 39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System
469 acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-
470 124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia
471 College Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's
472 Investment Advisory Committee appointed pursuant to § 23.1-702 of information excluded from this
473 chapter pursuant to subdivision 25 of § 2.2-3705.7.

474 40. Discussion or consideration of information excluded from this chapter pursuant to
475 subdivision 3 of § 2.2-3705.6.

476 41. Discussion or consideration by the Board of Education of information relating to the denial,
477 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of §
478 2.2-3705.3.

479 42. Those portions of meetings of the Virginia Military Advisory Council or any commission
480 created by executive order for the purpose of studying and making recommendations regarding
481 preventing closure or realignment of federal military and national security installations and facilities
482 located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs
483 organization appointed by a local governing body, during which there is discussion of information
484 excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.2.

485 43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
486 information excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.

487 44. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of
488 information excluded from this chapter pursuant to subdivision 23 of § 2.2-3705.6.

489 45. Discussion or consideration by the board of directors of the Commercial Space Flight
490 Authority of information excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6.

491 46. Discussion or consideration of personal and proprietary information that are excluded from
492 the provisions of this chapter pursuant to (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of §
493 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records that contain
494 information that has been certified for release by the person who is the subject of the information or
495 transformed into a statistical or aggregate form that does not allow identification of the person who
496 supplied, or is the subject of, the information.

497 47. (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the Virginia
498 Alcoholic Beverage Control Authority of information excluded from this chapter pursuant to subdivision
499 1 of § 2.2-3705.3 or subdivision 34 of § 2.2-3705.7.

500 48. Discussion or consideration of grant or loan application records excluded from this chapter
501 pursuant to subdivision 28 of § 2.2-3705.6 related to the submission of an application for an award from

502 the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title
503 23.1.

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

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

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

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

517 E. This section shall not be construed to (i) require the disclosure of any contract between the
518 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§
519 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to
520 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered
521 to issue industrial revenue bonds by general or special law, to identify a business or industry to which
522 subdivision A 5 applies. However, such business or industry shall be identified as a matter of public
523 record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such
524 bonds.

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

526 **§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.**

527 The following information contained in a public record is excluded from the mandatory
528 disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except

529 where such disclosure is prohibited by law. Redaction of information excluded under this section from a
530 public record shall be conducted in accordance with § 2.2-3704.01.

531 1. A record delivered or transmitted to a public body by a submitting entity that is not a public
532 body to the extent that:

533 a. The record contains information in which the submitting entity has an ownership interest;

534 b. The submitted information qualifies as a "trade secret" of the submitting entity as defined in
535 the Uniform Trade Secrets Act (§ 59.1-336 et seq.);

536 c. The submitting entity delivered or transmitted the record to the public body (i) in compliance
537 with a statute, regulation, or other law of the United States or the Commonwealth or (ii) as a required
538 component of a submission made in connection with a public procurement, public financing, or
539 economic development transaction; and

540 d. The information that the submitting entity seeks to protect was clearly and specifically
541 identified by the submitting entity as a trade secret at the time of its delivery or transmission to the
542 public body, such identification being a representation by the submitting entity that it has made a good
543 faith effort to designate as trade secrets only those portions of the submitted information that are entitled
544 to protection under the Uniform Trade Secrets Act (§ 59.1-336 et seq.).

545 In the event a public body, in response to a request under this chapter, denies access to a public
546 record or a portion of a public record on the grounds that the requested information has been identified
547 by the submitting entity as a trade secret and the requester challenges the characterization of the
548 withheld information as a trade secret, the public body shall notify the submitting entity within two
549 working days of the challenge made by the requester. If the submitting entity and the requester are
550 unable, after conferring, to reach an agreement on the proper designation of the material in dispute, or
551 the submitting entity refuses to confer with the requester, the requester may bring an action under this
552 Chapter to require the public body to produce the requested material, and shall name the submitting
553 entity as an additional defendant in the action. If, as a result of the action, the court requires the public
554 body to produce material that has been improperly designated as a trade secret by the submitting entity,

555 any award of reasonable costs and attorney fees to the requester pursuant to § 2.2-3713 shall be paid by
556 the submitting entity and not by the public body.

557 1a. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-
558 132.4 or 62.1-134.1.

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

561 3. Proprietary information, voluntarily provided by private business pursuant to a promise of
562 confidentiality from a public body, used by the public body for business, trade, and tourism development
563 or retention; and memoranda, working papers, or other information related to businesses that are
564 considering locating or expanding in Virginia, prepared by a public body, where competition or
565 bargaining is involved and where disclosure of such information would adversely affect the financial
566 interest of the public body.

567 4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-
568 239 et seq.), as such Act existed prior to July 1, 1992.

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

571 6. Confidential financial statements, balance sheets, ~~trade secrets~~, and revenue and cost
572 projections provided to the Department of Rail and Public Transportation, provided such information is
573 exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other
574 laws administered by the Surface Transportation Board or the Federal Railroad Administration with
575 respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad
576 Administration.

577 7. Proprietary information related to inventory and sales, voluntarily provided by private energy
578 suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy
579 contingency planning purposes or for developing consolidated statistical information on energy supplies.

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

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

593 10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade
594 secrets or proprietary information by any person in connection with a procurement transaction or by any
595 person who has submitted to a public body an application for prequalification to bid on public
596 construction projects in accordance with subsection B of § 2.2-4317.

597 11. a. Memoranda, staff evaluations, or other information prepared by the responsible public
598 entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of
599 proposals filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-
600 Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where (i) if such
601 information was made public prior to or after the execution of an interim or a comprehensive agreement,
602 § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public
603 entity would be adversely affected and (ii) the basis for the determination required in clause (i) is
604 documented in writing by the responsible public entity; and

605 b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or
606 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§

607 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1
608 et seq.) if disclosure of such information would reveal (i) ~~trade secrets of the private entity as defined in~~
609 ~~the Uniform Trade Secrets Act (§ 59.1-336 et seq.);~~ (ii) financial information of the private entity,
610 including balance sheets and financial statements, that are not generally available to the public through
611 regulatory disclosure or otherwise; or ~~(iii)~~ (ii) other information submitted by the private entity where if
612 such information was made public prior to the execution of an interim agreement or a comprehensive
613 agreement, the financial interest or bargaining position of the public or private entity would be adversely
614 affected. In order for the information specified in clauses (i), and (ii), ~~and (iii)~~ to be excluded from the
615 provisions of this chapter, the private entity shall make a written request to the responsible public entity:

- 616 (1) Invoking such exclusion upon submission of the data or other materials for which protection
617 from disclosure is sought;
- 618 (2) Identifying with specificity the data or other materials for which protection is sought; and
- 619 (3) Stating the reasons why protection is necessary.

620 The responsible public entity shall determine whether the requested exclusion from disclosure is
621 necessary to protect the ~~trade secrets or~~ financial information of the private entity. To protect other
622 information submitted by the private entity from disclosure, the responsible public entity shall determine
623 whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement
624 would adversely affect the financial interest or bargaining position of the public or private entity. The
625 responsible public entity shall make a written determination of the nature and scope of the protection to
626 be afforded by the responsible public entity under this subdivision. Once a written determination is made
627 by the responsible public entity, the information afforded protection under this subdivision shall
628 continue to be protected from disclosure when in the possession of any affected jurisdiction or affected
629 local jurisdiction.

630 Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed
631 to authorize the withholding of (a) procurement records as required by § 33.2-1820 or 56-575.17; (b)
632 information concerning the terms and conditions of any interim or comprehensive agreement, service
633 contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity

634 and the private entity; (c) information concerning the terms and conditions of any financing arrangement
635 that involves the use of any public funds; or (d) information concerning the performance of any private
636 entity developing or operating a qualifying transportation facility or a qualifying project.

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

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

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

657 In order for ~~trade secrets or~~ confidential proprietary information to be excluded from the
658 provisions of this chapter, the bidder, applicant, or franchisee shall (a) invoke such exclusion upon
659 submission of the data or other materials for which protection from disclosure is sought, (b) identify the

660 data or other materials for which protection is sought, and (c) state the reason why protection is
661 necessary.

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

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

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

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

673 17. Information relating to a grant or loan application, or accompanying a grant or loan
674 application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-
675 2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to
676 Chapter 5.3 (§ 32.1-162.23 et seq.) of Title 32.1 if disclosure of such information would (i) reveal
677 proprietary business or research-related information produced or collected by the applicant in the
678 conduct of or as a result of study or research on medical, rehabilitative, scientific, technical,
679 technological, or scholarly issues, when such information has not been publicly released, published,
680 copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

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

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

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

690 19. Confidential proprietary information ~~and trade secrets~~ developed by or for a local authority
691 created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to
692 provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of
693 Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive
694 position of the authority, except that information required to be maintained in accordance with § 15.2-
695 2160 shall be released.

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

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

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

713 ~~In order for the information specified in this subdivision to be excluded from the provisions of~~
714 ~~this chapter, the private or nongovernmental entity shall make a written request to the State Inspector~~

715 ~~General:~~

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

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

719 ~~c. Stating the reasons why protection is necessary.~~

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

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

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

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

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

742 c. Stating the reasons why protection is necessary.

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

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

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

757 In order for the information specified in clauses (a); and (b); ~~and (e)~~ of subdivision ~~24~~ b to be
758 excluded from the provisions of this chapter, the private entity shall make a written request to the
759 Authority:

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

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

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

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

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

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

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

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

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

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

791 28. Records submitted as a grant or loan application, or accompanying a grant or loan
792 application, for an award from the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-
793 3130 et seq.) of Chapter 31 of Title 23.1, to the extent that such records contain proprietary business or

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

798 **3. That the provisions of the first enactment of this act shall become effective on July 1, 2018, and**
799 **the provisions of the second enactment of this act shall become effective on July 1, 2020.**

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