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HOUSE BILL NO. 904

Offered January 10, 2018

Prefiled January 9, 2018

A BILL to amend and reenact §§ 2.2-2240.1, 2.2-3705.6, 2.2-3711, 2.2-3713, 10.1-1458, 15.2-2103.1, 30-281, 33.2-1803, 33.2-1820, 56-575.4, and 56-575.17 of the Code of Virginia, relating to the Virginia Freedom of Information Act; general exclusion for trade secrets submitted to a public body.

Patron—Robinson

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2240.1, 2.2-3705.6, 2.2-3711, 2.2-3713, 10.1-1458, 15.2-2103.1, 30-281, 33.2-1803, 33.2-1820, 56-575.4, and 56-575.17 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-2240.1. Grants paid to the Authority to promote research, development, and commercialization of products.

A. The General Assembly may appropriate grants to the Authority for use by a nonprofit, public benefit research institute that (i) conducts research and development for government agencies, commercial businesses, foundations, and other organizations and (ii) commercializes technology.

B. The Authority is hereby authorized to create a nonprofit, nonstock corporation to receive such grants and to oversee the administration of the payment of the grants. As a condition to the payment of any grants to the Authority under this section, the General Assembly may require that such nonprofit, nonstock corporation be created.

C. Notwithstanding the provisions of § 2.2-2240, the Board of Directors of the nonprofit, nonstock corporation shall consist of nine voting members as follows: (i) the president of the University of Virginia, or his designee, (ii) the president of Virginia Polytechnic Institute and State University, or his designee, (iii) the president of James Madison University, or his designee, (iv) the president (or the designee of such president) of Virginia Commonwealth University, Christopher Newport University, the University of Mary Washington, Radford University, Virginia State University, Norfolk State University, Old Dominion University, George Mason University, or Longwood University, as appointed by the Governor, with appointments to this position rotated equally among such baccalaureate public institutions of higher education, (v) one citizen member who shall have substantial experience in research and development in the fields of pharmaceuticals, engineering, energy, or similar sciences, appointed by the Governor, (vi) a representative of a nonprofit, public benefit research institute that has entered into a Memorandum of Agreement with the Commonwealth, (vii) the Secretary of Commerce and Trade, or his designee, (viii) the Secretary of Technology, or his designee, and (ix) a representative of a local government that has concluded a Memorandum of Agreement with such research institute. Citizen members appointed by the Governor shall serve for four-year terms, but no citizen member shall serve for more than two full successive terms. A vacancy for a citizen member shall be filled by the Governor for the unexpired term.

D. The Board is authorized to make grant payments only to those nonprofit, public benefit research institutes described in subsection A that have entered into a Memorandum of Agreement (MOA) with the Commonwealth. The MOA shall, at a minimum, (i) require the research institute to perform research, development, and commercialization activities that improve society and facilitate economic growth; (ii) require research to be conducted collaboratively with Virginia public and private institutions and that such collaborative research benefit the capabilities, facilities, and staff of all organizations involved; (iii) require the research institute to develop protocols for the commercialization efforts of the institute, including protocols addressing intellectual property rights; (iv) require the Board to evaluate fulfillment of key milestones for the research institute, which shall include but not be limited to milestones relating to job creation, research institute reinvestment goals, research proposals submissions, and royalties, and to annually evaluate the Commonwealth's investment in the research institute by reporting on the institute's progress in meeting such milestones; and (v) establish relationships and expectations between the research institutes and public institutions of higher education in the Commonwealth, including opportunities for principal investigators to serve as adjunct faculty and the creation of internships for students and postdoctoral appointees.

E. The maximum amount of grants awarded by the Board shall not exceed a total of \$22 million per recipient through June 30, 2013.

F. The Board of any nonprofit, nonstock corporation created under this section shall be established in the executive branch of state government. The records of the corporation, its Board members, and

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59 employees that are deemed confidential or proprietary shall be exempt from disclosure pursuant to
60 subdivision 3 4 of § 2.2-3705.6 of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

61 **§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.**

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

66 1. *Information furnished to a public body by a submitting entity that qualifies as a trade secret of the*
67 *submitting entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.). In order for such*
68 *trade secret information to be excluded under this subdivision, the submitting entity shall make a written*
69 *request to the public body (i) invoking such exclusion upon submission of the trade secret information*
70 *for which protection from disclosure is sought, (ii) identifying with specificity the trade secret*
71 *information for which protection is sought, and (iii) stating the reasons why protection is necessary.*

72 *The provisions of this subdivision shall not be construed to authorize the withholding of such*
73 *information that no longer meets the definition of a trade secret under the Uniform Trade Secrets Act*
74 *(§ 59.1-336 et seq.).*

75 2. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4
76 or 62.1-134.1.

77 ~~2.~~ 3. Financial statements not publicly available filed with applications for industrial development
78 financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

79 ~~3.~~ 4. Proprietary information, voluntarily provided by private business pursuant to a promise of
80 confidentiality from a public body, used by the public body for business, trade, and tourism
81 development or retention; and memoranda, working papers, or other information related to businesses
82 that are considering locating or expanding in Virginia, prepared by a public body, where competition or
83 bargaining is involved and where disclosure of such information would adversely affect the financial
84 interest of the public body.

85 ~~4.~~ 5. Information that was filed as confidential under the Toxic Substances Information Act
86 (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

87 ~~5.~~ 6. Fisheries data that would permit identification of any person or vessel, except when required by
88 court order as specified in § 28.2-204.

89 ~~6.~~ 7. Confidential financial statements, balance sheets, ~~trade secrets~~, and revenue and cost projections
90 provided to the Department of Rail and Public Transportation, provided *that* such information is exempt
91 under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws
92 administered by the Surface Transportation Board or the Federal Railroad Administration with respect to
93 data provided in confidence to the Surface Transportation Board and the Federal Railroad
94 Administration.

95 ~~7.~~ 8. Proprietary information related to inventory and sales, voluntarily provided by private energy
96 suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy
97 contingency planning purposes or for developing consolidated statistical information on energy supplies.

98 ~~8.~~ 9. Confidential proprietary information furnished to the Board of Medical Assistance Services or
99 the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of
100 Chapter 10 of Title 32.1.

101 ~~9.~~ 10. Proprietary, commercial or financial information, balance sheets, ~~trade secrets~~, and revenue and
102 cost projections provided by a private transportation business to the Virginia Department of
103 Transportation and the Department of Rail and Public Transportation for the purpose of conducting
104 transportation studies needed to obtain grants or other financial assistance under the Transportation
105 Equity Act for the 21st Century (P.L. 105-178) for transportation projects if disclosure of such
106 information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce
107 Act or other laws administered by the Surface Transportation Board or the Federal Railroad
108 Administration with respect to data provided in confidence to the Surface Transportation Board and the
109 Federal Railroad Administration. However, the exclusion provided by this subdivision shall not apply to
110 any wholly owned subsidiary of a public body.

111 ~~10.~~ 11. Confidential information designated as provided in subsection F of § 2.2-4342 as trade secrets
112 or proprietary information by any person in connection with a procurement transaction or by any person
113 who has submitted to a public body an application for prequalification to bid on public construction
114 projects in accordance with subsection B of § 2.2-4317.

115 ~~11.~~ 12. a. Memoranda, staff evaluations, or other information prepared by the responsible public
116 entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of
117 proposals filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the
118 Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where (i) if such
119 information was made public prior to or after the execution of an interim or a comprehensive agreement,
120 § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public

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

b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or affected local jurisdiction pursuant to the provisions of 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.) if disclosure of such information would reveal (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity where if such information was made public prior to the execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining position of the public or private entity would be adversely affected. In order for the information specified in clauses (i), (ii), and (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the responsible public entity:

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

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

(3) Stating the reasons why protection is necessary.

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

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

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

~~12.~~ 13. Confidential proprietary information ~~or trade secrets~~, not publicly available, provided by a private person or entity pursuant to a promise of confidentiality to the Virginia Resources Authority or to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such information were made public, the financial interest of the private person or entity would be adversely affected.

~~13.~~ Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), ~~or confidential~~ 14. Confidential proprietary information that is not generally available to the public through regulatory disclosure or otherwise, provided by a (i) bidder or applicant for a franchise or (ii) franchisee under Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of confidentiality from the franchising authority, to the extent the information relates to the bidder's, applicant's, or franchisee's financial capacity or provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies, or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area; and where, if such information were made public, the competitive advantage or financial interests of the franchisee would be adversely affected.

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

No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the

applicable franchising authority serves on the management board or as an officer of the bidder, applicant, or franchisee.

~~14. 15. Information of a proprietary or confidential nature furnished by a supplier or manufacturer of charitable gaming supplies to the Department of Agriculture and Consumer Services (i) pursuant to subsection E of § 18.2-340.34 and (ii) pursuant to regulations promulgated by the Charitable Gaming Board related to approval of electronic and mechanical equipment.~~

~~15. 16. Information related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to § 3.2-1215.~~

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

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

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

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

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

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

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

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

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

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

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

c. Stating the reasons why protection is necessary.

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

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

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

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

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

c. Stating the reasons why protection is necessary.

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

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

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

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

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

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

(3) Stating the reasons why protection is necessary.

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

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

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

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

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

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

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

c. Stating the reasons why protection is necessary.

~~28.~~ 27. Information relating to a grant or loan application, or accompanying a grant or loan application, submitted to the Virginia Research Investment Committee established pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title 23.1, to the extent that such records would (i) reveal (a) ~~trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.);~~ (b) financial information of a party to a grant or loan application that is not a public body, including balance sheets and financial statements, that ~~are~~ is not generally available to the public through regulatory disclosure or otherwise; or (c) (b) research-related information produced or collected by a party to the application in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of a party to a grant or loan application; and memoranda, staff evaluations, or other information prepared by the Committee or its staff, or a reviewing entity pursuant to subsection D of § 23.1-3133, exclusively for the evaluation of grant or loan applications, including any scoring or prioritization documents prepared for and forwarded to the Committee pursuant to subsection D of § 23.1-3133.

In order for the information submitted by the applicant and specified in this subdivision to be excluded from the provisions of this chapter, the applicant shall make a written request to the Committee:

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

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

c. Stating the reasons why protection is necessary.

The Virginia Research Investment Committee shall determine whether the requested exclusion from disclosure is necessary to protect the ~~trade secrets~~, financial information, or research-related information of the party to the application. The Committee shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

~~29.~~ 28. Proprietary information, voluntarily provided by a private business pursuant to a promise of confidentiality from a public body, used by the public body for a solar services agreement, where disclosure of such information would (i) reveal (a) ~~trade secrets of the private business as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.);~~ (b) financial information of the private business, including balance sheets and financial statements, that ~~are~~ is not generally available to the public through regulatory disclosure or otherwise; or (c) (b) other information submitted by the private business and (ii) adversely affect the financial interest or bargaining position of the public body or private business.

In order for the information specified in clauses (i) (a), ~~and~~ (b), ~~and~~ (c) to be excluded from the provisions of this chapter, the private business shall make a written request to the public body:

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

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

c. Stating the reasons why protection is necessary.

~~30.~~ 29. Information contained in engineering and construction drawings and plans submitted for the sole purpose of complying with the Building Code in obtaining a building permit if disclosure of such information would identify ~~specific trade secrets or other~~ information that would be harmful to the competitive position of the owner or lessee. However, such information shall be exempt only until the building is completed. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure.

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

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

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board. Nothing

in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body or an elected school board to discuss compensation matters that affect the membership of such body or board collectively.

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

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

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

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

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

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

8. Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

9. Discussion or consideration by governing boards of public institutions of higher education of matters relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a public institution of higher education in the Commonwealth shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof, (ii) "foreign legal entity" means any legal entity (a) created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities or (b) created under the laws of a foreign government, and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

10. Discussion or consideration by the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of Virginia of matters relating to specific gifts, bequests, and grants from private sources.

11. Discussion or consideration of honorary degrees or special awards.

12. Discussion or consideration of tests, examinations, or other information used, administered, or prepared by a public body and subject to the exclusion in subdivision 4 of § 2.2-3705.1.

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

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

15. Discussion by the Governor and any economic advisory board reviewing forecasts of economic

428 activity and estimating general and nongeneral fund revenues.

429 16. Discussion or consideration of medical and mental health records subject to the exclusion in
430 subdivision 1 of § 2.2-3705.5.

431 17. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to
432 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
433 discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game
434 information and studies or investigations excluded from disclosure under subdivision 6 of § 2.2-3705.3
435 and subdivision 11 of § 2.2-3705.7.

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

441 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific
442 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement
443 or emergency service officials concerning actions taken to respond to such matters or a related threat to
444 public safety; discussion of information subject to the exclusion in subdivision 2 or 14 of § 2.2-3705.2,
445 where discussion in an open meeting would jeopardize the safety of any person or the security of any
446 facility, building, structure, information technology system, or software program; or discussion of reports
447 or plans related to the security of any governmental facility, building or structure, or the safety of
448 persons using such facility, building or structure.

449 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or
450 of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of
451 trustees of a trust established by one or more local public bodies to invest funds for postemployment
452 benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title
453 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the
454 Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition,
455 holding or disposition of a security or other ownership interest in an entity, where such security or
456 ownership interest is not traded on a governmentally regulated securities exchange, to the extent that
457 such discussion (i) concerns confidential analyses prepared for the board of visitors of the University of
458 Virginia, prepared by the retirement system, or a local finance board or board of trustees, or the Virginia
459 College Savings Plan or provided to the retirement system, a local finance board or board of trustees, or
460 the Virginia College Savings Plan under a promise of confidentiality, of the future value of such
461 ownership interest or the future financial performance of the entity, and (ii) would have an adverse
462 effect on the value of the investment to be acquired, held, or disposed of by the retirement system, a
463 local finance board or board of trustees, the board of visitors of the University of Virginia, or the
464 Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure
465 of information relating to the identity of any investment held, the amount invested or the present value
466 of such investment.

467 21. Those portions of meetings in which individual child death cases are discussed by the State Child
468 Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which
469 individual child death cases are discussed by a regional or local child fatality review team established
470 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by
471 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in
472 which individual adult death cases are discussed by the state Adult Fatality Review Team established
473 pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are
474 discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

475 22. Those portions of meetings of the board of visitors of the University of Virginia or the Eastern
476 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
477 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
478 Virginia Medical School, as the case may be, have been delegated, in which there is discussed
479 proprietary, business-related information pertaining to the operations of the University of Virginia
480 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
481 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
482 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
483 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
484 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
485 Medical School, as the case may be.

486 23. Discussion or consideration by the Virginia Commonwealth University Health System Authority
487 or the board of visitors of Virginia Commonwealth University of any of the following: the acquisition or
488 disposition by the Authority of real property, equipment, or technology software or hardware and related
489 goods or services, where disclosure would adversely affect the bargaining position or negotiating

strategy of the Authority; matters relating to gifts or bequests to, and fund-raising activities of, the Authority; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies plans of the Authority where disclosure of such strategies or plans would adversely affect the competitive position of the Authority; and members of the Authority's medical and teaching staffs and qualifications for appointments thereto.

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

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

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

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

28. Discussion or consideration of information subject to the exclusion in subdivision 12 of § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are defined in § 33.2-1800, or any independent review panel appointed to review information and advise the responsible public entity concerning such records.

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

30. Discussion or consideration of grant or loan application information subject to the exclusion in subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

31. Discussion or consideration by the Commitment Review Committee of information subject to the exclusion in subdivision 5 of § 2.2-3705.2 relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

32. Discussion or consideration of confidential proprietary information and trade secrets developed and held by a local public body providing certain telecommunication services or cable television services and subject to the exclusion in subdivision 18 of § 2.2-3705.6. However, the exemption provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

33. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and trade secrets subject to the exclusion in subdivision 19 of § 2.2-3705.6.

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

35. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of criminal investigative files subject to the exclusion in subdivision A 2 a of § 2.2-3706.

36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of information or confidential matters subject to the exclusion in subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

37. Discussion or consideration by the Virginia Port Authority of information subject to the exclusion in subdivision 2 of § 2.2-3705.6 related to certain proprietary information gathered by or for the Virginia Port Authority.

38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26,

551 by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College
552 Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's Investment
553 Advisory Committee appointed pursuant to § 23.1-702 of information subject to the exclusion in
554 subdivision 24 of § 2.2-3705.7.

555 39. Discussion or consideration of information subject to the exclusion in subdivision 3 4 of
556 § 2.2-3705.6 related to economic development.

557 40. Discussion or consideration by the Board of Education of information relating to the denial,
558 suspension, or revocation of teacher licenses subject to the exclusion in subdivision 11 of § 2.2-3705.3.

559 41. Those portions of meetings of the Virginia Military Advisory Council or any commission created
560 by executive order for the purpose of studying and making recommendations regarding preventing
561 closure or realignment of federal military and national security installations and facilities located in
562 Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization
563 appointed by a local governing body, during which there is discussion of information subject to the
564 exclusion in subdivision 8 of § 2.2-3705.2.

565 42. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
566 information subject to the exclusion in subdivision 28 of § 2.2-3705.7 related to personally identifiable
567 information of donors.

568 43. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of
569 information subject to the exclusion in subdivision 23 of § 2.2-3705.6 related to certain information
570 contained in grant applications.

571 44. Discussion or consideration by the board of directors of the Commercial Space Flight Authority
572 of information subject to the exclusion in subdivision 24 of § 2.2-3705.6 related to rate structures or
573 charges for the use of projects of, the sale of products of, or services rendered by the Authority and
574 certain proprietary information of a private entity provided to the Authority.

575 45. Discussion or consideration of personal and proprietary information related to the resource
576 management plan program and subject to the exclusion in (i) subdivision 25 of § 2.2-3705.6 or (ii)
577 subsection E of § 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records
578 that contain information that has been certified for release by the person who is the subject of the
579 information or transformed into a statistical or aggregate form that does not allow identification of the
580 person who supplied, or is the subject of, the information.

581 46. Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control
582 Authority of information subject to the exclusion in subdivision 1 of § 2.2-3705.3 related to
583 investigations of applicants for licenses and permits and of licensees and permittees.

584 47. Discussion or consideration of grant or loan application records subject to the exclusion in
585 subdivision 28 27 of § 2.2-3705.6 related to the submission of an application for an award from the
586 Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title
587 23.1 or interviews of parties to an application by a reviewing entity pursuant to subsection D of
588 § 23.1-3133 or by the Virginia Research Investment Committee.

589 48. Discussion or development of grant proposals by a regional council established pursuant to
590 Article 26 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth
591 and Opportunity Board.

592 49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault team
593 established pursuant to § 15.2-1627.4 or (ii) individual child abuse or neglect cases or sex offenses
594 involving a child by a child abuse team established pursuant to § 15.2-1627.5.

595 50. Discussion or consideration by the Board of the Virginia Economic Development Partnership
596 Authority, or any subcommittee thereof, of the portions of the strategic plan, marketing plan, or
597 operational plan exempt from disclosure pursuant to subdivision 33 of § 2.2-3705.7.

598 51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic
599 Development Partnership Authority established pursuant to subsection F of § 2.2-2237.3 to review and
600 discuss information received from the Virginia Employment Commission pursuant to subdivision C 2 of
601 § 60.2-114.

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

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

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

612 E. This section shall not be construed to (i) require the disclosure of any contract between the

Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

§ 2.2-3713. Proceedings for enforcement of chapter.

A. Any person, including the attorney for the Commonwealth acting in his official or individual capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause. Such petition may be brought in the name of the person notwithstanding that a request for public records was made by the person's attorney in his representative capacity. Venue for the petition shall be addressed as follows:

1. In a case involving a local public body, to the general district court or circuit court of the county or city from which the public body has been elected or appointed to serve and in which such rights and privileges were so denied;

2. In a case involving a regional public body, to the general district or circuit court of the county or city where the principal business office of such body is located; and

3. In a case involving a board, bureau, commission, authority, district, institution, or agency of the state government, including a public institution of higher education, or a standing or other committee of the General Assembly, to the general district court or the circuit court of the residence of the aggrieved party or of the City of Richmond.

B. In any action brought before a general district court, a corporate petitioner may appear through its officer, director or managing agent without the assistance of counsel, notwithstanding any provision of law or Rule of the Supreme Court of Virginia to the contrary.

C. Notwithstanding the provisions of § 8.01-644, the petition for mandamus or injunction shall be heard within seven days of the date when the same is made, provided the party against whom the petition is brought has received a copy of the petition at least three working days prior to filing. The hearing on any petition made outside of the regular terms of the circuit court of a locality that is included in a judicial circuit with another locality or localities shall be given precedence on the docket of such court over all cases that are not otherwise given precedence by law.

D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorneys' fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust. In making this determination, a court may consider, among other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially supports the public body's position.

E. If a public body withholds trade secret information pursuant to subdivision 1 of § 2.2-3705.6 and the requester brings an action under this chapter to challenge such withholding, the requester may name the submitting entity or its successor in interest as an additional defendant in the action. Additionally, upon request of the public body, the court, by order pursuant to the provisions of § 8.01-7, may add the submitting entity as an additional defendant in the action.

F. In any action to enforce the provisions of this chapter, the public body shall bear the burden of proof to establish an exclusion by a preponderance of the evidence. No court shall be required to accord any weight to the determination of a public body as to whether an exclusion applies. Any failure by a public body to follow the procedures established by this chapter shall be presumed to be a violation of this chapter.

G. Failure by any person to request and receive notice of the time and place of meetings as provided in § 2.2-3707 shall not preclude any person from enforcing his rights and privileges conferred by this chapter.

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

Every person the Department has reason to believe is generating, storing, transporting, disposing of, or treating waste shall, on request of the Department, furnish such plans, specifications, and information as the Department may require in the discharge of its duties under this chapter. Trade secret information included within any plans, specifications, or information submitted pursuant to this section shall be excluded from the provisions of the Virginia Freedom of Information Act as provided in subdivision 26 1 of § 2.2-3705.6. At all times, the Department may disclose such trade secret information to the

appropriate officials of the Environmental Protection Agency pursuant to the requirements of the federal Solid Waste Disposal Act, 42 U.S.C. § 3251; et seq., or as otherwise required by law.

§ 15.2-2103.1. Solar services agreements; nondisclosure of proprietary information.

A. A solar services agreement may be structured as a service agreement or may be subject to available appropriation.

B. Nothing in this article shall be construed to require the disclosure of proprietary information voluntarily provided by a private entity in connection with a franchise, lease, or use under a solar services agreement that is excluded from mandatory disclosure pursuant to subdivision 29 28 of § 2.2-3705.6 of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

C. Nothing in this section, however, shall be construed as authorizing the withholding of the financial terms of such agreements.

§ 30-281. Confidentiality of certain records submitted to the Commission.

Records and information afforded the protection under subdivision 44 12 of § 2.2-3705.6 that are provided by a responsible public entity to the Commission shall continue to be protected from disclosure when in the possession of the Commission.

§ 33.2-1803. Approval by the responsible public entity.

A. The private entity may request approval by the responsible public entity. Any such request shall be accompanied by the following material and information unless waived by the responsible public entity in its guidelines or other instructions given, in writing, to the private entity with respect to the transportation facility or facilities that the private entity proposes to develop and/or operate as a qualifying transportation facility:

1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the transportation facility or facilities;

2. A description of the transportation facility or facilities, including the conceptual design of such facility or facilities and all proposed interconnections with other transportation facilities;

3. The proposed date for development and/or operation of the transportation facility or facilities along with an estimate of the life-cycle cost of the transportation facility as proposed;

4. A statement setting forth the method by which the private entity proposes to secure any property interests required for the transportation facility or facilities;

5. Information relating to the current transportation plans, if any, of each affected locality or public entity;

6. A list of all permits and approvals required for developing and/or operating improvements to the transportation facility or facilities from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;

7. A list of public utility's, locality's, or political subdivision's facilities, if any, that will be crossed by the transportation facility or facilities and a statement of the plans of the private entity to accommodate such crossings;

8. A statement setting forth the private entity's general plans for developing and/or operating the transportation facility or facilities, including identification of any revenue, public or private, or proposed debt or equity investment or concession proposed by the private entity;

9. The names and addresses of the persons who may be contacted for further information concerning the request;

10. Information on how the private entity's proposal will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, enhancing economic efficiency, or any combination thereof;

11. A statement of the risks, liabilities, and responsibilities to be transferred, assigned, or assumed by the private entity for the development and/or operation of the transportation facility, including revenue risk and operations and maintenance; and

12. Such additional material and information as the responsible public entity may reasonably request pursuant to its guidelines or other written instructions.

B. The responsible public entity may request proposals from private entities for the development and/or operation of transportation facilities subject to the following:

1. For transportation facilities where the Department of Transportation or the Department of Rail and Public Transportation is the responsible public entity, the Transportation Public-Private Partnership Steering Committee established pursuant to § 33.2-1803.2 has determined that moving forward with the development and/or operation of the facility pursuant to this article serves the best interest of the public.

2. A finding of public interest pursuant to § 33.2-1803.1 has been issued by the responsible public entity.

3. The responsible public entity shall not charge a fee to cover the costs of processing, reviewing, and evaluating proposals received in response to such requests.

C. The responsible public entity may grant approval of the development and/or operation of the transportation facility or facilities as a qualifying transportation facility if the responsible public entity

determines that it is in the best interest of the public. The responsible public entity may determine that the development and/or operation of the transportation facility or facilities as a qualifying transportation facility serves the best interest of the public if:

1. The private entity can develop and/or operate the transportation facility or facilities with a public contribution amount that is less than the maximum public contribution determined pursuant to subsection A of § 33.2-1803.1:1 for transportation facilities where the Department of Transportation or the Department of Rail and Public Transportation is the responsible public entity;

2. There is a public need for the transportation facility or facilities the private entity proposes to develop and/or operate as a qualifying transportation facility and for transportation facilities where the Department of Transportation or the Department of Rail and Public Transportation is the responsible public entity, such facility or facilities meet a need included in the plan developed pursuant to § 33.2-353;

3. The plan for the development and/or operation of the transportation facility or facilities is anticipated to have significant benefits as determined pursuant to subdivision B 1 of § 33.2-1803.1;

4. The private entity's plans will result in the timely development and/or operation of the transportation facility or facilities or their more efficient operation; and

5. The risks, liabilities, and responsibilities transferred, assigned, or assumed by the private entity provide sufficient benefits to the public to not proceed with the development and/or operation of the transportation facility through other means of procurement available to the responsible public entity.

In evaluating any request, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of outside advisors or consultants having relevant experience.

D. The responsible public entity shall not enter into a comprehensive agreement unless the chief executive officer of the responsible public entity certifies in writing to the Governor and the General Assembly that:

1. The finding of public interest issued pursuant to § 33.2-1803.1 is still valid;

2. The transfer, assignment, and assumption of risks, liabilities, and permitting responsibilities and the mitigation of revenue risk by the private sector have not materially changed since the finding of public interest was issued pursuant to § 33.2-1803.1; and

3. The public contribution requested by the private entity does not exceed the maximum public contribution determined pursuant to subsection A of § 33.2-1803.1:1.

Changes to the project scope that do not impact the assignment of risks or liabilities or the mitigation of revenue risk shall not be considered material changes to the finding of public interest, provided that such changes were presented in a public meeting to the Commonwealth Transportation Board, other state board, or the governing body of a locality, as appropriate.

E. The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the request submitted by a private entity pursuant to subsection A, including reasonable attorney fees and fees for financial and other necessary advisors or consultants. The responsible public entity shall also develop guidelines that establish the process for the acceptance and review of a proposal from a private entity pursuant to subsections A, B, C, and D. Such guidelines shall establish a specific schedule for review of the proposal by the responsible public entity, a process for alteration of that schedule by the responsible public entity if it deems that changes are necessary because of the scope or complexity of proposals it receives, the process for receipt and review of competing proposals, and the type and amount of information that is necessary for adequate review of proposals in each stage of review. For qualifying transportation facilities that have approved or pending state and federal environmental clearances, have secured significant right-of-way, have previously allocated significant state or federal funding, or exhibit other circumstances that could reasonably reduce the amount of time to develop and/or operate the qualifying transportation facility in accordance with the purpose of this chapter, the guidelines shall provide for a prioritized documentation, review, and selection process.

F. The approval of the responsible public entity shall be subject to the private entity's entering into an interim agreement or a comprehensive agreement with the responsible public entity. For any project with an estimated construction cost of over \$50 million, the responsible public entity also shall require the private entity to pay the costs for an independent audit of any and all traffic and cost estimates associated with the private entity's proposal, as well as a review of all public costs and potential liabilities to which taxpayers could be exposed (including improvements to other transportation facilities that may be needed as a result of the proposal, failure by the private entity to reimburse the responsible public entity for services provided, and potential risk and liability in the event the private entity defaults on the comprehensive agreement or on bonds issued for the project). This independent audit shall be conducted by an independent consultant selected by the responsible public entity, and all such information from such review shall be fully disclosed.

G. In connection with its approval of the development and/or operation of the transportation facility or facilities as a qualifying transportation facility, the responsible public entity shall establish a date for the acquisition of or the beginning of construction of or improvements to the qualifying transportation facility. The responsible public entity may extend such date.

H. The responsible public entity shall take appropriate action, as more specifically set forth in its guidelines, to protect confidential and proprietary information provided by the private entity pursuant to an agreement under subdivision 44 12 of § 2.2-3705.6.

I. The responsible public entity may also apply for, execute, and/or endorse applications submitted by private entities to obtain federal credit assistance for qualifying projects developed and/or operated pursuant to this chapter.

§ 33.2-1820. Posting of conceptual proposals; public comment; public access to procurement records.

A. Conceptual proposals submitted in accordance with subsection A or B of § 33.2-1803 to a responsible public entity shall be posted by the responsible public entity within 10 working days after acceptance of such proposals as follows:

1. For responsible public entities that are state agencies, authorities, departments, institutions, and other units of state government, posting shall be on the Department of General Services' central electronic procurement website. For proposals submitted pursuant to subsection A of § 33.2-1803, the notice posted shall (i) provide for a period of 120 days for the submission of competing proposals; (ii) include specific information regarding the proposed nature, timing, and scope of the qualifying transportation facility; and (iii) outline the opportunities that will be provided for public comment during the review process; and

2. For responsible public entities that are local public bodies, posting shall be on the responsible public entity's website or on the Department of General Services' central electronic procurement website. In addition, such public bodies may publish in a newspaper of general circulation in the area in which the contract is to be performed a summary of the proposals and the location where copies of the proposals are available for public inspection. Such local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Nothing in this section shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the responsible public entity so as to provide maximum notice to the public of the opportunity to inspect the proposals. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 44 12 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the responsible public entity and the private entity.

B. In addition to the posting requirements of subsection A, the following shall apply:

1. For 30 days prior to entering into an interim agreement, a responsible public entity shall provide an opportunity for public comment on the proposals. The public comment period required by this subsection may include a public hearing at the sole discretion of the responsible public entity. After the end of the public comment period, no additional posting shall be required.

2. For 30 days prior to the planned issuance of a final request for proposals, a responsible public entity shall provide an opportunity for public comment on the draft comprehensive agreement. The public comment period may include a public hearing at the sole discretion of the responsible public entity.

C. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete and a decision to award has been made by a responsible public entity, the responsible public entity shall (i) post the major business points of the interim or comprehensive agreement, including the projected use of any public funds, on the Department of General Services' central electronic procurement website; (ii) outline how the public can submit comments on those major business points; and (iii) present the major business points of the interim or comprehensive agreement, including the use of any public funds, to its oversight board at a regularly scheduled meeting of the board that is open to the public.

D. Once an interim agreement or a comprehensive agreement has been entered into, a responsible public entity shall make procurement records available for public inspection, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). For the purposes of this subsection, procurement records shall not be interpreted to include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

E. Cost estimates relating to a proposed procurement transaction prepared by or for a responsible public entity shall not be open to public inspection.

F. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

G. The provisions of this section shall apply to accepted proposals regardless of whether the process of bargaining will result in an interim or a comprehensive agreement.

§ 56-575.4. Approval of qualifying projects by the responsible public entity.

A. A private entity may request approval of a qualifying project by the responsible public entity. Any such request shall be accompanied by the following material and information unless waived by the responsible public entity:

1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the qualifying project;

2. A description of the qualifying project, including the conceptual design of such facility or facilities or a conceptual plan for the provision of services or technology infrastructure, and a schedule for the initiation of and completion of the qualifying project to include the proposed major responsibilities and timeline for activities to be performed by both the public and private entity;

3. A statement setting forth the method by which the private entity proposes to secure necessary property interests required for the qualifying project;

4. Information relating to the current plans for development of facilities or technology infrastructure to be used by a public entity that are similar to the qualifying project being proposed by the private entity, if any, of each affected local jurisdiction;

5. A list of all permits and approvals required for the qualifying project from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;

6. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the private entity to accommodate such crossings;

7. A statement setting forth the private entity's general plans for financing the qualifying project including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on the behalf of the private entity;

8. The names and addresses of the persons who may be contacted for further information concerning the request;

9. User fees, lease payments, and other service payments over the term of the interim or comprehensive agreement pursuant to § 56-575.9 or 56-575.9:1 and the methodology and circumstances for changes to such user fees, lease payments, and other service payments over time; and

10. Such additional material and information as the responsible public entity may reasonably request.

B. The responsible public entity may request proposals or invite bids from private entities for the development or operation of qualifying projects.

C. The responsible public entity may grant approval of the development or operation of the education facility, technology infrastructure or other public infrastructure or government facility needed by a public entity as a qualifying project, or the design or equipping of a qualifying project so developed or operated, if the responsible public entity determines that the project serves the public purpose of this chapter. The responsible public entity may determine that the development or operation of the qualifying project as a qualifying project serves such public purpose if:

1. There is a public need for or benefit derived from the qualifying project of the type the private entity proposes as a qualifying project;

2. The estimated cost of the qualifying project is reasonable in relation to similar facilities; and

3. The private entity's plans will result in the timely development or operation of the qualifying project.

In evaluating any request, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of outside advisors or consultants having relevant experience.

D. The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing and evaluating the request, including without limitation, reasonable attorney's fees and fees for financial, technical, and other necessary advisors or consultants.

E. The approval of the responsible public entity shall be subject to the private entity's entering into an interim or comprehensive agreement pursuant to § 56-575.9 with the responsible public entity.

F. In connection with its approval of the qualifying project, the responsible public entity shall establish a date for the commencement of activities related to the qualifying project. The responsible public entity may extend such date from time to time.

G. The responsible public entity shall take appropriate action to protect confidential and proprietary information provided by the private entity pursuant to an agreement under subdivision 44-12 of § 2.2-3705.6.

H. Nothing in this chapter or in an interim or comprehensive agreement entered into pursuant to this chapter shall be deemed to enlarge, diminish or affect the authority, if any, otherwise possessed by the

920 responsible public entity to take action that would impact the debt capacity of the Commonwealth.

921 I. Prior to entering into the negotiation of an interim or comprehensive agreement, each responsible
922 public entity that is an agency or institution of the Commonwealth shall submit copies of detailed
923 proposals to the Public-Private Partnership Advisory Commission as provided by Chapter 42 (§ 30-278
924 et seq.) of Title 30.

925 J. Any proposed comprehensive agreement for a qualifying project where the responsible public
926 entity is an agency or institution of the Commonwealth that (i) creates state tax-supported debt, (ii)
927 requires a level of appropriation significantly beyond the appropriation received by the responsible
928 public entity in the most recent appropriation act, or (iii) significantly alters the Commonwealth's
929 discretion to change the level of services or the funding for such services over time, shall be reviewed
930 by the appropriating body prior to execution.

931 **§ 56-575.17. Posting of conceptual proposals; public comment; public access to procurement**
932 **records.**

933 A. Conceptual proposals submitted in accordance with subsection A or B of § 56-575.4 to a
934 responsible public entity shall be posted by the responsible public entity within 10 working days after
935 acceptance of such proposals as follows:

936 1. For responsible public entities that are state agencies, authorities, departments, institutions, and
937 other units of state government, posting shall be on the Department of General Services' centralized
938 electronic procurement website; and

939 2. For responsible public entities that are local bodies, posting shall be on the responsible public
940 entity's website or on the Department of General Services' central electronic procurement website. In
941 addition, such public bodies may publish in a newspaper of general circulation in the area in which the
942 contract is to be performed a summary of the proposals and the location where copies of the proposals
943 are available for public inspection. Such local public bodies are encouraged to utilize the Department of
944 General Services' central electronic procurement website to provide the public with centralized visibility
945 and access to the Commonwealth's procurement opportunities.

946 In addition to the posting requirements, at least one copy of the proposals shall be made available for
947 public inspection. Nothing in this section shall be construed to prohibit the posting of the conceptual
948 proposals by additional means deemed appropriate by the responsible public entity so as to provide
949 maximum notice to the public of the opportunity to inspect the proposals. Trade secrets, financial
950 records, or other records of the private entity excluded from disclosure under the provisions of
951 subdivision 44 12 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by
952 the responsible public entity and the private entity.

953 B. The responsible public entity shall hold a public hearing on the proposals during the proposal
954 review process, but not later than 30 days prior to entering into an interim or comprehensive agreement.

955 C. Once the negotiation phase for the development of an interim or a comprehensive agreement is
956 complete, but before an interim agreement or a comprehensive agreement is entered into, a responsible
957 public entity shall make available the proposed agreement in a manner provided in subsection A.

958 D. Once an interim agreement or a comprehensive agreement has been entered into, a responsible
959 public entity shall make procurement records available for public inspection, upon request. For the
960 purposes of this subsection, procurement records shall not be interpreted to include (i) trade secrets of
961 the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial
962 records, including balance sheets or financial statements of the private entity that are not generally
963 available to the public through regulatory disclosure or otherwise.

964 E. Cost estimates relating to a proposed procurement transaction prepared by or for a responsible
965 public entity shall not be open to public inspection.

966 F. Any inspection of procurement transaction records under this section shall be subject to reasonable
967 restrictions to ensure the security and integrity of the records.

968 G. The provisions of this section shall apply to accepted proposals regardless of whether the process
969 of bargaining will result in an interim or a comprehensive agreement.