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**HOUSE BILL NO. 1271**

Offered January 9, 2008

Prefiled January 9, 2008

*A BILL to amend and reenact § 2.2-3705.6 of the Code of Virginia, relating to the Freedom of Information Act; exemption for local franchises.*

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 Referred to Committee on General Laws
 

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**Be it enacted by the General Assembly of Virginia:****1. That § 2.2-3705.6 of the Code of Virginia is 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, a nonprofit, nonstock corporation created pursuant to § 2.2-2240.1, 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. a. Memoranda, staff evaluations, or other records prepared by the responsible public entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed

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59 under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or the Public Private Education  
60 Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (i) if such records were made public  
61 prior to or after the execution of an interim or a comprehensive agreement, § 56-573.1:1 or 56-575.17  
62 notwithstanding, the financial interest or bargaining position of the public entity would be adversely  
63 affected, and (ii) the basis for the determination required in clause (i) is documented in writing by the  
64 responsible public entity; and

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

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

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

79 3. Stating the reasons why protection is necessary.

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

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

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

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

108 13. Confidential Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or  
109 confidential proprietary records that are that are not generally available to the public through regulatory  
110 disclosure or otherwise, provided by a franchisee a (i) bidder or applicant for a franchise or (ii)  
111 franchisee, under Article 1-2 (§ 15.2-2108.19 et seq.) of Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2 to  
112 its the applicable franchising authority pursuant to a promise of confidentiality from the franchising  
113 authority that relates, to the extent the records relate to the bidder's, applicant's or franchisee's potential  
114 provision of new services, adoption of new technologies or implementation of improvements, where  
115 such new services, technologies or improvements have not been implemented by the franchisee on a  
116 nonexperimental scale in the franchise area, and where, if such records were made public, the  
117 competitive advantage or financial interests of the franchisee would be adversely affected. In order for  
118 trade secrets or confidential proprietary information to be excluded from the provisions of this chapter,  
119 the bidder, applicant, or franchisee shall (i) invoke such exclusion upon submission of the data or other  
120 materials for which protection from disclosure is sought, (ii) identify the data or other materials for

121 which protection is sought, and (iii) state the reason why protection is necessary.

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

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

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

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

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

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

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