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SENATE BILL NO. 329

AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Senate Committee on Local Government
 on February 2, 2016)

(Patron Prior to Substitute—Senator Carrico)

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

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 56-575.17 notwithstanding, the financial interest or bargaining position of the public entity would be

60 adversely affected, and (ii) the basis for the determination required in clause (i) is documented in writing
61 by the responsible public entity; and

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

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

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

76 3. Stating the reasons why protection is necessary.

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

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

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

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

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

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

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

122 applicant, or franchisee.

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

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

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

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

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

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

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

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

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

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

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

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

177 3. Stating the reasons why protection is necessary.

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

182 23. Records submitted as a grant application, or accompanying a grant application, to the Tobacco

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

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

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

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

199 3. Stating the reasons why protection is necessary.

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

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

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

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

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

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

219 3. Stating the reasons why protection is necessary.

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

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

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

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

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

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

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

247 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

248 A. Public bodies may hold closed meetings only for the following purposes:

249 1. Discussion, consideration, or interviews of prospective candidates for employment; assignment,
 250 appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public
 251 officers, appointees, or employees of any public body; and evaluation of performance of departments or
 252 schools of public institutions of higher education where such evaluation will necessarily involve
 253 discussion of the performance of specific individuals. Any teacher shall be permitted to be present
 254 during a closed meeting in which there is a discussion or consideration of a disciplinary matter that
 255 involves the teacher and some student and the student involved in the matter is present, provided the
 256 teacher makes a written request to be present to the presiding officer of the appropriate board.

257 2. Discussion or consideration of admission or disciplinary matters or any other matters that would
 258 involve the disclosure of information contained in a scholastic record concerning any student of any
 259 Virginia public institution of higher education or any state school system. However, any such student,
 260 legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to
 261 be present during the taking of testimony or presentation of evidence at a closed meeting, if such
 262 student, parents, or guardians so request in writing and such request is submitted to the presiding officer
 263 of the appropriate board.

264 3. Discussion or consideration of the acquisition of real property for a public purpose, or of the
 265 disposition of publicly held real property, where discussion in an open meeting would adversely affect
 266 the bargaining position or negotiating strategy of the public body.

267 4. The protection of the privacy of individuals in personal matters not related to public business.

268 5. Discussion concerning a prospective business or industry or the expansion of an existing business
 269 or industry where no previous announcement has been made of the business' or industry's interest in
 270 locating or expanding its facilities in the community.

271 6. Discussion or consideration of the investment of public funds where competition or bargaining is
 272 involved, where, if made public initially, the financial interest of the governmental unit would be
 273 adversely affected.

274 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual
 275 or probable litigation, where such consultation or briefing in open meeting would adversely affect the
 276 negotiating or litigating posture of the public body; and consultation with legal counsel employed or
 277 retained by a public body regarding specific legal matters requiring the provision of legal advice by such
 278 counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been
 279 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe
 280 will be commenced by or against a known party. Nothing in this subdivision shall be construed to
 281 permit the closure of a meeting merely because an attorney representing the public body is in attendance
 282 or is consulted on a matter.

283 8. In the case of boards of visitors of public institutions of higher education, discussion or
 284 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts
 285 for services or work to be performed by such institution. However, the terms and conditions of any such
 286 gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign
 287 person and accepted by a public institution of higher education in Virginia shall be subject to public
 288 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
 289 (i) "foreign government" means any government other than the United States government or the
 290 government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity
 291 created under the laws of the United States or of any state thereof if a majority of the ownership of the
 292 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
 293 membership of any such entity is composed of foreign persons or foreign legal entities, or any legal
 294 entity created under the laws of a foreign government; and (iii) "foreign person" means any individual
 295 who is not a citizen or national of the United States or a trust territory or protectorate thereof.

296 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum
 297 of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of Virginia,
 298 discussion or consideration of matters relating to specific gifts, bequests, and grants.

299 10. Discussion or consideration of honorary degrees or special awards.

300 11. Discussion or consideration of tests, examinations, or other records excluded from this chapter
 301 pursuant to subdivision 4 of § 2.2-3705.1.

302 12. Discussion, consideration, or review by the appropriate House or Senate committees of possible
 303 disciplinary action against a member arising out of the possible inadequacy of the disclosure statement
 304 filed by the member, provided the member may request in writing that the committee meeting not be
 305 conducted in a closed meeting.

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

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

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

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

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

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

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

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

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

359 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern
360 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
361 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
362 Virginia Medical School, as the case may be, have been delegated, in which there is discussed
363 proprietary, business-related information pertaining to the operations of the University of Virginia
364 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
365 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
366 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
367 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such

368 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
369 Medical School, as the case may be.

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

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

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

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

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

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

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

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

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

413 32. [Expired.]

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

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

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

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

426 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards
427 Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of
428 § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship

429 award, review and consider scholarship applications and requests for scholarship award renewal, and
430 cancel, rescind, or recover scholarship awards.

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

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

439 40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of
440 § 2.2-3705.6.

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

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

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

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

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

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

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

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

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

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

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

483 **§ 15.2-2160. Provision of telecommunications services.**

484 A. Any locality that operates an electric distribution system may provide telecommunications
485 services, including local exchange telephone service as defined in § 56-1, within or outside its
486 boundaries if the locality obtains a certificate pursuant to § 56-265.4:4. Such locality may provide
487 telecommunications services within any locality in which it has electric distribution system facilities as
488 of March 1, 2002. Any locality providing telecommunications services on March 1, 2002, may provide
489 telecommunications, Internet access, broadband, information, and data transmission services within any
490 locality within 75 miles of the geographic boundaries of its electric distribution system as such system

491 existed on March 1, 2002. *The BVU Authority may provide telecommunications, Internet access,*
 492 *broadband, information, and data transmission services as provided in the BVU Authority Act*
 493 *(§ 15.2-7200 et seq.).*

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

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

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

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

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

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

535 **§ 15.2-7202. Definitions.**

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

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

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

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

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

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

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

546 "Commission" means the Virginia State Corporation Commission.

547 "Commonwealth" means the Commonwealth of Virginia.

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

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

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

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

561 **§ 15.2-7203. BVU Authority; operating name or names.**

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

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

568 **§ 15.2-7205. Board of Directors; membership.**

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

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

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

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

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

580 e. ~~The second term ending June 30, 2011, will be extended to end June 30, 2016.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

641 **§ 15.2-7206. Organization; compensation.**

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

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

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

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

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

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

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

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

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

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

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

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

686 9. *No Board member shall receive any financial compensation for service on the Board. The Board
687 may reimburse members for reasonable expenses they incur while serving on the Board. Any member
688 seeking reimbursement shall itemize and document by receipts such expenses pursuant to subsection E of
689 § 15.2-7205.*

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

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

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

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

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

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

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

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

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

715 *E. Notwithstanding the quorum requirement in subsection A, any decision of the Board related to the
716 provision, use, operation, or maintenance of water or sewer systems shall be made by a majority vote of
717 the three members of the Board representing the City of Bristol, Virginia.*

718 **§ 15.2-7207. Powers generally.**

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

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

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

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

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

729 ~~5.~~ 4. To maintain offices at such places as it may designate;

730 ~~6.~~ 5. To appoint, employ, or engage such officers, employees, architects, engineers, attorneys,
731 accountants, financial advisors, investment bankers, and other advisors, consultants, and agents as may
732 be necessary or appropriate, and to fix their duties and compensation;

733 ~~7.~~ 6. To establish personnel rules;

734 ~~8.~~ 7. To make, assume, and enter into all contracts, leases, and arrangements necessary or incidental
735 to the exercise of its powers, including contracts for the management or operation of all or any part of
736 its facilities;

737 9. 8. To borrow money, as hereinafter provided, and to borrow money for the purpose of meeting
738 casual deficits in its revenues;

739 ~~10.~~ 9. To provide electric, water, sewer, and telecommunication and related services, including
740 without limitation, cable television, internet, and all other services that might be lawfully rendered by
741 use of the Authority's fiber optic system as set forth in § 15.2-7208 subject to all ~~existing~~ *applicable*
742 restrictions and limitations thereon;

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

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

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

764 ~~13. To~~ 12. *Subject to subdivision 19, to apply for and accept gifts or grants of money or gifts, grants*
765 *or loans of other property or other financial assistance from the United States of America and agencies*
766 *and instrumentalities thereof, this Commonwealth and political subdivisions, agencies and*
767 *instrumentalities thereof, or any other person or entity, for or in aid of the construction, acquisition,*
768 *ownership, operation, maintenance, or repair of its infrastructure or for the payment of principal of any*
769 *indebtedness of the Authority, interest thereon, or other cost incident thereto, or for the operation of any*
770 *of its services, or for any other purpose of the Authority, and to this end the Authority shall have the*
771 *power to render such services, comply with such conditions, and execute such agreements and legal*
772 *instruments as may be necessary, convenient or desirable or imposed as a condition to such financial*
773 *aid;*

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

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

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

798 17. 16. To purchase and maintain insurance or provide indemnification on behalf of any person who
 799 is or was a director, officer, employee, or agent of the Authority and on behalf of the Authority itself
 800 against any liability asserted against it or him or incurred by it or him in any such capacity or arising
 801 out of his status as such;

802 18. To establish and charge such fees as it deems appropriate for attachment to or inclusion in the
 803 Authority's infrastructure, including but not limited to its poles, conduits, and collocation sites, subject to
 804 all existing limitations and restrictions thereon;

805 19. 17. To fund economic development projects *that provide broadband infrastructure to unserved*
 806 *areas as set forth in subdivision 19 and subsection C* and, in advance of economic development
 807 projects, to enter into contracts, to borrow money and to do all other such acts as will allow it to
 808 encourage and support economic development; ~~and~~

809 20. 18. To have police powers on all of the properties of the Authority within the Commonwealth,
 810 exercised through appointment of an armed conservator of the peace. The ~~President~~ *president* of the
 811 Authority may apply to the circuit court for any locality in which the Authority has property for the
 812 appointment of one or more special conservators of the peace under procedures specified by Chapter 2
 813 (§ 19.2-12 et seq.) of Title 19.2 of the Code of Virginia or any successor provisions. Any such special
 814 conservator of the peace shall have, within the lands and facilities controlled by the Authority, the
 815 powers, functions, duties, responsibilities, and authority of any other armed conservator of the peace.
 816 Nothing in this section shall be construed to prevent the conservator of the peace currently serving
 817 Bristol Virginia Utilities from continuing as an armed special conservator of the peace for the Authority
 818 during the remainder of his term, if not removed for cause; *and*

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

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

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

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

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

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

848 **§ 15.2-7208. Powers.**

849 ~~The~~ *Unless limited elsewhere in this chapter, the Authority shall have those powers possessed by the*
 850 *City of Bristol necessary and convenient for the provision of electric, water and sanitary sewer services,*
 851 *and those powers possessed by the Bristol Virginia Utilities Board and the division of the city known as*
 852 *Bristol Virginia Utilities as they existed on July 1, 2001, in the Charter of the City of Bristol, Virginia,*
 853 *and the general laws of the Commonwealth. The* ~~Unless limited elsewhere in this chapter, the~~ *Authority*
 854 *shall also possess all those powers, subject to the limitations and restrictions thereon, as granted to the*
 855 *City, the Bristol Virginia Utilities Board, and BVU by Chapter 479 of the Acts of Assembly of 2002,*
 856 *Chapters 539, 546, and 677 of the Acts of Assembly 2003, Chapter 586 of the Acts of Assembly of*
 857 *2004, Chapter 258 of the Acts of Assembly of 2005, Chapters 607 and 682 of the Acts of Assembly of*
 858 *2007, and Chapters 99 and 323 of the Acts of Assembly of 2008.*

859 **§ 56-265.4:4. Certificate to operate as a telephone utility.**

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

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

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

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

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

919 5. Upon the Commission's granting of a certificate to a county, city or town under this section, such
 920 county, city, or town (i) shall be subject to regulation by the Commission for intrastate

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

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

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

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

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

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

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

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

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

983 Commission to regulate cable television service.
984 2. That §§ 15.2-7205, 15.2-7206, and 15.2-7207 of the Code of Virginia are amended and reenacted
985 as follows:

986 § 15.2-7205. Board of Directors; membership.

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

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

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

- 996 a. The term ending June 30, 2010, will be extended to end June 30, 2014.
- 997 b. The term ending June 30, 2011, will be extended to end June 30, 2015.
- 998 c. The second term ending June 30, 2011, will be extended to end June 30, 2016.
- 999 d. The term ending June 30, 2012, will be extended to end June 30, 2016.

1000 Each of said members will thereafter be eligible for one additional consecutive four-year term
1001 pursuant to the limitation set forth herein.

1002 2. Two members appointed by *One* director who is a member of the Bristol City Council who are
1003 members of, *appointed by* the Bristol City Council serving on the Bristol Virginia Utilities Board as of
1004 June 1, 2010. Such members shall *to* serve a four-year term, coterminous with their ~~his~~ *her* term on the
1005 Council, commencing July 1, 2010. Should no present member of Council serving on the Bristol
1006 Virginia Utilities Board be a member of Council on that date, Council may appoint two other members
1007 of Council to serve on the initial Authority Board for a term that is coterminous with that member's
1008 term on Council.

1009 3. One new Bristol, Virginia, citizen, who is not a city council member. Such citizen will be *director*
1010 *who is a citizen of Washington County and is not a member of the Washington County Board of*
1011 *Supervisors, appointed by the Bristol, Virginia, City Council and shall serve a term from July 1, 2010,*
1012 ~~until June 30, 2015~~ *Senate Committee on Rules.*

1013 4. One new member, a director who is a citizen of the City of Bristol, Virginia, ~~citizen, appointed by~~
1014 ~~the Bristol Virginia Utilities Board whose term will start July 1, 2010, and end June 30, 2014~~ *who is*
1015 *engaged in business and is not a member of the Bristol City Council, appointed by the Authority Board.*
1016 *However, the first such director shall be appointed by the Bristol City Council for a term that ends the*
1017 *sooner of July 1, 2017, or the date upon which the Authority Board appoints a director to this position*
1018 *to serve the remainder of the initial four-year term. The Authority Board shall appoint a director to this*
1019 *position thereafter.*

1020 5. One director who is a member of the Board of Supervisors of Washington County, Virginia, who
1021 will be *Board of Supervisors, appointed by that the Washington County Board of Supervisors to serve a*
1022 *four-year term coterminous with his or her term on the Board of Supervisors commencing July 1, 2010.*

1023 C. If any appointments to the initial Board are made prior to the effective date of this chapter, such
1024 appointments shall be deemed valid and effective as of such date *The four-year term of all directors*
1025 *shall begin July 1, 2016. The term of Authority Board membership for any director thereafter shall be*
1026 *four years.*

1027 D. The City Council shall elect, in addition to its Council members, three of the Bristol, Virginia,
1028 citizen Board members when the above terms expire. The remaining three Bristol, Virginia, citizen
1029 members will be elected by the Authority Board when the above terms expire. The City Council and the
1030 Authority Board will alternate electing persons to fill an expiring term until each has appointed the
1031 number it appoints to the Board. Any vacancy in a term shall be filled by the body making the original
1032 appointment and shall be for the remainder of the term. Said appointment shall be made within 30 days
1033 from the date the vacancy occurs.

1034 E. The term of the Council members shall be for four years coterminous with those members' terms
1035 of office on the City Council. Those City Council Members *Each* director who is a member of the
1036 *Bristol City Council or Washington County Board of Supervisors may serve as many terms as the City*
1037 *Council appointing governing body decides as long as the appointees are members* ~~appointee~~ *remains a*
1038 *member of the City Council relevant governing body. The City Council governing body may appoint*
1039 ~~other members~~ *a different member of the City Council or Board of Supervisors at the end of any*
1040 *appointee's four-year Council or Board term or upon the exit of the Council member from the Council*
1041 *governing body. In the latter case, the Council Member will* ~~new~~ *appointee shall* serve for the remainder
1042 of the term vacated by an exiting City Council member *of the governing body.*

1043 F. All other directors shall serve four-year terms, except for the longer appointments to the initial

1044 Board. Those directors may serve a maximum of two terms and then must be off the Board for one full
 1045 year before election to fill another full term or to fill the remainder of a vacated term.

1046 G. E. If funds are available, each director may be reimbursed by the Authority for the amount of
 1047 actual expenses incurred by him in the performance of his duties. Such expense allowance shall
 1048 constitute a cost of operation and maintenance of such utility systems and shall be prorated among each
 1049 of the systems it manages using the "~~3-Factor~~" "*Three-Factor*" allocation method approved by the
 1050 Commission. The three factors consist of the percentages that each division comprises of total plant in
 1051 service, total operating revenues, and total customer accounts. Once each operating division's percentage
 1052 of each of the three factors is calculated, the sum of the three factors divided by ~~3~~ *three* results in the
 1053 operating division's share of the total direct or indirect costs.

1054 **§ 15.2-7206. Organization; compensation.**

1055 A. *The following provisions apply to the Board of Directors:*

1056 A simple majority 1. *Three* of the directors ~~in office~~ shall constitute a quorum. No vacancy in the
 1057 Board of Directors shall impair the right of a quorum to exercise all the rights and perform all the duties
 1058 of the Authority.

1059 2. The Board of ~~Directors~~ shall hold regular meetings at such times and places as may be established
 1060 by its bylaws. *The Board shall hold its meetings as provided in § 2.2-3707.*

1061 3. The Board of ~~Directors~~ shall hold its first organizational meeting on July 1, 2010.

1062 *Bylaws 4. The Board shall adopt bylaws governing the conduct of business by the Board and the*
 1063 *Authority. Proposed bylaws shall be made available before being duly adopted and published at said*
 1064 *each annual meeting. The Board is authorized to adopt bylaws governing the amendment of bylaws at*
 1065 *any time.*

1066 ~~Also at said meeting, the~~ 5. *The Board of Directors shall annually elect a chairman and a*
 1067 *vice-chairman from its membership and a secretary of the Board from either its membership or the staff*
 1068 *of the Authority to take office as of that same date. Thereafter the Board of Directors shall annually*
 1069 *elect a chairman and a vice-chairman from its membership and a secretary from the staff of the*
 1070 *Authority at its June annual meeting, to take office on the following July 1. The terms of such officers*
 1071 *shall be for one year.*

1072 The Board of Directors shall continue to appoint and contract with a president and CEO to manage
 1073 the operations of the Authority and a licensed attorney to serve as general counsel for the Authority, and
 1074 the contracts with the president and general counsel of Bristol Virginia Utilities shall continue in effect
 1075 and be binding upon the Authority. The Board of Directors shall also authorize the position of executive
 1076 vice-president and CFO, to be filled and managed by the president. The president shall have the
 1077 authority to hire, fire, and manage such staff as the president deems expedient to the operation of the
 1078 Authority, subject to the availability of budgeted funds, and to assign such positions, titles, powers, and
 1079 duties at such salaries as the president deems most effective for the efficient operation of the Authority.

1080 Except for the purpose of inquiry, ~~the~~ 6. *The Board and its individual members shall deal with*
 1081 *Authority employees solely through the president. Neither the Board nor any member thereof shall*
 1082 *Board shall not* give orders to any of the subordinates of the president, either publicly or privately. *Any*
 1083 *such orders or other interferences on the part of the Board or any of its members with subordinates or*
 1084 *appointees of the president, instead of dealing or communicating directly with the president, are*
 1085 *prohibited.*

1086 Neither shall the Board or any of its members 7. *The Board shall not* direct the appointment or
 1087 removal of any person from any office or employment by Authority contractor or employee other than
 1088 the president or any of his subordinates. Nothing herein shall be construed to limit or prohibit contact
 1089 with the president and general counsel, both of whom report directly to the Board.

1090 The Board of Directors shall make and, by recorded affirmative vote of three-fourths of all members,
 1091 amend and repeal bylaws governing the manner in which the Authority's business may be transacted and
 1092 in which the power granted to it may be enjoyed not inconsistent with this chapter. The initial set of
 1093 such bylaws shall be adopted at the first regular meeting of the Board following the Board's first
 1094 organizational meeting. The Board of Directors may appoint such committees as it may deem advisable
 1095 and fix the duties and responsibilities of such committees. The Board of Directors shall have the power
 1096 to request amendments to this chapter as set forth by the Code of Virginia that the Board deems
 1097 necessary and expedient for the proper operation of the Authority.

1098 8. *The Board may appoint committees from among its membership in accordance with its bylaws.*

1099 9. *No Board member shall receive any financial compensation for service on the Board. The Board*
 1100 *may reimburse members for reasonable expenses they incur while serving on the Board. Any member*
 1101 *seeking reimbursement shall itemize and document by receipts such expenses pursuant to subsection E of*
 1102 *§ 15.2-7205.*

1103 B. *The following provisions apply to the president:*

1104 1. *The Board shall continue to appoint and contract with a president to manage the operations of*
 1105 *the Authority, and the contract with the president that is in effect as of January 1, 2016, shall continue*

1106 in effect and be binding upon the Authority.

1107 2. The term of the president's employment contract shall not exceed three years. The board may vote
1108 to renew the contract of the president for additional terms not to exceed three years each.

1109 3. The president's employment contract shall not contain a severance payout upon termination
1110 amounting to more than 12 months of his base salary.

1111 4. The president shall have the sole authority to hire, fire, and manage such staff and contractors as
1112 the president deems expedient to the operation of the Authority, subject to the availability of budgeted
1113 funds, and to assign such positions, titles, powers, and duties at such salaries as the president deems
1114 most effective for the efficient operation of the Authority.

1115 5. The president shall not have the power to enter into an employment contract with any employee of
1116 the Authority unless the Board ratifies such contract by a majority vote in an open meeting. Such
1117 contract shall be subject to the term and severance payout restrictions applicable to the president's
1118 contract as provided in subdivisions 2 and 3.

1119 6. The Board may appoint an employee as acting president during any period of vacancy. The Board
1120 shall advertise the vacancy of the presidency and accept applications from candidates interested in
1121 filling the vacancy.

1122 C. The Board shall vote annually to retain outside legal counsel to advise the Authority on legal
1123 matters. The legal counsel shall be licensed to practice law in the Commonwealth, shall not be an
1124 employee of the Authority, and shall be separate from and independent of any legal counsel for the City
1125 of Bristol, Virginia, or Washington County.

1126 D. The Board shall authorize the position of executive vice-president/CFO, to be filled and managed
1127 by the president.

1128 **§ 15.2-7207. Powers generally.**

1129 A. The Authority is hereby granted all powers *reasonably* necessary or appropriate to carry out the
1130 purposes of this chapter in order to provide electric, water, sewer, and telecommunication and related
1131 services, including without limitation, cable television internet, and all other services that might be
1132 lawfully rendered by use of the Authority's fiber optic system, subject to all ~~existing~~ applicable
1133 limitations and restrictions thereon. Such powers include, without limitation, except as set forth hereafter,
1134 the following:

1135 1. To adopt bylaws for the regulation of its affairs and the conduct of its business;

1136 2. To sue and be sued in the Authority's name;

1137 3. ~~To have perpetual succession;~~

1138 4. To adopt a corporate seal and alter the same at its pleasure;

1139 5. 4. To maintain offices at such places as it may designate;

1140 6. 5. To appoint, employ, or engage such officers, employees, architects, engineers, attorneys,
1141 accountants, financial advisors, investment bankers, and other advisors, consultants, and agents as may
1142 be necessary or appropriate, and to fix their duties and compensation;

1143 7. 6. To establish personnel rules;

1144 8. 7. To make, assume, and enter into all contracts, leases, and arrangements necessary or incidental
1145 to the exercise of its powers, including contracts for the management or operation of all or any part of
1146 its facilities;

1147 9. 8. To borrow money, as hereinafter provided, and to borrow money for the purpose of meeting
1148 casual deficits in its revenues;

1149 10. 9. To provide electric, water, sewer, and telecommunication and related services, including
1150 without limitation, cable television, internet, and all other services that might be lawfully rendered by
1151 use of the Authority's fiber optic system as set forth in § 15.2-7208 subject to all ~~existing~~ applicable
1152 restrictions and limitations thereon;

1153 11. 10. To determine fees, rates, and charges for the services and products it provides, subject only
1154 to such state or federal regulation as the Tennessee Valley Authority (TVA) or other cognizant state or
1155 federal agency may impose by order, rulemaking, contract or otherwise, including, without limitation,
1156 electric, water and sewer, and internet and cable television services, including all other services that
1157 might be rendered by use of its fiber optic system, furnished by the Authority. MLEC telephone service,
1158 including rates, is regulated by the Commission. All rate increases for services other than electric, which
1159 are set by the TVA, and telephone, which are set by the Commission and applicable law, shall require a
1160 favorable vote at two meetings, one of which must be a regular meeting of the BVU Authority Board.

1161 The Authority may assess such rates and charges for such services or products in such manner
1162 *mutatis mutandis* as BVU or the City has the authority to do so at present subject to the same
1163 restrictions and limitations thereon;

1164 12. 11. To adopt, amend, and repeal rules and regulations for the use, maintenance, and operation of
1165 its facilities and utility services and governing the conduct of persons and organizations using its
1166 facilities or obtaining its utility services and to enforce such rules and regulations and all other rules,

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SB329S1

1167 regulations, ordinances, and statutes relating to its facilities and services, as authorized by the enacting
 1168 body of such rules, regulations, ordinances, and statutes. The civil penalty for violation of any such rules
 1169 and regulations shall be set forth in the rules and may be enforced by the Authority by direct action in
 1170 terminating services and by the imposition of monetary penalties to be billed to the customer. The
 1171 Authority may request the governing body of each locality in which it does business to impose by
 1172 ordinance such penal liability for violation of such rules and regulations as such body deems
 1173 appropriate;

1174 ~~13. To~~ 12. *Subject to subdivision 18, to apply for and accept gifts or grants of money or gifts, grants*
 1175 *or loans of other property or other financial assistance from the United States of America and agencies*
 1176 *and instrumentalities thereof, this Commonwealth and political subdivisions, agencies and*
 1177 *instrumentalities thereof, or any other person or entity, for or in aid of the construction, acquisition,*
 1178 *ownership, operation, maintenance, or repair of its infrastructure or for the payment of principal of any*
 1179 *indebtedness of the Authority, interest thereon, or other cost incident thereto, or for the operation of any*
 1180 *of its services, or for any other purpose of the Authority, and to this end the Authority shall have the*
 1181 *power to render such services, comply with such conditions, and execute such agreements and legal*
 1182 *instruments as may be necessary, convenient or desirable or imposed as a condition to such financial*
 1183 *aid;*

1184 ~~14. 13.~~ 13. *Subject to subdivision 16 15 and all existing limitations and restrictions thereon, to acquire,*
 1185 *establish, construct, enlarge, improve, maintain, equip, operate, and regulate electric, water, sewer,*
 1186 *telecommunications, internet and cable television services, including all other services that might be*
 1187 *rendered by use of its fiber optic system, and other infrastructure and facilities that are owned or*
 1188 *managed by the Authority within the territorial areas in which it operates or provides services;*

1189 ~~15. 14.~~ 14. *To construct, install, maintain, and operate facilities and infrastructure for managing its*
 1190 *utility, consulting and operational management services. The Authority shall have the power and duty to*
 1191 *manage and operate the electric, public lighting, water, sewerage, telecommunications, internet and cable*
 1192 *television services, including all other services that might be rendered by use of its fiber optic system*
 1193 *directly subject to all existing limitations and restrictions thereon, or it may subcontract such functions.*
 1194 *The Authority shall construct, maintain, and operate all facilities necessary thereto; shall sell and*
 1195 *distribute to the public electric power, light, water, sewer, telecommunications, internet and cable*
 1196 *television, and other services as they now exist or may exist in the future subject to all existing*
 1197 *limitations and restrictions thereon; and shall collect the rates and charges provided for all such services;*

1198 ~~16. 15.~~ 15. *To own, purchase, lease, obtain options upon, acquire by gift, grant, or bequest or otherwise*
 1199 *acquire any property, real or personal, or any interest therein, and in connection therewith to assume or*
 1200 *take subject to any indebtedness secured by such property and dispose of any or all such properties as is*
 1201 *deemed appropriate by the Board. The Authority shall have the power of eminent domain to acquire*
 1202 *property and easements as needed for its various utility electric power, light, water, and sewer services*
 1203 *within the areas it provides or can provide such services. The power of eminent domain shall not*
 1204 *include the power to acquire existing telecommunications, internet or cable facilities, which is expressly*
 1205 *prohibited, and the Authority shall not accept or receive any telecommunications, internet or cable*
 1206 *facilities from an entity that acquired such facilities by use of eminent domain for the purpose of*
 1207 *conveying them to the Authority;*

1208 ~~17. 16.~~ 16. *To purchase and maintain insurance or provide indemnification on behalf of any person who*
 1209 *is or was a director, officer, employee, or agent of the Authority and on behalf of the Authority itself*
 1210 *against any liability asserted against it or him or incurred by it or him in any such capacity or arising*
 1211 *out of his status as such;*

1212 ~~18. To establish and charge such fees as it deems appropriate for attachment to or inclusion in the~~
 1213 ~~Authority's infrastructure, including but not limited to its poles, conduits, and collocation sites, subject to~~
 1214 ~~all existing limitations and restrictions thereon;~~

1215 ~~19. To fund economic development projects and, in advance of economic development projects, to~~
 1216 ~~enter into contracts, to borrow money and to do all other such acts as will allow it to encourage and~~
 1217 ~~support economic development; and~~

1218 ~~20. 17.~~ 17. *To have police powers on all of the properties of the Authority within the Commonwealth,*
 1219 *exercised through appointment of an armed conservator of the peace. The President president of the*
 1220 *Authority may apply to the circuit court for any locality in which the Authority has property for the*
 1221 *appointment of one or more special conservators of the peace under procedures specified by Chapter 2*
 1222 *(§ 19.2-12 et seq.) of Title 19.2 of the Code of Virginia or any successor provisions. Any such special*
 1223 *conservator of the peace shall have, within the lands and facilities controlled by the Authority, the*
 1224 *powers, functions, duties, responsibilities, and authority of any other armed conservator of the peace.*
 1225 *Nothing in this section shall be construed to prevent the conservator of the peace currently serving*
 1226 *Bristol Virginia Utilities from continuing as an armed special conservator of the peace for the Authority*
 1227 *during the remainder of his term, if not removed for cause; and*

1228 *18. To build or facilitate the building of, as the first broadband priority of the Authority, wired*

1229 broadband infrastructure to serve residents in the Authority's lawful service area who are not served by
1230 any wired broadband service provider. The president of the Authority shall annually provide the Board
1231 with a report detailing (i) the number of requests for broadband services received from residents in
1232 unserved areas, (ii) the number of such requests for which the Authority has provided a connection to
1233 broadband services, and (iii) the costs of providing such broadband service.

1234 B. The Authority is authorized to (i) operate only in Virginia and Tennessee; (ii) offer broadband
1235 services only in Sullivan, Unicoi, and Washington Counties, Tennessee; the City of Bristol, Virginia; and
1236 Bland, Buchanan, Dickinson, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe Counties in
1237 Virginia, together with any towns located in such counties; and (iii) offer cable television services or
1238 other video services only within Russell County and the electric utility service territory of Bristol
1239 Virginia Utilities as it existed on December 31, 2009, in the City of Bristol, Virginia, and Washington
1240 County.

1241 C. Whenever any grant, loan, or application for such grant or loan includes or refers to funding for
1242 broadband deployment, the Authority shall ensure that (i) funds are allocated to the maximum extent
1243 possible to projects that expand broadband deployment to areas, residents, or businesses that are
1244 unserved by wired broadband; (ii) in any funding of grants for broadband deployment that include
1245 areas already served by wired broadband, such areas already served are incidental to and are crossed
1246 only for the purpose of reaching an unserved area; and (iii) any broadband network built will be
1247 operated on an open-access basis, available to multiple broadband providers, with dark fibers and
1248 capacity sufficient for competitive broadband providers to lease the same from the Authority at
1249 commercially reasonable rates.

1250 D. The Authority shall not seek to become or establish a wireless service authority under the
1251 Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) or contract for services with such an
1252 authority.

1253 E. The Authority shall not solicit or contract with any locality or other entity possessing the power
1254 of eminent domain in order to cause such a third party to exercise its power of eminent domain to
1255 acquire any easements or other property where the Authority itself lacks such power.

1256 F. The Authority shall not have the power to make charitable donations.

1257 **3. That upon the completion of the transfer to a third party of ownership of the Authority's**
1258 **broadband service, commonly known as BVU OptiNet, the director who is a member of the**
1259 **Abingdon Town Council, appointed by the Abingdon Town Council, and the director who is a**
1260 **Scott County citizen and not a member of the Scott County Board of Supervisors, appointed by**
1261 **the Speaker of the House of Delegates, shall both be removed from their directorships, and the**
1262 **second enactment of this act shall become effective.**

1263 **4. That § 15.2-2108.18 of the Code of Virginia is repealed.**

1264 **5. That this act shall not be construed to affect the contract of employment existing between the**
1265 **BVU Authority or BVU Board of Directors and the Executive Vice-President and Chief Financial**
1266 **Officer of the BVU Authority as of the effective date of this act.**

1267 **6. That the members of the Board of Directors of the BVU Authority in office on June 30, 2016,**
1268 **are hereby removed from office as of July 1, 2016. Notwithstanding the appointment of any**
1269 **director on or before July 1, 2010, or of his successor, any term of office begun before July 1,**
1270 **2016, and scheduled to end after that date is hereby terminated. No person who was a member of**
1271 **the Board of Directors in office on June 30, 2016, shall be eligible for reappointment to the Board**
1272 **prior to July 1, 2018.**

1273 **7. That no later than July 1, 2016, the Auditor of Public Accounts or his legally authorized**
1274 **representative shall examine the accounts and books of the BVU Authority.**

1275 **8. That any sale or disposition of any of the Authority's assets shall be made in accordance with**
1276 **the BVU Authority Transition Agreement made between the City of Bristol, Virginia, and Bristol**
1277 **Virginia Utilities, dated November 2, 2009.**

1278 **9. That notwithstanding any contrary provision of law, general or special, the Bristol City Council**
1279 **shall, as of the effective date of this act, have the authority to make the appointment of a member**
1280 **of the Bristol City Council pursuant to subdivision B 2 of § 15.2-7205 of the Code of Virginia, as**
1281 **amended by this act, for the term ending July 1, 2020.**

1282 **10. That notwithstanding any contrary provision of law, general or special, the Bristol City**
1283 **Council shall, as of the effective date of this act, have the authority to make the appointment of a**
1284 **citizen of the City of Bristol, Virginia, who is engaged in business and is not a member of the**
1285 **Bristol City Council pursuant to subdivision B 4 of § 15.2-7205 of the Code of Virginia, as**
1286 **amended by this act, for the term ending July 1, 2020.**

1287 **11. That an emergency exists and this act is in force from its passage.**