

054209836

## SENATE BILL NO. 959

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Commerce and Labor  
on February 7, 2005)

(Patron Prior to Substitute—Senator Wampler)

A *BILL to amend and reenact §§ 2.2-3705.6, 2.2-3711, 15.2-2160, and 56-265.4:4 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1.1 of Chapter 21 of Title 15.2 a section number 15.2-2108.18, relating to the Virginia Freedom of Information Act; exemptions for proprietary records of cable television and telecommunication services provided by localities.*

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

**1. That §§ 2.2-3705.6, 2.2-3711, 15.2-2160, and 56-265.4:4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1.1 of Chapter 21 of Title 15.2 a section number 15.2-2108.18, as follows:**

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

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

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

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

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

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

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. Confidential proprietary records that are voluntarily provided by a private entity pursuant to a proposal filed with a public entity or an affected local jurisdiction under the Public-Private

60 Transportation Act of 1995 (§ 56-556 et seq.) or the Public-Private Education Facilities and  
61 Infrastructure Act of 2002 (§ 56-575.1 et seq.), pursuant to a promise of confidentiality from the  
62 responsible public entity or affected local jurisdiction, used by the responsible public entity or affected  
63 local jurisdiction for purposes related to the development of a qualifying transportation facility or  
64 qualifying project; and memoranda, working papers or other records related to proposals filed under the  
65 Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure  
66 Act of 2002, where, if such records were made public, the financial interest of the public or private  
67 entity involved with such proposal or the process of competition or bargaining would be adversely  
68 affected. In order for confidential proprietary information to be excluded from the provisions of this  
69 chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other materials  
70 for which protection from disclosure is sought, (ii) identify the data or other materials for which  
71 protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of this  
72 subdivision, the terms "affected local jurisdiction," "public entity" and "private entity" shall be defined  
73 as they are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education  
74 Facilities and Infrastructure Act of 2002. However, nothing in this subdivision shall be construed to  
75 prohibit the release of procurement records as required by § 56-573.1 or § 56-575.16. Procurement  
76 records shall not be interpreted to include proprietary, commercial or financial information, balance  
77 sheets, financial statements, or trade secrets that may be provided by the private entity as evidence of its  
78 qualifications.

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

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

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

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

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

102 17. Records submitted as a grant application, or accompanying a grant application, to the  
103 Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 to the  
104 extent such records contain proprietary business or research-related information produced or collected by  
105 the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific,  
106 technical or scholarly issues, when such information has not been publicly released, published,  
107 copyrighted or patented, if the disclosure of such information would be harmful to the competitive  
108 position of the applicant.

109 18. Confidential proprietary records and trade secrets developed and held by a local public body (i)  
110 providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television  
111 services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 2 of Title 15.2, to the extent that  
112 disclosure of such records would be harmful to the competitive position of the locality. In order for  
113 confidential proprietary information or trade secrets to be excluded from the provisions of this chapter,  
114 the locality in writing shall (i) invoke the protections of this subdivision, (ii) identify with specificity the  
115 records or portions thereof for which protection is sought, and (iii) state the reasons why protection is  
116 necessary.

117 § 2.2-3711. Closed meetings authorized for certain limited purposes.

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

119 1. Discussion, consideration or interviews of prospective candidates for employment; assignment,  
120 appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific public  
121 officers, appointees or employees of any public body; and evaluation of performance of departments or

schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.

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

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

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

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

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

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

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

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

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

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

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

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

14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic

183 activity and estimating general and nongeneral fund revenues.

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

186 16. Deliberations of the State Lottery Board in a licensing appeal action conducted pursuant to  
187 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and  
188 discussion, consideration or review of State Lottery Department matters related to proprietary lottery  
189 game information and studies or investigations exempted from disclosure under subdivision 6 of  
190 § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

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

194 18. Discussion, consideration, review and deliberations by local community corrections resources  
195 boards regarding the placement in community diversion programs of individuals previously sentenced to  
196 state correctional facilities.

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

202 20. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by staff  
203 members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to  
204 respond to such activity or a related threat to public safety.

205 21. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or  
206 of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the  
207 University of Virginia, acting pursuant to § 23-76.1, regarding the acquisition, holding or disposition of  
208 a security or other ownership interest in an entity, where such security or ownership interest is not  
209 traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns  
210 confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the  
211 retirement system or provided to the retirement system under a promise of confidentiality, of the future  
212 value of such ownership interest or the future financial performance of the entity, and (ii) would have an  
213 adverse effect on the value of the investment to be acquired, held or disposed of by the retirement  
214 system or the Rector and Visitors of the University of Virginia. Nothing in this subdivision shall be  
215 construed to prevent the disclosure of information relating to the identity of any investment held, the  
216 amount invested or the present value of such investment.

217 22. Those portions of meetings in which individual child death cases are discussed by the State Child  
218 Fatality Review team established pursuant to § 32.1-283.1, and those portions of meetings in which  
219 individual child death cases are discussed by a regional or local child fatality review team established  
220 pursuant to § 32.1-283.2, and those portions of meetings in which individual death cases are discussed  
221 by family violence fatality review teams established pursuant to § 32.1-283.3.

222 23. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern  
223 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any  
224 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern  
225 Virginia Medical School, as the case may be, have been delegated, in which there is discussed  
226 proprietary, business-related information pertaining to the operations of the University of Virginia  
227 Medical Center or Eastern Virginia Medical School, as the case may be, including business development  
228 or marketing strategies and activities with existing or future joint venturers, partners, or other parties  
229 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case  
230 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such  
231 information would adversely affect the competitive position of the Medical Center or Eastern Virginia  
232 Medical School, as the case may be.

233 24. In the case of the Virginia Commonwealth University Health System Authority, discussion or  
234 consideration of any of the following: the acquisition or disposition of real or personal property where  
235 disclosure would adversely affect the bargaining position or negotiating strategy of the Authority;  
236 operational plans that could affect the value of such property, real or personal, owned or desirable for  
237 ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and  
238 contracts for services or work to be performed by the Authority; marketing or operational strategies  
239 where disclosure of such strategies would adversely affect the competitive position of the Authority;  
240 members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications  
241 or evaluations of other employees.

242 25. Those portions of the meetings of the Intervention Program Committee within the Department of  
243 Health Professions to the extent such discussions identify any practitioner who may be, or who actually  
244 is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

26. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § 2.2-3801, which has been provided to the Board 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 is discussed.

27. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, of 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, related to the provision of wireless E-911 service.

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

29. Discussion or consideration by a responsible public entity or an affected local jurisdiction, as those terms are defined in § 56-557, of confidential proprietary records excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.6.

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

31. Discussion or consideration by the Commonwealth Health Research Board of grant application records excluded from this chapter pursuant to subdivision 17 of § 2.2-3705.6.

32. Discussion or consideration by the Commitment Review Committee of records excluded from this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to commitment as sexually violent predators under Article 1.1 (§ 37.1-70.1 et seq.) of Chapter 2 of Title 37.1.

33. (Expires July 1, 2006) Discussion or consideration by the Virginia Commission on Military Bases of records excluded from this chapter pursuant to subdivision 8 of § 2.2-3705.2.

34. Discussion or consideration of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6.

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

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

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

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

§ 15.2-2108.18. Disclosure of certain information.

A municipality's public records that contain confidential proprietary information or trade secrets pertaining to the municipality's provision of cable television service shall be exempt from disclosure under the Freedom of Information Act (§ 2.2-3700 et seq.). As used in this section, a public record contains confidential proprietary information or trade secrets if its acquisition by a competing provider of cable television service would provide the competing provider with a competitive benefit.

§ 15.2-2160. Provision of telecommunications services.

A. Any locality that operates an electric distribution system may provide telecommunications services, including local exchange telephone service as defined in § 56-1, within or outside its boundaries if the locality obtains a certificate pursuant to § 56-265.4:4. Such locality may provide telecommunications services within any locality in which it has electric distribution system facilities as of March 1, 2002. Any locality providing telecommunications services on March 1, 2002, may provide

306 such services within any locality within 75 miles of the geographic boundaries of its electric distribution  
307 system as such system existed on March 1, 2002.

308 B. A locality that has obtained a certificate pursuant to § 56-265.4:4 shall (i) comply with all  
309 applicable laws and regulations for the provision of telecommunications services; (ii) make a reasonable  
310 estimate of the amount of all federal, state, and local taxes (including income taxes and consumer utility  
311 taxes) that would be required to be paid or collected for each fiscal year if the locality were a for-profit  
312 provider of telecommunications services, (iii) prepare reasonable estimates of the amount of any  
313 franchise fees and other state and local fees (including permit fees and pole rental fees), and  
314 right-of-way charges that would be incurred in each fiscal year if the locality were a for-profit provider  
315 of telecommunications services, (iv) prepare and publish annually financial statements in accordance  
316 with generally accepted accounting principles showing the results of operations of its provision of  
317 telecommunications services, and (v) maintain records demonstrating compliance with the provisions of  
318 this section that shall be made available for inspection and copying pursuant to the Virginia Freedom of  
319 Information Act (§ 2.2-3700 et seq.).

320 C. Each locality that has obtained a certificate pursuant to § 56-265.4:4 shall provide  
321 nondiscriminatory access to for-profit providers of telecommunications services on a first-come,  
322 first-served basis to rights-of-way, poles, conduits or other permanent distribution facilities owned, leased  
323 or operated by the locality unless the facilities have insufficient capacity for such access and additional  
324 capacity cannot reasonably be added to the facilities.

325 D. The prices charged and the revenue received by a locality for providing telecommunications  
326 services shall not be cross-subsidized by other revenues of the locality or affiliated entities, except (i) in  
327 areas where no offers exist from for-profit providers of such telecommunications services, or (ii) as  
328 permitted by the provisions of subdivision B 5 of § 56-265.4:4.

329 E. No locality providing such services shall acquire by eminent domain the facilities or other  
330 property of any telecommunications service provider to offer cable, telephone, data transmission or other  
331 information or online programming services.

332 *F. Public records of a locality that has obtained a certificate pursuant to § 56-265.4:4, which*  
333 *records contain confidential proprietary information or trade secrets pertaining to the provision of*  
334 *telecommunications service, shall be exempt from disclosure under the Freedom of Information Act*  
335 *(§ 2.2-3700 et seq.). As used in this subsection, a public record contains confidential proprietary*  
336 *information or trade secrets if its acquisition by a competing provider of telecommunications services*  
337 *would provide the competing provider with a competitive benefit.*

338 § 56-265.4:4. Certificate to operate as a telephone utility.

339 A. The Commission may grant certificates to competing telephone companies, or any county, city or  
340 town that operates an electric distribution system, for interexchange service where it finds that such  
341 action is justified by public interest, and is in accordance with such terms, conditions, limitations, and  
342 restrictions as may be prescribed by the Commission for competitive telecommunications services. A  
343 certificate to provide interexchange services shall not authorize the holder to provide local exchange  
344 services. The Commission may grant a certificate to a carrier, or any county, city or town that operates  
345 an electric distribution system, to furnish local exchange services as provided in subsection B.

346 B. 1. After notice to all local exchange carriers certificated in the Commonwealth and other  
347 interested parties and following an opportunity for hearing, the Commission may grant certificates to any  
348 telephone company, or any county, city or town that operates an electric distribution system, proposing  
349 to furnish local exchange telephone service in the Commonwealth. In determining whether to grant a  
350 certificate under this subsection, the Commission may require that the applicant show that it possesses  
351 sufficient technical, financial, and managerial resources. Before granting any such certificate, the  
352 Commission shall: (i) consider whether such action reasonably protects the affordability of basic local  
353 exchange telephone service, as such service is defined by the Commission, and reasonably assures the  
354 continuation of quality local exchange telephone service; and (ii) find that such action will not  
355 unreasonably prejudice or disadvantage any class of telephone company customers or telephone service  
356 providers, including the new entrant and any incumbent local exchange telephone company, and is in the  
357 public interest. Except as provided in subsection A of § 15.2-2160, all local exchange certificates granted  
358 by the Commission after July 1, 2002, shall be to provide service in any territory in the Commonwealth  
359 unless the applicant specifically requests a different certificated service territory. The Commission shall  
360 amend the certificated service territory of each local exchange carrier that was previously certificated to  
361 provide service in only part of the Commonwealth to permit such carrier's provision of local exchange  
362 service throughout the Commonwealth beginning on September 1, 2002, unless that local exchange  
363 carrier notifies the Commission prior to September 1, 2002, that it elects to retain its existing certificated  
364 service territory. A local exchange carrier shall only be considered an incumbent in any certificated  
365 service territory in which it was considered an incumbent prior to July 1, 2002.

366 2. A Commission order, including appropriate findings of fact and conclusions of law, denying or  
367 approving, with or without modification, an application for certification of a new entrant shall be entered

no more than 180 days from the filing of the application, except that the Commission, upon notice to all parties in interest, may extend that period in additional 30-day increments not to exceed an additional 90 days in all.

3. The Commission shall (i) promote and seek to assure the provision of competitive services to all classes of customers throughout all geographic areas of the Commonwealth by a variety of service providers; (ii) require equity in the treatment of the certificated local exchange telephone companies so as to encourage competition based on service, quality, and price differences between alternative providers; (iii) consider the impact on competition of any government-imposed restrictions limiting the markets to be served or the services offered by any provider; (iv) determine the form of rate regulation, if any, for the local exchange services to be provided by the applicant and, upon application, the form of rate regulation for the comparable services of the incumbent local exchange telephone company provided in the geographical area to be served by the applicant; and (v) promulgate standards to assure that there is no cross-subsidization of the applicant's competitive local exchange telephone services by any other of its services over which it has a monopoly, whether or not those services are telephone services. The Commission shall also adopt safeguards to ensure that the prices charged and the revenue received by a county, city or town for providing telecommunications services shall not be cross-subsidized from other revenues of the county, city or town or affiliated entities, except (i) in areas where no offers exist from for-profit providers of such telecommunications services, or (ii) as authorized pursuant to subdivision 5 of this subsection.

4. The Commission shall discharge the responsibilities of state commissions as set forth in the federal Telecommunications Act of 1996 (P.L. 104-104) (the Act) and applicable law and regulations, including, but not limited to, the arbitration of interconnection agreements between local exchange carriers; however, the Commission may exercise its discretion to defer selected issues under the Act. If the Commission incurs additional costs in arbitrating such agreements or resolving related legal actions or disputes that cannot be recovered through the maximum levy authorized pursuant to § 58.1-2660, that levy shall be increased above the levy authorized by that section to the extent necessary to recover such additional costs.

5. Upon the Commission's granting of a certificate to a county, city or town under this section, such county, city, or town (i) shall be subject to regulation by the Commission for intrastate telecommunications services, (ii) shall have the same duties and obligations as other certificated providers of telecommunications services, (iii) shall separately account for the revenues, expenses, property, and source of investment dollars associated with the provision of such services, and (iv) to ensure that there is no unreasonable advantage gained from a government agency's taxing authority and control of government-owned land, shall charge an amount for such services that (a) does not include any subsidies, unless approved by the Commission, and (b) takes into account, by imputation or allocation, equivalent charges for all taxes, pole rentals, rights of way, licenses, and similar costs incurred by for-profit providers. Each certificated county, city, or town that provides telecommunications services regulated by the Commission shall file an annual report with the Commission demonstrating that the requirements of clauses (iii) and (iv) of this subdivision have been met. The Commission may approve a subsidy under this section if deemed to be in the public interest and provided that such subsidy does not result in a price for the service lower than the price for the same service charged by the incumbent provider in the area.

6. A locality that has obtained a certificate pursuant to this section shall (i) comply with all applicable laws and regulations for the provision of telecommunications services; (ii) make a reasonable estimate of the amount of all federal, state, and local taxes (including income taxes and consumer utility taxes) that would be required to be paid or collected for each fiscal year if the locality were a for-profit provider of telecommunications services, (iii) prepare reasonable estimates of the amount of any franchise fees and other state and local fees (including permit fees and pole rental fees), and right-of-way charges that would be incurred in each fiscal year if the locality were a for-profit provider of telecommunications services, (iv) prepare and publish annually financial statements in accordance with generally accepted accounting principles showing the results of operations of its provision of telecommunications services, and (v) maintain records demonstrating compliance with the provisions of this section that shall be made available for inspection and copying pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

7. Each locality that has obtained a certificate pursuant to this section shall provide nondiscriminatory access to for-profit providers of telecommunications services on a first-come, first-served basis to rights-of-way, poles, conduits or other permanent distribution facilities owned, leased or operated by the locality unless the facilities have insufficient capacity for such access and additional capacity cannot reasonably be added to the facilities.

8. The prices charged and the revenue received by a locality for providing telecommunications services shall not be cross-subsidized by other revenues of the locality or affiliated entities, except (i) in

429 areas where no offers exist from for-profit providers of such telecommunications services, or (ii) as  
430 permitted by the provisions of subdivision B 5.

431 9. The Commission shall promulgate rules necessary to implement this section. In no event, however,  
432 shall the rules necessary to implement subdivisions B 5 iii and iv, B 6 ii through v, and B 8 impose any  
433 obligations on a locality that has obtained a certificate pursuant to this section, but is not yet providing  
434 telecommunications services regulated by the Commission.

435 *10. Public records of a locality that has obtained a certificate pursuant to this section, which records*  
436 *contain confidential proprietary information or trade secrets pertaining to the provision of*  
437 *telecommunications service, shall be exempt from disclosure under the Freedom of Information Act*  
438 *(§ 2.2-3700 et seq.). As used in this subdivision, a public record contains confidential proprietary*  
439 *information or trade secrets if its acquisition by a competing provider of telecommunications services*  
440 *would provide the competing provider with a competitive benefit.*

441 C. Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of this title shall not apply to a county, city or  
442 town that has obtained a certificate pursuant to this section.

443 D. Any county, city, or town that has obtained a certificate pursuant to this section may construct,  
444 own, maintain, and operate a fiber optic or communications infrastructure to provide consumers with  
445 Internet services, data transmission services, and any other communications service that its infrastructure  
446 is capable of delivering; provided, however, nothing in this subsection shall authorize the provision of  
447 cable television services or other multi-channel video programming service. Furthermore, nothing in this  
448 subsection shall alter the authority of the Commission.

449 E. Any county, city, or town that has obtained a certificate pursuant to this section and that had  
450 installed a cable television headend prior to December 31, 2002, is authorized to own and operate a  
451 cable television system or other multi-channel video programming service and shall be exempt from the  
452 provisions of §§ 15.2-2108.4 through 15.2-2108.8. Nothing in this subsection shall authorize the  
453 Commission to regulate cable television service.