

## 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. Information furnished to a public body by a submitting entity that is not a public body to the  
12 extent that:

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

15 (2) The submitting entity furnished the information to the public body (i) voluntarily; (ii) in  
16 compliance with a statute, regulation, or other law of the United States or the Commonwealth; or (iii) as  
17 a required component of a submission made in connection with a public procurement, public financing,  
18 or economic development transaction; and

19 (3) The information that the submitting entity seeks to protect was clearly and specifically  
20 identified by the submitting entity as a trade secret upon submission of such information to the public  
21 body. Such identification shall be deemed a representation by the submitting entity that it has made a  
22 good faith effort to designate as trade secrets only those portions of the submitted information that are  
23 entitled to protection under the Uniform Trade Secrets Act (§ 59.1-336 et seq.).

24 The public body shall determine whether the requested exclusion from disclosure is necessary to  
25 protect the trade secrets of the submitting entity. The public body shall make a written determination of  
26 the nature and scope of the protection to be afforded by it under this subdivision a.

27 b. In the event that a public body, in response to a request under this chapter, denies a request for  
28 such information on the grounds that the requested information has been identified by the submitting  
29 entity as a trade secret and the requester challenges the characterization of the withheld information as a  
30 trade secret, the public body shall notify the submitting entity within two working days of the challenge  
31 made by the requester. If the submitting entity and the requester are unable, after conferring, to reach an  
32 agreement on the proper designation of the material in dispute, or the submitting entity refuses to confer  
33 with the requester, the requester may bring an action under this chapter to require the public body to  
34 produce the requested material and shall name the submitting entity as an additional defendant in the  
35 action. If, as a result of the action, the court requires the public body to produce material that has been  
36 improperly designated as a trade secret, any award of reasonable costs and attorney fees to the requester  
37 pursuant to § 2.2-3713 shall be paid by the submitting entity or the public body, or both, in the  
38 proportion deemed appropriate by the court.

39 c. The provisions of this subdivision 1 shall not be construed to authorize the withholding of  
40 such information where the submitting entity no longer exercises reasonable efforts to maintain the  
41 secrecy of such information or otherwise takes action that would constitute a waiver of the trade secrets  
42 protection provided under the Uniform Trade Secrets Act (§ 59.1-336 et seq.).

43 1a. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-  
44 132.4 or 62.1-134.1.

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

47 3. Proprietary information, voluntarily provided by private business pursuant to a promise of  
48 confidentiality from a public body, used by the public body for business, trade, and tourism development  
49 or retention; and memoranda, working papers, or other information related to businesses that are  
50 considering locating or expanding in Virginia, prepared by a public body, where competition or

51 bargaining is involved and where disclosure of such information would adversely affect the financial  
52 interest of the public body.

53 4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-  
54 239 et seq.), as such Act existed prior to July 1, 1992.

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

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

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

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

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

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

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

83 11. a. Memoranda, staff evaluations, or other information prepared by the responsible public  
84 entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of  
85 proposals filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-  
86 Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where (i) if such  
87 information was made public prior to or after the execution of an interim or a comprehensive agreement,  
88 § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public  
89 entity would be adversely affected and (ii) the basis for the determination required in clause (i) is  
90 documented in writing by the responsible public entity; and

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

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

- 104 (2) Identifying with specificity the data or other materials for which protection is sought; and  
105 (3) Stating the reasons why protection is necessary.

106 The responsible public entity shall determine whether the requested exclusion from disclosure is  
107 necessary to protect the ~~trade secrets or~~ financial information of the private entity. To protect other  
108 information submitted by the private entity from disclosure, the responsible public entity shall determine  
109 whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement  
110 would adversely affect the financial interest or bargaining position of the public or private entity. The  
111 responsible public entity shall make a written determination of the nature and scope of the protection to  
112 be afforded by the responsible public entity under this subdivision. Once a written determination is made  
113 by the responsible public entity, the information afforded protection under this subdivision shall  
114 continue to be protected from disclosure when in the possession of any affected jurisdiction or affected  
115 local jurisdiction.

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

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

128 12. Confidential proprietary information ~~or trade secrets~~, not publicly available, provided by a  
129 private person or entity pursuant to a promise of confidentiality to the Virginia Resources Authority or  
130 to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia

131 Resources Authority where, if such information were made public, the financial interest of the private  
132 person or entity would be adversely affected.

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

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

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

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

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

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

159 17. Information relating to a grant or loan application, or accompanying a grant or loan  
160 application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-  
161 2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to  
162 Chapter 5.3 (§ 32.1-162.23 et seq.) of Title 32.1 if disclosure of such information would (i) reveal  
163 proprietary business or research-related information produced or collected by the applicant in the  
164 conduct of or as a result of study or research on medical, rehabilitative, scientific, technical,  
165 technological, or scholarly issues, when such information has not been publicly released, published,  
166 copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

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

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

176 19. Confidential proprietary information ~~and trade secrets~~ developed by or for a local authority  
177 created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to  
178 provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of  
179 Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive  
180 position of the authority, except that information required to be maintained in accordance with § 15.2-  
181 2160 shall be released.

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

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

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

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

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

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

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

206 ~~The State Inspector General shall determine whether the requested exclusion from disclosure is~~  
207 ~~necessary to protect the trade secrets or financial information of the private entity. The State Inspector~~



208 ~~General shall make a written determination of the nature and scope of the protection to be afforded by it~~  
209 ~~under this subdivision.~~

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

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

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

228 c. Stating the reasons why protection is necessary.

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

233 24. a. Information held by the Commercial Space Flight Authority relating to rate structures or  
234 charges for the use of projects of, the sale of products of, or services rendered by the Authority if

235 disclosure of such information would adversely affect the financial interest or bargaining position of the  
236 Authority or a private entity providing the information to the Authority; or

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

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

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

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

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

250 The Authority shall determine whether the requested exclusion from disclosure is necessary to  
251 protect the ~~trade secrets or~~ financial information of the private entity. To protect other information  
252 submitted by the private entity from disclosure, the Authority shall determine whether public disclosure  
253 would adversely affect the financial interest or bargaining position of the Authority or private entity. The  
254 Authority shall make a written determination of the nature and scope of the protection to be afforded by  
255 it under this subdivision.

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

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

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

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

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

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

276 c. Stating the reasons why protection is necessary.

277 28. Records submitted as a grant or loan application, or accompanying a grant or loan  
278 application, for an award from the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-  
279 3130 et seq.) of Chapter 31 of Title 23.1, to the extent that such records contain proprietary business or  
280 research-related information produced or collected by the applicant in the conduct of or as a result of  
281 study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when  
282 such information has not been publicly released, published, copyrighted, or patented, if the disclosure of  
283 such information would be harmful to the competitive position of the applicant.

284 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

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

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

288 specific public officers, appointees, or employees of any public body; and evaluation of performance of  
289 departments or schools of public institutions of higher education where such evaluation will necessarily  
290 involve discussion of the performance of specific individuals. Any teacher shall be permitted to be  
291 present during a closed meeting in which there is a discussion or consideration of a disciplinary matter  
292 that involves the teacher and some student and the student involved in the matter is present, provided the  
293 teacher makes a written request to be present to the presiding officer of the appropriate board. Nothing  
294 in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body  
295 or an elected school board to discuss compensation matters that affect the membership of such body or  
296 board collectively.

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

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

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

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

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

314 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to  
315 actual or probable litigation, where such consultation or briefing in open meeting would adversely affect  
316 the negotiating or litigating posture of the public body; and consultation with legal counsel employed or  
317 retained by a public body regarding specific legal matters requiring the provision of legal advice by such  
318 counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been  
319 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe  
320 will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit  
321 the closure of a meeting merely because an attorney representing the public body is in attendance or is  
322 consulted on a matter.

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

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

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

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

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

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

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

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

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

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

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

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

369 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific  
370 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-  
371 enforcement or emergency service officials concerning actions taken to respond to such matters or a  
372 related threat to public safety; discussion of information excluded from this chapter pursuant to  
373 subdivision 3 or 4 of § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of  
374 any person or the security of any facility, building, structure, information technology system, or software  
375 program; or discussion of reports or plans related to the security of any governmental facility, building  
376 or structure, or the safety of persons using such facility, building or structure.

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

391 21. Those portions of meetings in which individual child death cases are discussed by the State  
392 Child Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which  
393 individual child death cases are discussed by a regional or local child fatality review team established

394 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by  
395 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in  
396 which individual adult death cases are discussed by the state Adult Fatality Review Team established  
397 pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are  
398 discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

399 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern  
400 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any  
401 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern  
402 Virginia Medical School, as the case may be, have been delegated, in which there is discussed  
403 proprietary, business-related information pertaining to the operations of the University of Virginia  
404 Medical Center or Eastern Virginia Medical School, as the case may be, including business development  
405 or marketing strategies and activities with existing or future joint venturers, partners, or other parties  
406 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case  
407 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such  
408 information would adversely affect the competitive position of the Medical Center or Eastern Virginia  
409 Medical School, as the case may be.

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



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

423 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein  
424 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees  
425 by or on behalf of individuals who have requested information about, applied for, or entered into prepaid  
426 tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title  
427 23.1 is discussed.

428 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee  
429 created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-  
430 336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of  
431 wireless E-911 service.

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

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

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

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

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

454 32. [Expired.]

455 33. Discussion or consideration of confidential proprietary information and trade secrets  
456 excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6. However, the exemption  
457 provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act  
458 (§ 15.2-7200 et seq.).

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

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

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

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

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

474 39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System  
475 acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-  
476 124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia  
477 College Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's  
478 Investment Advisory Committee appointed pursuant to § 23.1-702 of information excluded from this  
479 chapter pursuant to subdivision 25 of § 2.2-3705.7.

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

482 41. Discussion or consideration by the Board of Education of information relating to the denial,  
483 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of §  
484 2.2-3705.3.

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

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

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

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

497 46. Discussion or consideration of personal and proprietary information that are excluded from  
498 the provisions of this chapter pursuant to (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of §

499 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records that contain  
500 information that has been certified for release by the person who is the subject of the information or  
501 transformed into a statistical or aggregate form that does not allow identification of the person who  
502 supplied, or is the subject of, the information.

503 47. (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the Virginia  
504 Alcoholic Beverage Control Authority of information excluded from this chapter pursuant to subdivision  
505 1 of § 2.2-3705.3 or subdivision 34 of § 2.2-3705.7.

506 48. Discussion or consideration of grant or loan application records excluded from this chapter  
507 pursuant to subdivision 28 of § 2.2-3705.6 related to the submission of an application for an award from  
508 the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title  
509 23.1.

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

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

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

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

523 E. This section shall not be construed to (i) require the disclosure of any contract between the  
524 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§  
525 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to

**526** the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered  
**527** to issue industrial revenue bonds by general or special law, to identify a business or industry to which  
**528** subdivision A 5 applies. However, such business or industry shall be identified as a matter of public  
**529** record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such  
**530** bonds.

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