

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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An Act 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.

[S 329]

Approved

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 Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (i) if such records were made public prior to or after the execution of an interim or a comprehensive agreement, § 33.2-1820 or

57 56-575.17 notwithstanding, the financial interest or bargaining position of the public entity would be
58 adversely affected, and (ii) the basis for the determination required in clause (i) is documented in writing
59 by the responsible public entity; and

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

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

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

74 3. Stating the reasons why protection is necessary.

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

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

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

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

103 13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential
104 proprietary records that are not generally available to the public through regulatory disclosure or
105 otherwise, provided by a (a) bidder or applicant for a franchise or (b) franchisee under Chapter 21
106 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of
107 confidentiality from the franchising authority, to the extent the records relate to the bidder's, applicant's,
108 or franchisee's financial capacity or provision of new services, adoption of new technologies or
109 implementation of improvements, where such new services, technologies or improvements have not been
110 implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such
111 records were made public, the competitive advantage or financial interests of the franchisee would be
112 adversely affected.

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

117 No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the

118 bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the
 119 applicable franchising authority serves on the management board or as an officer of the bidder,
 120 applicant, or franchisee.

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

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

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

129 17. Records submitted as a grant or loan application, or accompanying a grant or loan application, to
 130 the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.) of
 131 Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 22
 132 (§ 23-277 et seq.) of Title 23 to the extent such records contain proprietary business or research-related
 133 information produced or collected by the applicant in the conduct of or as a result of study or research
 134 on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information
 135 has not been publicly released, published, copyrighted, or patented, if the disclosure of such information
 136 would be harmful to the competitive position of the applicant.

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

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

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

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

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

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

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

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

175 3. Stating the reasons why protection is necessary.

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

179 under this subdivision.

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

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

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

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

197 3. Stating the reasons why protection is necessary.

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

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

206 b. Records provided by a private entity to the Commercial Space Flight Authority, to the extent that
207 such records contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act
208 (§ 59.1-336 et seq.); (ii) financial records of the private entity, including balance sheets and financial
209 statements, that are not generally available to the public through regulatory disclosure or otherwise; or
210 (iii) other information submitted by the private entity, where, if the records were made public, the
211 financial interest or bargaining position of the Authority or private entity would be adversely affected.

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

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

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

217 3. Stating the reasons why protection is necessary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

362 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
 363 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
 364 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
 365 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
 366 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
 367 Medical School, as the case may be.

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

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

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

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

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

396 28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11 of
 397 § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are
 398 defined in § 33.2-1800, or any independent review panel appointed to review information and advise the
 399 responsible public entity concerning such records.

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

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

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

411 32. [Expired.]

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

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

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

421 36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee
 422 created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from

423 this chapter pursuant to subdivision A 2 a of § 2.2-3706.

424 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards
 425 Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of
 426 § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship
 427 award, review and consider scholarship applications and requests for scholarship award renewal, and
 428 cancel, rescind, or recover scholarship awards.

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

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

437 40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of
 438 § 2.2-3705.6.

439 41. Discussion or consideration by the Board of Education of records relating to the denial,
 440 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of
 441 § 2.2-3705.3.

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

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

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

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

454 46. Discussion or consideration of personal and proprietary information that are excluded from the
 455 provisions of this chapter pursuant to (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of
 456 § 10.1-104.7. This exemption shall not apply to the discussion or consideration of records that contain
 457 information that has been certified for release by the person who is the subject of the information or
 458 transformed into a statistical or aggregate form that does not allow identification of the person who
 459 supplied, or is the subject of, the information.

460 47. (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the Virginia
 461 Alcoholic Beverage Control Authority of records excluded from this chapter pursuant to subdivision 1 of
 462 § 2.2-3705.3 or subdivision 34 of § 2.2-3705.7.

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

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

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

473 E. This section shall not be construed to (i) require the disclosure of any contract between the
 474 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1
 475 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant
 476 to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body
 477 empowered to issue industrial revenue bonds by general or special law, to identify a business or industry
 478 to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of
 479 public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance
 480 of such bonds.

481 **§ 15.2-2160. Provision of telecommunications services.**

482 A. Any locality that operates an electric distribution system may provide telecommunications
 483 services, including local exchange telephone service as defined in § 56-1, within or outside its

484 boundaries if the locality obtains a certificate pursuant to § 56-265.4:4. Such locality may provide
 485 telecommunications services within any locality in which it has electric distribution system facilities as
 486 of March 1, 2002. Any locality providing telecommunications services on March 1, 2002, may provide
 487 telecommunications, Internet access, broadband, information, and data transmission services within any
 488 locality within 75 miles of the geographic boundaries of its electric distribution system as such system
 489 existed on March 1, 2002. *The BVU Authority may provide telecommunications, Internet access,*
 490 *broadband, information, and data transmission services as provided in the BVU Authority Act*
 491 *(§ 15.2-7200 et seq.).*

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

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

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

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

518 F. Public records of a locality that has obtained a certificate pursuant to § 56-265.4:4, which records
 519 contain confidential proprietary information or trade secrets pertaining to the provision of
 520 telecommunications service, shall be exempt from disclosure under the Freedom of Information Act
 521 (§ 2.2-3700 et seq.). As used in this subsection, a public record contains confidential proprietary
 522 information or trade secrets if its acquisition by a competing provider of telecommunications services
 523 would provide the competing provider with a competitive benefit. *However, the exemption provided by*
 524 *this subsection shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200*
 525 *et seq.).*

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

533 **§ 15.2-7202. Definitions.**

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

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

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

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

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

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

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

544 "Commission" means the Virginia State Corporation Commission.

545 "Commonwealth" means the Commonwealth of Virginia.

546 "Infrastructure" means all property, whether attached to real property or not, now used by Bristol
547 Virginia Utilities and hereafter used by the Authority for the provision of (i) electric, water, sewer,
548 telecommunications, internet, and cable television services and (ii) all other utility, management, and
549 consulting services the Authority may lawfully provide.

550 "MLEC" means any city, county, or town certificated to provide local exchange and/or interexchange
551 telecommunications services pursuant to § 56-265.4:4 and any authority granted such powers pursuant to
552 § 15.2-7209.

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

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

559 **§ 15.2-7203. BVU Authority; operating name or names.**

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

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

566 **§ 15.2-7205. Board of Directors; membership.**

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

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

572 1. ~~Four~~ *One* director who is a citizen of the City of Bristol, Virginia, ~~citizen appointees and is not a~~
573 *member of the Bristol City Council, appointed by the Speaker of the House of Delegates. The four*
574 *Bristol, Virginia, citizen appointees currently on the Bristol Virginia Utilities Board are hereby* directors
575 *on the Authority's Board and their respective terms are extended on the Authority Board as follows:*

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

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

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

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

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

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

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

593 4. ~~One new~~ *member, a* director who is a citizen of the City of Bristol, Virginia, ~~citizen, appointed by~~
594 *the Bristol Virginia Utilities Board whose term will start July 1, 2010, and end June 30, 2014 who is*
595 *engaged in business and is not a member of the Bristol City Council, appointed by the Authority Board.*
596 *However, the first such director shall be appointed by the Bristol City Council for a term that ends the*
597 *sooner of July 1, 2017, or the date upon which the Authority Board appoints a director to this position*
598 *to serve the remainder of the initial four-year term. The Authority Board shall appoint a director to this*
599 *position thereafter.*

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

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

605 7. *One* director who is a Scott County citizen and is not a member of the Scott County Board of

606 *Supervisors, appointed by the Speaker of the House of Delegates.*

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

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

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

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

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

639 **§ 15.2-7206. Organization; compensation.**

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

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

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

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

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

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

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

665 ~~Except for the purpose of inquiry, the~~ *6. The Board and its individual members shall deal with*
666 *Authority employees solely through the president. Neither the Board nor any member thereof shall The*

667 *Board shall not give orders to any of the subordinates of the president, either publicly or privately. Any*
 668 *such orders or other interferences on the part of the Board or any of its members with subordinates or*
 669 *appointees of the president, instead of dealing or communicating directly with the president, are*
 670 *prohibited.*

671 *Neither shall the Board or any of its members* 7. *The Board shall not direct the appointment or*
 672 *removal of any person from any office or employment by Authority contractor or employee other than*
 673 *the president or any of his subordinates. Nothing herein shall be construed to limit or prohibit contact*
 674 *with the president and general counsel, both of whom report directly to the Board.*

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

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

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

688 *10. The Board shall adopt a travel and expense policy that applies to Board members and Authority*
 689 *employees and addresses what expenditures are appropriate in furtherance of the activities of the*
 690 *Authority.*

691 *11. The Board shall adopt a conflict of interest policy addressing the acceptance by Board members*
 692 *or Authority employees of gifts of travel or entertainment from any vendor that seeks or maintains a*
 693 *contract with the Authority.*

694 *12. Each member of the Board shall file with the president a disclosure form containing a statement*
 695 *of economic interests as provided in § 2.2-3117 according to the schedule required by § 2.2-3115.*

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

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

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

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

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

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

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

715 *C. The Board shall vote annually to retain outside legal counsel to advise the Authority on legal*
 716 *matters. The legal counsel shall be licensed to practice law in the Commonwealth, shall not be an*
 717 *employee of the Authority, and shall be separate from and independent of any legal counsel for the City*
 718 *of Bristol, Scott County, or Washington County. The legal counsel shall provide annual training to the*
 719 *Board on the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.).*

720 *D. The Board may authorize the position of executive vice-president, to be filled and managed by the*
 721 *president.*

722 *E. Notwithstanding the quorum requirement in subsection A, any decision of the Board related to the*
 723 *provision, use, operation, or maintenance of water or sewer systems shall be made by a majority vote of*
 724 *the three members of the Board representing the City of Bristol, Virginia, and the director who is a*
 725 *member of the Washington County Board of Supervisors.*

726 **§ 15.2-7207. Powers generally.**

727 *A. The Authority is hereby granted all powers reasonably necessary or appropriate to carry out the*

728 purposes of this chapter in order to provide electric, water, sewer, and telecommunication and related
729 services, including without limitation, cable television internet, and all other services that might be
730 lawfully rendered by use of the Authority's fiber optic system, subject to all ~~existing~~ applicable
731 limitations and restrictions thereon. Such powers include, without limitation, except as set forth hereafter,
732 the following:

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

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

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

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

737 5. 4. To maintain offices at such places as it may designate;

738 6. 5. To appoint, employ, or engage such officers, employees, architects, engineers, attorneys,
739 accountants, financial advisors, investment bankers, and other advisors, consultants, and agents as may
740 be necessary or appropriate, and to fix their duties and compensation;

741 7. 6. To establish personnel rules;

742 8. 7. To make, assume, and enter into all contracts, leases, and arrangements necessary or incidental
743 to the exercise of its powers, including contracts for the management or operation of all or any part of
744 its facilities;

745 9. 8. To borrow money, as hereinafter provided, and to borrow money for the purpose of meeting
746 casual deficits in its revenues;

747 10. 9. To provide electric, water, sewer, and telecommunication and related services, including
748 without limitation, cable television, internet, and all other services that might be lawfully rendered by
749 use of the Authority's fiber optic system as set forth in § 15.2-7208 subject to all ~~existing~~ applicable
750 restrictions and limitations thereon;

751 11. 10. To determine fees, rates, and charges for the services and products it provides, subject only
752 to such state or federal regulation as the Tennessee Valley Authority (TVA) or other cognizant state or
753 federal agency may impose by order, rulemaking, contract or otherwise, including, without limitation,
754 electric, water and sewer, and internet and cable television services, including all other services that
755 might be rendered by use of its fiber optic system, furnished by the Authority. MLEC telephone service,
756 including rates, is regulated by the Commission. All rate increases for services other than electric, which
757 are set by the TVA, and telephone, which are set by the Commission and applicable law, shall require a
758 favorable vote at two meetings, one of which must be a regular meeting of the BVU Authority Board.

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

762 12. 11. To adopt, amend, and repeal rules and regulations for the use, maintenance, and operation of
763 its facilities and utility services and governing the conduct of persons and organizations using its
764 facilities or obtaining its utility services and to enforce such rules and regulations and all other rules,
765 regulations, ordinances, and statutes relating to its facilities and services, as authorized by the enacting
766 body of such rules, regulations, ordinances, and statutes. The civil penalty for violation of any such rules
767 and regulations shall be set forth in the rules and may be enforced by the Authority by direct action in
768 terminating services and by the imposition of monetary penalties to be billed to the customer. The
769 Authority may request the governing body of each locality in which it does business to impose by
770 ordinance such penal liability for violation of such rules and regulations as such body deems
771 appropriate;

772 13. ~~To~~ 12. Subject to subdivision 20, to apply for and accept gifts or grants of money or gifts, grants
773 or loans of other property or other financial assistance from the United States of America and agencies
774 and instrumentalities thereof, this Commonwealth and political subdivisions, agencies and
775 instrumentalities thereof, or any other person or entity, for or in aid of the construction, acquisition,
776 ownership, operation, maintenance, or repair of its infrastructure or for the payment of principal of any
777 indebtedness of the Authority, interest thereon, or other cost incident thereto, or for the operation of any
778 of its services, or for any other purpose of the Authority, and to this end the Authority shall have the
779 power to render such services, comply with such conditions, and execute such agreements and legal
780 instruments as may be necessary, convenient or desirable or imposed as a condition to such financial
781 aid;

782 14. 13. Subject to subdivision 16 15 and all existing limitations and restrictions thereon, to acquire,
783 establish, construct, enlarge, improve, maintain, equip, operate, and regulate electric, water, sewer,
784 telecommunications, internet and cable television services, including all other services that might be
785 rendered by use of its fiber optic system, and other infrastructure and facilities that are owned or
786 managed by the Authority within the territorial areas in which it operates or provides services;

787 15. 14. To construct, install, maintain, and operate facilities and infrastructure for managing its
788 utility, consulting and operational management services. The Authority shall have the power and duty to

879 manage and operate the electric, public lighting, water, sewerage, telecommunications, internet and cable
 890 television services, including all other services that might be rendered by use of its fiber optic system
 891 directly subject to all existing limitations and restrictions thereon, or it may subcontract such functions.
 892 The Authority shall construct, maintain, and operate all facilities necessary thereto; shall sell and
 893 distribute to the public electric power, light, water, sewer, telecommunications, internet and cable
 894 television, and other services as they now exist or may exist in the future subject to all existing
 895 limitations and restrictions thereon; and shall collect the rates and charges provided for all such services;

896 ~~16.~~ 15. To own, purchase, lease, obtain options upon, acquire by gift, grant, or bequest or otherwise
 897 acquire any property, real or personal, or any interest therein, and in connection therewith to assume or
 898 take subject to any indebtedness secured by such property and dispose of any or all such properties as is
 899 deemed appropriate by the Board. The Authority shall have the power of eminent domain to acquire
 900 property and easements as needed for its ~~various utility~~ *electric power, light, water, and sewer* services
 901 within the areas it provides or can provide such services. The power of eminent domain shall not
 902 include the power to acquire existing telecommunications, internet or cable facilities, which is expressly
 903 prohibited, and the Authority shall not accept or receive any telecommunications, internet or cable
 904 facilities from an entity that acquired such facilities by use of eminent domain *for the purpose of*
 905 *conveying them to the Authority;*

906 ~~17.~~ 16. To purchase and maintain insurance or provide indemnification on behalf of any person who
 907 is or was a director, officer, employee, or agent of the Authority and on behalf of the Authority itself
 908 against any liability asserted against it or him or incurred by it or him in any such capacity or arising
 909 out of his status as such;

910 ~~18.~~ 17. To establish and charge such fees as it deems appropriate for attachment to or inclusion in
 911 the Authority's infrastructure, including but not limited to its poles, conduits, and ~~collocation~~ *co-location*
 912 sites, subject to all existing limitations and restrictions thereon;

913 ~~19.~~ 18. To fund economic development projects and, in advance of economic development projects,
 914 to enter into contracts, to borrow money and to do all other such acts as will allow it to encourage and
 915 support economic development.

916 *Before the Authority expends any funds for an economic development project that is funded in whole*
 917 *or in part by funds allocated by the Board pursuant to a power purchase agreement with the Tennessee*
 918 *Valley Authority, a determination shall be made that the electric system benefit is expected to be*
 919 *commensurate with the expenditure.*

920 *Within 30 days of the end of the Authority's fiscal year, the Authority shall publish on its website the*
 921 *details of any incentive awarded to an economic development project; and*

922 ~~20.~~ 19. To have police powers on all of the properties of the Authority within the Commonwealth,
 923 exercised through appointment of an armed conservator of the peace. The ~~President~~ *president* of the
 924 Authority may apply to the circuit court for any locality in which the Authority has property for the
 925 appointment of one or more special conservators of the peace under procedures specified by Chapter 2
 926 (§ 19.2-12 et seq.) of Title 19.2 of the Code of Virginia or any successor provisions. Any such special
 927 conservator of the peace shall have, within the lands and facilities controlled by the Authority, the
 928 powers, functions, duties, responsibilities, and authority of any other armed conservator of the peace.
 929 Nothing in this section shall be construed to prevent the conservator of the peace currently serving
 930 Bristol Virginia Utilities from continuing as an armed special conservator of the peace for the Authority
 931 during the remainder of his term, if not removed for cause; *and*

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

938 *B. The Authority is authorized to (i) operate only in Virginia and Tennessee; (ii) offer broadband*
 939 *services only in Sullivan, Unicoi, and Washington Counties, Tennessee; the City of Bristol, Virginia; and*
 940 *Bland, Buchanan, Dickenson, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe Counties in*
 941 *Virginia, together with any towns located in such counties; and (iii) offer cable television services or*
 942 *other video services only within the electric utility service territory of Bristol Virginia Utilities as it*
 943 *existed on December 31, 2009, in the City of Bristol, Virginia, Scott County, and Washington County,*
 944 *including within the Town of Abingdon. Notwithstanding the geographic limitations of this subsection,*
 945 *the Authority shall have the right to sell any of its non-electric utility services at wholesale to an*
 946 *independent third party in which the Authority has no ownership or management interest and no*
 947 *economic interest apart from the sale of utility services, to allow such independent third party to*
 948 *distribute and sell the utility services at retail in areas outside of the Authority's geographic limitations.*

949 *C. Whenever any grant, loan, or application for such grant or loan includes or refers to funding for*

850 broadband deployment, the Authority shall ensure that (i) funds are allocated to the maximum extent
 851 possible to projects that expand broadband deployment to areas, residents, or businesses that are
 852 unserved by wired broadband; (ii) in any funding of grants for broadband deployment that include
 853 areas already served by wired broadband, such areas already served are incidental to and are crossed
 854 only for the purpose of reaching an unserved area; and (iii) any broadband network built will be
 855 operated on an open-access basis, available to multiple broadband providers, with dark fibers and
 856 capacity sufficient for competitive broadband providers to lease the same from the Authority at
 857 commercially reasonable rates.

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

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

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

865 **§ 15.2-7208. Powers.**

866 ~~The~~ Unless limited elsewhere in this chapter, the Authority shall have those powers possessed by the
 867 City of Bristol necessary and convenient for the provision of electric, water and sanitary sewer services,
 868 and those powers possessed by the Bristol Virginia Utilities Board and the division of the city known as
 869 Bristol Virginia Utilities as they existed on July 1, 2001, in the Charter of the City of Bristol, Virginia,
 870 and the general laws of the Commonwealth. ~~The~~ Unless limited elsewhere in this chapter, the Authority
 871 shall also possess all those powers, subject to the limitations and restrictions thereon, as granted to the
 872 City, the Bristol Virginia Utilities Board, and BVU by Chapter 479 of the Acts of Assembly of 2002,
 873 Chapters 539, 546, and 677 of the Acts of Assembly 2003, Chapter 586 of the Acts of Assembly of
 874 2004, Chapter 258 of the Acts of Assembly of 2005, Chapters 607 and 682 of the Acts of Assembly of
 875 2007, and Chapters 99 and 323 of the Acts of Assembly of 2008.

876 **§ 56-265.4:4. Certificate to operate as a telephone utility.**

877 A. The Commission may grant certificates to competing telephone companies, or any county, city or
 878 town that operates an electric distribution system, for interexchange service where it finds that such
 879 action is justified by public interest, and is in accordance with such terms, conditions, limitations, and
 880 restrictions as may be prescribed by the Commission for competitive telecommunications services. A
 881 certificate to provide interexchange services shall not authorize the holder to provide local exchange
 882 services. The Commission may grant a certificate to a carrier, or any county, city or town that operates
 883 an electric distribution system, to furnish local exchange services as provided in subsection B.

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

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

911 days in all.

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

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

936 5. Upon the Commission's granting of a certificate to a county, city or town under this section, such
 937 county, city, or town (i) shall be subject to regulation by the Commission for intrastate
 938 telecommunications services, (ii) shall have the same duties and obligations as other certificated
 939 providers of telecommunications services, (iii) shall separately account for the revenues, expenses,
 940 property, and source of investment dollars associated with the provision of such services, and (iv) to
 941 ensure that there is no unreasonable advantage gained from a government agency's taxing authority and
 942 control of government-owned land, shall charge an amount for such services that (a) does not include
 943 any subsidies, unless approved by the Commission, and (b) takes into account, by imputation or
 944 allocation, equivalent charges for all taxes, pole rentals, rights of way, licenses, and similar costs
 945 incurred by for-profit providers. Each certificated county, city, or town that provides telecommunications
 946 services regulated by the Commission shall file an annual report with the Commission demonstrating
 947 that the requirements of clauses (iii) and (iv) of this subdivision have been met. The Commission may
 948 approve a subsidy under this section if deemed to be in the public interest and provided that such
 949 subsidy does not result in a price for the service lower than the price for the same service charged by
 950 the incumbent provider in the area.

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

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

968 8. The prices charged and the revenue received by a locality for providing telecommunications
 969 services shall not be cross-subsidized by other revenues of the locality or affiliated entities, except (i) in
 970 areas where no offers exist from for-profit providers of such telecommunications services, or (ii) as
 971 permitted by the provisions of subdivision B 5. The provisions of this subdivision shall not apply to

972 Internet access, broadband, information, and data transmission services provided by any locality
973 providing telecommunications services on March 1, 2002, *except for an authority created pursuant to*
974 *the BVU Authority Act (§ 15.2-7200 et seq.).*

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

980 10. Public records of a locality that has obtained a certificate pursuant to this section, which records
981 contain confidential proprietary information or trade secrets pertaining to the provision of
982 telecommunications service, shall be exempt from disclosure under the Freedom of Information Act
983 (§ 2.2-3700 et seq.). As used in this subdivision, a public record contains confidential proprietary
984 information or trade secrets if its acquisition by a competing provider of telecommunications services
985 would provide the competing provider with a competitive benefit. *However, the exemption provided by*
986 *this subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200*
987 *et seq.).*

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

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

996 E. Any county, city, or town that has obtained a certificate pursuant to this section and that had
997 installed a cable television headend prior to December 31, 2002, is authorized to own and operate a
998 cable television system or other multi-channel video programming service and shall be exempt from the
999 provisions of §§ 15.2-2108.4 through 15.2-2108.8. Nothing in this subsection shall authorize the
1000 Commission to regulate cable television service.

1001 **2. That §§ 15.2-7205 and 15.2-7206 of the Code of Virginia are amended and reenacted as follows:**

1002 **§ 15.2-7205. Board of Directors; membership.**

1003 A. The powers of the Authority shall be vested in ~~an~~ *the* Authority Board of Directors consisting of
1004 ~~nine~~ *five* directors. The number of ~~Directors on the Board~~ *directors shall not be increased* altered
1005 by the Authority Board.

1006 B. The ~~Authority's~~ *Authority* Board, which will initially take office on July 1, 2010, shall be
1007 constituted as follows:

1008 1. ~~Four~~ *One* director who is a citizen of the City of Bristol, Virginia, ~~citizen appointees and is not a~~
1009 ~~member of the Bristol City Council, appointed by the Speaker of the House of Delegates. The four~~
1010 ~~Bristol, Virginia, citizen appointees currently on the Bristol Virginia Utilities Board are hereby~~ directors
1011 ~~on the Authority's Board and their respective terms are extended on the Authority Board as follows:~~

- 1012 a. The term ending June 30, 2010, will be extended to end June 30, 2014.
- 1013 b. The term ending June 30, 2011, will be extended to end June 30, 2015.
- 1014 c. The second term ending June 30, 2011, will be extended to end June 30, 2016.
- 1015 d. The term ending June 30, 2012, will be extended to end June 30, 2016.

1016 Each of said members will thereafter be eligible for one additional consecutive four-year term
1017 pursuant to the limitation set forth herein.

1018 2. Two members ~~appointed by~~ *One* director who is a member of the Bristol City Council who are
1019 ~~members of,~~ *appointed by* the Bristol City Council serving on the Bristol Virginia Utilities Board as of
1020 ~~June 1, 2010. Such members shall to serve a four-year term, coterminous with their~~ *his* term on the
1021 Council, commencing July 1, 2010. Should no present member of Council serving on the Bristol
1022 Virginia Utilities Board be a member of Council on that date, Council may appoint two other members
1023 of Council to serve on the initial Authority Board for a term that is coterminous with that member's
1024 term on Council.

1025 3. One new Bristol, Virginia, ~~citizen, who is not a city council member.~~ Such ~~citizen~~ will be *director*
1026 *who is a citizen of Washington County and is not a member of the Washington County Board of*
1027 *Supervisors, appointed by the Bristol, Virginia, City Council and shall serve a term from July 1, 2010,*
1028 *until June 30, 2015* Senate Committee on Rules.

1029 4. One new member, a *director who is a citizen of the City of Bristol, Virginia, citizen, appointed by*
1030 *the Bristol Virginia Utilities Board whose term will start July 1, 2010, and end June 30, 2014 who is*
1031 *engaged in business and is not a member of the Bristol City Council, appointed by the Authority Board.*
1032 *However, the first such director shall be appointed by the Bristol City Council for a term that ends the*

1033 sooner of July 1, 2017, or the date upon which the Authority Board appoints a director to this position
 1034 to serve the remainder of the initial four-year term. The Authority Board shall appoint a director to this
 1035 position thereafter.

1036 5. One director who is a member of the Board of Supervisors of Washington County, Virginia, who
 1037 will be Board of Supervisors, appointed by that the Washington County Board of Supervisors to serve a
 1038 four-year term coterminous with his or her term on the Board of Supervisors commencing July 1, 2010.

1039 C. If any appointments to the initial Board are made prior to the effective date of this chapter, such
 1040 appointments shall be deemed valid and effective as of such date The four-year term of all directors
 1041 shall begin July 1, 2016. The term of Authority Board membership for any director thereafter shall be
 1042 four years.

1043 D. The City Council shall elect, in addition to its Council members, three of the Bristol, Virginia,
 1044 citizen Board members when the above terms expire. The remaining three Bristol, Virginia, citizen
 1045 members will be elected by the Authority Board when the above terms expire. The City Council and the
 1046 Authority Board will alternate electing persons to fill an expiring term until each has appointed the
 1047 number it appoints to the Board. Any vacancy in a term shall be filled by the body making the original
 1048 appointment and shall be for the remainder of the term. Said appointment shall be made within 30 days
 1049 from the date the vacancy occurs.

1050 E. The term of the Council members shall be for four years coterminous with those members' terms
 1051 of office on the City Council. Those City Council Members Each director who is a member of the
 1052 Bristol City Council or Washington County Board of Supervisors may serve as many terms as the City
 1053 Council appointing governing body decides as long as the appointees are members appointee remains a
 1054 member of the City Council relevant governing body. The City Council governing body may appoint
 1055 other members a different member of the City Council or Board of Supervisors at the end of any
 1056 appointee's four-year Council or Board term or upon the exit of the Council member from the Council
 1057 governing body. In the latter case, the Council Member will new appointee shall serve for the remainder
 1058 of the term vacated by an exiting City Council member of the governing body.

1059 F. All other directors shall serve four-year terms, except for the longer appointments to the initial
 1060 Board. Those directors may serve a maximum of two terms and then must be off the Board for one full
 1061 year before election to fill another full term or to fill the remainder of a vacated term.

1062 G. E. If funds are available, each director may be reimbursed by the Authority for the amount of
 1063 actual expenses incurred by him in the performance of his duties. Such expense allowance shall
 1064 constitute a cost of operation and maintenance of such utility systems and shall be prorated among each
 1065 of the systems it manages using the "3-Factor" "Three-Factor" allocation method approved by the
 1066 Commission. The three factors consist of the percentages that each division comprises of total plant in
 1067 service, total operating revenues, and total customer accounts. Once each operating division's percentage
 1068 of each of the three factors is calculated, the sum of the three factors divided by 3 three results in the
 1069 operating division's share of the total direct or indirect costs.

1070 **§ 15.2-7206. Organization; compensation.**

1071 A. The following provisions apply to the Board of Directors:

1072 A simple majority 1. Three of the directors in office shall constitute a quorum. No vacancy in the
 1073 Board of Directors shall impair the right of a quorum to exercise all the rights and perform all the duties
 1074 of the Authority.

1075 2. The Board of Directors shall hold regular meetings at such times and places as may be established
 1076 by its bylaws. The Board shall hold its meetings as provided in § 2.2-3707.

1077 3. The Board of Directors shall hold its first organizational meeting on July 1, 2010.

1078 Bylaws 4. The Board shall adopt bylaws governing the conduct of business by the Board and the
 1079 Authority. Proposed bylaws shall be made available before being duly adopted and published at said
 1080 each annual meeting. The Board is authorized to adopt bylaws governing the amendment of bylaws at
 1081 any time.

1082 Also at said meeting, the 5. The Board of Directors shall annually elect a chairman and a
 1083 vice-chairman from its membership and a secretary of the Board from either its membership or the staff
 1084 of the Authority to take office as of that same date. Thereafter the Board of Directors shall annually
 1085 elect a chairman and a vice-chairman from its membership and a secretary from the staff of the
 1086 Authority at its June annual meeting, to take office on the following July 1. The terms of such officers
 1087 shall be for one year.

1088 The Board of Directors shall continue to appoint and contract with a president and CEO to manage
 1089 the operations of the Authority and a licensed attorney to serve as general counsel for the Authority, and
 1090 the contracts with the president and general counsel of Bristol Virginia Utilities shall continue in effect
 1091 and be binding upon the Authority. The Board of Directors shall also authorize the position of executive
 1092 vice-president and CFO, to be filled and managed by the president. The president shall have the
 1093 authority to hire, fire, and manage such staff as the president deems expedient to the operation of the

1094 Authority, subject to the availability of budgeted funds, and to assign such positions, titles, powers, and
 1095 duties at such salaries as the president deems most effective for the efficient operation of the Authority.

1096 Except for the purpose of inquiry, the 6. The Board and its individual members shall deal with
 1097 Authority employees solely through the president. Neither the Board nor any member thereof shall The
 1098 Board shall not give orders to any of the subordinates of the president, either publicly or privately. Any
 1099 such orders or other interferences on the part of the Board or any of its members with subordinates or
 1100 appointees of the president, instead of dealing or communicating directly with the president, are
 1101 prohibited.

1102 Neither shall the Board or any of its members 7. The Board shall not direct the appointment or
 1103 removal of any person from any office or employment by Authority contractor or employee other than
 1104 the president or any of his subordinates. Nothing herein shall be construed to limit or prohibit contact
 1105 with the president and general counsel, both of whom report directly to the Board.

1106 The Board of Directors shall make and, by recorded affirmative vote of three-fourths of all members,
 1107 amend and repeal bylaws governing the manner in which the Authority's business may be transacted and
 1108 in which the power granted to it may be enjoyed not inconsistent with this chapter. The initial set of
 1109 such bylaws shall be adopted at the first regular meeting of the Board following the Board's first
 1110 organizational meeting. The Board of Directors may appoint such committees as it may deem advisable
 1111 and fix the duties and responsibilities of such committees. The Board of Directors shall have the power
 1112 to request amendments to this chapter as set forth by the Code of Virginia that the Board deems
 1113 necessary and expedient for the proper operation of the Authority.

1114 8. The Board may appoint committees from among its membership in accordance with its bylaws.

1115 9. No Board member shall receive any financial compensation for service on the Board. The Board
 1116 may reimburse members for reasonable expenses they incur while serving on the Board. Any member
 1117 seeking reimbursement shall itemize and document by receipts such expenses pursuant to subsection E of
 1118 § 15.2-7205.

1119 10. The Board shall adopt a travel and expense policy that applies to Board members and Authority
 1120 employees and addresses what expenditures are appropriate in furtherance of the activities of the
 1121 Authority.

1122 11. The Board shall adopt a conflict of interest policy addressing the acceptance by Board members
 1123 or Authority employees of gifts of travel or entertainment from any vendor that seeks or maintains a
 1124 contract with the Authority.

1125 12. Each member of the Board shall file with the president a disclosure form containing a statement
 1126 of economic interests as provided in § 2.2-3117 according to the schedule required by § 2.2-3115.

1127 B. The following provisions apply to the president:

1128 1. The Board shall continue to appoint and contract with a president to manage the operations of
 1129 the Authority, and the contract with the president that is in effect as of January 1, 2016, shall continue
 1130 in effect and be binding upon the Authority.

1131 2. The term of the president's employment contract shall not exceed three years. The board may vote
 1132 to renew the contract of the president for additional terms not to exceed three years each.

1133 3. The president's employment contract shall not contain a severance payout upon termination
 1134 amounting to more than 12 months of his base salary.

1135 4. The president shall have the sole authority to hire, fire, and manage such staff and contractors as
 1136 the president deems expedient to the operation of the Authority, subject to the availability of budgeted
 1137 funds, and to assign such positions, titles, powers, and duties at such salaries as the president deems
 1138 most effective for the efficient operation of the Authority.

1139 5. The president shall not have the power to enter into an employment contract with any employee of
 1140 the Authority unless the Board ratifies such contract by a majority vote in an open meeting. Such
 1141 contract shall be subject to the term and severance payout restrictions applicable to the president's
 1142 contract as provided in subdivisions 2 and 3.

1143 6. The Board may appoint an employee as acting president during any period of vacancy. The Board
 1144 shall advertise the vacancy of the presidency and accept applications from candidates interested in
 1145 filling the vacancy.

1146 C. The Board shall vote annually to retain outside legal counsel to advise the Authority on legal
 1147 matters. The legal counsel shall be licensed to practice law in the Commonwealth, shall not be an
 1148 employee of the Authority, and shall be separate from and independent of any legal counsel for the City
 1149 of Bristol, Virginia, or Washington County. The legal counsel shall provide annual training to the Board
 1150 on the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.).

1151 D. The Board may authorize the position of executive vice-president, to be filled and managed by the
 1152 president.

1153 E. Notwithstanding the quorum requirement in subsection A, any decision of the Board related to the
 1154 provision, use, operation, or maintenance of water or sewer systems shall be made by a majority vote of

1155 *the three members of the Board representing the City of Bristol, Virginia, and the director who is a*
1156 *member of the Washington County Board of Supervisors.*

1157 **3. That upon the completion of the transfer to a third party of ownership of the Authority's**
1158 **broadband service, commonly known as BVU OptiNet, the director who is a member of the**
1159 **Abingdon Town Council, appointed by the Abingdon Town Council, and the director who is a**
1160 **Scott County citizen and not a member of the Scott County Board of Supervisors, appointed by**
1161 **the Speaker of the House of Delegates, shall both be removed from their directorships, and the**
1162 **second enactment of this act shall become effective.**

1163 **4. That § 15.2-2108.18 of the Code of Virginia is repealed.**

1164 **5. That this act shall not be construed to affect the contract of employment existing between the**
1165 **BVU Authority or BVU Board of Directors and the Executive Vice-President and Chief Financial**
1166 **Officer of the BVU Authority as of the effective date of this act.**

1167 **6. That the members of the Board of Directors of the BVU Authority in office on June 30, 2016,**
1168 **are hereby removed from office as of July 1, 2016. Notwithstanding the appointment of any**
1169 **director on or before July 1, 2010, or of his successor, any term of office begun before July 1,**
1170 **2016, and scheduled to end after that date is hereby terminated. No person who was a member of**
1171 **the Board of Directors in office on June 30, 2016, shall be eligible for reappointment to the Board**
1172 **prior to July 1, 2018.**

1173 **7. That no later than July 1, 2016, the Auditor of Public Accounts or his legally authorized**
1174 **representative shall examine the accounts and books of the BVU Authority.**

1175 **8. That any sale or disposition of any of the Authority's assets shall be made in accordance with**
1176 **the BVU Authority Transition Agreement made between the City of Bristol, Virginia, and Bristol**
1177 **Virginia Utilities, dated November 2, 2009, as it may be amended, except to the extent necessary to**
1178 **comply with any federal tax laws.**

1179 **9. That notwithstanding any contrary provision of law, general or special, the Bristol City Council**
1180 **shall, as of the effective date of this act, have the authority to make the appointment of a member**
1181 **of the Bristol City Council pursuant to subdivision B 2 of § 15.2-7205 of the Code of Virginia, as**
1182 **amended by this act, for the term ending July 1, 2020.**

1183 **10. That notwithstanding any contrary provision of law, general or special, the Bristol City**
1184 **Council shall, as of the effective date of this act, have the authority to make the appointment of a**
1185 **citizen of the City of Bristol, Virginia, who is engaged in business and is not a member of the**
1186 **Bristol City Council pursuant to subdivision B 4 of § 15.2-7205 of the Code of Virginia, as**
1187 **amended by this act, for the term ending July 1, 2020.**

1188 **11. That an emergency exists and this act is in force from its passage.**