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**HOUSE BILL NO. 2108**

Offered January 11, 2017

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A *BILL to amend and reenact §§ 2.2-3705.6, 2.2-3711, 10.1-1458, 15.2-2160, 32.1-276.5:1, and 56-265.4:4 of the Code of Virginia and to amend the Code of Virginia by adding in Title 56 a chapter numbered 15.1, consisting of sections numbered 56-484.26 through 56-484.33, relating to broadband deployment.*

Patrons—Byron, Boysko, Hugo and Leftwich

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-3705.6, 2.2-3711, 10.1-1458, 15.2-2160, 32.1-276.5:1, and 56-265.4:4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 56 a chapter numbered 15.1, consisting of sections numbered 56-484.26 through 56-484.33, as follows:**

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

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

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. Proprietary information, 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 information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body.

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. Proprietary information 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 if disclosure of 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 exclusion 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

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59 proprietary information by any person in connection with a procurement transaction or by any person  
60 who has submitted to a public body an application for prequalification to bid on public construction  
61 projects in accordance with subsection B of § 2.2-4317.

62 11. a. Memoranda, staff evaluations, or other information prepared by the responsible public entity,  
63 its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed  
64 under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-Private  
65 Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where (i) if such information  
66 was made public prior to or after the execution of an interim or a comprehensive agreement,  
67 § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public  
68 entity would be adversely affected and (ii) the basis for the determination required in clause (i) is  
69 documented in writing by the responsible public entity; and

70 b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or  
71 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995  
72 (§ 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002  
73 (§ 56-575.1 et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity  
74 as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial information of the private  
75 entity, including balance sheets and financial statements, that are not generally available to the public  
76 through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity  
77 where if such information was made public prior to the execution of an interim agreement or a  
78 comprehensive agreement, the financial interest or bargaining position of the public or private entity  
79 would be adversely affected. In order for the information specified in clauses (i), (ii), and (iii) to be  
80 excluded from the provisions of this chapter, the private entity shall make a written request to the  
81 responsible public entity:

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

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

85 (3) Stating the reasons why protection is necessary.

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

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

103 For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction,"  
104 "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation  
105 facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined  
106 in the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or in the Public-Private Education  
107 Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.).

108 12. Confidential proprietary information or trade secrets, not publicly available, provided by a private  
109 person or entity pursuant to a promise of confidentiality to the Virginia Resources Authority or to a  
110 fund administered in connection with financial assistance rendered or to be rendered by the Virginia  
111 Resources Authority where, if such information were made public, the financial interest of the private  
112 person or entity would be adversely affected.

113 13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential  
114 proprietary information that is not generally available to the public through regulatory disclosure or  
115 otherwise, provided by a (i) bidder or applicant for a franchise or (ii) franchisee under Chapter 21  
116 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of  
117 confidentiality from the franchising authority, to the extent the information relates to the bidder's,  
118 applicant's, or franchisee's financial capacity or provision of new services, adoption of new technologies  
119 or implementation of improvements, where such new services, technologies, or improvements have not  
120 been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such

121 information were made public, the competitive advantage or financial interests of the franchisee would  
122 be adversely affected.

123 In order for trade secrets or confidential proprietary information to be excluded from the provisions  
124 of this chapter, the bidder, applicant, or franchisee shall (a) invoke such exclusion upon submission of  
125 the data or other materials for which protection from disclosure is sought, (b) identify the data or other  
126 materials for which protection is sought, and (c) state the reason why protection is necessary.

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

131 14. Information of a proprietary nature furnished by a supplier of charitable gaming supplies to the  
132 Department of Agriculture and Consumer Services pursuant to subsection E of § 18.2-340.34.

133 15. Information related to Virginia apple producer sales provided to the Virginia State Apple Board  
134 pursuant to § 3.2-1215.

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

138 17. Information relating to a grant or loan application, or accompanying a grant or loan application,  
139 to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.)  
140 of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 5.3  
141 (§ 32.1-162.23 et seq.) of Title 32.1 if disclosure of such information would (i) reveal proprietary  
142 business or research-related information produced or collected by the applicant in the conduct of or as a  
143 result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly  
144 issues, when such information has not been publicly released, published, copyrighted, or patented, and  
145 (ii) be harmful to the competitive position of the applicant.

146 18. Confidential proprietary information and trade secrets developed and held by a local public body  
147 (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television  
148 services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2 if disclosure of such  
149 information would be harmful to the competitive position of the locality.

150 In order for confidential proprietary information or trade secrets to be excluded from the provisions  
151 of this chapter, the locality in writing shall (a) invoke the protections of this subdivision, (b) identify  
152 with specificity the information for which protection is sought, and (c) state the reasons why protection  
153 is necessary. However, the exemption provided by this subdivision shall not apply to any authority  
154 created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

155 19. Confidential proprietary information and trade secrets developed by or for a local authority  
156 created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to  
157 provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of  
158 Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive  
159 position of the authority, except that information required to be maintained in accordance with §-  
160 15.2-2160 shall be released.

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

170 ~~21.~~ 19. Information of a proprietary or confidential nature disclosed by a carrier to the State Health  
171 Commissioner pursuant to §§ 32.1-276.5:1 and 32.1-276.7:1.

172 ~~22.~~ 20. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including,  
173 but not limited to, financial information, including balance sheets and financial statements, that are not  
174 generally available to the public through regulatory disclosure or otherwise, and revenue and cost  
175 projections supplied by a private or nongovernmental entity to the State Inspector General for the  
176 purpose of an audit, special investigation, or any study requested by the Office of the State Inspector  
177 General in accordance with law.

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

181 a. Invoking such exclusion upon submission of the data or other materials for which protection from

182 disclosure is sought;

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

184 c. Stating the reasons why protection is necessary.

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

189 ~~23.~~ 21. Information relating to a grant application, or accompanying a grant application, submitted to  
190 the Tobacco Region Revitalization Commission that would (i) reveal (a) trade secrets as defined in the  
191 Uniform Trade Secrets Act (§ 59.1-336 et seq.), (b) financial information of a grant applicant that is not  
192 a public body, including balance sheets and financial statements, that are not generally available to the  
193 public through regulatory disclosure or otherwise, or (c) research-related information produced or  
194 collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative,  
195 scientific, technical, technological, or scholarly issues, when such information has not been publicly  
196 released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the  
197 applicant; and memoranda, staff evaluations, or other information prepared by the Commission or its  
198 staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision  
199 shall apply to grants that are consistent with the powers of and in furtherance of the performance of the  
200 duties of the Commission pursuant to § 3.2-3103.

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

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

205 b. Identifying with specificity the data, information or other materials for which protection is sought;  
206 and

207 c. Stating the reasons why protection is necessary.

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

212 ~~24.~~ 22. a. Information held by the Commercial Space Flight Authority relating to rate structures or  
213 charges for the use of projects of, the sale of products of, or services rendered by the Authority if  
214 disclosure of such information would adversely affect the financial interest or bargaining position of the  
215 Authority or a private entity providing the information to the Authority; or

216 b. Information provided by a private entity to the Commercial Space Flight Authority if disclosure of  
217 such information would (i) reveal (a) trade secrets of the private entity as defined in the Uniform Trade  
218 Secrets Act (§ 59.1-336 et seq.); (b) financial information of the private entity, including balance sheets  
219 and financial statements, that are not generally available to the public through regulatory disclosure or  
220 otherwise; or (c) other information submitted by the private entity and (ii) adversely affect the financial  
221 interest or bargaining position of the Authority or private entity.

222 In order for the information specified in clauses (a), (b), and (c) of subdivision ~~24~~ 22 b to be  
223 excluded from the provisions of this chapter, the private entity shall make a written request to the  
224 Authority:

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

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

228 (3) Stating the reasons why protection is necessary.

229 The Authority shall determine whether the requested exclusion from disclosure is necessary to protect  
230 the trade secrets or financial information of the private entity. To protect other information submitted by  
231 the private entity from disclosure, the Authority shall determine whether public disclosure would  
232 adversely affect the financial interest or bargaining position of the Authority or private entity. The  
233 Authority shall make a written determination of the nature and scope of the protection to be afforded by  
234 it under this subdivision.

235 ~~25.~~ 23. Information of a proprietary nature furnished by an agricultural landowner or operator to the  
236 Department of Conservation and Recreation, the Department of Environmental Quality, the Department  
237 of Agriculture and Consumer Services, or any political subdivision, agency, or board of the  
238 Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when required as part  
239 of a state or federal regulatory enforcement action.

240 ~~26.~~ 24. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to  
241 the Department of Environmental Quality pursuant to the provisions of § 10.1-1458. In order for such  
242 trade secrets to be excluded from the provisions of this chapter, the submitting party shall (i) invoke this  
243 exclusion upon submission of the data or materials for which protection from disclosure is sought, (ii)

244 identify the data or materials for which protection is sought, and (iii) state the reasons why protection is  
245 necessary.

246 ~~27.~~ 25. Information of a proprietary nature furnished by a licensed public-use airport to the  
247 Department of Aviation for funding from programs administered by the Department of Aviation or the  
248 Virginia Aviation Board, where if such information was made public, the financial interest of the  
249 public-use airport would be adversely affected.

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

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

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

255 c. Stating the reasons why protection is necessary.

256 ~~28.~~ 26. Records submitted as a grant or loan application, or accompanying a grant or loan  
257 application, for an award from the Virginia Research Investment Fund pursuant to Article 8 (§  
258 23.1-3130 et seq.) of Chapter 31 of Title 23.1, to the extent that such records contain proprietary  
259 business or research-related information produced or collected by the applicant in the conduct of or as a  
260 result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly  
261 issues, when such information has not been publicly released, published, copyrighted, or patented, if the  
262 disclosure of such information would be harmful to the competitive position of the applicant.

263 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

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

265 1. Discussion, consideration, or interviews of prospective candidates for employment; assignment,  
266 appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public  
267 officers, appointees, or employees of any public body; and evaluation of performance of departments or  
268 schools of public institutions of higher education where such evaluation will necessarily involve  
269 discussion of the performance of specific individuals. Any teacher shall be permitted to be present  
270 during a closed meeting in which there is a discussion or consideration of a disciplinary matter that  
271 involves the teacher and some student and the student involved in the matter is present, provided the  
272 teacher makes a written request to be present to the presiding officer of the appropriate board. Nothing  
273 in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body  
274 or an elected school board to discuss compensation matters that affect the membership of such body or  
275 board collectively.

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

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

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

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

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

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

302 8. In the case of boards of visitors of public institutions of higher education, discussion or  
303 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts  
304 for services or work to be performed by such institution. However, the terms and conditions of any such

305 gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign  
306 person and accepted by a public institution of higher education in Virginia shall be subject to public  
307 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,  
308 (i) "foreign government" means any government other than the United States government or the  
309 government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity  
310 created under the laws of the United States or of any state thereof if a majority of the ownership of the  
311 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the  
312 membership of any such entity is composed of foreign persons or foreign legal entities, or any legal  
313 entity created under the laws of a foreign government; and (iii) "foreign person" means any individual  
314 who is not a citizen or national of the United States or a trust territory or protectorate thereof.

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

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

319 11. Discussion or consideration of tests, examinations, or other information excluded from this  
320 chapter pursuant to subdivision 4 of § 2.2-3705.1.

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

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

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

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

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

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

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

348 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific  
349 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement  
350 or emergency service officials concerning actions taken to respond to such matters or a related threat to  
351 public safety; discussion of information excluded from this chapter pursuant to subdivision 3 or 4 of  
352 § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of any person or the  
353 security of any facility, building, structure, information technology system, or software program; or  
354 discussion of reports or plans related to the security of any governmental facility, building or structure,  
355 or the safety of persons using such facility, building or structure.

356 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or  
357 of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the  
358 University of Virginia, acting pursuant to § 23.1-2210, or by the Board of the Virginia College Savings  
359 Plan, acting pursuant to § 23.1-706, regarding the acquisition, holding or disposition of a security or  
360 other ownership interest in an entity, where such security or ownership interest is not traded on a  
361 governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential  
362 analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement  
363 system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia  
364 College Savings Plan under a promise of confidentiality, of the future value of such ownership interest  
365 or the future financial performance of the entity, and (ii) would have an adverse effect on the value of  
366 the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of

367 the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be  
 368 construed to prevent the disclosure of information relating to the identity of any investment held, the  
 369 amount invested or the present value of such investment.

370 21. Those portions of meetings in which individual child death cases are discussed by the State Child  
 371 Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which  
 372 individual child death cases are discussed by a regional or local child fatality review team established  
 373 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by  
 374 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in  
 375 which individual adult death cases are discussed by the state Adult Fatality Review Team established  
 376 pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are  
 377 discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

378 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern  
 379 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any  
 380 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern  
 381 Virginia Medical School, as the case may be, have been delegated, in which there is discussed  
 382 proprietary, business-related information pertaining to the operations of the University of Virginia  
 383 Medical Center or Eastern Virginia Medical School, as the case may be, including business development  
 384 or marketing strategies and activities with existing or future joint venturers, partners, or other parties  
 385 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case  
 386 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such  
 387 information would adversely affect the competitive position of the Medical Center or Eastern Virginia  
 388 Medical School, as the case may be.

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

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

402 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein  
 403 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees  
 404 by or on behalf of individuals who have requested information about, applied for, or entered into  
 405 prepaid tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.)  
 406 of Title 23.1 is discussed.

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

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

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

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

425 30. Discussion or consideration of grant or loan application information excluded from this chapter  
 426 pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the  
 427 Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment

428 Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.  
429 31. Discussion or consideration by the Commitment Review Committee of information excluded from  
430 this chapter pursuant to subdivision 8 of § 2.2-3705.2 relating to individuals subject to commitment as  
431 sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.  
432 32. ~~[Expired.]~~  
433 ~~33. Discussion or consideration of confidential proprietary information and trade secrets excluded~~  
434 ~~from this chapter pursuant to subdivision 18 of § 2.2-3705.6. However, the exemption provided by this~~  
435 ~~subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et~~  
436 ~~seq.).~~  
437 ~~34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless~~  
438 ~~Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and trade secrets~~  
439 ~~excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.~~  
440 ~~35. Discussion or consideration by the State Board of Elections or local electoral boards of voting~~  
441 ~~security matters made confidential pursuant to § 24.2-625.1.~~  
442 ~~36. 33. Discussion or consideration by the Forensic Science Board or the Scientific Advisory~~  
443 ~~Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records~~  
444 ~~excluded from this chapter pursuant to subdivision A 2 a of § 2.2-3706.~~  
445 ~~37. 34. Discussion or consideration by the Brown v. Board of Education Scholarship Program~~  
446 ~~Awards Committee of information or confidential matters excluded from this chapter pursuant to~~  
447 ~~subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual~~  
448 ~~maximum scholarship award, review and consider scholarship applications and requests for scholarship~~  
449 ~~award renewal, and cancel, rescind, or recover scholarship awards.~~  
450 ~~38. 35. Discussion or consideration by the Virginia Port Authority of information excluded from this~~  
451 ~~chapter pursuant to subdivision 1 of § 2.2-3705.6.~~  
452 ~~39. 36. Discussion or consideration by the Board of Trustees of the Virginia Retirement System~~  
453 ~~acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to §~~  
454 ~~51.1-124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia~~  
455 ~~College Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's~~  
456 ~~Investment Advisory Committee appointed pursuant to § 23.1-702 of information excluded from this~~  
457 ~~chapter pursuant to subdivision 25 of § 2.2-3705.7.~~  
458 ~~40. 37. Discussion or consideration of information excluded from this chapter pursuant to subdivision~~  
459 ~~3 of § 2.2-3705.6.~~  
460 ~~41. 38. Discussion or consideration by the Board of Education of information relating to the denial,~~  
461 ~~suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of~~  
462 ~~§ 2.2-3705.3.~~  
463 ~~42. 39. Those portions of meetings of the Virginia Military Advisory Council or any commission~~  
464 ~~created by executive order for the purpose of studying and making recommendations regarding~~  
465 ~~preventing closure or realignment of federal military and national security installations and facilities~~  
466 ~~located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs~~  
467 ~~organization appointed by a local governing body, during which there is discussion of information~~  
468 ~~excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.2.~~  
469 ~~43. 40. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of~~  
470 ~~information excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.~~  
471 ~~44. 41. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of~~  
472 ~~information excluded from this chapter pursuant to subdivision 2321 of § 2.2-3705.6.~~  
473 ~~45. 42. Discussion or consideration by the board of directors of the Commercial Space Flight~~  
474 ~~Authority of information excluded from this chapter pursuant to subdivision 24 22 of § 2.2-3705.6.~~  
475 ~~46. 43. Discussion or consideration of personal and proprietary information that are excluded from~~  
476 ~~the provisions of this chapter pursuant to (i) subdivision 25 23 of § 2.2-3705.6 or (ii) subsection E of~~  
477 ~~§ 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records that contain~~  
478 ~~information that has been certified for release by the person who is the subject of the information or~~  
479 ~~transformed into a statistical or aggregate form that does not allow identification of the person who~~  
480 ~~supplied, or is the subject of, the information.~~  
481 ~~47. 44. (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the Virginia~~  
482 ~~Alcoholic Beverage Control Authority of information excluded from this chapter pursuant to subdivision~~  
483 ~~1 of § 2.2-3705.3 or subdivision 34 of § 2.2-3705.7.~~  
484 ~~48. 45. Discussion or consideration of grant or loan application records excluded from this chapter~~  
485 ~~pursuant to subdivision 28 26 of § 2.2-3705.6 related to the submission of an application for an award~~  
486 ~~from the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of~~  
487 ~~Title 23.1.~~  
488 ~~49. 46. Discussion or development of grant proposals by a regional council established pursuant to~~  
489 ~~Article 26 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth~~

490 and Opportunity Board.

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

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

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

501 E. This section shall not be construed to (i) require the disclosure of any contract between the  
 502 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1  
 503 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant  
 504 to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body  
 505 empowered to issue industrial revenue bonds by general or special law, to identify a business or industry  
 506 to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of  
 507 public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance  
 508 of such bonds.

509 **§ 10.1-1458. Persons to provide plans, specifications, and information.**

510 Every person the Department has reason to believe is generating, storing, transporting, disposing of,  
 511 or treating waste shall, on request of the Department, furnish such plans, specifications, and information  
 512 as the Department may require in the discharge of its duties under this chapter. Trade secret information  
 513 included within any plans, specifications, or information submitted pursuant to this section shall be  
 514 excluded from the provisions of the Virginia Freedom of Information Act as provided in subdivision 26  
 515 24 of § 2.2-3705.6. At all times, the Department may disclose such trade secret information to the  
 516 appropriate officials of the Environmental Protection Agency pursuant to the requirements of the federal  
 517 Solid Waste Disposal Act, 42 U.S.C. § 3251, et seq., or as otherwise required by law.

518 **§ 15.2-2160. Provision of telecommunications services.**

519 A. Any locality that operates an electric distribution system may provide telecommunications  
 520 services, including local exchange telephone service as defined in § 56-1, within or outside its  
 521 boundaries if the locality obtains a certificate pursuant to § 56-265.4:4. Such locality may provide  
 522 telecommunications services within any locality in which it has electric distribution system facilities as  
 523 of March 1, 2002. Any locality providing telecommunications services on March 1, 2002, may provide  
 524 telecommunications, Internet access, broadband, information, and data transmission services within any  
 525 locality within 75 miles of the geographic boundaries of its electric distribution system as such system  
 526 existed on March 1, 2002. The BVU Authority may provide telecommunications, Internet access,  
 527 broadband, information, and data transmission services as provided in the BVU Authority Act  
 528 (§ 15.2-7200 et seq.).

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

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

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

551 locality providing telecommunications services on March 1, 2002.

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

555 F. ~~Public records of a locality that has obtained a certificate pursuant to § 56-265.4:4, which records  
556 contain confidential proprietary information or trade secrets pertaining to the provision of  
557 telecommunications service, shall be exempt from disclosure under the Freedom of Information Act  
558 (§ 2.2-3700 et seq.). As used in this subsection, a public record contains confidential proprietary  
559 information or trade secrets if its acquisition by a competing provider of telecommunications services  
560 would provide the competing provider with a competitive benefit. However, the exemption provided by  
561 this subsection shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200  
562 et seq.).~~

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

570 § 32.1-276.5:1. (Contingent repeal — see Editor's note) Disclosures of contractual arrangements to be  
571 made publicly available.

572 A. In order to advance transparency in health care and provide patients and families with better  
573 information on which to judge value among their treatment options, the Commissioner shall negotiate  
574 and contract with a nonprofit organization authorized under § 32.1-276.4 for an annual survey of carriers  
575 offering private group health insurance policies, which are subject to HEDIS reporting, to determine the  
576 reimbursement that is paid for a minimum of 25 most frequently reported health care services which  
577 may include inpatient and outpatient diagnostic services, surgical services or the treatment of certain  
578 conditions or diseases. Each carrier shall report the average reimbursement paid for a specific service  
579 from all providers and provider types, to include hospitals, outpatient or ambulatory surgery centers and  
580 physician offices. The survey shall also include, when available, the average reimbursement rates for the  
581 same services provided for reimbursement by fee-for-service Medicare and Medicaid. The survey shall  
582 be managed by the Commissioner to insure that when such information is reported it will provide the  
583 aggregate information so that readers will be able to determine the average amount of reimbursement  
584 paid for specific healthcare services. No provider, facility or carrier specific reimbursement information  
585 shall be included in the public survey reports. Such specific information shall be deemed proprietary and  
586 shall not be disclosed to the public; only the Commissioner will have access to the underlying survey  
587 data. The public survey reports shall be made available to the public through an Internet Website  
588 operated by the contracting organization.

589 The Commissioner, in conjunction with stakeholders working through the non-profit organization,  
590 shall work to (i) incorporate existing service quality data and guidance to the price information to  
591 further assist informed consumer choice to the extent it is practical and consistent with generally  
592 accepted national guidelines, and (ii) seek over time to display price and quality information for  
593 episodes of care in a manner which is consistent with generally accepted national guidelines.

594 B. The information acquired in the survey and provided to the Commissioner shall be confidential  
595 and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to  
596 subdivision 24 19 of § 2.2-3705.6.

597 **§ 56-265.4:4. Certificate to operate as a telephone utility.**

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

605 B. 1. After notice to all local exchange carriers certificated in the Commonwealth and other  
606 interested parties and following an opportunity for hearing, the Commission may grant certificates to any  
607 telephone company, or any county, city or town that operates an electric distribution system, proposing  
608 to furnish local exchange telephone service in the Commonwealth. In determining whether to grant a  
609 certificate under this subsection, the Commission may require that the applicant show that it possesses  
610 sufficient technical, financial, and managerial resources. Before granting any such certificate, the  
611 Commission shall: (i) consider whether such action reasonably protects the affordability of basic local  
612 exchange telephone service, as such service is defined by the Commission, and reasonably assures the

613 continuation of quality local exchange telephone service; and (ii) find that such action will not  
 614 unreasonably prejudice or disadvantage any class of telephone company customers or telephone service  
 615 providers, including the new entrant and any incumbent local exchange telephone company, and is in the  
 616 public interest. Except as provided in subsection A of § 15.2-2160, all local exchange certificates granted  
 617 by the Commission after July 1, 2002, shall be to provide service in any territory in the Commonwealth  
 618 unless the applicant specifically requests a different certificated service territory. The Commission shall  
 619 amend the certificated service territory of each local exchange carrier that was previously certificated to  
 620 provide service in only part of the Commonwealth to permit such carrier's provision of local exchange  
 621 service throughout the Commonwealth beginning on September 1, 2002, unless that local exchange  
 622 carrier notifies the Commission prior to September 1, 2002, that it elects to retain its existing certificated  
 623 service territory. A local exchange carrier shall only be considered an incumbent in any certificated  
 624 service territory in which it was considered an incumbent prior to July 1, 2002, except that the  
 625 Commission may make changes to a local exchange carrier's incumbent certificated service territory at  
 626 the request of those incumbent local exchange carriers that are directly involved in a proposed change in  
 627 the certificated service territory.

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

633 3. The Commission shall (i) promote and seek to assure the provision of competitive services to all  
 634 classes of customers throughout all geographic areas of the Commonwealth by a variety of service  
 635 providers; (ii) require equity in the treatment of the certificated local exchange telephone companies so  
 636 as to encourage competition based on service, quality, and price differences between alternative  
 637 providers; (iii) consider the impact on competition of any government-imposed restrictions limiting the  
 638 markets to be served or the services offered by any provider; (iv) determine the form of rate regulation,  
 639 if any, for the local exchange services to be provided by the applicant and, upon application, the form  
 640 of rate regulation for the comparable services of the incumbent local exchange telephone company  
 641 provided in the geographical area to be served by the applicant; and (v) promulgate standards to assure  
 642 that there is no cross-subsidization of the applicant's competitive local exchange telephone services by  
 643 any other of its services over which it has a monopoly, whether or not those services are telephone  
 644 services. The Commission shall also adopt safeguards to ensure that the prices charged and the revenue  
 645 received by a county, city or town for providing telecommunications services shall not be  
 646 cross-subsidized from other revenues of the county, city or town or affiliated entities, except (i) in areas  
 647 where no offers exist from for-profit providers of such telecommunications services, or (ii) as authorized  
 648 pursuant to subdivision 5.

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

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

672 6. A locality that has obtained a certificate pursuant to this section shall (i) comply with all  
 673 applicable laws and regulations for the provision of telecommunications services; (ii) make a reasonable

674 estimate of the amount of all federal, state, and local taxes (including income taxes and consumer utility  
 675 taxes) that would be required to be paid or collected for each fiscal year if the locality were a for-profit  
 676 provider of telecommunications services, (iii) prepare reasonable estimates of the amount of any  
 677 franchise fees and other state and local fees (including permit fees and pole rental fees), and  
 678 right-of-way charges that would be incurred in each fiscal year if the locality were a for-profit provider  
 679 of telecommunications services, (iv) prepare and publish annually financial statements in accordance  
 680 with generally accepted accounting principles showing the results of operations of its provision of  
 681 telecommunications services, and (v) maintain records demonstrating compliance with the provisions of  
 682 this section that shall be made available for inspection and copying pursuant to the Virginia Freedom of  
 683 Information Act (§ 2.2-3700 et seq.).

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

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

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

701 ~~10. Public records of a locality that has obtained a certificate pursuant to this section, which records  
 702 contain confidential proprietary information or trade secrets pertaining to the provision of  
 703 telecommunications service, shall be exempt from disclosure under the Freedom of Information Act  
 704 (§ 2.2-3700 et seq.). As used in this subdivision, a public record contains confidential proprietary  
 705 information or trade secrets if its acquisition by a competing provider of telecommunications services  
 706 would provide the competing provider with a competitive benefit. However, the exemption provided by  
 707 this subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§  
 708 15.2-7200 et seq.).~~

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

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

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

#### 722 CHAPTER 15.1.

#### 723 VIRGINIA BROADBAND DEPLOYMENT ACT.

#### 724 § 56-484.26. Definitions.

725 As used in this chapter:

726 "Affiliate" or "affiliates" refers to any board, authority, district, commission, or other public body  
 727 having overlapping geographic territory with a locality, or originally created by the locality, or any  
 728 public body whose jurisdiction or membership includes any part of the locality.

729 "Broadband expansion services" refers to broadband or Internet services offered by a locality or its  
 730 affiliate in exchange for compensation to customers or subscribers in an unserved area.

731 "Broadband speeds" means average Internet speeds of both 10 Mbps or more download and 1 Mbps  
 732 or more upload.

733 "Communications services" refers to any of the following: internal government services, broadband  
 734 expansion services, or overbuild broadband services.

735 "Internal government services" refers to broadband, Internet, and data transmission services offered

736 by a locality or its affiliate, whether or not in exchange for compensation, only to a locality and to one  
 737 or more public bodies with facilities located within the locality. "Internal government services" includes  
 738 only those services provided within the boundaries of a locality, except as necessary to provide service  
 739 to a building owned or leased by the locality and used for governmental purposes, but located within an  
 740 adjacent jurisdiction. Nothing herein shall be deemed to prohibit or restrict interconnection of the  
 741 internal government services communications facilities of a locality or its affiliate to one or more  
 742 communications networks extending outside the locality.

743 "Locality" refers to a county, city, or town.

744 "Overbuild broadband services" refers to broadband or Internet services offered by a locality or its  
 745 affiliate in exchange for compensation which do not qualify as internal government services or  
 746 broadband expansion services.

747 "Public body" has the meaning set out in § 2.2-3701.

748 "Unserved Area" refers to a geographic area of the locality in which broadband or Internet services  
 749 providing broadband speeds are not generally available from any provider.

750 **§ 56-484.27. Provision of internal government services.**

751 Any locality or an affiliate may own and operate a broadband or Internet communications system,  
 752 including ownership or lease of fiber optic or other communications lines and facilities, and may lease  
 753 or grant rights in such communications facilities to other public bodies, all for the purpose of providing  
 754 internal government services.

755 **§ 56-484.28. Provision of broadband expansion services.**

756 Notwithstanding any provision of the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.)  
 757 or any other provision of law, a locality or any affiliate may own and operate a broadband or Internet  
 758 communications system, including ownership or lease of fiber optic or other communications lines and  
 759 facilities, to provide broadband expansion services only if the following conditions are met:

760 1. The locality or its affiliate has obtained a comprehensive broadband assessment by report or  
 761 study, by the Center for Innovative Technology, or an independent consulting firm knowledgeable and  
 762 experienced in analyzing broadband deployment, which report or study is made available to the public  
 763 and specifically identifies any unserved areas. The locality or its affiliate shall be responsible for all  
 764 fees charged by the Center for Innovative Technology or an independent consulting firm for the  
 765 preparation of such comprehensive broadband assessment report or study.

766 2. Based upon the comprehensive broadband assessment, the locality or its affiliate formally adopts  
 767 and publishes specific broadband goals regarding capacity, geography and documented demand for  
 768 Internet services in the specific unserved areas which the locality or its affiliate desires to address.

769 3. The locality or its affiliate has issued a request or solicitation for proposals, consistent with the  
 770 specific broadband goals of the locality previously identified, requesting the capital cost which an  
 771 existing for-profit local Internet service provider offering communications services with broadband  
 772 speeds would incur to meet the locality's specific broadband goals by extending or upgrading such  
 773 services with broadband speeds to any specific unserved areas of the locality identified in the  
 774 comprehensive broadband assessment. Copies of such request or solicitation shall be sent to any  
 775 franchised cable operator and other known Internet service providers with local facilities offering  
 776 communications services in the locality at least 180 days in advance of the deadline for the response to  
 777 the request or solicitation for proposals. The governing body of the locality or its affiliate shall analyze  
 778 any responses it receives to determine if capital grants or subsidies by the locality to pay for such  
 779 extension by an existing provider would be more cost effective than construction and operation of a new  
 780 distribution system by the locality or its affiliate.

781 4. If no incumbent broadband provider advises the governing body of the locality within six months  
 782 after the release of the request or solicitation for proposal that it is willing or able to meet the local  
 783 goals, either without a capital grant or subsidy, or with the capital grant or subsidy or portion thereof  
 784 proposed by the locality, then the governing body of the locality or its affiliate, after a public hearing,  
 785 may vote to authorize one or more projects, consistent with the specific broadband goals of the locality  
 786 previously identified, to provide broadband expansion services to unserved areas within the locality  
 787 identified by the comprehensive broadband assessment report or study described above, which report or  
 788 study shall not be more than one year old at the time of the public hearing. The chief executive officer  
 789 of the locality or its affiliate shall certify that the comprehensive broadband assessment report or study  
 790 identification of unserved areas is still correct based upon information presented at the hearing.

791 5. Any locality or affiliate project to provide broadband expansion services shall be designed and  
 792 built or otherwise implemented so that at the time of authorization, the project (i) does not duplicate  
 793 existing broadband facilities offering broadband speeds to customers, within 90 percent of the  
 794 geographic area of the project, and (ii) does not duplicate service to customers who already are in a  
 795 position to connect to an Internet service offering broadband speeds, for 90 percent of the projected  
 796 residential and commercial customers who will be served by the project or otherwise are within the

797 *service area of the project.*

798 6. Any locality or its affiliates seeking to offer or offering broadband expansion services shall, at  
 799 least 120 days prior to commencement of construction of any project, file with the Virginia Broadband  
 800 Advisory Council, (i) copies of its report or study from the Center for Innovative Technology, including  
 801 any updates or supplements thereto, (ii) copies of the minutes of the meeting at which it voted to  
 802 authorize the offering of broadband expansion services, (iii) a map or description of each project and  
 803 projected area in which it plans to offer broadband expansion services, (iv) an annual certification by  
 804 July 1 of each year that any expansion to or changes in its projects or system since the preceding July  
 805 1 still qualify as broadband expansion services, and (v) an annual certification that its provision of  
 806 services meets or in the case of a prospective or an incomplete project shall meet, the requirements of  
 807 subdivisions 1 through 6 of § 56-484.30. Any person who believes that any part of such filings is  
 808 incomplete, incorrect or false and who is in the business of providing Internet services within the  
 809 locality shall have standing to bring an action in the circuit court for the locality to seek to require the  
 810 locality to either comply with the substantive and procedural content of the filings required by this  
 811 section, or cease to provide services, and no bond shall be required for injunctive relief against the  
 812 locality.

813 **§ 56-484.29. Provision of overbuild broadband services.**

814 Any locality or its affiliate that is providing overbuild broadband services as of July 1, 2017, may  
 815 continue to serve customers within the geographic service area within which it is actually providing  
 816 such services as of that date; however, except as hereafter provided such locality or its affiliate shall  
 817 not subsequently expand the geographic scope of its services or expand the nature of the service being  
 818 offered. Any locality or its affiliate that is not actually providing overbuild broadband services as of  
 819 July 1, 2017, or if providing such services, subsequently seeks to expand the geographic territory or  
 820 nature of services being offered, shall submit a proposal to the Virginia Broadband Advisory Council  
 821 with a full explanation of the proposed overbuild broadband services, and if recommended by the  
 822 Virginia Broadband Advisory Council, shall then require the express approval of the General Assembly  
 823 through legislation approving the offering or expansion of such services by the locality or its affiliate.

824 **§ 56-484.30. Operating requirements.**

825 The following provisions shall apply to any locality or its affiliate which offers broadband expansion  
 826 services or overbuild broadband services, after July 1, 2017:

827 1. A locality or its affiliate shall apply, without discrimination as to itself and any affiliate, including  
 828 any charges or fees for permits, access or occupancy, the locality's ordinances, rules, and policies,  
 829 including those relating to (i) obligation to serve; (ii) access to public rights of way and municipal  
 830 utility poles and conduits; (iii) permitting; (iv) performance bonding; (v) reporting; and (vi) quality of  
 831 service.

832 2. In calculating the rates charged by a locality for any communications service:

833 a. The locality or its affiliate shall include within its rates an amount equal to all taxes, fees, and  
 834 other assessments that would be applicable to a similarly situated private provider of the same  
 835 communications services, including federal, state, and local taxes; franchise fees; permit fees; pole  
 836 attachment fees; and any similar fees; and

837 b. The locality or its affiliate shall not price any of its communications services at a level that is less  
 838 than the sum of: (i) the actual direct costs of providing the service; (ii) the actual indirect costs of  
 839 providing the service; and (iii) the amount determined under subdivision 2a.

840 3. A locality or its affiliate shall keep accurate books and records of any provision of  
 841 communications services. A locality or its affiliate shall conduct an annual audit of its books and  
 842 records associated with any provision of communications services, with such audit to be performed by  
 843 an independent auditor approved by the Auditor of Public Accounts. Such audit shall include such  
 844 criteria as the Auditor of Public Accounts deems appropriate and be filed with him, and with copies to  
 845 be submitted to the Virginia Broadband Advisory Council. If, after review of such audit, the Auditor of  
 846 Public Accounts determines that there are violations of this chapter, he shall provide public notice of  
 847 same, and the locality or its affiliate shall take appropriate corrective action to cure past violations and  
 848 prevent future violations.

849 4. In providing communications services, a locality or its affiliate shall provide nondiscriminatory  
 850 access to its poles, conduits, rights of way, dark fiber, and towers or other structures, to any private  
 851 party offering any communications services within the locality, including, without limitation, collocation  
 852 rights and access to leased fiber, unless the facilities of the locality or its affiliate have insufficient  
 853 capacity for such access and additional capacity cannot reasonably be added to the facilities due to  
 854 physical limitations.

855 5. No locality or its affiliate shall exercise any power of eminent domain to condemn any plant or  
 856 equipment of a private provider of communications service for the purpose of allowing the locality or its  
 857 affiliate to use such plant or equipment in the provision of communications services.

858 6. No other political subdivision of the Commonwealth, or public body, shall provide loans, or issue

859 notes or bonds, or facilitate the construction of facilities, to provide communications services by a  
860 locality or its affiliate, nor shall any locality or its affiliate enter into a commercial loan agreement for  
861 funding to provide communications services, unless the locality and its affiliate are in compliance with  
862 the provisions of this section.

863 7. Any person who believes that a locality or its affiliate are in violation of this section and who is  
864 in the business of providing Internet services within the locality shall have standing to bring an action  
865 in the circuit court for the locality to seek to require the locality to either comply with this section, or  
866 cease to provide services, and no bond shall be required for injunctive relief against the locality.

867 **§ 56-484.31. Sale or disposal.**

868 Any locality or its affiliate that seeks to sell or dispose of all or any material part of the  
869 infrastructure of an internal government services, broadband expansion services, or overbuild  
870 broadband services system, or any material portion of any subscriber or service contracts in connection  
871 therewith, shall do so by a public sale or auction process after advertisement.

872 **§ 56-484.32. Freedom of Information Act exemptions.**

873 No exemptions from the Freedom of Information Act (§ 2.2-3700 et seq.) based on confidential  
874 proprietary records, trade secrets, or working papers shall apply to a locality or its affiliate in its  
875 planning or provision of communications services.

876 **§ 56-484.33. Refinancing or refunding.**

877 Nothing in this chapter shall impair the ability or right of any locality or other political subdivision  
878 or public institution of the Commonwealth to refinance or refund loans or notes, or issue refunding  
879 bonds, or participate in such refinancing or refunding, or participate in such refinancing or refunding,  
880 with respect to projects originally funded prior to July 1, 2017.