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**HOUSE BILL NO. 383**

Offered January 13, 2016

Prefiled January 6, 2016

*A BILL to amend and reenact §§ 2.2-3705.6 and 15.2-2259 of the Code of Virginia, relating to Freedom of Information Act; exclusion pursuant to nondisclosure agreement; building permit application; site plan.*

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Patron—Marshall, R.G.

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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 and 15.2-2259 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 a public body, used by the public body for business, trade, and tourism development or retention; ~~and, provided that no application for a building permit that is submitted to a locality for final approval shall be excluded pursuant to such a promise of confidentiality, as well as~~ memoranda, working papers, or other records related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where, if such records ~~are~~ were made public, the financial interest of the public body 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 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

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59 under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public Private  
60 Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (i) if such records were  
61 made public prior to or after the execution of an interim or a comprehensive agreement, § 33.2-1820 or  
62 56-575.17 notwithstanding, the financial interest or bargaining position of the public entity would be  
63 adversely affected, and (ii) the basis for the determination required in clause (i) is documented in writing  
64 by the 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 § 33.2-1820 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. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential  
109 proprietary records that are not generally available to the public through regulatory disclosure or  
110 otherwise, provided by a (a) bidder or applicant for a franchise or (b) franchisee under Chapter 21  
111 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of  
112 confidentiality from the franchising authority, to the extent the records relate to the bidder's, applicant's,  
113 or franchisee's financial capacity or provision of new services, adoption of new technologies or  
114 implementation of improvements, where such new services, technologies or improvements have not been  
115 implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such  
116 records were made public, the competitive advantage or financial interests of the franchisee would be  
117 adversely affected.

118 In order for trade secrets or confidential proprietary information to be excluded from the provisions  
119 of this chapter, the bidder, applicant, or franchisee shall (i) invoke such exclusion upon submission of  
120 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.

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

14. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Department of Agriculture and Consumer Services 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 § 3.2-1215.

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 or loan application, or accompanying a grant or loan application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.) of Chapter 22 of Title 2.2 or 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, 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.

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 (a) invoke the protections of this subdivision, (b) identify with specificity the records or portions thereof for which protection is sought, and (c) 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 Small Business and Supplier Diversity as part of an application for certification as a small, women-owned, or minority-owned business in accordance with Chapter 16.1 (§ 2.2-1603 et seq.). In order for such trade secrets or financial records to be excluded from the provisions of this chapter, the business shall (i) invoke such 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 reasons 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

182 General shall make a written determination of the nature and scope of the protection to be afforded by it  
183 under this subdivision.

184 23. Records submitted as a grant application, or accompanying a grant application, to the Tobacco  
185 Region Revitalization Commission to the extent such records contain (i) trade secrets as defined in the  
186 Uniform Trade Secrets Act (§ 59.1-336 et seq.), (ii) financial records of a grant applicant that is not a  
187 public body, including balance sheets and financial statements, that are not generally available to the  
188 public through regulatory disclosure or otherwise, or (iii) research-related information produced or  
189 collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative,  
190 scientific, technical, technological, or scholarly issues, when such information has not been publicly  
191 released, published, copyrighted, or patented, if the disclosure of such information would be harmful to  
192 the competitive position of the applicant; and memoranda, staff evaluations, or other records prepared by  
193 the Commission or its staff exclusively for the evaluation of grant applications. The exclusion provided  
194 by this subdivision shall apply to grants that are consistent with the powers of and in furtherance of the  
195 performance of the duties of the Commission pursuant to § 3.2-3103.

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

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

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

201 3. Stating the reasons why protection is necessary.

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

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

210 b. Records provided by a private entity to the Commercial Space Flight Authority, to the extent that  
211 such records contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act  
212 (§ 59.1-336 et seq.); (ii) financial records of the private entity, including balance sheets and financial  
213 statements, that are not generally available to the public through regulatory disclosure or otherwise; or  
214 (iii) other information submitted by the private entity, where, if the records were made public, the  
215 financial interest or bargaining position of the Authority or private entity would be adversely affected.

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

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

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

221 3. Stating the reasons why protection is necessary.

222 The Authority shall determine whether the requested exclusion from disclosure is necessary to protect  
223 the trade secrets or financial records of the private entity. To protect other records submitted by the  
224 private entity from disclosure, the Authority shall determine whether public disclosure would adversely  
225 affect the financial interest or bargaining position of the Authority or private entity. The Authority shall  
226 make a written determination of the nature and scope of the protection to be afforded by it under this  
227 subdivision.

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

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

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

243 In order for the records specified in this subdivision to be excluded from the provisions of this

chapter, the public-use airport shall make a written request to the Department of Aviation:

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.

**§ 15.2-2259. Local planning commission to act on proposed plat.**

A. 1. Except as otherwise provided in subdivisions 2 and 3, the local planning commission or other agent shall act on any proposed plat within 60 days after it has been officially submitted for approval by either approving or disapproving the plat in writing, and giving with the latter specific reasons therefor. The Commission or agent shall thoroughly review the plat and shall make a good faith effort to identify all deficiencies, if any, with the initial submission. However, if approval of a feature or features of the plat by a state agency or public authority authorized by state law is necessary, the commission or agent shall forward the plat to the appropriate state agency or agencies for review within 10 business days of receipt of such plat. The state agency shall respond in accord with the requirements set forth in § 15.2-2222.1, which shall extend the time for action by the local planning commission or other agent, as set forth in subsection B. Specific reasons for disapproval shall be contained either in a separate document or on the plat itself. The reasons for disapproval shall identify deficiencies in the plat that cause the disapproval by reference to specific duly adopted ordinances, regulations, or policies and shall identify modifications or corrections as will permit approval of the plat. The local planning commission or other agent shall act on any proposed plat that it has previously disapproved within 45 days after the plat has been modified, corrected and resubmitted for approval.

2. The approval of plats, site plans, and plans of development solely involving parcels of commercial real estate by a local planning commission or other agent shall be governed by subdivision 3 and subsections B, C, and D. For the purposes of this section, the term "commercial" means all real property used for commercial or industrial uses.

3. The local planning commission or other agent shall act on any proposed plat, site plan or plan of development within 60 days after it has been officially submitted for approval by either approving or disapproving the plat in writing, and giving with the latter specific reasons therefor. The Commission or agent shall thoroughly review the plat or plan and shall in good faith identify, to the greatest extent practicable, all deficiencies, if any, with the initial submission. However, if approval of a feature or features of the plat or plan by a state agency or public authority authorized by state law is necessary, the commission or agent shall forward the plat or plan to the appropriate state agency or agencies for review within 10 business days of receipt of such plat or plan. The state agency shall respond in accord with the requirements set forth in § 15.2-2222.1, which shall extend the time for action by the local planning commission or other agent, as set forth in subsection B. Specific reasons for disapproval shall be contained either in a separate document or on the plat or plan itself. The reasons for disapproval shall identify deficiencies in the plat or plan that caused the disapproval by reference to specific duly adopted ordinances, regulations, or policies and shall identify, to the greatest extent practicable, modifications or corrections that will permit approval of the plat or plan.

In the review of a resubmitted proposed plat, site plan or plan of development that has been previously disapproved, the local planning commission or other agent shall consider only deficiencies it had identified in its review of the initial submission of the plat or plan that have not been corrected in such resubmission and any deficiencies that arise as a result of the corrections made to address deficiencies identified in the initial submission. In the review of the resubmission of a plat or plan, the local planning commission or other agent shall identify all deficiencies with the proposed plat or plan that caused the disapproval by reference to specific duly adopted ordinances, regulations or policies and shall identify modifications or corrections that will permit approval of the plat or plan. Upon the second resubmission of such disapproved plat or plan, the local planning commission or other agent's review shall be limited solely to the previously identified deficiencies that caused its disapproval.

The local planning commission or other agent shall act on any proposed plat, site plan or plan of development that it has previously disapproved within 45 days after the plat or plan has been modified, corrected and resubmitted for approval. The failure of a local planning commission or other agent to approve or disapprove a resubmitted plat or plan within the time periods required by this section shall cause the plat or plan to be deemed approved.

Notwithstanding the approval or deemed approval of any proposed plat, site plan or plan of development, any deficiency in any proposed plat or plan, that if left uncorrected, would violate local, state or federal law, regulations, mandatory Department of Transportation engineering and safety requirements, and other mandatory engineering and safety requirements, shall not be considered, treated or deemed as having been approved by the local planning commission or other agent. Should any resubmission include a material revision of infrastructure or physical improvements from the earlier submission or if a material revision in the resubmission creates a new required review by the Virginia

305 Department of Transportation or by a state agency or public authority authorized by state law, then the  
306 local planning commission or other agent's review shall not be limited to only the previously identified  
307 deficiencies identified in the prior submittals and may consider deficiencies initially appearing in the  
308 resubmission because of such material revision.

309 The provisions of this subsection shall not apply to deficiencies caused by changes, errors or  
310 omissions occurring in the applicant's plat, site plan or plan of development filings after the initial  
311 submission of such plat, site plan or plan of development. The provision of this subsection shall not  
312 apply to the review and approval of construction plans.

313 *Any proposed plat, site plan, or plan of development that is officially submitted to the local planning*  
314 *commission or other agent for approval, or officially resubmitted to such commission or agent after a*  
315 *previous disapproval, shall be considered a public record subject to disclosure under the Virginia*  
316 *Freedom of Information Act (§ 2.2-3700 et seq.).*

317 B. Any state agency or public authority authorized by state law making a review of a plat forwarded  
318 to it under this article, including, without limitation, the Virginia Department of Transportation and  
319 authorities authorized by Chapter 51 (§ 15.2-5100 et seq.), shall complete its review within 45 days of  
320 receipt of the plat upon first submission and within 45 days for any proposed plat that has previously  
321 been disapproved, provided, however, that the time periods set forth in § 15.2-2222.1 shall apply to plats  
322 triggering the applicability of said section. The Virginia Department of Transportation and authorities  
323 authorized by Chapter 51 (§ 15.2-5100 et seq.) shall allow use of public rights-of-way dedicated for  
324 public street purposes for placement of utilities by permit when practical and shall not unreasonably  
325 deny plat approval. If a state agency or public authority authorized by state law does not approve the  
326 plat, it shall comply with the requirements, and be subject to the restrictions, set forth in subsection A,  
327 with the exception of the time period therein specified. Upon receipt of the approvals from all state  
328 agencies and other agencies, the local agent shall act upon a plat within 35 days.

329 C. If the commission or other agent fails to approve or disapprove the plat within 60 days after it  
330 has been officially submitted for approval, or within 45 days after it has been officially resubmitted after  
331 a previous disapproval or within 35 days of receipt of any agency response pursuant to subsection B, the  
332 subdivider, after 10-days' written notice to the commission, or agent, may petition the circuit court for  
333 the locality in which the land involved, or the major part thereof, is located, to decide whether the plat  
334 should or should not be approved. The court shall give the petition priority on the civil docket, hear the  
335 matter expeditiously in accordance with the procedures prescribed in Article 2 (§ 8.01-644 et seq.) of  
336 Chapter 25 of Title 8.01 and make and enter an order with respect thereto as it deems proper, which  
337 may include directing approval of the plat.

338 D. If a commission or other agent disapproves a plat and the subdivider contends that the disapproval  
339 was not properly based on the ordinance applicable thereto, or was arbitrary or capricious, he may  
340 appeal to the circuit court having jurisdiction of such land and the court shall hear and determine the  
341 case as soon as may be, provided that his appeal is filed with the circuit court within 60 days of the  
342 written disapproval by the commission or other agent.