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SENATE BILL NO. 854

Offered January 14, 2015

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A *BILL to amend and reenact §§ 2.2-1605, 2.2-3705.6, and 18.2-213.1 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 2.2-2311.1; and to repeal § 2.2-2311 of the Code of Virginia, relating to the Virginia Small Business Financing Authority; establishment of the Small, Women-owned, and Minority-owned Business Loan Fund; repeal.*

Patron—Lucas

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1605, 2.2-3705.6, and 18.2-213.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-2311.1 as follows:

§ 2.2-1605. Powers and duties of Department.

A. The Department shall have the following powers and duties:

1. Coordinate as consistent with prevailing law the plans, programs, and operations of the state government that affect or may contribute to the establishment, preservation, and strengthening of small, women-owned, and minority-owned businesses;

2. Promote the mobilization of activities and resources of state and local governments, businesses and trade associations, universities, foundations, professional organizations, and volunteer and other groups towards the growth of small businesses and businesses owned by women and minorities, and facilitate the coordination of the efforts of these groups with those of state departments and agencies;

3. Establish a center for the development, collection, summarization, and dissemination of information that will be helpful to persons and organizations throughout the nation in undertaking or promoting procurement from small, women-owned, and minority-owned businesses;

4. Consistent with prevailing law and availability of funds, and according to the Director's discretion, provide technical and management assistance to small, women-owned, and minority-owned businesses and defray all or part of the costs of pilot or demonstration projects that are designed to overcome the special problems of small, women-owned, and minority-owned businesses;

5. ~~Manage the Capital Access Fund for Disadvantaged Businesses created pursuant to § 2.2-2311 and, in cooperation with the Small Business Financing Authority, determine the qualifications, terms, and conditions for the use of such Fund on the management and administration of the Small, Women-owned, and Minority-owned Business Loan Fund created pursuant to § 2.2-2311.1; and~~

6. Implement any remediation or enhancement measure for small, women-owned, or minority-owned businesses as may be authorized by the Governor pursuant to subsection C of § 2.2-4310 and develop regulations, consistent with prevailing law, for program implementation. Such regulations shall be developed in consultation with the state agencies with procurement responsibility and promulgated by those agencies in accordance with applicable law.

B. In addition, the Department shall serve as the liaison between the Commonwealth's existing businesses and state government in order to promote the development of Virginia's economy. To that end, the Department shall:

1. Encourage the training or retraining of individuals for specific employment opportunities at new or expanding business facilities in the Commonwealth;

2. Develop and implement programs to assist small businesses in the Commonwealth in order to promote their growth and the creation and retention of jobs for Virginians;

3. Establish an industry program that is the principal point of communication between basic employers in the Commonwealth and the state government that will address issues of significance to business;

4. Make available to existing businesses, in conjunction and cooperation with localities, chambers of commerce, and other public and private groups, basic information and pertinent factors of interest and concern to such businesses;

5. Develop statistical reports on job creation and the general economic conditions in the Commonwealth; and

6. Administer the Small Business Jobs Grant Fund Program and the Small Business Investment Grant Fund described in Article 2 (§ 2.2-1611 et seq.).

C. All agencies of the Commonwealth shall assist the Department upon request and furnish such information and assistance as the Department may require in the discharge of its duties.

INTRODUCED

SB854

59 § 2.2-2311.1. *Creation, administration, and management of the Small, Women-owned, and*
60 *Minority-owned Business Loan Fund.*

61 A. *For the purposes of this section:*

62 "Eligible small business" means any person engaged in a for-profit business enterprise in the
63 Commonwealth and such enterprise has (i) \$10 million or less in annual gross income under generally
64 accepted accounting principles for each of its last three fiscal years or lesser time period if it has been
65 in existence less than three years, (ii) fewer than 250 employees, or (iii) a net worth of \$2 million or
66 less, or such business enterprise meets such other satisfactory requirements as the Board shall determine
67 from time to time upon a finding that such business enterprise is in need of assistance.

68 "Fund" means the Small, Women-owned, and Minority-owned Business Loan Fund.

69 "Minority-owned business" means a for-profit small business concern that is majority-owned by one
70 or more individuals of an ethnic or racial minority. In the case of a corporation, a majority of the stock
71 shall be owned by one or more such individuals and the management and daily business operations
72 shall be controlled by one or more of the individuals of an ethnic or racial minority who own it.

73 "Women-owned business" means a for-profit small business concern that is majority-owned by one or
74 more women. In the case of a corporation, a majority of the stock shall be owned by one or more
75 women and the management and daily business operations shall be controlled by one or more of the
76 women who own it.

77 B. There is created in the state treasury a permanent nonreverting fund to be known as the Small,
78 Women-owned, and Minority-owned Business Loan Fund. The Fund shall be established on the books of
79 the Comptroller. The Fund shall be comprised of (i) moneys appropriated to the Fund by the General
80 Assembly, (ii) all income from the investment of moneys held by the Fund, and (iii) any other moneys
81 designated for deposit to the Fund from any source, public or private. All moneys shall be paid into the
82 state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the
83 Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of
84 each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund
85 shall be used to provide direct loans to eligible small, women-owned, and minority-owned businesses.
86 The Fund shall be managed and administered by the Authority with guidance from the Director of the
87 Department of Small Business and Supplier Diversity. Expenditures and disbursements from the Fund
88 shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed
89 by the Executive Director of the Authority.

90 C. The Authority, or its designated agents, shall determine the qualifications, terms, and conditions
91 for the use of the Fund and the accounts thereof.

92 § 2.2-3705.6. **Exclusions to application of chapter; proprietary records and trade secrets.**

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

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

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

99 3. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of
100 confidentiality from a public body, used by the public body for business, trade and tourism development
101 or retention; and memoranda, working papers or other records related to businesses that are considering
102 locating or expanding in Virginia, prepared by a public body, where competition or bargaining is
103 involved and where, if such records are made public, the financial interest of the public body would be
104 adversely affected.

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

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

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

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

118 8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the
119 Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of
120 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 F 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 under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (i) if such records were made public prior to or after the execution of an interim or a comprehensive agreement, § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public entity would be adversely affected, and (ii) the basis for the determination required in clause (i) is documented in writing by the responsible public entity; and

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

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

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

3. Stating the reasons why protection is necessary.

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

Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed to authorize the withholding of (a) procurement records as required by § 33.2-1820 or 56-575.17; (b) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity and the private entity; (c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or (d) information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

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

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

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

185 13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential
186 proprietary records that are not generally available to the public through regulatory disclosure or
187 otherwise, provided by a (a) bidder or applicant for a franchise or (b) franchisee under Chapter 21 (§
188 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of
189 confidentiality from the franchising authority, to the extent the records relate to the bidder's, applicant's,
190 or franchisee's financial capacity or provision of new services, adoption of new technologies or
191 implementation of improvements, where such new services, technologies or improvements have not been
192 implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such
193 records were made public, the competitive advantage or financial interests of the franchisee would be
194 adversely affected.

195 In order for trade secrets or confidential proprietary information to be excluded from the provisions
196 of this chapter, the bidder, applicant, or franchisee shall (i) invoke such exclusion upon submission of
197 the data or other materials for which protection from disclosure is sought, (ii) identify the data or other
198 materials for which protection is sought, and (iii) state the reason why protection is necessary.

199 No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the
200 bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the
201 applicable franchising authority serves on the management board or as an officer of the bidder,
202 applicant, or franchisee.

203 14. Documents and other information of a proprietary nature furnished by a supplier of charitable
204 gaming supplies to the Department of Agriculture and Consumer Services pursuant to subsection E of
205 § 18.2-340.34.

206 15. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple
207 Board pursuant to § 3.2-1215.

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

211 17. Records submitted as a grant or loan application, or accompanying a grant or loan application, to
212 the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.) of
213 Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 22
214 (§ 23-277 et seq.) of Title 23 to the extent such records contain proprietary business or research-related
215 information produced or collected by the applicant in the conduct of or as a result of study or research
216 on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information
217 has not been publicly released, published, copyrighted, or patented, if the disclosure of such information
218 would be harmful to the competitive position of the applicant.

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

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

233 20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial
234 records of a business, including balance sheets and financial statements, that are not generally available
235 to the public through regulatory disclosure or otherwise, provided to the Department of Small Business
236 and Supplier Diversity as part of an application for (i) certification as a small, women-owned, or
237 minority-owned business in accordance with Chapter 16.1 (§ 2.2-1603 et seq.) or (ii) a claim made by a
238 disadvantaged business or an economically disadvantaged individual against the Capital Access Fund for
239 Disadvantaged Businesses created pursuant to § 2.2-2311. In order for such trade secrets or financial
240 records to be excluded from the provisions of this chapter, the business shall (a) (i) invoke such
241 exclusion upon submission of the data or other materials for which protection from disclosure is sought,
242 (b) (ii) identify the data or other materials for which protection is sought, and (c) (iii) state the reasons
243 why protection is necessary.

21. Documents and other information of a proprietary or confidential nature disclosed by a carrier to the State Health Commissioner pursuant to §§ 32.1-276.5:1 and 32.1-276.7:1.

22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including, but not limited to, financial records, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the State Inspector General for the purpose of an audit, special investigation, or any study requested by the Office of the State Inspector General in accordance with law.

In order for the records specified in this subdivision to be excluded from the provisions of this chapter, the private or nongovernmental entity shall make a written request to the State Inspector General:

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

2. Identifying with specificity the data or other materials for which protection is sought; and
3. Stating the reasons why protection is necessary.

The State Inspector General shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. The State Inspector General shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

23. Records submitted as a grant application, or accompanying a grant application, to the Virginia Tobacco Indemnification and Community Revitalization Commission to the extent such records contain (i) trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), (ii) financial records of a grant applicant that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, or (iii) 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, technological, 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; and memoranda, staff evaluations, or other records prepared by the Commission or its staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision shall apply to grants that are consistent with the powers of and in furtherance of the performance of the duties of the Commission pursuant to § 3.2-3103.

In order for the records specified in this subdivision to be excluded from the provisions of this chapter, the applicant shall make a written request to the Commission:

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

2. Identifying with specificity the data, records or other materials for which protection is sought; and
3. Stating the reasons why protection is necessary.

The Commission shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets, financial records or research-related information of the applicant. The Commission shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

24. a. Records of the Commercial Space Flight Authority relating to rate structures or charges for the use of projects of, the sale of products of, or services rendered by the Authority if public disclosure would adversely affect the financial interest or bargaining position of the Authority or a private entity providing records to the Authority; or

b. Records provided by a private entity to the Commercial Space Flight Authority, to the extent that such records contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial records of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity, where, if the records were made public, the financial interest or bargaining position of the Authority or private entity would be adversely affected.

In order for the records specified in clauses (i), (ii), and (iii) of subdivision 24 b to be excluded from the provisions of this chapter, the private entity shall make a written request to the Authority:

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

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

3. Stating the reasons why protection is necessary.

The Authority shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. To protect other records submitted by the private entity from disclosure, the Authority shall determine whether public disclosure would adversely

305 affect the financial interest or bargaining position of the Authority or private entity. The Authority shall
306 make a written determination of the nature and scope of the protection to be afforded by it under this
307 subdivision.

308 25. Documents and other information of a proprietary nature furnished by an agricultural landowner
309 or operator to the Department of Conservation and Recreation, the Department of Environmental
310 Quality, the Department of Agriculture and Consumer Services or any political subdivision, agency, or
311 board of the Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when
312 required as part of a state or federal regulatory enforcement action.

313 26. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to the
314 Department of Environmental Quality pursuant to the provisions of § 10.1-1458. In order for such trade
315 secrets to be excluded from the provisions of this chapter, the submitting party shall (i) invoke this
316 exclusion upon submission of the data or materials for which protection from disclosure is sought, (ii)
317 identify the data or materials for which protection is sought, and (iii) state the reasons why protection is
318 necessary.

319 27. Documents and other information of a proprietary nature furnished by a licensed public-use
320 airport to the Department of Aviation for funding from programs administered by the Department of
321 Aviation or the Virginia Aviation Board, where if the records were made public, the financial interest of
322 the public-use airport would be adversely affected.

323 In order for the records specified in this subdivision to be excluded from the provisions of this
324 chapter, the public-use airport shall make a written request to the Department of Aviation:

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

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

328 3. Stating the reasons why protection is necessary.

329 **§ 18.2-213.1. Obtaining certification as small, women-owned, or minority-owned business by**
330 **deception; penalty.**

331 A. Except as otherwise provided by § 18.2-498.3, a person shall be guilty of a Class 1 misdemeanor
332 if, in the course of business, he:

333 1. Fraudulently obtains or retains certification as a small, women-owned, or minority-owned business
334 ~~or disadvantaged business;~~

335 2. Willfully makes a false statement knowing it to be untrue, whether by affidavit, report or other
336 representation, to an official or employee of a public body for the purpose of influencing the
337 certification or denial of certification of any business entity as a small, women-owned, or
338 minority-owned business; ~~or disadvantaged business;~~

339 3. Willfully obstructs or impedes any agency official or employee who is investigating the
340 qualifications of a business entity which has requested certification as a small, women-owned, or
341 minority-owned business; ~~or disadvantaged business;~~ or

342 4. Fraudulently obtains public moneys reserved for or allocated or available to small, women-owned,
343 or minority-owned businesses ~~or disadvantaged business.~~

344 B. For the purposes of this section, "minority-owned business," and "small business" and
345 "women-owned business" shall have the same meaning as those terms are defined in § 2.2-1604 ~~and~~
346 ~~"disadvantaged business" shall mean the same as that term is defined in § 2.2-2311.~~

347 **2. That § 2.2-2311 of the Code of Virginia is repealed.**