

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

1
2
3
4
5
6

7
8

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56

An Act to amend and reenact §§ 2.2-3705.6, 56-573.1, and 56-575.16 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-573.1:1 and by adding in Chapter 22.1 of Title 56 a section numbered 56-575.17, relating to disclosure of procurement records under the Public-Private Transportation Act of 1995 and the Public-Private Education Facilities and Infrastructure Act of 2002.

[S 76]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.6, 56-573.1, and 56-575.16 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-573.1:1 and by adding in Chapter 22.1 of Title 56 a section numbered 56-575.17 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.

57 11. Confidential proprietary records that are voluntarily provided by a private entity pursuant to a
 58 proposal filed with a public entity or an affected local jurisdiction under the Public-Private
 59 Transportation Act of 1995 (§ 56-556 et seq.) or the Public-Private Education Facilities and
 60 Infrastructure Act of 2002 (§ 56-575.1 et seq.); pursuant to a promise of confidentiality from the
 61 responsible public entity or affected local jurisdiction, used by the responsible public entity or affected
 62 local jurisdiction for purposes related to the development of a qualifying transportation facility or
 63 qualifying project; and memoranda, working papers or other records related to proposals filed under the
 64 Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure
 65 Act of 2002, where, if such records were made public, the financial interest of the public or private
 66 entity involved with such proposal or the process of competition or bargaining would be adversely
 67 affected. In order for confidential proprietary information to be excluded from the provisions of this
 68 chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other materials
 69 for which protection from disclosure is sought, (ii) identify the data or other materials for which
 70 protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of this
 71 subdivision, the terms "affected local jurisdiction," "public entity" and "private entity" shall be defined
 72 as they are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education
 73 Facilities and Infrastructure Act of 2002. However, nothing in this subdivision shall be construed to
 74 prohibit the release of procurement records as required by § 56-573.1 or 56-575.16. Procurement records
 75 shall not be interpreted to include proprietary, commercial or financial information, balance sheets,
 76 financial statements, or trade secrets that may be provided by the private entity as evidence of its
 77 qualifications. Records provided by a private entity to a responsible public entity, affected jurisdiction,
 78 or affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995
 79 (§ 56-556 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1
 80 et seq.), to the extent that such records contain (i) trade secrets of the private entity as defined in the
 81 Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial records of the private entity, including
 82 balance sheets and financial statements, that are not generally available to the public through
 83 regulatory disclosure or otherwise; or (iii) other information submitted by the private entity, where, if
 84 the records were made public prior to the execution of an interim agreement or a comprehensive
 85 agreement, the financial interest or bargaining position of the public or private entity would be
 86 adversely affected. In order for the records specified in clauses (i), (ii) and (iii) to be excluded from the
 87 provisions of this chapter, the private entity shall make a written request to the responsible public
 88 entity:

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

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

103 *Nothing in this subdivision shall be construed to authorize the withholding of (a) procurement*
 104 *records as required by § 56-573.1:1 or 56-575.17; (b) information concerning the terms and conditions*
 105 *of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of*
 106 *any kind entered into by the responsible public entity and the private entity; (c) information concerning*
 107 *the terms and conditions of any financing arrangement that involves the use of any public funds; or (d)*
 108 *information concerning the performance of any private entity developing or operating a qualifying*
 109 *transportation facility or a qualifying project.*

110 *For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction,"*
 111 *"comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation*
 112 *facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined*
 113 *in the Public-Private Transportation Act of 1995 or in the Public-Private Education Facilities and*
 114 *Infrastructure Act of 2002.*

115 12. Confidential proprietary information or trade secrets, not publicly available, provided by a private
 116 person or entity to the Virginia Resources Authority or to a fund administered in connection with
 117 financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such

118 information were made public, the financial interest of the private person or entity would be adversely
119 affected, and, after June 30, 1997, where such information was provided pursuant to a promise of
120 confidentiality.

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

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

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

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

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

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

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

159 § 56-573.1. Procurement.

160 The Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to this chapter; however, a
161 responsible public entity may enter into an interim or a comprehensive agreement only in accordance
162 with guidelines adopted by it as follows:

163 1. A responsible public entity may enter into an interim or a comprehensive agreement in accordance
164 with guidelines adopted by it that are consistent with procurement through "competitive sealed bidding"
165 as defined in § 2.2-4301 and subsection B of § 2.2-4310.

166 2. A responsible public entity may enter into an interim or a comprehensive agreement in accordance
167 with guidelines adopted by it that are consistent with the procurement of "other than professional
168 services" through competitive negotiation as defined in § 2.2-4301 and subsection B of § 2.2-4310. Such
169 responsible public entity shall not be required to select the proposal with the lowest price offer, but may
170 consider price as one factor in evaluating the proposals received. Other factors that may be considered
171 include (i) the proposed cost of the qualifying transportation facility; (ii) the general reputation,
172 qualifications, industry experience, and financial capacity of the private entity; (iii) the proposed design,
173 operation, and feasibility of the qualifying transportation facility; (iv) the eligibility of the facility for
174 priority selection, review, and documentation timelines under the responsible public entity's guidelines;
175 (v) local citizen and public entity comments; (vi) benefits to the public; (vii) the private entity's
176 compliance with a minority business enterprise participation plan or good faith effort to comply with the
177 goals of such plan; (viii) the private entity's plans to employ local contractors and residents; (ix) the
178 safety record of the private entity; (x) the ability of the facility to address the needs identified in the

179 appropriate state, regional or local transportation plan by improving safety, reducing congestion,
 180 increasing capacity, and/or enhancing economic efficiency; and (xi) other criteria that the responsible
 181 public entity deems appropriate.

182 A responsible public entity shall proceed in accordance with the guidelines adopted by it pursuant to
 183 subdivision 1 unless it determines that proceeding in accordance with the guidelines adopted by it
 184 pursuant to this subdivision is likely to be advantageous to the responsible public entity and the public,
 185 based on (i) the probable scope, complexity, or urgency of a project; (ii) risk sharing including
 186 guaranteed cost or completion guarantees, added value, or debt or equity investments proposed by the
 187 private entity; or (iii) an increase in funding, dedicated revenue source or other economic benefit that
 188 would not otherwise be available. When the responsible public entity determines to proceed according to
 189 the guidelines adopted by it pursuant to this subdivision, it shall state the reasons for its determination in
 190 writing. If a state agency is the responsible public entity, the approval of the Secretary of Transportation
 191 shall be required as more specifically set forth in the guidelines before the comprehensive agreement is
 192 signed.

193 3. Interim or comprehensive agreements for maintenance or asset management services for a
 194 transportation facility that is a highway, bridge, tunnel, or overpass, and any amendment or change order
 195 thereto that increases the highway lane-miles receiving services under such an agreement, shall be
 196 procured in accordance with guidelines that are consistent with procurement through "competitive sealed
 197 bidding" as defined in § 2.2-4301 and subsection B of § 2.2-4310. Furthermore, such contracts shall be
 198 of a size and scope to encourage maximum competition and participation by agency prequalified
 199 contractors and otherwise qualified contractors.

200 4. The provisions of subdivision 3 shall not apply to maintenance or asset management services
 201 agreed to as part of the initial provisions of any interim or comprehensive agreement entered into for the
 202 original construction, reconstruction, or improvement of any highway pursuant to Chapter 22 (§ 56-556
 203 et seq.) of Title 56.

204 ~~5. Once a comprehensive agreement has been entered into, and the process of bargaining of all~~
 205 ~~phases or aspects of the comprehensive agreement is complete, a responsible public entity shall make~~
 206 ~~available, upon request, procurement records in accordance with § 2.2-4342.~~

207 ~~6.~~ 5. Nothing in this section shall require that professional services be procured by any method other
 208 than competitive negotiation in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et
 209 seq.).

210 *§ 56-573.1:1 Posting of conceptual proposals; public comment; public access to procurement*
 211 *records.*

212 *A. Conceptual proposals submitted in accordance with subsection A or B of § 56-560 to a*
 213 *responsible public entity shall be posted by the responsible public entity within 10 working days after*
 214 *acceptance of such proposals as follows:*

215 *1. For responsible public entities that are state agencies, departments, and institutions, posting shall*
 216 *be on the Department of General Service's web-based electronic procurement program commonly known*
 217 *as "eVA;" and*

218 *2. For responsible public entities that are local public bodies, posting shall be on the responsible*
 219 *public entity's website or by publication, in a newspaper of general circulation in the area in which the*
 220 *contract is to be performed, of a summary of the proposals and the location where copies of the*
 221 *proposals are available for public inspection. Posting may also be on the Department of General*
 222 *Service's web-based electronic procurement program commonly known as "eVA," in the discretion of the*
 223 *local responsible public entity.*

224 *In addition to the posting requirements, at least one copy of the proposals shall be made available*
 225 *for public inspection. Nothing in this section shall be construed to prohibit the posting of the conceptual*
 226 *proposals by additional means deemed appropriate by the responsible public entity so as to provide*
 227 *maximum notice to the public of the opportunity to inspect the proposals. Trade secrets, financial*
 228 *records, or other records of the private entity excluded from disclosure under the provisions of*
 229 *subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the*
 230 *responsible public entity and the private entity.*

231 *B. In addition to the posting requirements of subsection A, for 30 days prior to entering into an*
 232 *interim or comprehensive agreement, a responsible public entity shall provide an opportunity for public*
 233 *comment on the proposals. The public comment period required by this subsection may include a public*
 234 *hearing in the sole discretion of the responsible public entity. After the end of the public comment*
 235 *period, no additional posting shall be required.*

236 *C. Once the negotiation phase for the development of an interim or a comprehensive agreement is*
 237 *complete and a decision to award has been made by a responsible public entity, the responsible public*
 238 *entity shall present the major business points of the interim or comprehensive agreement, including the*
 239 *use of any public funds, to its oversight board at a regularly scheduled meeting of the board that is*

240 open to the public.

241 D. Once an interim agreement or a comprehensive agreement has been entered into, a responsible
242 public entity shall make procurement records available for public inspection, upon request. For the
243 purposes of this subsection, procurement records shall not be interpreted to include (i) trade secrets of
244 the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial
245 records, including balance sheets or financial statements of the private entity that are not generally
246 available to the public through regulatory disclosure or otherwise.

247 E. Cost estimates relating to a proposed procurement transaction prepared by or for a responsible
248 public entity shall not be open to public inspection.

249 F. Any inspection of procurement transaction records under this section shall be subject to
250 reasonable restrictions to ensure the security and integrity of the records.

251 G. The provisions of this section shall apply to accepted proposals regardless of whether the process
252 of bargaining will result in an interim or a comprehensive agreement.

253 § 56-575.16. Procurement.

254 The Virginia Public Procurement Act (§ 2.2-4300 et seq.) and any interpretations, regulations, or
255 guidelines of the Division of Engineering and Buildings of the Department of General Services or the
256 Virginia Information Technologies Agency, including the Capital Outlay Manual and those
257 interpretations, regulations or guidelines developed pursuant to §§ 2.2-1131, 2.2-1132, 2.2-1133,
258 2.2-1149, and 2.2-1502, except those developed by the Division or the Virginia Information
259 Technologies Agency in accordance with this chapter when the Commonwealth is the responsible public
260 entity, shall not apply to this chapter. However, a responsible public entity may enter into a
261 comprehensive agreement only in accordance with guidelines adopted by it as follows:

262 1. A responsible public entity may enter into a comprehensive agreement in accordance with
263 guidelines adopted by it that are consistent with procurement through competitive sealed bidding as
264 defined in § 2.2-4301 and subsection B of § 2.2-4310.

265 2. A responsible public entity may enter into a comprehensive agreement in accordance with
266 guidelines adopted by it that are consistent with the procurement of "other than professional services"
267 through competitive negotiation as defined in § 2.2-4301 and subsection B of § 2.2-4310. Such
268 responsible public entity shall not be required to select the proposal with the lowest price offer, but may
269 consider price as one factor in evaluating the proposals received. Other factors that may be considered
270 include (i) the proposed cost of the qualifying facility; (ii) the general reputation, industry experience,
271 and financial capacity of the private entity; (iii) the proposed design of the qualifying project; (iv) the
272 eligibility of the facility for accelerated selection, review, and documentation timelines under the
273 responsible public entity's guidelines; (v) local citizen and government comments; (vi) benefits to the
274 public; (vii) the private entity's compliance with a minority business enterprise participation plan or good
275 faith effort to comply with the goals of such plan; (viii) the private entity's plans to employ local
276 contractors and residents; and (ix) other criteria that the responsible public entity deems appropriate.

277 A responsible public entity shall proceed in accordance with the guidelines adopted by it pursuant to
278 subdivision 1 unless it determines that proceeding in accordance with the guidelines adopted by it
279 pursuant to this subdivision is likely to be advantageous to the responsible public entity and the public,
280 based on (i) the probable scope, complexity or priority of the project; (ii) risk sharing including
281 guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the
282 private entity; or (iii) an increase in funding, dedicated revenue source or other economic benefit that
283 would not otherwise be available. When the responsible public entity determines to proceed according to
284 the guidelines adopted by it pursuant to this subdivision, it shall state the reasons for its determination in
285 writing. If a state agency is the responsible public entity, the approval of the responsible Governor's
286 Secretary, or the Governor, shall be required before the responsible public entity may enter into a
287 comprehensive agreement pursuant to this subdivision.

288 3. Nothing in this chapter shall authorize or require that a responsible public entity obtain
289 professional services through any process except in accordance with guidelines adopted by it that are
290 consistent with the procurement of "professional services" through competitive negotiation as defined in
291 § 2.2-4301 and subsection B of § 2.2-4310.

292 4. A responsible public entity shall not proceed to consider any request by a private entity for
293 approval of a qualifying project pursuant to subsection A of § 56-575.4 until the responsible public
294 entity has adopted and made publicly available guidelines that are sufficient to enable the responsible
295 public entity to comply with this chapter. Such guidelines shall:

296 a. If the responsible public entity is not an agency or authority of the Commonwealth, require the
297 responsible public entity to engage the services of qualified professionals, which may include an
298 architect, professional engineer, or certified public accountant, not employed by the responsible public
299 entity to provide to the responsible public entity independent analysis regarding the specifics,
300 advantages, disadvantages, and the long- and short-term costs of any request by a private entity for

301 approval of a qualifying project, unless the governing body of the responsible public entity determines
302 that such analysis of a request by a private entity for approval of a qualifying project shall be performed
303 by employees of the responsible public entity.

304 b. Provide for the posting and publishing of public notice of a private entity's request for approval of
305 a qualifying project pursuant to subsection A of § 56-575.4 and a reasonable time period, determined by
306 the responsible public entity to be appropriate to encourage competition and public-private partnerships
307 pursuant to the goals of this chapter, such reasonable period not to be less than 45 days, during which
308 the responsible public entity will receive competing proposals pursuant to that subsection.

309 Such guidelines shall also require advertising the public notice in the Virginia Business Opportunities
310 publication and posting a notice on the Commonwealth's electronic procurement website.

311 ~~5. Once a comprehensive agreement has been entered into, and the process of bargaining of all~~
312 ~~phases or aspects of the comprehensive agreement is complete, a responsible public entity shall make~~
313 ~~available, upon request, procurement records in accordance with § 2.2-4342.~~

314 ~~6. 5. A responsible public entity that is a school board or a county, city or town may enter into an~~
315 ~~interim or comprehensive agreement under this chapter only with the approval of the local governing~~
316 ~~body.~~

317 *§ 56-575.17. Posting of conceptual proposals; public comment; public access to procurement records.*

318 *A. Conceptual proposals submitted in accordance with subsection A or B of § 56-575.4 to a*
319 *responsible public entity shall be posted by the responsible public entity within 10 working days after*
320 *acceptance of such proposals as follows:*

321 *1. For responsible public entities that are state agencies, departments, and institutions, posting shall*
322 *be on the Department of General Service's web-based electronic procurement program commonly known*
323 *as "eVA;" and*

324 *2. For responsible public entities that are local bodies, posting shall be on the responsible public*
325 *entity's website or by publication, in a newspaper of general circulation in the area in which the*
326 *contract is to be performed, of a summary of the proposals and the location where copies of the*
327 *proposals are available for public inspection. Posting may also be on the Department of General*
328 *Service's web-based electronic procurement program commonly known as "eVA," in the discretion of the*
329 *local responsible public entity.*

330 *In addition to the posting requirements, at least one copy of the proposals shall be made available*
331 *for public inspection. Nothing in this section shall be construed to prohibit the posting of the conceptual*
332 *proposals by additional means deemed appropriate by the responsible public entity so as to provide*
333 *maximum notice to the public of the opportunity to inspect the proposals. Trade secrets, financial*
334 *records, or other records of the private entity excluded from disclosure under the provisions of*
335 *subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the*
336 *responsible public entity and the private entity.*

337 *B. In addition to the posting requirements of subsection A, for 30 days prior to entering into an*
338 *interim or comprehensive agreement, a responsible public entity shall provide an opportunity for public*
339 *comment on the proposals. The public comment period required by this subsection may include a public*
340 *hearing in the sole discretion of the responsible public entity. After the end of the public comment*
341 *period, no additional posting shall be required.*

342 *C. Once the negotiation phase for the development of an interim or a comprehensive agreement is*
343 *complete, but before an interim agreement or a comprehensive agreement is entered into, a responsible*
344 *public entity shall make available the proposed agreement in a manner provided in subsection A.*

345 *D. Once an interim agreement or a comprehensive agreement has been entered into, a responsible*
346 *public entity shall make procurement records available for public inspection, upon request. For the*
347 *purposes of this subsection, procurement records shall not be interpreted to include (i) trade secrets of*
348 *the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial*
349 *records, including balance sheets or financial statements of the private entity that are not generally*
350 *available to the public through regulatory disclosure or otherwise.*

351 *E. Cost estimates relating to a proposed procurement transaction prepared by or for a responsible*
352 *public entity shall not be open to public inspection.*

353 *F. Any inspection of procurement transaction records under this section shall be subject to*
354 *reasonable restrictions to ensure the security and integrity of the records.*

355 *G. The provisions of this section shall apply to accepted proposals regardless of whether the process*
356 *of bargaining will result in an interim or a comprehensive agreement.*

357 **2. That the Chairs of the Senate and House Committees on General Laws and Transportation,**
358 **respectively, shall convene a working group consisting of representatives of public and private**
359 **entities to revise the current model guidelines to incorporate amendments to the Public-Private**
360 **Transportation Act of 1995 (§ 56-556 et seq. of the Code of Virginia) and the Public-Private**
361 **Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) in accordance with this act.**

362 The working groups shall make their recommendations available to the responsible public entities
363 by September 30, 2006.
364 3. That the provisions of this act shall apply only to proposals for qualifying transportation
365 facilities and qualifying projects filed on or after July 1, 2006.

ENROLLED

SB76ER