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SENATE BILL NO. 1002

Offered January 10, 2007

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A BILL to amend and reenact §§ 2.2-3705.6, 2.2-3711, and 56-573.1:1 of the Code of Virginia, relating to public access to procurement records and certain discussions thereof under the Public-Private Transportation Act of 1995 and the Public-Private Education Facilities and Infrastructure Act of 2002.

Patron—Houck

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.6, 2.2-3711, and 56-573.1:1 of the Code of Virginia are amended and reenacted 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, the Tobacco Indemnification and Community Revitalization Commission, 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

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59 prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

60 11. (~~Effective July 1, 2007~~) ~~Records~~ *a. Memoranda, staff evaluations, or other records prepared by*
61 *the responsible public entity, its staff, outside advisors, or consultants exclusively for the evaluation and*
62 *negotiation of proposals filed under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or*
63 *the Public Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (i) if*
64 *such records were made public prior to or after the execution of an interim or a comprehensive*
65 *agreement, § 56-573.1:1 or 56-575.17 notwithstanding, the financial interest or bargaining position of*
66 *the public entity would be adversely affected, and (ii) the basis for the determination required in clause*
67 *(i) is documented in writing by the responsible public entity; and*

68 *b. Records provided by a private entity to a responsible public entity, affected jurisdiction, or*
69 *affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995*
70 *(§ 56-556 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et*
71 *seq.), to the extent that such records contain (i) trade secrets of the private entity as defined in the*
72 *Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial records of the private entity, including*
73 *balance sheets and financial statements, that are not generally available to the public through regulatory*
74 *disclosure or otherwise; or (iii) other information submitted by the private entity, where, if the records*
75 *were made public prior to the execution of an interim agreement or a comprehensive agreement, the*
76 *financial interest or bargaining position of the public or private entity would be adversely affected. In*
77 *order for the records specified in clauses (i), (ii) and (iii) to be excluded from the provisions of this*
78 *chapter, the private entity shall make a written request to the responsible public entity:*

79 1. Invoking such exclusion upon submission of the data or other materials for which protection from
80 disclosure is sought;

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

82 3. Stating the reasons why protection is necessary.

83 The responsible public entity shall determine whether the requested exclusion from disclosure is
84 necessary to protect the trade secrets or financial records of the private entity. To protect other records
85 submitted by the private entity from disclosure, the responsible public entity shall determine whether
86 public disclosure prior to the execution of an interim agreement or a comprehensive agreement would
87 adversely affect the financial interest or bargaining position of the public or private entity. The
88 responsible public entity shall make a written determination of the nature and scope of the protection to
89 be afforded by the responsible public entity under this subdivision. Once a written determination is made
90 by the responsible public ~~body~~ *entity*, the records afforded protection under this subdivision shall
91 continue to be protected from disclosure when in the possession of any affected jurisdiction or affected
92 local jurisdiction ~~to which such records are provided by the responsible public entity~~.

93 ~~Nothing~~ *Except as specifically provided in subdivision 11 a, nothing* in this subdivision shall be
94 construed to authorize the withholding of (a) procurement records as required by § 56-573.1:1 or
95 56-575.17; (b) information concerning the terms and conditions of any interim or comprehensive
96 agreement, service contract, lease, partnership, or any agreement of any kind entered into by the
97 responsible public entity and the private entity; (c) information concerning the terms and conditions of
98 any financing arrangement that involves the use of any public funds; or (d) information concerning the
99 performance of any private entity developing or operating a qualifying transportation facility or a
100 qualifying project.

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

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

112 13. Confidential proprietary records that are provided by a franchisee under Article 1.2
113 (§ 15.2-2108.19 et seq.) of Chapter 21 of Title 15.2 to its franchising authority pursuant to a promise of
114 confidentiality from the franchising authority that relates to the franchisee's potential provision of new
115 services, adoption of new technologies or implementation of improvements, where such new services,
116 technologies or improvements have not been implemented by the franchisee on a nonexperimental scale
117 in the franchise area, and where, if such records were made public, the competitive advantage or
118 financial interests of the franchisee would be adversely affected. In order for confidential proprietary
119 information to be excluded from the provisions of this chapter, the franchisee shall (i) invoke such
120 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.

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

15. 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.

16. 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.

17. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 to the extent such records contain 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.

18. Confidential proprietary records and trade secrets developed and held by a local public body (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2, to the extent that disclosure of such records would be harmful to the competitive position of the locality. In order for confidential proprietary information or trade secrets to be excluded from the provisions of this chapter, the locality in writing shall (i) invoke the protections of this subdivision, (ii) identify with specificity the records or portions thereof for which protection is sought, and (iii) state the reasons why protection is necessary.

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

20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial records of a business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, provided to the Department of Minority Business Enterprise as part of an application for (i) certification as a small, women- or minority-owned business in accordance with Chapter 14 (§ 2.2-1400 et seq.) of this title or (ii) a claim made by a disadvantaged business or an economically disadvantaged individual against the Capital Access Fund for Disadvantaged Businesses created pursuant to § 2.2-2311. In order for such trade secrets or financial records to be excluded from the provisions of this chapter, the business shall (a) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (b) identify the data or other materials for which protection is sought, and (c) state the reasons why protection is necessary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

231 16. Deliberations of the State Lottery Board in a licensing appeal action conducted pursuant to
232 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
233 discussion, consideration or review of State Lottery Department matters related to proprietary lottery
234 game information and studies or investigations exempted from disclosure under subdivision 6 of
235 § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

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

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

242 19. Those portions of meetings in which the Board of Corrections discusses or discloses the identity
243 of, or information tending to identify, any prisoner who (i) provides information about crimes or

criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

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

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

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

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

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

25. Those portions of the meetings of the Intervention Program Committee within the Department of Health Professions to the extent such discussions identify any practitioner who may be, or who actually 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.), 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 of records excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.6 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 or any independent review panel appointed to review information and advise the responsible public entity concerning such records.

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 Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

33. [Expired.]

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

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

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

37. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from this chapter pursuant to subdivision F 1 of § 2.2-3706.

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

39. Discussion or consideration by the Virginia Port Authority of records excluded from this chapter pursuant to subdivision 1 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.

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

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

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

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

the local responsible public entity.

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

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

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

D. (~~Effective July 1, 2007~~) Once an interim agreement or a comprehensive agreement has been entered into, a responsible public entity shall make procurement records available for public inspection, ~~upon request~~ *in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.)*. For the purposes of this subsection, procurement records shall not be interpreted to include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

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

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

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