

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3705.6, 2.2-3711, and 2.2-3713 of the Code of Virginia, relating to
2 the Virginia Freedom of Information Act; general exclusion for trade secrets submitted to a
3 public body.

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

5 **1. That §§ 2.2-3705.6, 2.2-3711, and 2.2-3713 of the Code of Virginia are amended and reenacted**
6 **as follows:**

7 **§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.**

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

12 1. Information furnished to a public body by a submitting entity that qualifies as a trade secret of
13 the submitting entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.). In order for such
14 trade secret information to be excluded from the provisions of this subdivision, the submitting entity
15 shall make a written request to the public body (i) invoking such exclusion upon submission of the trade
16 secret information for which protection from disclosure is sought, (ii) identifying with specificity the
17 trade secret information for which protection is sought, and (iii) stating the reasons why protection is
18 necessary. The public body may determine whether the requested exclusion from disclosure is necessary
19 to protect the trade secrets of the submitting entity under this subdivision.

20 If a public body withholds such information pursuant to this subdivision and the requester brings
21 an action under this chapter to challenge such withholding, the requester may name the submitting entity
22 or its successor in interest as an additional defendant in the action. If, as a result of the action, the court
23 requires the public body to produce such information because it was improperly withheld pursuant to
24 this subdivision as a trade secret, any award of reasonable costs and attorney fees to the requester

25 pursuant to § 2.2-3713 shall be paid by the submitting entity or the public body, or both, in the
26 proportion deemed appropriate by the court.

27 The provisions of this subdivision shall not be construed to authorize the withholding of such
28 information that no longer meets the definition of a trade secret under the Uniform Trade Secrets Act.

29 1a. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-
30 132.4 or 62.1-134.1.

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

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

39 4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-
40 239 et seq.), as such Act existed prior to July 1, 1992.

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

43 6. Confidential financial statements, balance sheets, ~~trade secrets~~, and revenue and cost
44 projections provided to the Department of Rail and Public Transportation, provided that such
45 information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce
46 Act or other laws administered by the Surface Transportation Board or the Federal Railroad
47 Administration with respect to data provided in confidence to the Surface Transportation Board and the
48 Federal Railroad Administration.

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

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

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

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

69 11. a. Memoranda, staff evaluations, or other information prepared by the responsible public
70 entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of
71 proposals filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-
72 Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where (i) if such
73 information was made public prior to or after the execution of an interim or a comprehensive agreement,
74 § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public
75 entity would be adversely affected and (ii) the basis for the determination required in clause (i) is
76 documented in writing by the responsible public entity; and

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

79 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1
80 et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity as defined in
81 the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial information of the private entity,
82 including balance sheets and financial statements, that are not generally available to the public through
83 regulatory disclosure or otherwise; or (iii) other information submitted by the private entity where if
84 such information was made public prior to the execution of an interim agreement or a comprehensive
85 agreement, the financial interest or bargaining position of the public or private entity would be adversely
86 affected. In order for the information specified in clauses (i), (ii), and (iii) to be excluded from the
87 provisions of this chapter, the private entity shall make a written request to the responsible public entity:

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

92 The responsible public entity shall determine whether the requested exclusion from disclosure is
93 necessary to protect the trade secrets under this subdivision or financial information of the private entity.
94 To protect other information submitted by the private entity from disclosure, the responsible public
95 entity shall determine whether public disclosure prior to the execution of an interim agreement or a
96 comprehensive agreement would adversely affect the financial interest or bargaining position of the
97 public or private entity. The responsible public entity shall make a written determination of the nature
98 and scope of the protection to be afforded by the responsible public entity under this subdivision. Once a
99 written determination is made by the responsible public entity, the information afforded protection under
100 this subdivision shall continue to be protected from disclosure when in the possession of any affected
101 jurisdiction or affected local jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

153 ~~18.-17.~~ Confidential proprietary information and trade secrets developed and held by a local
154 public body (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable
155 television services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2 if
156 disclosure of such information would be harmful to the competitive position of the locality.

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

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

162 ~~19.~~ 18. Confidential proprietary information and trade secrets developed by or for a local
163 authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et
164 seq.) to provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.)
165 of Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive
166 position of the authority, except that information required to be maintained in accordance with § 15.2-
167 2160 shall be released.

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

177 ~~21.~~ 20. Information of a proprietary or confidential nature disclosed by a carrier to the State
178 Health Commissioner pursuant to §§ 32.1-276.5:1 and 32.1-276.7:1.

179 ~~22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including,~~
180 ~~but not limited to, financial~~ 21. Financial information, including balance sheets and financial statements,
181 that ~~are~~ is not generally available to the public through regulatory disclosure or otherwise, and revenue
182 and cost projections supplied by a private or nongovernmental entity to the State Inspector General for
183 the purpose of an audit, special investigation, or any study requested by the Office of the State Inspector
184 General in accordance with law.

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

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

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

196 ~~23.~~ 22. Information relating to a grant application, or accompanying a grant application,
197 submitted to the Tobacco Region Revitalization Commission that would (i) reveal (a) ~~trade secrets as~~
198 ~~defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.),~~ (b) financial information of a grant
199 applicant that is not a public body, including balance sheets and financial statements, that ~~are~~ is not
200 generally available to the public through regulatory disclosure or otherwise, or ~~(e)~~ (b) research-related
201 information produced or collected by the applicant in the conduct of or as a result of study or research
202 on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information
203 has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the
204 competitive position of the applicant; and memoranda, staff evaluations, or other information prepared
205 by the Commission or its staff exclusively for the evaluation of grant applications. The exclusion
206 provided by this subdivision shall apply to grants that are consistent with the powers of and in
207 furtherance of the performance of the duties of the Commission pursuant to § 3.2-3103.

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

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

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

214 c. Stating the reasons why protection is necessary.

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

219 ~~24.~~23. a. Information held by the Commercial Space Flight Authority relating to rate structures
220 or charges for the use of projects of, the sale of products of, or services rendered by the Authority if
221 disclosure of such information would adversely affect the financial interest or bargaining position of the
222 Authority or a private entity providing the information to the Authority; or

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

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

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

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

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

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

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

242 ~~25-24.~~ Information of a proprietary nature furnished by an agricultural landowner or operator to
243 the Department of Conservation and Recreation, the Department of Environmental Quality, the
244 Department of Agriculture and Consumer Services, or any political subdivision, agency, or board of the
245 Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when required as part
246 of a state or federal regulatory enforcement action.

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

253 ~~27-25.~~ Information of a proprietary nature furnished by a licensed public-use airport to the
254 Department of Aviation for funding from programs administered by the Department of Aviation or the
255 Virginia Aviation Board, where if such information was made public, the financial interest of the public-
256 use airport would be adversely affected.

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

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

263 ~~28-26.~~ Records submitted as a grant or loan application, or accompanying a grant or loan
264 application, for an award from the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-
265 3130 et seq.) of Chapter 31 of Title 23.1, to the extent that such records contain proprietary business or

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

270 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

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

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

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

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

- 293 4. The protection of the privacy of individuals in personal matters not related to public business.
- 294 5. Discussion concerning a prospective business or industry or the expansion of an existing
295 business or industry where no previous announcement has been made of the business' or industry's
296 interest in locating or expanding its facilities in the community.
- 297 6. Discussion or consideration of the investment of public funds where competition or bargaining
298 is involved, where, if made public initially, the financial interest of the governmental unit would be
299 adversely affected.
- 300 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to
301 actual or probable litigation, where such consultation or briefing in open meeting would adversely affect
302 the negotiating or litigating posture of the public body; and consultation with legal counsel employed or
303 retained by a public body regarding specific legal matters requiring the provision of legal advice by such
304 counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been
305 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe
306 will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit
307 the closure of a meeting merely because an attorney representing the public body is in attendance or is
308 consulted on a matter.
- 309 8. In the case of boards of visitors of public institutions of higher education, discussion or
310 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts
311 for services or work to be performed by such institution. However, the terms and conditions of any such
312 gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign
313 person and accepted by a public institution of higher education in Virginia shall be subject to public
314 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
315 (i) "foreign government" means any government other than the United States government or the
316 government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity
317 created under the laws of the United States or of any state thereof if a majority of the ownership of the
318 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
319 membership of any such entity is composed of foreign persons or foreign legal entities, or any legal

320 entity created under the laws of a foreign government; and (iii) "foreign person" means any individual
321 who is not a citizen or national of the United States or a trust territory or protectorate thereof.

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

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

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

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

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

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

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

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

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

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

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

363 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-
364 124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of
365 the University of Virginia, acting pursuant to § 23.1-2210, or by the Board of the Virginia College
366 Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition, holding or disposition of a
367 security or other ownership interest in an entity, where such security or ownership interest is not traded
368 on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns
369 confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the
370 retirement system or by the Virginia College Savings Plan or provided to the retirement system or the
371 Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership
372 interest or the future financial performance of the entity, and (ii) would have an adverse effect on the
373 value of the investment to be acquired, held or disposed of by the retirement system, the Rector and

374 Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision
375 shall be construed to prevent the disclosure of information relating to the identity of any investment
376 held, the amount invested or the present value of such investment.

377 21. Those portions of meetings in which individual child death cases are discussed by the State
378 Child Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which
379 individual child death cases are discussed by a regional or local child fatality review team established
380 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by
381 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in
382 which individual adult death cases are discussed by the state Adult Fatality Review Team established
383 pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are
384 discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

385 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern
386 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
387 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
388 Virginia Medical School, as the case may be, have been delegated, in which there is discussed
389 proprietary, business-related information pertaining to the operations of the University of Virginia
390 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
391 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
392 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
393 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
394 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
395 Medical School, as the case may be.

396 23. In the case of the Virginia Commonwealth University Health System Authority, discussion
397 or consideration of any of the following: the acquisition or disposition of real or personal property where
398 disclosure would adversely affect the bargaining position or negotiating strategy of the Authority;
399 operational plans that could affect the value of such property, real or personal, owned or desirable for
400 ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and

401 contracts for services or work to be performed by the Authority; marketing or operational strategies
402 where disclosure of such strategies would adversely affect the competitive position of the Authority;
403 members of its medical and teaching staffs and qualifications for appointments thereto; and
404 qualifications or evaluations of other employees. This exclusion shall also apply when the foregoing
405 discussions occur at a meeting of the Virginia Commonwealth University Board of Visitors.

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

409 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
410 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees
411 by or on behalf of individuals who have requested information about, applied for, or entered into prepaid
412 tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title
413 23.1 is discussed.

414 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee
415 created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-
416 336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of
417 wireless E-911 service.

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

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

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

432 30. Discussion or consideration of grant or loan application information excluded from this
433 chapter pursuant to subdivision ~~17~~ 16 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board
434 or (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology
435 Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment
436 Authority.

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

440 32. [Expired.]

441 33. Discussion or consideration of confidential proprietary information and trade secrets
442 excluded from this chapter pursuant to subdivision ~~18~~ 17 of § 2.2-3705.6. However, the exemption
443 provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act
444 (§ 15.2-7200 et seq.).

445 34. Discussion or consideration by a local authority created in accordance with the Virginia
446 Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and
447 trade secrets excluded from this chapter pursuant to subdivision ~~19~~ 18 of § 2.2-3705.6.

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

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

453 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program
454 Awards Committee of information or confidential matters excluded from this chapter pursuant to

455 subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual
456 maximum scholarship award, review and consider scholarship applications and requests for scholarship
457 award renewal, and cancel, rescind, or recover scholarship awards.

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

460 39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System
461 acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-
462 124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia
463 College Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's
464 Investment Advisory Committee appointed pursuant to § 23.1-702 of information excluded from this
465 chapter pursuant to subdivision 25 of § 2.2-3705.7.

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

468 41. Discussion or consideration by the Board of Education of information relating to the denial,
469 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of §
470 2.2-3705.3.

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

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

479 44. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of
480 information excluded from this chapter pursuant to subdivision ~~23~~ 22 of § 2.2-3705.6.

481 45. Discussion or consideration by the board of directors of the Commercial Space Flight
482 Authority of information excluded from this chapter pursuant to subdivision ~~24~~ 23 of § 2.2-3705.6.

483 46. Discussion or consideration of personal and proprietary information that are excluded from
484 the provisions of this chapter pursuant to (i) subdivision ~~25~~ 24 of § 2.2-3705.6 or (ii) subsection E of §
485 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records that contain
486 information that has been certified for release by the person who is the subject of the information or
487 transformed into a statistical or aggregate form that does not allow identification of the person who
488 supplied, or is the subject of, the information.

489 47. (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the Virginia
490 Alcoholic Beverage Control Authority of information excluded from this chapter pursuant to subdivision
491 1 of § 2.2-3705.3 or subdivision 34 of § 2.2-3705.7.

492 48. Discussion or consideration of grant or loan application records excluded from this chapter
493 pursuant to subdivision ~~28~~ 26 of § 2.2-3705.6 related to the submission of an application for an award
494 from the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of
495 Title 23.1.

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

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

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

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

509 E. This section shall not be construed to (i) require the disclosure of any contract between the
510 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§
511 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to
512 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered
513 to issue industrial revenue bonds by general or special law, to identify a business or industry to which
514 subdivision A 5 applies. However, such business or industry shall be identified as a matter of public
515 record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such
516 bonds.

517 **§ 2.2-3713. Proceedings for enforcement of chapter.**

518 A. Any person, including the attorney for the Commonwealth acting in his official or individual
519 capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights
520 and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good
521 cause. Such petition may be brought in the name of the person notwithstanding that a request for public
522 records was made by the person's attorney in his representative capacity. Venue for the petition shall be
523 addressed as follows:

524 1. In a case involving a local public body, to the general district court or circuit court of the
525 county or city from which the public body has been elected or appointed to serve and in which such
526 rights and privileges were so denied;

527 2. In a case involving a regional public body, to the general district or circuit court of the county
528 or city where the principal business office of such body is located; and

529 3. In a case involving a board, bureau, commission, authority, district, institution, or agency of
530 the state government, including a public institution of higher education, or a standing or other committee
531 of the General Assembly, to the general district court or the circuit court of the residence of the
532 aggrieved party or of the City of Richmond.

533 B. In any action brought before a general district court, a corporate petitioner may appear
534 through its officer, director or managing agent without the assistance of counsel, notwithstanding any
535 provision of law or Rule of the Supreme Court of Virginia to the contrary.

536 C. Notwithstanding the provisions of § 8.01-644, the petition for mandamus or injunction shall
537 be heard within seven days of the date when the same is made, provided the party against whom the
538 petition is brought has received a copy of the petition at least three working days prior to filing. The
539 hearing on any petition made outside of the regular terms of the circuit court of a locality that is included
540 in a judicial circuit with another locality or localities shall be given precedence on the docket of such
541 court over all cases that are not otherwise given precedence by law.

542 D. The petition shall allege with reasonable specificity the circumstances of the denial of the
543 rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges
544 conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the
545 denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover
546 reasonable costs, including costs and reasonable fees for expert witnesses, and attorneys' fees from the
547 public body if the petitioner substantially prevails on the merits of the case, unless special circumstances
548 would make an award unjust. In making this determination, a court may consider, among other things,
549 the reliance of a public body on an opinion of the Attorney General or a decision of a court that
550 substantially supports the public body's position. The court may apportion any such award of reasonable
551 costs and attorney fees in accordance with the provisions of subdivision 1 of § 2.2-3705.6.

552 E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of
553 proof to establish an exclusion by a preponderance of the evidence. No court shall be required to accord
554 any weight to the determination of a public body as to whether an exclusion applies. Any failure by a
555 public body to follow the procedures established by this chapter shall be presumed to be a violation of
556 this chapter.

557 F. Failure by any person to request and receive notice of the time and place of meetings as
558 provided in § 2.2-3707 shall not preclude any person from enforcing his rights and privileges conferred
559 by this chapter.

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