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SENATE BILL NO. 681

Offered January 18, 2002

A BILL to amend and reenact § 2.2-3705 of the Code of Virginia and to amend the Code of Virginia by adding in Title 56 a chapter numbered 22.1, consisting of sections numbered 56-575.1 through 56-575.16, relating to the Public-Private Education Facilities and Infrastructure Act of 2002.

Patrons—Stosch, Blevins, Bolling, Chichester, Hanger, Hawkins, Lambert, Miller, K.G., Mims, Newman, Norment, Potts, Puckett, Puller, Quayle, Rerras, Reynolds, Ruff, Stolle, Ticer, Trumbo, Wagner, Wampler, Watkins and Williams; Delegates: Abbitt, Albo, Almand, Armstrong, Athey, Barlow, Black, Bolvin, Broman, Bryant, Byron, Callahan, Carrico, Cosgrove, Cox, Devolites, Dillard, Drake, Dudley, Gear, Griffith, Hamilton, Hargrove, Hogan, Howell, Hurt, Ingram, Janis, Jones, S.C., Kilgore, Landes, Lingamfelter, Marrs, Marshall, D.W., May, McDougle, McQuigg, Morgan, Nixon, Nutter, O'Bannon, O'Brien, Oder, Orrock, Phillips, Purkey, Putney, Rapp, Reese, Reid, Rollison, Rust, Saxman, Sears, Sherwood, Suit, Tata, Thomas, Wardrup, Ware and Weatherholtz

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3705 of the Code of Virginia is amended and reenacted and the Code of Virginia is amended by adding in Title 56 a chapter numbered 22.1, consisting of sections numbered 56-575.1 through 56-575.16, as follows:

§ 2.2-3705. Exclusions to application of chapter.

A. The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Confidential records of all investigations of applications for licenses and permits, and all licensees and permittees made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, or the Charitable Gaming Commission.

2. State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § 58.1-3.

3. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. However, no student shall have access to (i) financial records of a parent or guardian or (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, which are in the sole possession of the maker thereof and that are not accessible or revealed to any other person except a substitute.

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of eighteen years. For scholastic records of students under the age of eighteen years, the right of access may be asserted only by his legal guardian or parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic records of students who are emancipated or attending a state-supported institution of higher education, the right of access may be asserted by the student.

Any person who is the subject of any scholastic record and who is eighteen years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

4. Personnel records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of any personnel record and who is eighteen years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

5. Medical and mental records, except that such records may be personally reviewed by the subject person or a physician of the subject person's choice. However, the subject person's mental records may not be personally reviewed by such person when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being.

Where the person who is the subject of medical records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the medical records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other

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52 persons so confined need to be protected. Medical records shall only be reviewed and shall not be
53 copied by such administrator or chief medical officer. The information in the medical records of a
54 person so confined shall continue to be confidential and shall not be disclosed by the administrator or
55 chief medical officer of the facility to any person except the subject or except as provided by law.

56 For the purposes of this chapter, statistical summaries of incidents and statistical data concerning
57 patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental
58 Retardation and Substance Abuse Services shall be open to inspection and copying as provided in
59 § 2.2-3704. No such summaries or data shall include any patient-identifying information. Where the
60 person who is the subject of medical and mental records is under the age of eighteen, his right of access
61 may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's
62 parental rights have been terminated or a court of competent jurisdiction has restricted or denied such
63 access. In instances where the person who is the subject thereof is an emancipated minor or a student in
64 a public institution of higher education, the right of access may be asserted by the subject person.

65 6. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the
66 Attorney General; the members of the General Assembly or the Division of Legislative Services; the
67 mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or
68 other chief executive officer of any public institution of higher education in Virginia. However, no
69 record which is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the
70 fact that it has been attached to or incorporated within any working paper or correspondence.

71 As used in this subdivision:

72 "Working papers" means those records prepared by or for an above-named public official for his
73 personal or deliberative use.

74 "Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet
75 Secretaries, and the Director of the Virginia Liaison Office; and those individuals to whom the Governor
76 has delegated his authority pursuant to § 2.2-104.

77 7. Written advice of legal counsel to state, regional or local public bodies or public officials and any
78 other records protected by the attorney-client privilege.

79 8. Legal memoranda and other work product compiled specifically for use in litigation or for use in
80 an active administrative investigation concerning a matter that is properly the subject of a closed
81 meeting under § 2.2-3711.

82 9. Confidential letters and statements of recommendation placed in the records of educational
83 agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an
84 application for employment, or (iii) receipt of an honor or honorary recognition.

85 10. Library records that can be used to identify both (i) any library patron who has borrowed
86 material from a library and (ii) the material such patron borrowed.

87 11. Any test or examination used, administered or prepared by any public body for purposes of
88 evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's
89 qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license
90 or certificate issued by a public body.

91 As used in this subdivision, "test or examination" shall include (i) any scoring key for any such test
92 or examination and (ii) any other document that would jeopardize the security of the test or
93 examination. Nothing contained in this subdivision shall prohibit the release of test scores or results as
94 provided by law, or limit access to individual records as provided by law. However, the subject of such
95 employment tests shall be entitled to review and inspect all records relative to his performance on such
96 employment tests.

97 When, in the reasonable opinion of such public body, any such test or examination no longer has any
98 potential for future use, and the security of future tests or examinations will not be jeopardized, the test
99 or examination shall be made available to the public. However, minimum competency tests administered
100 to public school children shall be made available to the public contemporaneously with statewide release
101 of the scores of those taking such tests, but in no event shall such tests be made available to the public
102 later than six months after the administration of such tests.

103 12. Applications for admission to examinations or for licensure and scoring records maintained by
104 the Department of Health Professions or any board in that department on individual licensees or
105 applicants. However, such material may be made available during normal working hours for copying, at
106 the requester's expense, by the individual who is the subject thereof, in the offices of the Department of
107 Health Professions or in the offices of any health regulatory board, whichever may possess the material.

108 13. Records of active investigations being conducted by the Department of Health Professions or by
109 any health regulatory board in the Commonwealth.

110 14. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to
111 § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be deemed
112 exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

113 15. Reports, documentary evidence and other information as specified in §§ 2.2-706 and 63.1-55.4.

114 16. Proprietary information gathered by or for the Virginia Port Authority as provided in
115 § 62.1-132.4 or § 62.1-134.1.

116 17. Contract cost estimates prepared for the confidential use of the Department of Transportation in
117 awarding contracts for construction or the purchase of goods or services, and records and automated
118 systems prepared for the Department's Bid Analysis and Monitoring Program.

119 18. Vendor proprietary information software that may be in the official records of a public body. For
120 the purpose of this subdivision, "vendor proprietary software" means computer programs acquired from a
121 vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.

122 19. Financial statements not publicly available filed with applications for industrial development
123 financings.

124 20. Data, records or information of a proprietary nature produced or collected by or for faculty or
125 staff of public institutions of higher education, other than the institutions' financial or administrative
126 records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly
127 issues, whether sponsored by the institution alone or in conjunction with a governmental body or a
128 private concern, where such data, records or information has not been publicly released, published,
129 copyrighted or patented.

130 21. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth,
131 whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by
132 the political subdivision.

133 22. Confidential proprietary records, voluntarily provided by private business pursuant to a promise
134 of confidentiality from the Department of Business Assistance, the Virginia Economic Development
135 Partnership, the Virginia Tourism Authority, or local or regional industrial or economic development
136 authorities or organizations, used by the Department, the Partnership, the Authority, or such entities for
137 business, trade and tourism development; and memoranda, working papers or other records related to
138 businesses that are considering locating or expanding in Virginia, prepared by the Partnership, where
139 competition or bargaining is involved and where, if such records are made public, the financial interest
140 of the governmental unit would be adversely affected.

141 23. Information that was filed as confidential under the Toxic Substances Information Act
142 (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

143 24. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis
144 center or a program for battered spouses.

145 25. Computer software developed by or for a state agency, state-supported institution of higher
146 education or political subdivision of the Commonwealth.

147 26. Investigator notes, and other correspondence and information, furnished in confidence with
148 respect to an active investigation of individual employment discrimination complaints made to the
149 Department of Human Resource Management. However, nothing in this section shall prohibit the
150 disclosure of information taken from inactive reports in a form that does not reveal the identity of
151 charging parties, persons supplying the information or other individuals involved in the investigation.

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

154 28. Records of active investigations being conducted by the Department of Medical Assistance
155 Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

156 29. Records and writings furnished by a member of the General Assembly to a meeting of a standing
157 committee, special committee or subcommittee of his house established solely for the purpose of
158 reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of
159 formulating advisory opinions to members on standards of conduct, or both.

160 30. Customer account information of a public utility affiliated with a political subdivision of the
161 Commonwealth, including the customer's name and service address, but excluding the amount of utility
162 service provided and the amount of money paid for such utility service.

163 31. Investigative notes and other correspondence and information furnished in confidence with
164 respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice
165 under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in
166 accordance with the authority specified in § 2.2-2638, or adopted pursuant to § 15.2-965, or adopted
167 prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human
168 relations commissions. However, nothing in this section shall prohibit the distribution of information
169 taken from inactive reports in a form that does not reveal the identity of the parties involved or other
170 persons supplying information.

171 32. Investigative notes; proprietary information not published, copyrighted or patented; information
172 obtained from employee personnel records; personally identifiable information regarding residents,
173 clients or other recipients of services; and other correspondence and information furnished in confidence
174 to the Department of Social Services in connection with an active investigation of an applicant or

licensee pursuant to Chapters 9 (§ 63.1-172 et seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1. However, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

33. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other local government agency concerning persons who have applied for occupancy or who have occupied affordable dwelling units established pursuant to § 15.2-2304 or § 15.2-2305. However, access to one's own information shall not be denied.

34. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if disclosure of them would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions and provisions of the siting agreement.

35. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease.

36. Records containing information on the site specific location of rare, threatened, endangered or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body that has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exemption shall not apply to requests from the owner of the land upon which the resource is located.

37. Records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the State Lottery Department relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such official records have not been publicly released, published, copyrighted or patented. Whether released, published or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

38. Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv) and (v) shall be open to inspection and copying upon completion of the study or investigation.

39. Those portions of engineering and construction drawings and plans submitted for the sole purpose of complying with the Building Code in obtaining a building permit that would identify specific trade secrets or other information the disclosure of which would be harmful to the competitive position of the owner or lessee. However, such information shall be exempt only until the building is completed. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure.

40. Records concerning reserves established in specific claims administered by the Department of the Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-1832 et seq.) of Chapter 18 of this title, or by any county, city, or town.

41. Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

42. Reports and court documents required to be kept confidential pursuant to § 37.1-67.3.

43. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the (i) Auditor of Public Accounts; (ii) Joint Legislative Audit and Review Commission; (iii) Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline; or (iv) committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825. Records of completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless

disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person.

44. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or the expansion of existing clinical health services, acquisition of major medical equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

45. Documentation or other information that describes the design, function, operation or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.

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

47. In the case of corporations organized by the Virginia Retirement System (i) proprietary information provided by, and financial information concerning, coventurers, partners, lessors, lessees, or investors and (ii) records concerning the condition, acquisition, disposition, use, leasing, development, coventuring, or management of real estate, the disclosure of which would have a substantial adverse impact on the value of such real estate or result in a competitive disadvantage to the corporation or subsidiary.

48. Confidential proprietary records related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.

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

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

51. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information.

52. Information required to be provided pursuant to § 54.1-2506.1.

53. Confidential information designated as provided in subsection D of § 2.2-4342 as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

54. All information and records acquired during a review of any child death by the State Child Fatality Review team established pursuant to § 32.1-283.1, during a review of any child death by a local or regional child fatality review team established pursuant to § 32.1-283.2, and all information and records acquired during a review of any death by a family violence fatality review team established pursuant to § 32.1-283.3.

55. Financial, medical, rehabilitative and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

56. Confidential proprietary records that are voluntarily provided by a private entity pursuant to a proposal filed with a public entity under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), pursuant to a promise of confidentiality from the responsible public entity, used by the responsible public entity for purposes related to the development of a qualifying transportation facility; and memoranda, working papers or other records related to proposals filed under the Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure Act of 2002, where, if such records were

made public, the financial interest of the public or private entity involved with such proposal or the process of competition or bargaining would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of this subdivision, the terms "public entity" and "private entity" shall be defined as they are defined in the Public-Private Transportation Act of 1995 or in the *Public-Private Education Facilities and Infrastructure Act of 2002*.

57. Records of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public; or records of emergency service agencies to the extent that such records contain specific tactical plans relating to antiterrorist activity.

58. All records of the University of Virginia or the University of Virginia Medical Center that contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center, including its business development or marketing strategies and its activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would be harmful to the competitive position of the Medical Center.

59. Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to § 32.1-276.4.

60. Records of the Virginia Commonwealth University Health System Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; data, records or information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; and the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and data, records or information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body or a private concern, when such data, records or information have not been publicly released, published, copyrighted or patented.

61. Confidential proprietary information or trade secrets, not publicly available, provided by a private person or entity to the Virginia Resources Authority or to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such information were made public, the financial interest of the private person or entity would be adversely affected, and, after June 30, 1997, where such information was provided pursuant to a promise of confidentiality.

62. Confidential proprietary records that are provided by a franchisee under § 15.2-2108 to its franchising authority pursuant to a promise of confidentiality from the franchising authority that relates to the franchisee's potential provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such records were made public, the competitive advantage or financial interests of the franchisee would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the franchisee shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reason why protection is necessary.

63. Records of the Intervention Program Committee within the Department of Health Professions, to the extent such records may identify any practitioner who may be, or who is actually, impaired to the extent disclosure is prohibited by § 54.1-2517.

64. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 32.1-73.1 et seq.) of Chapter 2 of Title 32.1, to the extent such records contain (i) medical or mental records, or other data identifying individual patients or (ii) proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly released, published,

copyrighted or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

65. Information that would disclose the security aspects of a system safety program plan adopted pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety Oversight agency; and information in the possession of such agency, the release of which would jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway safety.

66. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Charitable Gaming Commission pursuant to subsection E of § 18.2-340.34.

67. Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College Savings Plan or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure or publication of information in a statistical or other form that does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

68. Any record copied, recorded or received by the Commissioner of Health in the course of an examination, investigation or review of a managed care health insurance plan licensee pursuant to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

69. Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security or employee safety of (i) the Virginia Museum of Fine Arts or any of its warehouses; (ii) any government store or warehouse controlled by the Department of Alcoholic Beverage Control; (iii) any courthouse, jail, detention or law-enforcement facility; or (iv) any correctional or juvenile facility or institution under the supervision of the Department of Corrections or the Department of Juvenile Justice.

70. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to §§ 3.1-622 and 3.1-624.

71. Records of the Department of Environmental Quality, the State Water Control Board, State Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.

72. As it pertains to any person, records related to the operation of toll facilities that identify an individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

73. Records of the Department for Rights of Virginians with Disabilities consisting of documentary evidence received or maintained by the Department or its agents in connection with specific complaints or investigations, and records of communications between employees and agents of the Department and its clients or prospective clients concerning specific complaints, investigations or cases. Upon the conclusion of an investigation of a complaint, this exclusion shall no longer apply, but the Department may not at any time release the identity of any complainant or person with mental illness, mental retardation, developmental disabilities or other disability, unless (i) such complainant or person or his legal representative consents in writing to such identification or (ii) such identification is required by court order.

74. Information furnished in confidence to the Department of Employment Dispute Resolution with respect to an investigation, consultation, or mediation under Chapter 10 (§ 2.2-1000 et seq.) of this title, and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

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

76. Records of the State Lottery Department pertaining to (i) the social security number, tax

421 identification number, state sales tax number, home address and telephone number, personal and lottery
422 banking account and transit numbers of a retailer, and financial information regarding the nonlottery
423 operations of specific retail locations, and (ii) individual lottery winners, except that a winner's name,
424 hometown, and amount won shall be disclosed.

425 77. Records, information and statistical registries required to be kept confidential pursuant to
426 §§ 63.1-53 and 63.1-209.

427 B. Neither any provision of this chapter nor any provision of Chapter 38 (§ 2.2-3800 et seq.) of this
428 title shall be construed as denying public access to (i) contracts between a public official and a public
429 body, other than contracts settling public employee employment disputes held confidential as personnel
430 records under subdivision 4. of subsection A; (ii) records of the position, job classification, official
431 salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to any
432 officer, official or employee of a public body; or (iii) the compensation or benefits paid by any
433 corporation organized by the Virginia Retirement System or its officers or employees. The provisions of
434 this subsection, however, shall not require public access to records of the official salaries or rates of pay
435 of public employees whose annual rate of pay is \$10,000 or less.

436 C. No provision of this chapter or Chapter 21 (§ 30-178 et seq.) of Title 30 shall be construed to
437 afford any rights to any person incarcerated in a state, local or federal correctional facility, whether or
438 not such facility is (i) located in the Commonwealth or (ii) operated pursuant to the Corrections Private
439 Management Act (§ 53.1-261 et seq.). However, this subsection shall not be construed to prevent an
440 incarcerated person from exercising his constitutionally protected rights, including, but not limited to, his
441 rights to call for evidence in his favor in a criminal prosecution.

442 CHAPTER 21.1.

443 THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002.

444 § 56-575.1. Definitions.

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

446 *"Affected local jurisdiction" means any county, city or town in which all or a portion of a qualifying*
447 *project is located.*

448 *"Commission" means the State Corporation Commission.*

449 *"Comprehensive agreement" means the comprehensive agreement between the operator and the*
450 *responsible public entity required by § 56-575.9.*

451 *"Lease payment" means any form of payment, including a land lease, by a public entity to the*
452 *operator for the use of a qualifying project.*

453 *"Material default" means any default by the operator in the performance of its duties under*
454 *subsection E of § 56-575.8 that jeopardizes adequate service to the public from a qualifying project.*

455 *"Operator" means the private or other non-governmental entity that is responsible for any and all of*
456 *the stages of a qualifying project, or a portion thereof, including (i) acquisition, (ii) design, (iii)*
457 *construction, (iv) improvement, (v) renovation, (vi) expansion, (vii) equipping, (viii) maintenance and*
458 *(ix) operation.*

459 *"Private entity" means any natural person, corporation, limited liability company, partnership, joint*
460 *venture or other private business entity.*

461 *"Public entity" means the Commonwealth and any agency or authority thereof, any county, city or*
462 *town and any other political subdivision thereof, or any regional entity that serves a public purpose.*

463 *"Qualifying project" means (i) any education facility, including, but not limited to a school building,*
464 *any functionally related and subordinate facility and land to a school building (including any stadium or*
465 *other facility primarily used for school events), and any depreciable property provided for use in a*
466 *school facility that is operated as part of the public school system or as an institution of higher*
467 *education; (ii) any building for principal use by any public entity; (iii) any equipment or improvements*
468 *necessary to enhance public safety and security of buildings to be principally used by a public entity;*
469 *(iv) utility and telecommunications and other communications infrastructure; (v) a recreational facility;*
470 *or (vi) any other facility, or a portion thereof, that serves a public purpose pursuant to this chapter.*

471 *"Responsible public entity" means a public entity that has the power to acquire, design, construct,*
472 *improve, renovate, expand, equip, maintain, or operate the applicable qualifying project.*

473 *"Revenues" means user fees, lease payments, or other service payments generated by a qualifying*
474 *project.*

475 *"Service contract" means a contract entered into between a public entity and the operator pursuant*
476 *to § 56-575.5.*

477 *"Service payments" means payments to the operator of a qualifying project pursuant to a service*
478 *contract.*

479 *"State" means the Commonwealth of Virginia.*

480 *"User fees" mean the rates, fees or other charges imposed by the operator of a qualifying project for*
481 *use of all or a portion of such qualifying project pursuant to the comprehensive agreement pursuant to*
482 *§ 56-575.9.*

§ 56-575.2. Declaration of public purpose.

A. The General Assembly finds that:

1. There is a public need for timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of education facilities and other public infrastructure and government facilities within the Commonwealth that serve a public need and purpose;

2. Such public need may not be wholly satisfied by existing methods of procurement in which qualifying projects are acquired, designed, constructed, improved, renovated, expanded, equipped, maintained, or operated;

3. There are inadequate resources to develop new education facilities and other public infrastructure and government facilities for the benefit of citizens of the Commonwealth, and there is demonstrated evidence that public-private partnerships can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public;

4. Financial incentives exist under state and federal tax provisions that promote public entities to enter into partnerships with private entities to develop qualifying projects; and

5. Authorizing private entities to acquire, design, construct, improve, renovate, expand, equip, maintain, or operate one or more qualifying projects may result in the availability of such projects to the public in a more timely or less costly fashion, thereby serving the public safety, benefit, and welfare.

B. An action under § 56-575.4 shall serve the public purpose of this chapter if such action facilitates the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of qualifying projects.

C. It is the intent of this Act, among other things, to facilitate the bond financing provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 or other similar financing mechanisms, private capital and other funding sources that support the acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of qualifying projects, to the end that financing for qualifying projects be expanded and accelerated to improve and add to the convenience of the public, and such that public and private entities may have the greatest possible flexibility in contracting with each other for the provision of the public services that are the subject of this chapter.

D. This chapter shall be liberally construed in conformity with the purposes hereof.

§ 56-575.3. Prerequisite for operation of a qualifying project.

Any private entity seeking authorization under this chapter to acquire, design, construct, improve, renovate, expand, equip, maintain or operate a qualifying project shall first obtain approval of the responsible public entity under § 56-575.4. Such private entity may initiate the approval process by requesting approval pursuant to subsection A of § 56-575.4 or the responsible public entity may request proposals pursuant to subsection B of § 56-575.4.

§ 56-575.4. Approval of qualifying projects by the responsible public entity.

A. A private entity may request approval of a qualifying project by the responsible public entity. Any such request shall be accompanied by the following material and information unless waived by the responsible public entity:

1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the qualifying project;

2. A description of the qualifying project, including the conceptual design of such facility or facilities or a conceptual plan for the provision of services, and a schedule for the initiation of and completion of the qualifying project to include the proposed major responsibilities and timeline for activities to be performed by both the public and private entity;

3. A statement setting forth the method by which the operator proposes to secure any necessary property interests required for the qualifying project. The statement shall include: (i) the names and addresses, if known, of the current owners of the property needed for the qualifying project, (ii) the nature of the property interests to be acquired, and (iii) any property that the responsible public entity expects it will be requested to condemn;

4. Information relating to the current plans for development of facilities to be used by a public entity that are similar to the qualifying project being proposed by the private entity, if any, of each affected local jurisdiction;

5. A list of all permits and approvals required for the qualifying project from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;

6. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the operator to accommodate such crossings;

7. A statement setting forth the operator's general plans for financing the qualifying project including the sources of the operator's funds;

8. The names and addresses of the persons who may be contacted for further information concerning the request;

544 9. User fees, lease payments, and other service payments over the term of the comprehensive
545 agreement pursuant to § 56-575.9 and the methodology and circumstances for changes to such user fees,
546 lease payments, and other service payments over time; and

547 10. Such additional material and information as the responsible public entity may reasonably
548 request.

549 B. The responsible public entity may request proposals from private entities for the acquisition,
550 design, construction, improvement, renovation, expansion, equipping, maintenance or operation of
551 qualifying projects.

552 C. The responsible public entity may grant approval of the acquisition, design, construction,
553 improvement, renovation, expansion, equipping, maintenance, or operation of the education facility or
554 other public infrastructure and government facility needed by a public entity as a qualifying project if
555 the responsible public entity determines that the project serves the public purpose of this chapter. The
556 responsible public entity may determine that the acquisition, design, construction, improvement,
557 renovation, expansion, equipping, maintenance, or operation of the qualifying project as a qualifying
558 project serves such public purpose if:

559 1. There is a public need for or benefit derived from the qualifying project of the type the private
560 entity proposes as a qualifying project;

561 2. The estimated cost of the qualifying project is reasonable in relation to similar facilities; and

562 3. The private entity's plans will result in the timely acquisition, design, construction, improvement,
563 renovation, expansion, equipping, maintenance, or operation of the qualifying project.

564 In evaluating any request, the responsible public entity may rely upon internal staff reports prepared
565 by personnel familiar with the operation of similar facilities or the advice of outside advisors or
566 consultants having relevant experience.

567 D. The responsible public entity may charge a reasonable fee to cover the costs of processing,
568 reviewing and evaluating the request, including without limitation, reasonable attorney's fees and fees
569 for financial and other necessary advisors or consultants.

570 E. The approval of the responsible public entity shall be subject to the private entity's entering into a
571 comprehensive agreement pursuant to § 56-575.9 with the responsible public entity.

572 F. In connection with its approval of the qualifying project, the responsible public entity shall
573 establish a date for the commencement of activities related to the qualifying project. The responsible
574 public entity may extend such date from time to time.

575 G. The responsible public entity shall take appropriate action to protect confidential and proprietary
576 information provided by the operator pursuant to an agreement under subdivision 56 of § 2.2-3705.

577 § 56-575.5. Service contracts.

578 In addition to any authority otherwise conferred by law, any public entity may contract with an
579 operator for the delivery of services to be provided as part of a qualifying project in exchange for such
580 service payments and other consideration as such public entity may deem appropriate.

581 § 56-575.6. Affected local jurisdictions.

582 A. Any private entity requesting approval from, or submitting a proposal to, a responsible public
583 entity under § 56-575.4 shall notify each affected local jurisdiction by furnishing a copy of its request or
584 proposal to each affected local jurisdiction.

585 B. Each affected local jurisdiction that is not a responsible public entity for the respective qualifying
586 project shall, within sixty days after receiving such notice, submit any comments it may have in writing
587 on the proposed qualifying project to the responsible public entity and indicate whether the facility is
588 compatible with the local comprehensive plan, local infrastructure development plans, the capital
589 improvements budget, or other government spending plan. Such comments shall be given consideration
590 by the responsible public entity prior to entering a comprehensive agreement pursuant to § 56-575.9
591 with a private entity.

592 § 56-575.7. Dedication of public property.

593 Any public entity may dedicate any property interest, including land, improvements, and tangible
594 personal property, that it has for public use in a qualifying project if it finds that so doing will serve
595 the public purpose of this chapter by minimizing the cost of a qualifying project to the public entity or
596 reducing the delivery time of a qualifying project. In connection with such dedication, a public entity
597 may convey any property interest that it has, subject to the conditions imposed by general law, to the
598 operator subject to the provisions of this chapter, for such consideration as such public entity may
599 determine. The aforementioned consideration may include, without limitation, the agreement of the
600 operator to operate the qualifying project.

601 § 56-575.8. Powers and duties of the operator.

602 A. The operator shall have all power allowed by law generally to a private entity having the same
603 form of organization as the operator and shall have the power to acquire, design, construct, improve,
604 renovate, maintain, expand, equip or operate the qualifying project and collect lease payments, impose
605 user fees or enter into service contracts in connection with the use thereof.

606 *B. The operator may own, lease or acquire any other right to use or operate the qualifying project.*
 607 *C. Any financing of the qualifying project may be in such amounts and upon such terms and*
 608 *conditions as may be determined by the operator. Without limiting the generality of the foregoing, the*
 609 *operator may issue debt, equity or other securities or obligations, enter into sale and leaseback*
 610 *transactions and secure any financing with a pledge of, security interest in, or lien on, any or all of its*
 611 *property, including all of its property interests in the qualifying project.*
 612 *D. In operating the qualifying project, the operator may:*
 613 *1. Make classifications according to reasonable categories for assessment of user fees; and*
 614 *2. With the consent of the responsible public entity, make and enforce reasonable rules to the same*
 615 *extent that the responsible public entity may make and enforce rules with respect to similar facilities.*
 616 *E. The operator shall:*
 617 *1. Acquire, design, construct, improve, renovate, expand, equip, maintain, or operate the qualifying*
 618 *project in a manner that is acceptable to the responsible public entity, all in accordance with the*
 619 *provisions of the comprehensive agreement pursuant to § 56-575.9;*
 620 *2. Keep the qualifying project open for use by the members of the public at all times, or as*
 621 *appropriate based upon the use of the facility, after its initial opening upon payment of the applicable*
 622 *user fees, lease payments, or service payments; provided that the qualifying project may be temporarily*
 623 *closed because of emergencies or, with the consent of the responsible public entity, to protect the safety*
 624 *of the public or for reasonable construction or maintenance procedures;*
 625 *3. Maintain, or provide by contract for the maintenance of the qualifying project, if required by the*
 626 *comprehensive agreement;*
 627 *4. Cooperate with the responsible public entity in making best efforts to establish any interconnection*
 628 *with the qualifying project requested by the responsible public entity; and*
 629 *5. Comply with the provisions of the comprehensive agreement and any service contract.*
 630 *F. Nothing shall prohibit an operator of a qualifying project from providing additional services for*
 631 *the qualifying project to public or private entities other than the responsible public entity so long as the*
 632 *provision of additional service does not impair the operator's ability to meet commitments it makes to*
 633 *the responsible public entity pursuant to the comprehensive agreement as provided for in § 56-575.9.*
 634 *§ 56-575.9. Comprehensive agreement.*
 635 *A. Prior to acquiring, designing, constructing, improving, renovating, expanding, equipping,*
 636 *maintaining, or operating the qualifying project, the private entity shall enter into a comprehensive*
 637 *agreement with the responsible public entity. The comprehensive agreement shall provide for:*
 638 *1. Delivery of maintenance, performance and payment bonds or letters of credit in connection with*
 639 *the acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or*
 640 *operation of the qualifying project, in the forms and amounts satisfactory to the responsible public*
 641 *entity;*
 642 *2. Review of plans and specifications for the qualifying project by the responsible public entity and*
 643 *approval by the responsible public entity if the plans and specifications conform to standards acceptable*
 644 *to the responsible public entity. This shall not be construed as requiring the private entity to complete*
 645 *design of a qualifying project prior to the execution of a comprehensive agreement;*
 646 *3. Inspection of the qualifying project by the responsible public entity to ensure that the operator's*
 647 *activities are acceptable to the responsible public entity in accordance with the provisions of the*
 648 *comprehensive agreement;*
 649 *4. Maintenance of a policy or policies of public liability insurance (copies of which shall be filed*
 650 *with the responsible public entity accompanied by proofs of coverage), self-insurance, in form and*
 651 *amount satisfactory to the responsible public entity and reasonably sufficient to insure coverage of tort*
 652 *liability to the public and employees and to enable the continued operation of the qualifying project;*
 653 *5. Monitoring of the practices of the operator by the responsible public entity to ensure that the*
 654 *qualifying project is properly maintained;*
 655 *6. Reimbursement to be paid to the responsible public entity for services provided by the responsible*
 656 *public entity;*
 657 *7. Filing of appropriate financial statements on a periodic basis; and*
 658 *8. Policies and procedures governing the rights and responsibilities of the responsible public entity*
 659 *and the operator in the event the comprehensive agreement is terminated or there is a material default*
 660 *by the operator. Such policies and procedures shall include conditions governing assumption of the*
 661 *duties and responsibilities of the operator by the responsible public entity and the transfer or purchase*
 662 *of property or other interests of the operator by the responsible public entity.*
 663 *B. The comprehensive agreement shall provide for such user fees, lease payments, or service*
 664 *payments as may be established from time to time by agreement of the parties. A copy of any service*
 665 *contract shall be filed with the responsible public entity. In negotiating user fees under this section, the*
 666 *parties shall establish payments or fees that are the same for persons using the facility under like*

667 conditions and that will not materially discourage use of the qualifying project. The execution of the
668 comprehensive agreement or any amendment thereto shall constitute conclusive evidence that the user
669 fees, lease payments, or service payments provided for comply with this chapter. User fees or lease
670 payments established in the comprehensive agreement as a source of revenues may be in addition to, or
671 in lieu of, service payments.

672 C. In the comprehensive agreement, the responsible public entity may agree to make grants or loans
673 to the operator from time to time from amounts received from the federal, state, or local government or
674 any agency or instrumentality thereof.

675 D. The comprehensive agreement shall incorporate the duties of the operator under this chapter and
676 may contain such other terms and conditions that the responsible public entity determines serve the
677 public purpose of this chapter. Without limitation, the comprehensive agreement may contain provisions
678 under which the responsible public entity agrees to provide notice of default and cure rights for the
679 benefit of the operator and the persons specified therein as providing financing for the qualifying
680 project. The comprehensive agreement may contain such other lawful terms and conditions to which the
681 operator and the responsible public entity mutually agree, including, without limitation, provisions
682 regarding unavoidable delays or provisions providing for a loan of public funds to the operator to
683 acquire, design, construct, improve, renovate, expand, equip, maintain or operate one or more qualifying
684 projects. The comprehensive agreement may also contain provisions where the authority and duties of
685 the operator under this chapter shall cease, and the qualifying project is dedicated to the responsible
686 public entity or, if the qualifying project was initially dedicated by an affected local jurisdiction, to such
687 affected local jurisdiction for public use.

688 E. Any changes in the terms of the comprehensive agreement, as may be agreed upon by the parties
689 from time to time, shall be added to the comprehensive agreement by written amendment.

690 § 56-575.10. Federal, state and local assistance.

691 The responsible public entity may take any action to obtain federal, state, or local assistance for a
692 qualifying project that serves the public purpose of this chapter and may enter into any contracts
693 required to receive such assistance. If the responsible public entity is a state agency, any funds received
694 from the state or federal government or any agency or instrumentality thereof shall be subject to
695 appropriation by the General Assembly. The responsible public entity may determine that it serves the
696 public purpose of this chapter for all or any portion of the costs of a qualifying project to be paid,
697 directly or indirectly, from the proceeds of a grant or loan made by the local, state, or federal
698 government or any agency or instrumentality thereof.

699 § 56-575.11. Material default; remedies.

700 A. In the event of a material default by the operator, the responsible public entity may elect to
701 assume the responsibilities and duties of the operator of the qualifying project, and in such case, it shall
702 succeed to all of the right, title and interest in such qualifying project, subject to any liens on revenues
703 previously granted by the operator to any person providing financing thereof.

704 B. Any responsible public entity having the power of condemnation under state law may exercise
705 such power of condemnation to acquire the qualifying project in the event of a material default by the
706 operator. Any person who has provided financing for the qualifying project, and the operator, to the
707 extent of its capital investment, may participate in the condemnation proceedings with the standing of a
708 property owner.

709 C. The responsible public entity may terminate, with cause, the comprehensive agreement and
710 exercise any other rights and remedies that may be available to it at law or in equity.

711 D. The responsible public entity may make or cause to be made any appropriate claims under the
712 maintenance, performance, or payment bonds; or lines of credit required by subsection A. 1. of
713 § 56-575.9.

714 E. In the event the responsible public entity elects to take over a qualifying project pursuant to
715 subsection A, the responsible public entity may acquire, design, construct, improve, renovate, operate,
716 expand, equip, or maintain the qualifying project, impose user fees, impose and collect lease payments
717 for the use thereof and comply with any service contracts as if it were the operator. Any revenues that
718 are subject to a lien shall be collected for the benefit of and paid to secured parties, as their interests
719 may appear, to the extent necessary to satisfy the operator's obligations to secured parties, including the
720 maintenance of reserves. Such liens shall be correspondingly reduced and, when paid off, released.
721 Before any payments to, or for the benefit of, secured parties, the responsible public entity may use
722 revenues to pay current operation and maintenance costs of the qualifying project, including
723 compensation to the responsible public entity for its services in operating and maintaining the qualifying
724 project. The right to receive such payment, if any, shall be considered just compensation for the
725 qualifying project. The full faith and credit of the responsible public entity shall not be pledged to
726 secure any financing of the operator by the election to take over the qualifying project. Assumption of
727 operation of the qualifying project shall not obligate the responsible public entity to pay any obligation
728 of the operator from sources other than revenues.

§ 56-575.12. Condemnation.

At the request of the operator, the responsible public entity may exercise any power of condemnation that it has under law for the purpose of acquiring any lands or estates or interests therein to the extent that the responsible public entity finds that such action serves the public purpose of this chapter. Any amounts to be paid in any such condemnation proceeding shall be paid by the operator.

§ 56-575.13. Utility crossing.

The operator and each public service company, public utility, railroad, and cable television provider, whose facilities are to be crossed or affected shall cooperate fully with the other entity in planning and arranging the manner of the crossing or relocation of the facilities. Any such entity possessing the power of condemnation is hereby expressly granted such powers in connection with the moving or relocation of facilities to be crossed by the qualifying project or that must be relocated to the extent that such moving or relocation is made necessary or desirable by construction of, renovation to, or improvements to the qualifying project, which shall be construed to include construction of, renovation to, or improvements to temporary facilities for the purpose of providing service during the period of construction or improvement. Any amount to be paid for such crossing, construction, moving or relocating of facilities shall be paid for by the operator. Should the operator and any such public service company, public utility, railroad, and cable television provider not be able to agree upon a plan for the crossing or relocation, the Commission may determine the manner in which the crossing or relocation is to be accomplished and any damages due arising out of the crossing or relocation. The Commission may employ expert engineers who shall examine the location and plans for such crossing or relocation, hear any objections and consider modifications, and make a recommendation to the Commission. In such a case, the cost of the experts is to be borne by the operator. Such determination shall be made by the Commission within ninety days of notification by the private entity that the qualifying project will cross utilities subject to the Commission's jurisdiction.

§ 56-575.14. Police powers; violations of law.

All police officers of the Commonwealth and of each affected local jurisdiction shall have the same powers and jurisdiction within the limits of such qualifying project as they have in their respective areas of jurisdiction and such police officers shall have access to the qualifying project at any time for the purpose of exercising such powers and jurisdiction.

§ 56-575.15. Sovereign immunity.

Nothing in this chapter shall be construed as or deemed a waiver of the sovereign immunity of the Commonwealth, any responsible public entity or any affected local jurisdiction or any officer or employee thereof with respect to the participation in, or approval of all or any part of the qualifying project or its operation, including but not limited to interconnection of the qualifying project with any other infrastructure or project. Counties, cities and towns in which a qualifying project is located shall possess sovereign immunity with respect to its construction, design, and operation.

§ 56-575.16. Procurement.

The Virginia Public Procurement Act (§ 2.2-4300 et seq.) and any interpretations, regulations, or guidelines of the Division of Engineering and Buildings of the Department of General Services, including the Capital Outlay Manual and those interpretations, regulations or guidelines developed pursuant to §§ 2.2-1131, 2.2-1132, 2.2-1133, 2.2-1149, and 2.2-1502, except those developed by the Division in accordance with this chapter when the Commonwealth is the responsible public entity, shall not apply to this chapter. However, a responsible public entity may enter into a comprehensive agreement only in accordance with procedures adopted by it that are consistent with those of § 2.2-4301 to the extent such section applies to the procurement of "other than professional services" through competitive negotiation as defined in § 2.2-4301 and subsection B of § 2.2-4310. Such responsible public entities shall not be required to select the proposal with the lowest price offer, but may consider price as one factor in evaluating the proposals received.