

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3701 and 2.2-3705.6 of the Code of Virginia, relating to the
2 Virginia Freedom of Information Act; definition of trade secret; general exclusion for trade
3 secrets submitted to a public body. **[STAFF DRAFT]**

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

5 **1. That §§ 2.2-3701 and 2.2-3705.6 of the Code of Virginia are amended and reenacted as follows:**

6 **§ 2.2-3701. Definitions.**

7 As used in this chapter, unless the context requires a different meaning:

8 "Closed meeting" means a meeting from which the public is excluded.

9 "Electronic communication" means any audio or combined audio and visual communication
10 method.

11 "Emergency" means an unforeseen circumstance rendering the notice required by this chapter
12 impossible or impracticable and which circumstance requires immediate action.

13 "Information" as used in the exclusions established by §§ 2.2-3705.1 through 2.2-3705.7, means
14 the content within a public record that references a specifically identified subject matter, and shall not be
15 interpreted to require the production of information that is not embodied in a public record.

16 "Meeting" or "meetings" means the meetings including work sessions, when sitting physically,
17 or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as
18 an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the
19 constituent membership, wherever held, with or without minutes being taken, whether or not votes are
20 cast, of any public body. Neither the gathering of employees of a public body nor the gathering or
21 attendance of two or more members of a public body (i) at any place or function where no part of the
22 purpose of such gathering or attendance is the discussion or transaction of any public business, and such
23 gathering or attendance was not called or prearranged with any purpose of discussing or transacting any
24 business of the public body, or (ii) at a public forum, candidate appearance, or debate, the purpose of
25 which is to inform the electorate and not to transact public business or to hold discussions relating to the

26 transaction of public business, even though the performance of the members individually or collectively
27 in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be
28 deemed a "meeting" subject to the provisions of this chapter.

29 "Open meeting" or "public meeting" means a meeting at which the public may be present.

30 "Public body" means any legislative body, authority, board, bureau, commission, district or
31 agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities,
32 towns and counties, municipal councils, governing bodies of counties, school boards and planning
33 commissions; boards of visitors of public institutions of higher education; and other organizations,
34 corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall
35 include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of
36 directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee,
37 subcommittee, or other entity however designated, of the public body created to perform delegated
38 functions of the public body or to advise the public body. It shall not exclude any such committee,
39 subcommittee or entity because it has private sector or citizen members. Corporations organized by the
40 Virginia Retirement System are "public bodies" for purposes of this chapter.

41 For the purposes of the provisions of this chapter applicable to access to public records,
42 constitutional officers and private police departments as defined in § 9.1-101 shall be considered public
43 bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose
44 public records as other custodians of public records.

45 "Public records" means all writings and recordings that consist of letters, words or numbers, or
46 their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic
47 impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data
48 compilation, however stored, and regardless of physical form or characteristics, prepared or owned by,
49 or in the possession of a public body or its officers, employees or agents in the transaction of public
50 business. Records that are not prepared for or used in the transaction of public business are not public
51 records.

52 "Regional public body" means a unit of government organized as provided by law within defined
53 boundaries, as determined by the General Assembly, whose members are appointed by the participating
54 local governing bodies, and such unit includes two or more counties or cities.

55 "Scholastic records" means those records containing information directly related to a student or
56 an applicant for admission and maintained by a public body that is an educational agency or institution
57 or by a person acting for such agency or institution.

58 "Trade secret" means the same as that term is defined in the Uniform Trade Secrets Act (§59.1-
59 336 et seq.).

60 **§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.**

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

65 1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-
66 132.4 or 62.1-134.1.

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

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

75 4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-
76 239 et seq.), as such Act existed prior to July 1, 1992.

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

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

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

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

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

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

105 11. a. Memoranda, staff evaluations, or other information prepared by the responsible public
106 entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of
107 proposals filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-
108 Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where (i) if such
109 information was made public prior to or after the execution of an interim or a comprehensive agreement,
110 § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public
111 entity would be adversely affected and (ii) the basis for the determination required in clause (i) is
112 documented in writing by the responsible public entity; and

113 b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or
114 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§
115 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1
116 et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity as defined in
117 the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial information of the private entity,
118 including balance sheets and financial statements, that are not generally available to the public through
119 regulatory disclosure or otherwise; or (iii) other information submitted by the private entity where if
120 such information was made public prior to the execution of an interim agreement or a comprehensive
121 agreement, the financial interest or bargaining position of the public or private entity would be adversely
122 affected. In order for the information specified in clauses (i), (ii), and (iii) to be excluded from the
123 provisions of this chapter, the private entity shall make a written request to the responsible public entity:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

181 17. Information relating to a grant or loan application, or accompanying a grant or loan
182 application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-
183 2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to
184 Chapter 5.3 (§ 32.1-162.23 et seq.) of Title 32.1 if disclosure of such information would (i) reveal
185 proprietary business or research-related information produced or collected by the applicant in the

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

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

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

198 19. Confidential proprietary information and trade secrets developed by or for a local authority
199 created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to
200 provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of
201 Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive
202 position of the authority, except that information required to be maintained in accordance with § 15.2-
203 2160 shall be released.

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

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

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

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

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

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

227 c. Stating the reasons why protection is necessary.

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

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

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

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

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, information or other materials for which protection is
249 sought; and

250 c. Stating the reasons why protection is necessary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

298 c. Stating the reasons why protection is necessary.

299 28. Records submitted as a grant or loan application, or accompanying a grant or loan
300 application, for an award from the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-
301 3130 et seq.) of Chapter 31 of Title 23.1, to the extent that such records contain proprietary business or
302 research-related information produced or collected by the applicant in the conduct of or as a result of
303 study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when
304 such information has not been publicly released, published, copyrighted, or patented, if the disclosure of
305 such information would be harmful to the competitive position of the applicant.

306 29. Trade secrets submitted to a public body.

307 In order for the information specified in this subdivision to be excluded from the provisions of
308 this chapter, the submitting entity shall make a written request to the public body:

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

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

312 c. Stating the reasons why protection is necessary.

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

314 **§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.**

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

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

319 1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-
320 132.4 or 62.1-134.1.

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

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

329 4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-
330 239 et seq.), as such Act existed prior to July 1, 1992.

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

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

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

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

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

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

359 11. a. Memoranda, staff evaluations, or other information prepared by the responsible public
360 entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of
361 proposals filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-
362 Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where (i) if such
363 information was made public prior to or after the execution of an interim or a comprehensive agreement,
364 § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public
365 entity would be adversely affected and (ii) the basis for the determination required in clause (i) is
366 documented in writing by the responsible public entity; and

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

369 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1
370 et seq.) if disclosure of such information would reveal (i) ~~trade secrets of the private entity as defined in~~
371 ~~the Uniform Trade Secrets Act (§ 59.1-336 et seq.);~~ (ii) financial information of the private entity,
372 including balance sheets and financial statements, that are not generally available to the public through
373 regulatory disclosure or otherwise; or ~~(iii)~~ (ii) other information submitted by the private entity where if
374 such information was made public prior to the execution of an interim agreement or a comprehensive
375 agreement, the financial interest or bargaining position of the public or private entity would be adversely
376 affected. In order for the information specified in clauses (i), and (ii), ~~and (iii)~~ to be excluded from the
377 provisions of this chapter, the private entity shall make a written request to the responsible public entity:

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

382 The responsible public entity shall determine whether the requested exclusion from disclosure is
383 necessary to protect the ~~trade secrets or~~ financial information of the private entity. To protect other
384 information submitted by the private entity from disclosure, the responsible public entity shall determine
385 whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement
386 would adversely affect the financial interest or bargaining position of the public or private entity. The
387 responsible public entity shall make a written determination of the nature and scope of the protection to
388 be afforded by the responsible public entity under this subdivision. Once a written determination is made
389 by the responsible public entity, the information afforded protection under this subdivision shall
390 continue to be protected from disclosure when in the possession of any affected jurisdiction or affected
391 local jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

435 17. Information relating to a grant or loan application, or accompanying a grant or loan
436 application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-
437 2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to
438 Chapter 5.3 (§ 32.1-162.23 et seq.) of Title 32.1 if disclosure of such information would (i) reveal
439 proprietary business or research-related information produced or collected by the applicant in the
440 conduct of or as a result of study or research on medical, rehabilitative, scientific, technical,
441 technological, or scholarly issues, when such information has not been publicly released, published,
442 copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

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

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

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

452 19. Confidential proprietary information ~~and trade secrets~~ developed by or for a local authority
453 created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to
454 provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of
455 Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive
456 position of the authority, except that information required to be maintained in accordance with § 15.2-
457 2160 shall be released.

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

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

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

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

477 ~~General:~~

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

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

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

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

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

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

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

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

504 c. Stating the reasons why protection is necessary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

552 c. Stating the reasons why protection is necessary.

553 28. Records submitted as a grant or loan application, or accompanying a grant or loan
554 application, for an award from the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-
555 3130 et seq.) of Chapter 31 of Title 23.1, to the extent that such records contain proprietary business or

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

560 29. Trade secrets submitted to a public body.

561 In order for the information specified in this subdivision to be excluded from the provisions of
562 this chapter, the submitting entity shall make a written request to the public body:

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

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

566 c. Stating the reasons why protection is necessary.

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

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