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SENATE BILL NO. 329

Offered January 13, 2016

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A BILL to amend and reenact §§ 2.2-3705.6, 2.2-3711, 15.2-2160, 15.2-7202, 15.2-7203, 15.2-7205 through 15.2-7208, and 56-265.4:4 of the Code of Virginia and to repeal § 15.2-2108.18 of the Code of Virginia, relating to the BVU Authority.

Patron—Carrico

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.6, 2.2-3711, 15.2-2160, 15.2-7202, 15.2-7203, 15.2-7205 through 15.2-7208, and 56-265.4:4 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 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 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 under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public Private

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59 Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (i) if such records were
60 made public prior to or after the execution of an interim or a comprehensive agreement, § 33.2-1820 or
61 56-575.17 notwithstanding, the financial interest or bargaining position of the public entity would be
62 adversely affected, and (ii) the basis for the determination required in clause (i) is documented in writing
63 by the responsible public entity; and

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

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

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

78 3. Stating the reasons why protection is necessary.

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

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

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

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

107 13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential
108 proprietary records that are not generally available to the public through regulatory disclosure or
109 otherwise, provided by a (a) bidder or applicant for a franchise or (b) franchisee under Chapter 21
110 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of
111 confidentiality from the franchising authority, to the extent the records relate to the bidder's, applicant's,
112 or franchisee's financial capacity or provision of new services, adoption of new technologies or
113 implementation of improvements, where such new services, technologies or improvements have not been
114 implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such
115 records were made public, the competitive advantage or financial interests of the franchisee would be
116 adversely affected.

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

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

125 14. Documents and other information of a proprietary nature furnished by a supplier of charitable
126 gaming supplies to the Department of Agriculture and Consumer Services pursuant to subsection E of
127 § 18.2-340.34.

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

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

133 17. Records submitted as a grant or loan application, or accompanying a grant or loan application, to
134 the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.) of
135 Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 22
136 (§ 23-277 et seq.) of Title 23 to the extent such records contain proprietary business or research-related
137 information produced or collected by the applicant in the conduct of or as a result of study or research
138 on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information
139 has not been publicly released, published, copyrighted, or patented, if the disclosure of such information
140 would be harmful to the competitive position of the applicant.

141 18. Confidential proprietary records and trade secrets developed and held by a local public body (i)
142 providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television
143 services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2, to the extent that
144 disclosure of such records would be harmful to the competitive position of the locality. In order for
145 confidential proprietary information or trade secrets to be excluded from the provisions of this chapter,
146 the locality in writing shall (a) invoke the protections of this subdivision, (b) identify with specificity the
147 records or portions thereof for which protection is sought, and (c) state the reasons why protection is
148 necessary. *However, the exemption provided by this subdivision shall not apply to any authority created
149 pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).*

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

156 20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial
157 records of a business, including balance sheets and financial statements, that are not generally available
158 to the public through regulatory disclosure or otherwise, provided to the Department of Small Business
159 and Supplier Diversity as part of an application for certification as a small, women-owned, or
160 minority-owned business in accordance with Chapter 16.1 (§ 2.2-1603 et seq.). In order for such trade
161 secrets or financial records to be excluded from the provisions of this chapter, the business shall (i)
162 invoke such exclusion upon submission of the data or other materials for which protection from
163 disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state
164 the reasons why protection is necessary.

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

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

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

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

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

179 3. Stating the reasons why protection is necessary.

180 The State Inspector General shall determine whether the requested exclusion from disclosure is
181 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

- 244 chapter, the public-use airport shall make a written request to the Department of Aviation:
- 245 1. Invoking such exclusion upon submission of the data or other materials for which protection from
- 246 disclosure is sought;
- 247 2. Identifying with specificity the data or other materials for which protection is sought; and
- 248 3. Stating the reasons why protection is necessary.
- 249 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**
- 250 A. Public bodies may hold closed meetings only for the following purposes:
- 251 1. Discussion, consideration, or interviews of prospective candidates for employment; assignment,
- 252 appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public
- 253 officers, appointees, or employees of any public body; and evaluation of performance of departments or
- 254 schools of public institutions of higher education where such evaluation will necessarily involve
- 255 discussion of the performance of specific individuals. Any teacher shall be permitted to be present
- 256 during a closed meeting in which there is a discussion or consideration of a disciplinary matter that
- 257 involves the teacher and some student and the student involved in the matter is present, provided the
- 258 teacher makes a written request to be present to the presiding officer of the appropriate board.
- 259 2. Discussion or consideration of admission or disciplinary matters or any other matters that would
- 260 involve the disclosure of information contained in a scholastic record concerning any student of any
- 261 Virginia public institution of higher education or any state school system. However, any such student,
- 262 legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to
- 263 be present during the taking of testimony or presentation of evidence at a closed meeting, if such
- 264 student, parents, or guardians so request in writing and such request is submitted to the presiding officer
- 265 of the appropriate board.
- 266 3. Discussion or consideration of the acquisition of real property for a public purpose, or of the
- 267 disposition of publicly held real property, where discussion in an open meeting would adversely affect
- 268 the bargaining position or negotiating strategy of the public body.
- 269 4. The protection of the privacy of individuals in personal matters not related to public business.
- 270 5. Discussion concerning a prospective business or industry or the expansion of an existing business
- 271 or industry where no previous announcement has been made of the business' or industry's interest in
- 272 locating or expanding its facilities in the community.
- 273 6. Discussion or consideration of the investment of public funds where competition or bargaining is
- 274 involved, where, if made public initially, the financial interest of the governmental unit would be
- 275 adversely affected.
- 276 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual
- 277 or probable litigation, where such consultation or briefing in open meeting would adversely affect the
- 278 negotiating or litigating posture of the public body; and consultation with legal counsel employed or
- 279 retained by a public body regarding specific legal matters requiring the provision of legal advice by such
- 280 counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been
- 281 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe
- 282 will be commenced by or against a known party. Nothing in this subdivision shall be construed to
- 283 permit the closure of a meeting merely because an attorney representing the public body is in attendance
- 284 or is consulted on a matter.
- 285 8. In the case of boards of visitors of public institutions of higher education, discussion or
- 286 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts
- 287 for services or work to be performed by such institution. However, the terms and conditions of any such
- 288 gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign
- 289 person and accepted by a public institution of higher education in Virginia shall be subject to public
- 290 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
- 291 (i) "foreign government" means any government other than the United States government or the
- 292 government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity
- 293 created under the laws of the United States or of any state thereof if a majority of the ownership of the
- 294 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
- 295 membership of any such entity is composed of foreign persons or foreign legal entities, or any legal
- 296 entity created under the laws of a foreign government; and (iii) "foreign person" means any individual
- 297 who is not a citizen or national of the United States or a trust territory or protectorate thereof.
- 298 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum
- 299 of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of Virginia,
- 300 discussion or consideration of matters relating to specific gifts, bequests, and grants.
- 301 10. Discussion or consideration of honorary degrees or special awards.
- 302 11. Discussion or consideration of tests, examinations, or other records excluded from this chapter
- 303 pursuant to subdivision 4 of § 2.2-3705.1.
- 304 12. Discussion, consideration, or review by the appropriate House or Senate committees of possible

305 disciplinary action against a member arising out of the possible inadequacy of the disclosure statement
306 filed by the member, provided the member may request in writing that the committee meeting not be
307 conducted in a closed meeting.

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

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

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

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

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

326 18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity
327 of, or information tending to identify, any prisoner who (i) provides information about crimes or
328 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the
329 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders
330 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

331 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific
332 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement
333 or emergency service officials concerning actions taken to respond to such matters or a related threat to
334 public safety; discussion of records excluded from this chapter pursuant to subdivision 3 or 4 of
335 § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of any person or the
336 security of any facility, building, structure, information technology system, or software program; or
337 discussion of reports or plans related to the security of any governmental facility, building or structure,
338 or the safety of persons using such facility, building or structure.

339 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or
340 of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the
341 University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings
342 Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or
343 other ownership interest in an entity, where such security or ownership interest is not traded on a
344 governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential
345 analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement
346 system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia
347 College Savings Plan under a promise of confidentiality, of the future value of such ownership interest
348 or the future financial performance of the entity, and (ii) would have an adverse effect on the value of
349 the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of
350 the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be
351 construed to prevent the disclosure of information relating to the identity of any investment held, the
352 amount invested or the present value of such investment.

353 21. Those portions of meetings in which individual child death cases are discussed by the State Child
354 Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which
355 individual child death cases are discussed by a regional or local child fatality review team established
356 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by
357 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in
358 which individual adult death cases are discussed by the state Adult Fatality Review Team established
359 pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are
360 discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

361 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern
362 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
363 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
364 Virginia Medical School, as the case may be, have been delegated, in which there is discussed
365 proprietary, business-related information pertaining to the operations of the University of Virginia
366 Medical Center or Eastern Virginia Medical School, as the case may be, including business development

367 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
 368 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
 369 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
 370 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
 371 Medical School, as the case may be.

372 23. In the case of the Virginia Commonwealth University Health System Authority, discussion or
 373 consideration of any of the following: the acquisition or disposition of real or personal property where
 374 disclosure would adversely affect the bargaining position or negotiating strategy of the Authority;
 375 operational plans that could affect the value of such property, real or personal, owned or desirable for
 376 ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and
 377 contracts for services or work to be performed by the Authority; marketing or operational strategies
 378 where disclosure of such strategies would adversely affect the competitive position of the Authority;
 379 members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications
 380 or evaluations of other employees. This exemption shall also apply when the foregoing discussions occur
 381 at a meeting of the Virginia Commonwealth University Board of Visitors.

382 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within
 383 the Department of Health Professions to the extent such discussions identify any practitioner who may
 384 be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

385 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
 386 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees
 387 by or on behalf of individuals who have requested information about, applied for, or entered into
 388 prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.)
 389 of Title 23 is discussed.

390 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created
 391 pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et
 392 seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of wireless
 393 E-911 service.

394 27. Those portions of disciplinary proceedings by any regulatory board within the Department of
 395 Professional and Occupational Regulation, Department of Health Professions, or the Board of
 396 Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach
 397 a decision or meetings of health regulatory boards or conference committees of such boards to consider
 398 settlement proposals in pending disciplinary actions or modifications to previously issued board orders as
 399 requested by either of the parties.

400 28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11 of
 401 § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are
 402 defined in § 33.2-1800, or any independent review panel appointed to review information and advise the
 403 responsible public entity concerning such records.

404 29. Discussion of the award of a public contract involving the expenditure of public funds, including
 405 interviews of bidders or offerors, and discussion of the terms or scope of such contract, where
 406 discussion in an open session would adversely affect the bargaining position or negotiating strategy of
 407 the public body.

408 30. Discussion or consideration of grant or loan application records excluded from this chapter
 409 pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the
 410 Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment
 411 Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

412 31. Discussion or consideration by the Commitment Review Committee of records excluded from
 413 this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to commitment as
 414 sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

415 32. [Expired.]

416 33. Discussion or consideration of confidential proprietary records and trade secrets excluded from
 417 this chapter pursuant to subdivision 18 of § 2.2-3705.6. *However, the exemption provided by this*
 418 *subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et*
 419 *seq.).*

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

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

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

428 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards
429 Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of
430 § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship
431 award, review and consider scholarship applications and requests for scholarship award renewal, and
432 cancel, rescind, or recover scholarship awards.

433 38. Discussion or consideration by the Virginia Port Authority of records excluded from this chapter
434 pursuant to subdivision 1 of § 2.2-3705.6.

435 39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting
436 pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26,
437 by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College
438 Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's Investment
439 Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this chapter pursuant
440 to subdivision 25 of § 2.2-3705.7.

441 40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of
442 § 2.2-3705.6.

443 41. Discussion or consideration by the Board of Education of records relating to the denial,
444 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of
445 § 2.2-3705.3.

446 42. Those portions of meetings of the Virginia Military Advisory Council or any commission created
447 by executive order for the purpose of studying and making recommendations regarding preventing
448 closure or realignment of federal military and national security installations and facilities located in
449 Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization
450 appointed by a local governing body, during which there is discussion of records excluded from this
451 chapter pursuant to subdivision 12 of § 2.2-3705.2.

452 43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
453 records excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.

454 44. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of
455 records excluded from this chapter pursuant to subdivision 23 of § 2.2-3705.6.

456 45. Discussion or consideration by the board of directors of the Commercial Space Flight Authority
457 of records excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6.

458 46. Discussion or consideration of personal and proprietary information that are excluded from the
459 provisions of this chapter pursuant to (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of
460 § 10.1-104.7. This exemption shall not apply to the discussion or consideration of records that contain
461 information that has been certified for release by the person who is the subject of the information or
462 transformed into a statistical or aggregate form that does not allow identification of the person who
463 supplied, or is the subject of, the information.

464 47. (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the Virginia
465 Alcoholic Beverage Control Authority of records excluded from this chapter pursuant to subdivision 1 of
466 § 2.2-3705.3 or subdivision 34 of § 2.2-3705.7.

467 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a
468 closed meeting shall become effective unless the public body, following the meeting, reconvenes in open
469 meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or
470 motion that shall have its substance reasonably identified in the open meeting.

471 C. Public officers improperly selected due to the failure of the public body to comply with the other
472 provisions of this section shall be de facto officers and, as such, their official actions are valid until they
473 obtain notice of the legal defect in their election.

474 D. Nothing in this section shall be construed to prevent the holding of conferences between two or
475 more public bodies, or their representatives, but these conferences shall be subject to the same
476 procedures for holding closed meetings as are applicable to any other public body.

477 E. This section shall not be construed to (i) require the disclosure of any contract between the
478 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1
479 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant
480 to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body
481 empowered to issue industrial revenue bonds by general or special law, to identify a business or industry
482 to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of
483 public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance
484 of such bonds.

485 § 15.2-2160. Provision of telecommunications services.

486 A. Any locality that operates an electric distribution system may provide telecommunications
487 services, including local exchange telephone service as defined in § 56-1, within or outside its
488 boundaries if the locality obtains a certificate pursuant to § 56-265.4:4. Such locality may provide
489 telecommunications services within any locality in which it has electric distribution system facilities as

490 of March 1, 2002. Any locality providing telecommunications services on March 1, 2002, may provide
 491 telecommunications, Internet access, broadband, information, and data transmission services within any
 492 locality within 75 miles of the geographic boundaries of its electric distribution system as such system
 493 existed on March 1, 2002. *The BVU Authority may provide telecommunications, Internet access,*
 494 *broadband, information, and data transmission services as provided in the BVU Authority Act*
 495 *(§ 15.2-7200 et seq.).*

496 B. A locality that has obtained a certificate pursuant to § 56-265.4:4 shall (i) comply with all
 497 applicable laws and regulations for the provision of telecommunications services; (ii) make a reasonable
 498 estimate of the amount of all federal, state, and local taxes (including income taxes and consumer utility
 499 taxes) that would be required to be paid or collected for each fiscal year if the locality were a for-profit
 500 provider of telecommunications services, (iii) prepare reasonable estimates of the amount of any
 501 franchise fees and other state and local fees (including permit fees and pole rental fees), and
 502 right-of-way charges that would be incurred in each fiscal year if the locality were a for-profit provider
 503 of telecommunications services, (iv) prepare and publish annually financial statements in accordance
 504 with generally accepted accounting principles showing the results of operations of its provision of
 505 telecommunications services, and (v) maintain records demonstrating compliance with the provisions of
 506 this section that shall be made available for inspection and copying pursuant to the Virginia Freedom of
 507 Information Act (§ 2.2-3700 et seq.).

508 C. Each locality that has obtained a certificate pursuant to § 56-265.4:4 shall provide
 509 nondiscriminatory access to for-profit providers of telecommunications services on a first-come,
 510 first-served basis to rights-of-way, poles, conduits or other permanent distribution facilities owned, leased
 511 or operated by the locality unless the facilities have insufficient capacity for such access and additional
 512 capacity cannot reasonably be added to the facilities.

513 D. The prices charged and the revenue received by a locality for providing telecommunications
 514 services shall not be cross-subsidized by other revenues of the locality or affiliated entities, except (i) in
 515 areas where no offers exist for for-profit providers of such telecommunications services, or (ii) as
 516 permitted by the provisions of subdivision B 5 of § 56-265.4:4. The provisions of this subsection shall
 517 not apply to Internet access, broadband, information, and data transmission services provided by any
 518 locality providing telecommunications services on March 1, 2002.

519 E. No locality providing such services shall acquire by eminent domain the facilities or other
 520 property of any telecommunications service provider to offer cable, telephone, data transmission or other
 521 information or online programming services.

522 F. Public records of a locality that has obtained a certificate pursuant to § 56-265.4:4, which records
 523 contain confidential proprietary information or trade secrets pertaining to the provision of
 524 telecommunications service, shall be exempt from disclosure under the Freedom of Information Act
 525 (§ 2.2-3700 et seq.). As used in this subsection, a public record contains confidential proprietary
 526 information or trade secrets if its acquisition by a competing provider of telecommunications services
 527 would provide the competing provider with a competitive benefit. *However, the exemption provided by*
 528 *this subsection shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200*
 529 *et seq.).*

530 G. As used in this section, "locality" shall mean any county, city, town, authority, or other
 531 governmental entity which provides or seeks to provide telecommunications services. Every locality shall
 532 comply with the requirements of § 56-265.4:4 or 56-484.7:1 unless otherwise specifically exempt. Any
 533 locality that has obtained a certificate pursuant to § 56-265.4:4, and which surrenders or transfers such
 534 certificate shall continue to remain subject to subsections C, D, and E if any substantial part of its
 535 telecommunications assets or operations are transferred to an entity in which the locality has the right to
 536 appoint board members, directors, or managers.

537 **§ 15.2-7202. Definitions.**

538 As used in this chapter, unless the context requires a different meaning:

539 "Authority" means the BVU Authority created by entity conversion of Bristol Virginia Utilities by
 540 this chapter.

541 "Board," "Authority Board," or "Board of Directors" means the governing body of the Authority.

542 "Bonds" means any bonds, notes, debentures, bond acceptance notes, or other evidence of financial
 543 indebtedness either issued or assumed by the Authority pursuant to this chapter.

544 "Bristol Virginia Utilities Board" means the Board of Directors of Bristol Virginia Utilities governing
 545 that entity until the Authority Board takes office on July 1, 2010.

546 "City" means the City of Bristol, Virginia.

547 "City Council" means the City Council of the City of Bristol, Virginia.

548 "Commission" means the Virginia State Corporation Commission.

549 "Commonwealth" means the Commonwealth of Virginia.

550 "Infrastructure" means all property, whether attached to real property or not, now used by Bristol

551 Virginia Utilities and hereafter used by the Authority for the provision of (i) electric, water, sewer,
 552 telecommunications, internet, and cable television services and (ii) all other utility, ~~management, and~~
 553 ~~consulting~~ services the Authority may lawfully provide.

554 "MLEC" means any city, county, or town certificated to provide local exchange and/or interexchange
 555 telecommunications services pursuant to § 56-265.4:4 and any authority granted such powers pursuant to
 556 § 15.2-7209.

557 "Political subdivision" means, *when referring to an entity other than the Authority*, a locality,
 558 authority, or other public body of the Commonwealth or of any state in which the Authority does
 559 business.

560 "Utility," "utilities," or "utility services" means and includes electric, water, sewer, and
 561 telecommunications, internet and cable television services, including all other services that might be
 562 lawfully rendered by use of its fiber optic system.

563 **§ 15.2-7203. BVU Authority; operating name or names.**

564 The name of the Authority shall be "BVU Authority."

565 The BVU Authority is hereby authorized to operate under the names BVU, BVU OptiNet, CPC
 566 OptiNet, and BVU Focus. The name of the Authority and any division or operating name may be
 567 changed upon approval of a simple majority of the Board of Directors. The Board of Directors may
 568 adopt additional operating names in the future. ~~If it does so, it~~ *The Authority* shall comply with requisite
 569 fictitious name recording requirements for any areas in which it is doing business.

570 **§ 15.2-7205. Board of Directors; membership.**

571 A. The powers of the Authority shall be vested in ~~an~~ *the* Authority Board of Directors consisting of
 572 ~~nine seven~~ directors. The number of Directors ~~on the Board may directors shall not be increased altered~~
 573 by the Authority Board.

574 B. The Authority's Authority Board, which will initially take office on July 1, 2010, ~~However,~~
 575 *beginning on July 1, 2016, the Authority Board* shall be constituted as follows:

576 1. ~~Four~~ *One* director who is a citizen of the City of Bristol, Virginia, ~~citizen appointees and is not a~~
 577 *member of the Bristol City Council, appointed by the Governor. The four* Bristol, Virginia, ~~citizen~~
 578 ~~appointees currently on the Bristol Virginia Utilities Board are hereby directors on the Authority's Board~~
 579 ~~and their respective terms are extended on the Authority Board as follows:~~

580 a. The term ending June 30, 2010, will be extended to end June 30, 2014.

581 b. The term ending June 30, 2011, will be extended to end June 30, 2015.

582 c. The second term ending June 30, 2011, will be extended to end June 30, 2016.

583 d. The term ending June 30, 2012, will be extended to end June 30, 2016.

584 Each of said members will thereafter be eligible for one additional consecutive four-year term
 585 pursuant to the limitation set forth herein.

586 2. ~~Two~~ *members* appointed by ~~One~~ *director* who is a member of the Bristol City Council who are
 587 ~~members of,~~ *appointed by* the Bristol City Council serving on the Bristol Virginia Utilities Board as of
 588 ~~June 1, 2010. Such members shall to serve a four-year term, coterminous with their~~ *his* term on the
 589 ~~Council, commencing July 1, 2010. Should no present member of Council serving on the Bristol~~
 590 ~~Virginia Utilities Board be a member of Council on that date, Council may appoint two other members~~
 591 ~~of Council to serve on the initial Authority Board for a term that is coterminous with that member's~~
 592 ~~term on Council.~~

593 3. ~~One new~~ *Bristol, Virginia, citizen,* who is not a city council member. Such ~~citizen~~ will be *director*
 594 *who is a citizen of Washington County and is not a member of the Washington County Board of*
 595 *Supervisors, appointed by the Bristol, Virginia, City Council and shall serve a term from July 1, 2010,*
 596 *until June 30, 2015 Senate Committee on Rules.*

597 4. ~~One new member,~~ *a director* who is a citizen of Washington County or the City of Bristol,
 598 ~~Virginia, citizen,~~ *appointed by the Bristol Virginia Utilities Board* whose term will start July 1, 2010,
 599 ~~and end June 30, 2014~~ *who is engaged in business and is not a member of the Washington County*
 600 *Board of Supervisors or Bristol City Council, appointed by the Authority Board.*

601 5. ~~One~~ *director* who is a member of the Board of Supervisors of Washington County, Virginia, ~~who~~
 602 ~~will be~~ *Board of Supervisors,* appointed by ~~that~~ *the* Washington County Board of Supervisors to serve a
 603 four-year term coterminous with his ~~or her~~ term on the Board of Supervisors ~~commencing~~ *July 1, 2010.*

604 6. ~~One~~ *director* who is a member of the Abingdon Town Council, appointed by the Abingdon Town
 605 *Council to serve a four-year term coterminous with his term on the Town Council.*

606 7. ~~One~~ *director* who is a Scott County citizen and is not a member of the Scott County Board of
 607 *Supervisors, appointed by the Speaker of the House of Delegates.*

608 C. If any appointments to the initial Board are made prior to the effective date of this chapter, such
 609 appointments shall be deemed valid and effective as of such date *The four-year term of all directors*
 610 *shall begin July 1, 2016. The term of Authority Board membership for any director thereafter shall be*
 611 *four years.*

612 D. The City Council shall elect, in addition to its Council members, three of the Bristol, Virginia,

613 citizen Board members when the above terms expire. The remaining three Bristol, Virginia, citizen
614 members will be elected by the Authority Board when the above terms expire. The City Council and the
615 Authority Board will alternate electing persons to fill an expiring term until each has appointed the
616 number it appoints to the Board. Any vacancy in a term shall be filled by the body making the original
617 appointment and shall be for the remainder of the term. Said appointment shall be made within 30 days
618 from the date the vacancy occurs.

619 E. The term of the Council members shall be for four years coterminous with those members' terms
620 of office on the City Council. Those City Council Members *Each director who is a member of the*
621 *Abingdon Town Council, Bristol City Council, or Washington County Board of Supervisors* may serve as
622 many terms as the City Council appointing governing body decides as long as the appointees are
623 members *appointee remains a member of the City Council relevant governing body.* The City Council
624 governing body may appoint other members a different member of the City Council or Board of
625 Supervisors at the end of any appointee's four-year Council or Board term or upon the exit of the
626 Council member from the Council governing body. In the latter case, the Council Member will new
627 appointee shall serve for the remainder of the term vacated by an exiting City Council member of the
628 governing body.

629 F. All other directors shall serve four-year terms, except for the longer appointments to the initial
630 Board. Those directors may serve a maximum of two terms and then must be off the Board for one full
631 year before election to fill another full term or to fill the remainder of a vacated term.

632 G. E. If funds are available, each director may be reimbursed by the Authority for the amount of
633 actual expenses incurred by him in the performance of his duties. Such expense allowance shall
634 constitute a cost of operation and maintenance of such utility systems and shall be prorated among each
635 of the systems it manages using the "~~3-Factor~~" *"Three-Factor"* allocation method approved by the
636 Commission. The three factors consist of the percentages that each division comprises of total plant in
637 service, total operating revenues, and total customer accounts. Once each operating division's percentage
638 of each of the three factors is calculated, the sum of the three factors divided by 3 *three* results in the
639 operating division's share of the total direct or indirect costs.

640 **§ 15.2-7206. Organization; compensation.**

641 A. *The following provisions apply to the Board of Directors:*

642 A simple majority 1. Five of the directors in office shall constitute a quorum. No vacancy in the
643 Board of Directors shall impair the right of a quorum to exercise all the rights and perform all the duties
644 of the Authority.

645 2. The Board of Directors shall hold regular meetings at such times and places as may be established
646 by its bylaws. *The Board shall hold its meetings as provided in § 2.2-3707.*

647 3. The Board of Directors shall hold its first organizational meeting on July 1, 2010.

648 Bylaws 4. *The Board shall adopt bylaws governing the conduct of business by the Board and the*
649 *Authority. Proposed bylaws shall be made available before being duly adopted and published at said at*
650 *each annual meeting. The Board is authorized to adopt bylaws governing the amendment of bylaws at*
651 *any time.*

652 Also at said meeting, the 5. The Board of Directors shall annually elect a chairman and a
653 vice-chairman from its membership and a secretary of the Board from *either its membership or* the staff
654 of the Authority to take office as of that same date. Thereafter the Board of Directors shall annually
655 elect a chairman and a vice-chairman from its membership and a secretary from the staff of the
656 Authority at its June annual meeting, to take office on the following July 1. The terms of such officers
657 shall be for one year.

658 The Board of Directors shall continue to appoint and contract with a president and CEO to manage
659 the operations of the Authority and a licensed attorney to serve as general counsel for the Authority, and
660 the contracts with the president and general counsel of Bristol Virginia Utilities shall continue in effect
661 and be binding upon the Authority. The Board of Directors shall also authorize the position of executive
662 vice-president and CFO, to be filled and managed by the president. The president shall have the
663 authority to hire, fire, and manage such staff as the president deems expedient to the operation of the
664 Authority, subject to the availability of budgeted funds, and to assign such positions, titles, powers, and
665 duties at such salaries as the president deems most effective for the efficient operation of the Authority.

666 Except for the purpose of inquiry, the 6. *The Board and its individual members shall deal with*
667 *Authority employees solely through the president. Neither the Board nor any member thereof shall The*
668 *Board shall not* give orders to any of the subordinates of the president, either publicly or privately. Any
669 such orders or other interferences on the part of the Board or any of its members with subordinates or
670 appointees of the president, instead of dealing or communicating directly with the president, are
671 prohibited.

672 Neither shall the Board or any of its members 7. *The Board shall not* direct the appointment or
673 removal of any person from any office or employment by Authority contractor or employee other than

674 the president or any of his subordinates. Nothing herein shall be construed to limit or prohibit contact
675 with the president and general counsel, both of whom report directly to the Board.

676 The Board of Directors shall make and, by recorded affirmative vote of three-fourths of all members,
677 amend and repeal bylaws governing the manner in which the Authority's business may be transacted and
678 in which the power granted to it may be enjoyed not inconsistent with this chapter. The initial set of
679 such bylaws shall be adopted at the first regular meeting of the Board following the Board's first
680 organizational meeting. The Board of Directors may appoint such committees as it may deem advisable
681 and fix the duties and responsibilities of such committees. The Board of Directors shall have the power
682 to request amendments to this chapter as set forth by the Code of Virginia that the Board deems
683 necessary and expedient for the proper operation of the Authority.

684 8. *The Board may appoint committees from among its membership in accordance with its bylaws.*

685 9. *No Board member shall receive any financial compensation for service on the Board. The Board
686 may reimburse members for reasonable expenses they incur while serving on the Board. Any member
687 seeking reimbursement shall itemize and document by receipts such expenses pursuant to subsection E of
688 § 15.2-7205.*

689 *B. The following provisions apply to the president:*

690 1. *The Board shall continue to appoint and contract with a president to manage the operations of
691 the Authority, and the contract with the president that is in effect as of January 1, 2016, shall continue
692 in effect and be binding upon the Authority.*

693 2. *The term of the president's employment contract shall not exceed three years. The board may vote
694 to renew the contract of the president for additional terms not to exceed three years each.*

695 3. *The president's employment contract shall not contain a severance payout upon termination
696 amounting to more than 12 months of his base salary.*

697 4. *The president shall have the sole authority to hire, fire, and manage such staff and contractors as
698 the president deems expedient to the operation of the Authority, subject to the availability of budgeted
699 funds, and to assign such positions, titles, powers, and duties at such salaries as the president deems
700 most effective for the efficient operation of the Authority.*

701 5. *The president shall not have the power to enter into an employment contract with any employee of
702 the Authority unless the Board ratifies such contract by a majority vote in an open meeting. Such
703 contract shall be subject to the term and severance payout restrictions applicable to the president's
704 contract as provided in subdivisions 2 and 3.*

705 6. *The Board may appoint an employee as acting president during any period of vacancy. The Board
706 shall advertise the vacancy of the presidency and accept applications from candidates interested in
707 filling the vacancy.*

708 *C. The Board shall vote annually to retain outside legal counsel to advise the Authority on legal
709 matters. The legal counsel shall be licensed to practice law in the Commonwealth, shall not be an
710 employee of the Authority, and shall be separate from and independent of any legal counsel for the City
711 of Bristol, Scott County, or Washington County.*

712 *D. The Board shall authorize the position of executive vice-president/CFO, to be filled and managed
713 by the president.*

714 **§ 15.2-7207. Powers generally.**

715 A. The Authority is hereby granted all powers *reasonably* necessary or appropriate to carry out the
716 purposes of this chapter in order to provide electric, water, sewer, and telecommunication and related
717 services, including without limitation, cable television internet, and all other services that might be
718 lawfully rendered by use of the Authority's fiber optic system, subject to all ~~existing~~ *applicable*
719 limitations and restrictions thereon. Such powers include, without limitation, except as set forth hereafter,
720 the following:

721 1. To adopt bylaws for the regulation of its affairs and the conduct of its business;

722 2. To sue and be sued in the Authority's name;

723 3. ~~To have perpetual succession;~~

724 4. To adopt a corporate seal and alter the same at its pleasure;

725 5- 4. To maintain offices at such places as it may designate;

726 6- 5. To appoint, employ, or engage such officers, employees, architects, engineers, attorneys,
727 accountants, financial advisors, investment bankers, and other advisors, consultants, and agents as may
728 be necessary or appropriate, and to fix their duties and compensation;

729 7- 6. To establish personnel rules;

730 8- 7. To make, assume, and enter into all contracts, leases, and arrangements necessary or incidental
731 to the exercise of its powers, including contracts for the management or operation of all or any part of
732 its facilities;

733 9- 8. To borrow money, as hereinafter provided, and to borrow money for the purpose of meeting
734 casual deficits in its revenues;

735 10- 9. To provide electric, water, sewer, and telecommunication and related services, including

736 without limitation, cable television, internet, and all other services that might be lawfully rendered by
737 use of the Authority's fiber optic system as set forth in § 15.2-7208 subject to all ~~existing~~ applicable
738 restrictions and limitations thereon;

739 ~~11.~~ 10. To determine fees, rates, and charges for the services and products it provides, subject only
740 to such state or federal regulation as the Tennessee Valley Authority (TVA) or other cognizant state or
741 federal agency may impose by order, rulemaking, contract or otherwise, including, without limitation,
742 electric, water and sewer, and internet and cable television services, including all other services that
743 might be rendered by use of its fiber optic system, furnished by the Authority. MLEC telephone service,
744 including rates, is regulated by the Commission. All rate increases for services other than electric, which
745 are set by the TVA, and telephone, which are set by the Commission and applicable law, shall require a
746 favorable vote at two meetings, one of which must be a regular meeting of the BVU Authority Board.

747 The Authority may assess such rates and charges for such services or products in such manner
748 mutatis mutandis as BVU or the City has the authority to do so at present subject to the same
749 restrictions and limitations thereon;

750 ~~12.~~ 11. To adopt, amend, and repeal rules and regulations for the use, maintenance, and operation of
751 its facilities and utility services and governing the conduct of persons and organizations using its
752 facilities or obtaining its utility services and to enforce such rules and regulations and all other rules,
753 regulations, ordinances, and statutes relating to its facilities and services, as authorized by the enacting
754 body of such rules, regulations, ordinances, and statutes. The civil penalty for violation of any such rules
755 and regulations shall be set forth in the rules and may be enforced by the Authority by direct action in
756 terminating services and by the imposition of monetary penalties to be billed to the customer. The
757 Authority may request the governing body of each locality in which it does business to impose by
758 ordinance such penal liability for violation of such rules and regulations as such body deems
759 appropriate;

760 ~~13.~~ ~~12.~~ Subject to subdivision 20, to apply for and accept gifts or grants of money or gifts, grants
761 or loans of other property or other financial assistance from the United States of America and agencies
762 and instrumentalities thereof, this Commonwealth and political subdivisions, agencies and
763 instrumentalities thereof, or any other person or entity, for or in aid of the construction, acquisition,
764 ownership, operation, maintenance, or repair of its infrastructure or for the payment of principal of any
765 indebtedness of the Authority, interest thereon, or other cost incident thereto, or for the operation of any
766 of its services, or for any other purpose of the Authority, and to this end the Authority shall have the
767 power to render such services, comply with such conditions, and execute such agreements and legal
768 instruments as may be necessary, convenient or desirable or imposed as a condition to such financial
769 aid;

770 ~~14.~~ 13. Subject to subdivision ~~16~~ 15 and all existing limitations and restrictions thereon, to acquire,
771 establish, construct, enlarge, improve, maintain, equip, operate, and regulate electric, water, sewer,
772 telecommunications, internet and cable television services, including all other services that might be
773 rendered by use of its fiber optic system, and other infrastructure and facilities that are owned or
774 managed by the Authority within the territorial areas in which it operates or provides services;

775 ~~15.~~ 14. To construct, install, maintain, and operate facilities and infrastructure for managing its
776 utility, consulting and operational management services. The Authority shall have the power and duty to
777 manage and operate the electric, public lighting, water, sewerage, telecommunications, internet and cable
778 television services, including all other services that might be rendered by use of its fiber optic system
779 directly subject to all existing limitations and restrictions thereon, or it may subcontract such functions.
780 The Authority shall construct, maintain, and operate all facilities necessary thereto; shall sell and
781 distribute to the public electric power, light, water, sewer, telecommunications, internet and cable
782 television, and other services as they now exist or may exist in the future subject to all existing
783 limitations and restrictions thereon; and shall collect the rates and charges provided for all such services;

784 ~~16.~~ 15. To own, purchase, lease, obtain options upon, acquire by gift, grant, or bequest or otherwise
785 acquire any property, real or personal, or any interest therein, and in connection therewith to assume or
786 take subject to any indebtedness secured by such property and dispose of any or all such properties as is
787 deemed appropriate by the Board. The Authority shall have the power of eminent domain to acquire
788 property and easements as needed for its ~~various utility~~ electric power, light, water, and sewer services
789 within the areas it provides or can provide such services. The power of eminent domain shall not
790 include the power to acquire existing telecommunications, internet or cable facilities, which is expressly
791 prohibited, and the Authority shall not accept or receive any telecommunications, internet or cable
792 facilities from an entity that acquired such facilities by use of eminent domain *for the purpose of*
793 *conveying them to the Authority*;

794 ~~17.~~ 16. To purchase and maintain insurance or provide indemnification on behalf of any person who
795 is or was a director, officer, employee, or agent of the Authority and on behalf of the Authority itself
796 against any liability asserted against it or him or incurred by it or him in any such capacity or arising

797 out of his status as such;

798 ~~18.~~ 17. To establish and charge such fees as it deems appropriate for attachment to or inclusion in
 799 the Authority's infrastructure, including but not limited to its poles, conduits, and ~~collocation~~ co-location
 800 sites, subject to all existing limitations and restrictions thereon. Such fees shall be designed to encourage
 801 third-party use of such infrastructure as provided in subdivision 20 and shall be based upon the
 802 principles established by the Federal Communications Commission for pole attachments, conduit
 803 occupancy, and co-location, including terms and price;

804 ~~19.~~ 18. To fund economic development projects that provide broadband infrastructure to unserved
 805 areas as set forth in subdivision 20 and subsection C and, in advance of economic development
 806 projects, to enter into contracts, to borrow money and to do all other such acts as will allow it to
 807 encourage and support economic development; and

808 ~~20.~~ 19. To have police powers on all of the properties of the Authority within the Commonwealth,
 809 exercised through appointment of an armed conservator of the peace. The ~~President~~ president of the
 810 Authority may apply to the circuit court for any locality in which the Authority has property for the
 811 appointment of one or more special conservators of the peace under procedures specified by Chapter 2
 812 (§ 19.2-12 et seq.) of Title 19.2 of the Code of Virginia or any successor provisions. Any such special
 813 conservator of the peace shall have, within the lands and facilities controlled by the Authority, the
 814 powers, functions, duties, responsibilities, and authority of any other armed conservator of the peace.
 815 Nothing in this section shall be construed to prevent the conservator of the peace currently serving
 816 Bristol Virginia Utilities from continuing as an armed special conservator of the peace for the Authority
 817 during the remainder of his term, if not removed for cause; and

818 20. To build or facilitate the building of, as the first broadband priority of the Authority, wired
 819 broadband infrastructure to serve residents in the Authority's lawful service area who are not served by
 820 any wired broadband service provider. The president of the Authority shall annually provide the Board
 821 with a report detailing (i) the number of requests for broadband services received from residents in
 822 unserved areas, (ii) the number of such requests for which the Authority has provided a connection to
 823 broadband services, and (iii) the costs of providing such broadband service.

824 B. The Authority is authorized to (i) operate only in Virginia and Tennessee; (ii) offer broadband
 825 services only in Sullivan County, Tennessee; the City of Bristol, Virginia; and Buchanan, Dickinson,
 826 Russell, Scott, Smyth, Tazewell, Washington, and Wythe Counties in Virginia, together with any towns
 827 located in such counties; and (iii) offer cable television services or other video services only within the
 828 electric utility service territory of Bristol Virginia Utilities as it existed on December 31, 2009, in the
 829 City of Bristol, Virginia, and Washington County.

830 C. Whenever any grant, loan, or application for such grant or loan includes or refers to funding for
 831 broadband deployment, the Authority shall ensure that (i) funds are allocated to the maximum extent
 832 possible to projects that expand broadband deployment to areas, residents, or businesses that are
 833 unserved by wired broadband; (ii) in any funding of grants for broadband deployment that include
 834 areas already served by wired broadband, such areas already served are incidental to and are crossed
 835 only for the purpose of reaching an unserved area; and (iii) any broadband network built will be
 836 operated on an open-access basis, available to multiple broadband providers, with dark fibers and
 837 capacity sufficient for competitive broadband providers to lease the same from the Authority at
 838 commercially reasonable rates.

839 D. The Authority shall not seek to become or establish a wireless service authority under the
 840 Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) or contract for services with such an
 841 authority.

842 E. The Authority shall not solicit or contract with any locality or other entity possessing the power
 843 of eminent domain in order to cause such a third party to exercise its power of eminent domain to
 844 acquire any easements or other property where the Authority itself lacks such power.

845 F. The Authority shall not have the power to make charitable donations.

846 **§ 15.2-7208. Powers.**

847 ~~The~~ Unless limited elsewhere in this chapter, the Authority shall have those powers possessed by the
 848 City of Bristol necessary and convenient for the provision of electric, water and sanitary sewer services,
 849 and those powers possessed by the Bristol Virginia Utilities Board and the division of the city known as
 850 Bristol Virginia Utilities as they existed on July 1, 2001, in the Charter of the City of Bristol, Virginia,
 851 and the general laws of the Commonwealth. ~~The~~ Unless limited elsewhere in this chapter, the Authority
 852 shall also possess all those powers, subject to the limitations and restrictions thereon, as granted to the
 853 City, the Bristol Virginia Utilities Board, and BVU by Chapter 479 of the Acts of Assembly of 2002,
 854 Chapters 539, 546, and 677 of the Acts of Assembly 2003, Chapter 586 of the Acts of Assembly of
 855 2004, Chapter 258 of the Acts of Assembly of 2005, Chapters 607 and 682 of the Acts of Assembly of
 856 2007, and Chapters 99 and 323 of the Acts of Assembly of 2008.

857 **§ 56-265.4:4. Certificate to operate as a telephone utility.**

858 A. The Commission may grant certificates to competing telephone companies, or any county, city or

859 town that operates an electric distribution system, for interexchange service where it finds that such
 860 action is justified by public interest, and is in accordance with such terms, conditions, limitations, and
 861 restrictions as may be prescribed by the Commission for competitive telecommunications services. A
 862 certificate to provide interexchange services shall not authorize the holder to provide local exchange
 863 services. The Commission may grant a certificate to a carrier, or any county, city or town that operates
 864 an electric distribution system, to furnish local exchange services as provided in subsection B.

865 B. 1. After notice to all local exchange carriers certificated in the Commonwealth and other
 866 interested parties and following an opportunity for hearing, the Commission may grant certificates to any
 867 telephone company, or any county, city or town that operates an electric distribution system, proposing
 868 to furnish local exchange telephone service in the Commonwealth. In determining whether to grant a
 869 certificate under this subsection, the Commission may require that the applicant show that it possesses
 870 sufficient technical, financial, and managerial resources. Before granting any such certificate, the
 871 Commission shall: (i) consider whether such action reasonably protects the affordability of basic local
 872 exchange telephone service, as such service is defined by the Commission, and reasonably assures the
 873 continuation of quality local exchange telephone service; and (ii) find that such action will not
 874 unreasonably prejudice or disadvantage any class of telephone company customers or telephone service
 875 providers, including the new entrant and any incumbent local exchange telephone company, and is in the
 876 public interest. Except as provided in subsection A of § 15.2-2160, all local exchange certificates granted
 877 by the Commission after July 1, 2002, shall be to provide service in any territory in the Commonwealth
 878 unless the applicant specifically requests a different certificated service territory. The Commission shall
 879 amend the certificated service territory of each local exchange carrier that was previously certificated to
 880 provide service in only part of the Commonwealth to permit such carrier's provision of local exchange
 881 service throughout the Commonwealth beginning on September 1, 2002, unless that local exchange
 882 carrier notifies the Commission prior to September 1, 2002, that it elects to retain its existing certificated
 883 service territory. A local exchange carrier shall only be considered an incumbent in any certificated
 884 service territory in which it was considered an incumbent prior to July 1, 2002, except that the
 885 Commission may make changes to a local exchange carrier's incumbent certificated service territory at
 886 the request of those incumbent local exchange carriers that are directly involved in a proposed change in
 887 the certificated service territory.

888 2. A Commission order, including appropriate findings of fact and conclusions of law, denying or
 889 approving, with or without modification, an application for certification of a new entrant shall be entered
 890 no more than 180 days from the filing of the application, except that the Commission, upon notice to all
 891 parties in interest, may extend that period in additional 30-day increments not to exceed an additional 90
 892 days in all.

893 3. The Commission shall (i) promote and seek to assure the provision of competitive services to all
 894 classes of customers throughout all geographic areas of the Commonwealth by a variety of service
 895 providers; (ii) require equity in the treatment of the certificated local exchange telephone companies so
 896 as to encourage competition based on service, quality, and price differences between alternative
 897 providers; (iii) consider the impact on competition of any government-imposed restrictions limiting the
 898 markets to be served or the services offered by any provider; (iv) determine the form of rate regulation,
 899 if any, for the local exchange services to be provided by the applicant and, upon application, the form
 900 of rate regulation for the comparable services of the incumbent local exchange telephone company
 901 provided in the geographical area to be served by the applicant; and (v) promulgate standards to assure
 902 that there is no cross-subsidization of the applicant's competitive local exchange telephone services by
 903 any other of its services over which it has a monopoly, whether or not those services are telephone
 904 services. The Commission shall also adopt safeguards to ensure that the prices charged and the revenue
 905 received by a county, city or town for providing telecommunications services shall not be
 906 cross-subsidized from other revenues of the county, city or town or affiliated entities, except (i) in areas
 907 where no offers exist from for-profit providers of such telecommunications services, or (ii) as authorized
 908 pursuant to subdivision 5 of ~~this subsection~~.

909 4. The Commission shall discharge the responsibilities of state commissions as set forth in the federal
 910 Telecommunications Act of 1996 (P.L. 104-104) (the Act) and applicable law and regulations, including,
 911 but not limited to, the arbitration of interconnection agreements between local exchange carriers;
 912 however, the Commission may exercise its discretion to defer selected issues under the Act. If the
 913 Commission incurs additional costs in arbitrating such agreements or resolving related legal actions or
 914 disputes that cannot be recovered through the maximum levy authorized pursuant to § 58.1-2660, that
 915 levy shall be increased above the levy authorized by that section to the extent necessary to recover such
 916 additional costs.

917 5. Upon the Commission's granting of a certificate to a county, city or town under this section, such
 918 county, city, or town (i) shall be subject to regulation by the Commission for intrastate
 919 telecommunications services, (ii) shall have the same duties and obligations as other certificated

920 providers of telecommunications services, (iii) shall separately account for the revenues, expenses,
921 property, and source of investment dollars associated with the provision of such services, and (iv) to
922 ensure that there is no unreasonable advantage gained from a government agency's taxing authority and
923 control of government-owned land, shall charge an amount for such services that (a) does not include
924 any subsidies, unless approved by the Commission, and (b) takes into account, by imputation or
925 allocation, equivalent charges for all taxes, pole rentals, rights of way, licenses, and similar costs
926 incurred by for-profit providers. Each certificated county, city, or town that provides telecommunications
927 services regulated by the Commission shall file an annual report with the Commission demonstrating
928 that the requirements of clauses (iii) and (iv) of this subdivision have been met. The Commission may
929 approve a subsidy under this section if deemed to be in the public interest and provided that such
930 subsidy does not result in a price for the service lower than the price for the same service charged by
931 the incumbent provider in the area.

932 6. A locality that has obtained a certificate pursuant to this section shall (i) comply with all
933 applicable laws and regulations for the provision of telecommunications services; (ii) make a reasonable
934 estimate of the amount of all federal, state, and local taxes (including income taxes and consumer utility
935 taxes) that would be required to be paid or collected for each fiscal year if the locality were a for-profit
936 provider of telecommunications services, (iii) prepare reasonable estimates of the amount of any
937 franchise fees and other state and local fees (including permit fees and pole rental fees), and
938 right-of-way charges that would be incurred in each fiscal year if the locality were a for-profit provider
939 of telecommunications services, (iv) prepare and publish annually financial statements in accordance
940 with generally accepted accounting principles showing the results of operations of its provision of
941 telecommunications services, and (v) maintain records demonstrating compliance with the provisions of
942 this section that shall be made available for inspection and copying pursuant to the Virginia Freedom of
943 Information Act (§ 2.2-3700 et seq.).

944 7. Each locality that has obtained a certificate pursuant to this section shall provide nondiscriminatory
945 access to for-profit providers of telecommunications services on a first-come, first-served basis to
946 rights-of-way, poles, conduits or other permanent distribution facilities owned, leased or operated by the
947 locality unless the facilities have insufficient capacity for such access and additional capacity cannot
948 reasonably be added to the facilities.

949 8. The prices charged and the revenue received by a locality for providing telecommunications
950 services shall not be cross-subsidized by other revenues of the locality or affiliated entities, except (i) in
951 areas where no offers exist from for-profit providers of such telecommunications services, or (ii) as
952 permitted by the provisions of subdivision ~~B~~ 5. The provisions of this subdivision shall not apply to
953 Internet access, broadband, information, and data transmission services provided by any locality
954 providing telecommunications services on March 1, 2002, *except for an authority created pursuant to*
955 *the BVU Authority Act (§ 15.2-7200 et seq.).*

956 9. The Commission shall promulgate rules necessary to implement this section. In no event, however,
957 shall the rules necessary to implement ~~subdivisions B clauses (iii) and (iv) of subdivision 5 and iv, B~~
958 *clauses (ii) through (v) of subdivision 6 through v, and B subdivision 8* impose any obligations on a
959 locality that has obtained a certificate pursuant to this section, but is not yet providing
960 telecommunications services regulated by the Commission.

961 10. Public records of a locality that has obtained a certificate pursuant to this section, which records
962 contain confidential proprietary information or trade secrets pertaining to the provision of
963 telecommunications service, shall be exempt from disclosure under the Freedom of Information Act
964 (§ 2.2-3700 et seq.). As used in this subdivision, a public record contains confidential proprietary
965 information or trade secrets if its acquisition by a competing provider of telecommunications services
966 would provide the competing provider with a competitive benefit. *However, the exemption provided by*
967 *this subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200*
968 *et seq.).*

969 C. Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of this title shall not apply to a county, city, or
970 town that has obtained a certificate pursuant to this section.

971 D. Any county, city, or town that has obtained a certificate pursuant to this section may construct,
972 own, maintain, and operate a fiber optic or communications infrastructure to provide consumers with
973 Internet services, data transmission services, and any other communications service that its infrastructure
974 is capable of delivering; provided, however, nothing in this subsection shall authorize the provision of
975 cable television services or other multi-channel video programming service. Furthermore, nothing in this
976 subsection shall alter the authority of the Commission.

977 E. Any county, city, or town that has obtained a certificate pursuant to this section and that had
978 installed a cable television headend prior to December 31, 2002, is authorized to own and operate a
979 cable television system or other multi-channel video programming service and shall be exempt from the
980 provisions of §§ 15.2-2108.4 through 15.2-2108.8. Nothing in this subsection shall authorize the
981 Commission to regulate cable television service.

- 982 2. That § 15.2-2108.18 of the Code of Virginia is repealed.
- 983 3. That this act shall not be construed to affect the contract of employment existing between the
- 984 BVU Authority or BVU Board of Directors and the Executive Vice-President and Chief Financial
- 985 Officer of the BVU Authority as of the effective date of this act.
- 986 4. That the members of the Board of Directors of the BVU Authority in office on June 30, 2016,
- 987 are hereby removed from office as of July 1, 2016. Notwithstanding the appointment of any
- 988 director on or before July 1, 2010, or of his successor, any term of office begun before July 1,
- 989 2016, and scheduled to end after that date is hereby terminated.
- 990 5. That no later than July 1, 2016, the Auditor of Public Accounts shall examine the accounts and
- 991 books of the BVU Authority.
- 992 6. That an emergency exists and this act is in force from its passage.