

20104644D

## HOUSE BILL NO. 1052

Offered January 8, 2020

Prefiled January 7, 2020

A *BILL to amend and reenact §§ 2.2-3705.6, 2.2-3711, 15.2-1500, 15.2-2108.2 through 15.2-2108.5, 15.2-2108.9 through 15.2-2108.12, 15.2-2108.14 through 15.2-2108.17, 15.2-2109, 15.2-2403, 15.2-2419, 15.2-5431.2, 15.2-5431.35, 56-265.4:4, 56-479.2, 56-484.7:1, 56-484.7:2, and 56-484.7:4 of the Code of Virginia and to repeal §§ 15.2-2108.6, 15.2-2108.7, 15.2-2108.8, 15.2-2108.13, and 15.2-2160 of the Code of Virginia, relating to the authority of localities to provide telecommunications services.*

Patron—Levine

Referred to Committee on Communications, Technology and Innovation

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

**1. That §§ 2.2-3705.6, 2.2-3711, 15.2-1500, 15.2-2108.2 through 15.2-2108.5, 15.2-2108.9 through 15.2-2108.12, 15.2-2108.14 through 15.2-2108.17, 15.2-2109, 15.2-2403, 15.2-2419, 15.2-5431.2, 15.2-5431.35, 56-265.4:4, 56-479.2, 56-484.7:1, 56-484.7:2, and 56-484.7:4 of the Code of Virginia are amended and reenacted as follows:**

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

The following 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

INTRODUCED

HB1052

59 any wholly owned subsidiary of a public body.

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

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

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

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

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

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

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

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

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

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

114 13. Trade secrets or confidential proprietary information that is not generally available to the public  
115 through regulatory disclosure or otherwise, provided by a (i) bidder or applicant for a franchise or (ii)  
116 franchisee under Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority  
117 pursuant to a promise of confidentiality from the franchising authority, to the extent the information  
118 relates to the bidder's, applicant's, or franchisee's financial capacity or provision of new services,  
119 adoption of new technologies or implementation of improvements, where such new services,  
120 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. 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. Information related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to § 3.2-1215.

16. Trade secrets submitted by CMRS providers as defined in § 56-484.12 to the former Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to former § 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~~ 15.2-2108.4 shall be released.

20. Trade secrets 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, 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

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

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

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

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

206 c. Stating the reasons why protection is necessary.

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

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

215 b. Information provided by a private entity to the Commercial Space Flight Authority if disclosure of  
216 such information would (i) reveal (a) trade secrets of the private entity; (b) financial information of the  
217 private entity, including balance sheets and financial statements, that are not generally available to the  
218 public through regulatory disclosure or otherwise; or (c) other information submitted by the private  
219 entity and (ii) adversely affect the financial interest or bargaining position of the Authority or private  
220 entity.

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

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

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

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

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

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

238 26. Trade secrets provided to the Department of Environmental Quality pursuant to the provisions of  
239 § 10.1-1458. In order for such trade secrets to be excluded from the provisions of this chapter, the  
240 submitting party shall (i) invoke this exclusion upon submission of the data or materials for which  
241 protection from disclosure is sought, (ii) identify the data or materials for which protection is sought,  
242 and (iii) state the reasons why protection is necessary.

243 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. 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; (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 not generally available to the public through regulatory disclosure or otherwise; or (c) 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. 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; (b) financial information of the private business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) 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), (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. 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.

31. Trade secrets, 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 Virginia Department of Transportation for the purpose of an audit, special investigation, or any study requested by the Virginia Department of Transportation in accordance with law.

In order for the records 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 Department:

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

305 disclosure is sought;

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

307 c. Stating the reasons why protection is necessary.

308 The Virginia Department of Transportation shall determine whether the requested exclusion from  
309 disclosure is necessary to protect trade secrets or financial records of the private entity. The Virginia  
310 Department of Transportation shall make a written determination of the nature and scope of the  
311 protection to be afforded by it under this subdivision.

312 32. Information related to a grant application, or accompanying a grant application, submitted to the  
313 Department of Housing and Community Development that would (i) reveal (a) trade secrets, (b)  
314 financial information of a grant applicant that is not a public body, including balance sheets and  
315 financial statements, that are not generally available to the public through regulatory disclosure or  
316 otherwise, or (c) research-related information produced or collected by the applicant in the conduct of or  
317 as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly  
318 issues, when such information has not been publicly released, published, copyrighted, or patented, and  
319 (ii) be harmful to the competitive position of the applicant. The exclusion provided by this subdivision  
320 shall only apply to grants administered by the Department, the Director of the Department, or pursuant  
321 to § 36-139, Article 26 (§ 2.2-2484 et seq.) of Chapter 24, or the Virginia Telecommunication Initiative  
322 as authorized by the appropriations act.

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

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

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

330 c. Stating the reasons why protection is necessary.

331 The Department shall determine whether the requested exclusion from disclosure is necessary to  
332 protect the trade secrets or confidential proprietary information of the applicant. The Department shall  
333 make a written determination of the nature and scope of the protection to be afforded by it under this  
334 subdivision.

335 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

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

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

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

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

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

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

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

365 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual  
366 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, the Fort Monroe Authority, 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 activity and estimating general and nongeneral fund revenues.

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

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

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

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

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

21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review Team established pursuant to § 32.1-283.1, those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in which individual adult death cases are discussed by the state Adult Fatality Review Team established pursuant to § 32.1-283.5, those portions of meetings in which individual adult death cases are discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6, those portions of meetings in which individual death cases are discussed by overdose fatality review teams established pursuant to § 32.1-283.7, and those portions of meetings in which individual maternal death cases are discussed by the Maternal Mortality Review Team pursuant to § 32.1-283.8.

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

23. Discussion or consideration by the Virginia Commonwealth University Health System Authority or the board of visitors of Virginia Commonwealth University of any of the following: the acquisition or disposition by the Authority of real property, equipment, or technology software or hardware and related 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 former Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to former § 56-484.15, of trade secrets 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 11 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 § 24.2-410.2 or 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 B 1 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 A 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 1 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, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § 23.1-702 of information subject to the exclusion in subdivision 24 of § 2.2-3705.7.

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

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

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

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

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

551 contained in grant applications.

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

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

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

565 47. Discussion or consideration of grant or loan application records subject to the exclusion in  
566 subdivision 28 of § 2.2-3705.6 related to the submission of an application for an award from the  
567 Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title  
568 23.1 or interviews of parties to an application by a reviewing entity pursuant to subsection D of  
569 § 23.1-3133 or by the Virginia Research Investment Committee.

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

573 49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault response  
574 team established pursuant to § 15.2-1627.4, (ii) individual child abuse or neglect cases or sex offenses  
575 involving a child by a child sexual abuse response team established pursuant to § 15.2-1627.5, or (iii)  
576 individual cases involving abuse, neglect, or exploitation of adults as defined in § 63.2-1603 pursuant to  
577 §§ 15.2-1627.5 and 63.2-1605.

578 50. Discussion or consideration by the Board of the Virginia Economic Development Partnership  
579 Authority, the Joint Legislative Audit and Review Commission, or any subcommittees thereof, of the  
580 portions of the strategic plan, marketing plan, or operational plan exempt from disclosure pursuant to  
581 subdivision 33 of § 2.2-3705.7.

582 51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic  
583 Development Partnership Authority established pursuant to subsection F of § 2.2-2237.3 to review and  
584 discuss information received from the Virginia Employment Commission pursuant to subdivision C 2 of  
585 § 60.2-114.

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

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

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

596 E. This section shall not be construed to (i) require the disclosure of any contract between the  
597 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1  
598 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant  
599 to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body  
600 empowered to issue industrial revenue bonds by general or special law, to identify a business or industry  
601 to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of  
602 public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance  
603 of such bonds.

#### 604 **§ 15.2-1500. Organization of local government.**

605 A. Every locality shall provide for all the governmental functions of the locality, including, without  
606 limitation, the organization of all departments, offices, boards, commissions and agencies of government,  
607 and the organizational structure thereof, which are necessary and the employment of the officers and  
608 other employees needed to carry out the functions of government.

609 B. Except as provided in § 15.2-2160 or Article 5-1 (§ 56-484.7-1 et seq.) of Chapter 15 of Title 56,  
610 no locality shall establish any department, office, board, commission, agency or other governmental  
611 division or entity which has authority to offer telecommunications equipment, infrastructure, other than  
612 pole or tower attachments including antennas or conduit occupancy, or services, other than

intragovernmental radio dispatch or paging systems shared by adjoining localities, for sale or lease to any person or entity other than (i) such locality's departments, offices, boards, commissions, agencies or other governmental divisions or entities or (ii) an adjoining locality's departments, offices, boards, commissions, agencies or other governmental divisions or entities, so long as any charges for such telecommunications equipment, infrastructure and services do not exceed the cost to the providing locality of providing such equipment, infrastructure or services. However, any town which is located adjacent to Exit 17 on Interstate 81 and which offered telecommunications services to the public on January 1, 1998, is hereby authorized to continue to offer such telecommunications services, but shall not acquire by eminent domain the facilities or other property of any telephone company or cable operator. Any locality may sell any telecommunications infrastructure, including related equipment, which such locality has constructed, and such locality may receive from the purchaser or purchasers, as full or partial consideration for the sale of such infrastructure, communications services to be used solely for internal use of the locality. The locality shall not be involved in any way in the promotion or marketing of services provided by any purchaser.

C. A locality, electric commission or board, industrial development authority, or economic development authority, may lease dark fiber. For purposes of this section, "dark fiber" means fiber optic cable that is not lighted by lasers or other electronic equipment. The locality, electric commission or board, industrial development authority, or economic development authority, shall not be involved in the promotion or marketing of the lessee as the provider of the services.

#### Article 1.1.

#### Provision of Cable Television Telecommunications Services by Certain Localities.

##### § 15.2-2108.2. Definitions.

As used in this article:

"Advanced service" means high-speed Internet access capability in excess of 144 kilobits per second both upstream and downstream.

"Broadband" means technology having the capability of supporting, in both the provider-to-consumer and the consumer-to-provider directions, a speed in excess of 200 kilobits per second in the last mile.

"Cable television service" means (i) the one-way transmission to subscribers of video programming or other programming service; and (ii) subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service.

"Capital costs" means all costs of providing a service that are capitalized in accordance with generally accepted accounting principles.

"Cross subsidize" means to pay a cost included in the direct costs or indirect costs of providing a service that is not accounted for in the full cost of accounting of providing the service.

"Direct costs" means those expenses of a municipality that are directly attributable to providing a cable television service and would be eliminated if such service were not provided by the municipality.

"Feasibility consultant" means an individual or entity with expertise in the processes and economics of providing cable television service.

"Full-cost accounting" means the accounting of all costs incurred by a municipality in providing a cable television service. The costs included in a full-cost accounting include all capital costs, direct costs, and indirect costs.

"Indirect costs" means any costs identified with two or more services or other functions; and that are not directly identified with a single service or function. "Indirect costs" may include cost factors for administration, accounting, personnel, purchasing, legal support, and other staff or departmental support.

"Computer services" means computer time or services, including data processing services, Internet services, electronic services, electronic message services, or information or data stored in connection therewith.

"Locality" includes any board, authority, district, commission, or other public body having overlapping geographic territory with a locality, or originally created by the locality, or any public body whose jurisdiction or membership includes any part of the locality.

"Private provider" means a private entity that provides cable television services.

"Telecommunications service" means the two-way transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means offered to the public generally. "Telecommunications service" includes (i) cable television or other multi-channel video programming services; (ii) advanced service; (iii) Internet access, broadband, information, and data transmission services; (iv) voice-over-Internet protocol service, interexchange telephone service, or local exchange telephone service as defined in § 56-1; or (v) wireless Internet service, including 5G service, whether provided for a fee or at no cost to the public or a subset thereof.

"Subscriber" means a person who lawfully receives cable television or purchases, as an end user, telecommunications services.

674 "Wireless internet service" means a service, whether provided for a fee or at no cost to a subscriber,  
675 that uses wireless networking technology utilizing radio waves to provide wireless high-speed Internet  
676 and network connections capable of delivering data to the end user transmitted at a speed of not less  
677 than five megabits per second downstream and at least one megabit per second upstream.

678 **§ 15.2-2108.3. Scope of article.**

679 A. Nothing in this article shall authorize any county or other political subdivision of the  
680 Commonwealth to (i) Any locality may, by ordinance, provide a ~~cable television~~ telecommunications  
681 service; or (ii) purchase, lease, construct, maintain, or operate a ~~facility~~ facilities for the purpose of  
682 providing a ~~cable television~~ telecommunications service as provided in this article, without regard to  
683 whether the locality has granted one or more franchises to private providers for cable television service  
684 pursuant to Article 1.2 (§ 15.2-2108.19 et seq.).

685 B. Nothing in this article shall apply to a ~~municipality~~ locality purchasing, leasing, constructing, or  
686 equipping facilities that are designed to provide services within the municipality, and that the  
687 municipality (i) uses for internal municipal government purposes; or (ii) by written contract, leases, sells  
688 capacity in, or grants other similar rights to a private provider to use the facilities in connection with a  
689 private provider offering cable television services.

690 **§ 15.2-2108.4. Provision of telecommunications service.**

691 A. Except as provided in this article, a ~~municipality~~ shall not (i) A locality may, by ordinance,  
692 provide a ~~cable television~~ telecommunications service; within its boundaries or (ii) purchase, lease,  
693 construct, maintain, or operate any facility for the purpose of providing a ~~cable television~~  
694 telecommunications service to one or more subscribers, provided that that locality first obtain from the  
695 State Corporation Commission a certificate as provided in § 56-265.4:4 or approval of a petition  
696 pursuant to Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of Title 56, unless otherwise specifically  
697 exempt.

698 B. A locality providing telecommunications service shall (i) comply with all applicable laws and  
699 regulations for the provision of telecommunications services, (ii) prepare and publish annually financial  
700 statements in accordance with generally accepted accounting principles showing the results of  
701 operations of its provision of telecommunications services, and (iii) maintain records demonstrating  
702 compliance with the provisions of this section that shall be made available for inspection and copying  
703 pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

704 C. Each locality providing telecommunications service shall provide nondiscriminatory access to  
705 private providers of cable television service on a first-come, first-served basis to rights-of-way, poles,  
706 conduits or other permanent distribution facilities owned, leased, or operated by the locality unless the  
707 facilities have insufficient capacity for such access and additional capacity cannot reasonably be added  
708 to the facilities.

709 D. Public records of a locality providing telecommunications service, which records contain  
710 confidential proprietary information or trade secrets pertaining to the provision of telecommunications  
711 service, shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et  
712 seq.). As used in this subsection, a public record contains confidential proprietary information or trade  
713 secrets if its acquisition by a competing provider of telecommunications services would provide the  
714 competing provider with a competitive benefit.

715 E. Any locality that has obtained a certificate pursuant to § 56-265.4:4, and that surrenders or  
716 transfers such certificate shall continue to remain subject to subsection C if any substantial part of its  
717 telecommunications assets or operations are transferred to an entity in which the locality has the right  
718 to appoint board members, directors, or managers.

719 F. For purposes of this article, a ~~municipality~~ locality provides a ~~cable television~~ telecommunications  
720 service if the ~~municipality~~ locality provides the service:

721 1. Directly or indirectly, including through an authority or instrumentality acting on behalf of the  
722 ~~municipality~~ locality or acting for the benefit of the ~~municipality~~ locality; or

723 2. By itself, through a partnership, joint venture, or by contract, resale, or otherwise.

724 **§ 15.2-2108.5. Preliminary public hearing.**

725 A. Before a ~~municipality~~ locality may engage or offer to engage in an activity described in  
726 subsection A of § 15.2-2108.4 provide a telecommunications service, the governing body of the  
727 ~~municipality~~ locality shall hold a preliminary public hearing at which any interested party may appear  
728 and be heard.

729 B. If the governing body elects to proceed after holding the preliminary public hearing required by  
730 subsection A, the governing body shall approve the hiring of a feasibility consultant to conduct a  
731 feasibility study in accordance with § 15.2-2108.6.

732 **§ 15.2-2108.9. Enterprise funds for telecommunications service.**

733 A. A ~~municipality~~ locality that provides a ~~cable television~~ telecommunications service under this  
734 article shall:

735 1. Establish an enterprise fund to account for the ~~municipality's~~ locality's operations of a ~~cable~~

television telecommunications service; and

2. Adopt separate operating and capital budgets for the municipality's cable television services telecommunications service.

B. A municipality locality that provides a cable television telecommunications service under this article shall not:

1. Transfer any appropriation or other balance in any enterprise fund established by the municipality locality under this section to another enterprise fund; or

2. Transfer any appropriation or other balance in any other enterprise fund established by the municipality locality to any enterprise fund established by the municipality locality under this section.

The restrictions on transfers described in this subsection do not apply to transfers made by a municipality locality between other enterprise funds established by the municipality locality.

C. A municipality authorized pursuant to subsection E of § 56-265.4:4 to provide cable television locality providing telecommunications service shall:

1. Establish a separate department within an enterprise fund to account for the municipality's locality's operations of a cable television telecommunications service. This department may share a common balance sheet with other telecommunications and communications services, but the income statements must shall be stated separately; and

2. Adopt separate operating and capital budgets for the municipality's cable television locality's telecommunications services.

D. A municipality authorized pursuant to subsection E of § 56-265.4:4 to provide cable television service shall not transfer funds from other departments to the cable television department, but the municipality may make interdepartmental loans at market rates, upon such terms and conditions as would prevail from a private lender.

#### § 15.2-2108.10. Bonding authority.

A. The governing body of a municipality locality may by resolution determine to issue one or more bonds to finance the capital costs for facilities necessary to provide to subscribers a cable television telecommunications service. Such resolution shall: (i) describe the purpose for which the indebtedness is to be created and (ii) specify the dollar amount of the one or more bonds proposed to be issued.

B. A bond issued under this section shall be secured and paid for solely from the revenues generated by the municipality from providing cable television services with respect to bonds issued to finance facilities for the municipality's cable television services. Notwithstanding the foregoing, a municipality authorized under subsection E of § 56-265.4:4 to provide cable television services shall not be subject to the requirement that it secure a bond with solely the revenues generated by the municipality from providing cable television services, and such municipality shall repay the bond indebtedness in a fashion that reflects a reasonable pro rata allocation of such indebtedness by enterprise fund or department.

C. A municipality locality shall pay that portion of the origination, financing, or other carrying costs associated with one or more bonds issued under this section associated with cable television telecommunications service solely from the funds of the cable television telecommunications department.

#### § 15.2-2108.11. General operating limitations.

A. A municipality locality that provides a cable television service shall comply with all terms and provisions of the Cable Communications Policy Act of 1984 (47 U.S.C. § 521 et seq.) and the regulations issued by the Federal Communications Commission under such Act that would be applicable to a similarly situated private provider of cable television services.

B. A municipality may not cross subsidize its cable television services with:

1. Tax dollars;
2. Income from other municipal or utility services;
3. Below-market rate loans from the municipality; or
4. Any other means.

C. A municipality locality shall not make or grant any undue or unreasonable preference or advantage to itself or to any private provider of cable television telecommunications services.

D. C. A municipality locality shall apply, without discrimination as to itself and to any private provider, the municipality's locality's ordinances, rules, and policies, including those relating to (i) obligation to serve; (ii) access to public rights of way and municipal utility poles and conduits; (iii) permitting; (iv) performance bonding; (v) reporting; and (vi) quality of service.

E. In calculating the rates charged by a municipality for a cable television service:

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

2. The municipality shall not price any cable television service at a level that is less than the sum of: (i) the actual direct costs of providing the service; (ii) the actual indirect costs of providing the service;

and (iii) the amount determined under subdivision E 1.

F. A municipality that provides cable television services shall comply with the provisions of Title 47 of the Code of Federal Regulations regarding rate and service changes.

G. A municipality shall offer to provide or provide cable television services to only those subscriber locations within either (i) the municipality's electric utility service area as it existed on January 1, 2003, or (ii) the area, as of January 1, 2003, in which the municipality was providing local exchange service or Internet service over telecommunications facilities owned by the municipality, provided that a cable television franchise from any jurisdiction other than the municipality authorized herein shall be required for any service outside the municipality's boundaries.

H. D. A municipality locality shall keep accurate books and records of the municipality's cable television locality's telecommunications services. A municipality locality shall conduct an annual audit of its books and records associated with the municipality's cable television locality's telecommunications services, such audit to be performed by an independent auditor approved by the Auditor of Public Accounts. Such audit shall include such criteria as the Auditor of Public Accounts deems appropriate and be filed with him, with copies to be submitted to each private provider that holds a franchise to offer service within the municipality locality. If, after review of such audit, the Commonwealth's Auditor of Public Accounts determines that there are violations of this article, he shall provide public notice of same.

I. E. Notwithstanding any other provision of law, the Auditor of Public Accounts shall not disclose those portions of any comprehensive business plan that reveal marketing strategies of a municipal cable television locality's telecommunications service except as necessary to perform his duties and such information shall be otherwise exempt from public disclosure and not subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

#### **§ 15.2-2108.12. Eminent domain.**

A. No municipality locality shall exercise its power of eminent domain to condemn any plant or equipment, facilities, or other property of a private provider for the purpose of providing to a subscriber a cable television telecommunications service.

B. No municipality locality, for the purpose of providing to a subscriber a cable television telecommunications service, shall be authorized to exercise its power of eminent domain to condemn real property, whether in whole or in part, or to obtain an easement to the same extent that the locality would be authorized to do so in connection with its providing any other utility service under this title to a customer.

#### **§ 15.2-2108.14. Civil action.**

A private provider may file an action against a municipality locality in the circuit court having jurisdiction over the municipality locality for equitable relief, including a restraining order and injunction, for a violation of the provisions of this article. At least 10 days before filing such action the private provider shall file a written notice thereof with the municipality locality.

#### **§ 15.2-2108.15. Consumer complaints.**

A municipality locality that provides cable television service shall enact an ordinance establishing a procedure for the filing and resolution of complaints relating to the municipality's locality's provision of cable television service. Such ordinance shall comply with Title 47 of the Code of Federal Regulations and shall be no more favorable or less burdensome to the municipality locality than such procedure applicable to any private provider providing cable television service in the municipality locality.

#### **§ 15.2-2108.16. Annual report.**

A municipality locality that provides cable television telecommunications service shall provide to a private provider the same information required to be filed with the municipality locality by that private provider under the terms of its franchise.

#### **§ 15.2-2108.17. Antitrust immunity.**

A municipality locality that provides a cable television telecommunications service is subject to applicable antitrust liabilities and immunities from liabilities under the federal Local Government Antitrust Act of 1984 (15 U.S.C. § 34 et seq.).

#### **§ 15.2-2109. Powers of localities as to public utilities and computer services; prevention of pollution of certain water.**

A. Any locality may (i) acquire or otherwise obtain control of or (ii) establish, maintain, operate, extend and enlarge: waterworks, sewerage, gas works (natural or manufactured), electric plants, public mass transportation systems, stormwater management systems and other public utilities within or outside the limits of the locality and may acquire within or outside its limits in accordance with § 15.2-1800 whatever land may be necessary for acquiring, locating, establishing, maintaining, operating, extending or enlarging waterworks, sewerage, gas works (natural or manufactured), electric plants, public mass transportation systems, stormwater management systems and other public utilities, and the rights-of-way, rails, pipes, poles, conduits or wires connected therewith, or any of the fixtures or appurtenances thereof. As required by subsection C of § 15.2-1800, this section expressly authorizes a county to acquire real

property for a public use outside its boundaries.

*Notwithstanding any provision of this title to the contrary, any locality may by ordinance establish and operate a utility offering any telecommunications service within the locality in accordance with the requirements of Article 1.1 (§ 15.2-2108.2 et seq.). A locality may establish, maintain, operate, extend, and enlarge a telecommunications system within the limits of the locality and may acquire within its limits in accordance with § 15.2-1800 whatever land may be necessary for acquiring, locating, establishing, maintaining, operating, extending, or enlarging facilities, and any rights-of-way, poles, conduits, or wires connected therewith or any of the fixtures or appurtenances thereof, that are used or useful in the provision of telecommunications service.*

The locality may also prevent the pollution of water and injury to waterworks for which purpose its jurisdiction shall extend to five miles beyond the locality. It may make, erect and construct, within or near its boundaries, drains, sewers and public ducts and acquire within or outside the locality in accordance with § 15.2-1800 so much land as may be necessary to make, erect, construct, operate and maintain any of the works or plants mentioned in this section.

In the exercise of the powers granted by this section, localities shall be subject to the provisions of § 25.1-102 to the same extent as are corporations. The provisions of this section shall not be construed to confer upon any locality the power of eminent domain with respect to any public utility owned or operated by any other political subdivision of this Commonwealth. The provisions of this section shall not be construed to exempt localities from the provisions of Chapters 20 (§ 46.2-2000 et seq.), 22 (§ 46.2-2200 et seq.) and 23 (§ 46.2-2300 et seq.) of Title 46.2.

B. A locality may not (i) acquire all of a public utility's facilities, equipment or appurtenances for the production, transmission or distribution of natural or manufactured gas, or of electric power, within the limits of such locality or (ii) take over or displace, in whole or in part, the utility services provided by such gas or electric public utility to customers within the limits of such locality until after the acquisition is authorized by a majority of the voters voting in a referendum held in accordance with the provisions of Article 5 (§ 24.2-681 et seq.) of Chapter 6 of Title 24.2 in such locality on the question of whether or not such facilities, equipment or appurtenances should be acquired or such services should be taken over or displaced; however, the provisions of this subsection shall not apply to the use of energy generated from landfill gas in the City of Lynchburg or Fairfax County. In no event, however, shall a locality be required to hold a referendum in order to provide gas or electric service to its own facilities. Notwithstanding any provision of this subsection, a locality may acquire public utility facilities or provide services to customers of a public utility with the consent of the public utility. No city or town which provided electric service as of January 1, 1994, shall be required to hold such a referendum prior to the acquisition of a public utility's facilities, equipment or appurtenances used for the production, transmission or distribution of electric power or to the provision of services to customers of a public utility. Nothing in this subsection shall be deemed to (a) create a property right or property interest or (b) affect or impair any existing property right or property interest of a public utility.

C. ~~The City of Bristol is authorized to provide computer services as defined in § 18.2-152.2. "Computer services" as used in this section shall specifically not include the communications link between the host computer and any person or entity other than (i) such locality's departments, offices, boards, commissions, agencies or other governmental divisions or entities or (ii) an adjoining locality's departments, offices, boards, commissions, agencies or other governmental divisions or entities.~~

#### **§ 15.2-2403. Powers of service districts.**

After adoption of an ordinance or ordinances or the entry of an order creating a service district, the governing body or bodies shall have the following powers with respect to the service districts:

1. To construct, maintain, and operate such facilities and equipment as may be necessary or desirable to provide additional, more complete, or more timely governmental services within a service district, including but not limited to general government facilities; water supply, dams, sewerage, garbage removal and disposal, heat, light, *telecommunications service as defined in § 15.2-2108.2*; fire-fighting equipment and power and gas systems and sidewalks; economic development services; promotion of business and retail development services; beautification and landscaping; beach and shoreline management and restoration; dredging of creeks and rivers to maintain existing uses; control of infestations of insects that may carry a disease that is dangerous to humans, gypsy moths, cankerworms or other pests identified by the Commissioner of the Department of Agriculture and Consumer Services in accordance with the Virginia Pest Law (§ 3.2-700 et seq.); public parking; extra security, street cleaning, snow removal and refuse collection services; sponsorship and promotion of recreational and cultural activities; upon petition of over 50 percent of the property owners who own not less than 50 percent of the property to be served, construction, maintenance, and general upkeep of streets and roads; construction, maintenance, and general upkeep of streets and roads through creation of urban transportation service districts pursuant to § 15.2-2403.1; and other services, events, or activities that will enhance the public use and enjoyment of and the public safety, public convenience, and public

well-being within a service district. Such services, events, or activities shall not be undertaken for the sole or dominant benefit of any particular individual, business or other private entity. Any transportation service, system, facility, roadway, or roadway appurtenance established under this subdivision that will be operated or maintained by the Virginia Department of Transportation shall be established with the involvement of the governing body of the locality and meet the appropriate requirements of the Department.

2. Notwithstanding the provisions of § 33.2-326, to provide, in addition to services authorized by subdivision 1, transportation and transportation services within a service district, regardless of whether the facilities subject to the services are or will be operated or maintained by the Virginia Department of Transportation, including, but not limited to: public transportation systems serving the district; transportation management services; road construction, including any new roads or improvements to existing roads; rehabilitation and replacement of existing transportation facilities or systems; and sound walls or sound barriers. However, any transportation service, system, facility, roadway, or roadway appurtenance established under this subdivision that will be operated or maintained by the Virginia Department of Transportation shall be established with the involvement of the governing body of the locality and meet the appropriate requirements of the Department. The proceeds from any annual tax or portion thereof collected for road construction pursuant to subdivision 6 may be accumulated and set aside for such reasonable period of time as is necessary to finance such construction; however, the governing body or bodies shall make available an annual disclosure statement, which shall contain the amount of any such proceeds accumulated and set aside to finance such road construction.

3. To acquire in accordance with § 15.2-1800, any such facilities and equipment and rights, title, interest or easements therefor in and to real estate in such district and maintain and operate the same as may be necessary and desirable to provide the governmental services authorized by subdivisions 1 and 2.

4. To contract with any person, municipality or state agency to provide the governmental services authorized by subdivisions 1 and 2 and to construct, establish, maintain, and operate any such facilities and equipment as may be necessary and desirable in connection therewith.

5. To require owners or tenants of any property in the district to connect with any such system or systems, and to contract with the owners or tenants for such connections. The owners or tenants shall have the right of appeal to the circuit court within 10 days from action by the governing body.

6. To levy and collect an annual tax upon any property in such service district subject to local taxation to pay, either in whole or in part, the expenses and charges for providing the governmental services authorized by subdivisions 1, 2 and 11 and for constructing, maintaining, and operating such facilities and equipment as may be necessary and desirable in connection therewith; however, such annual tax shall not be levied for or used to pay for schools, police, or general government services not authorized by this section, and the proceeds from such annual tax shall be so segregated as to enable the same to be expended in the district in which raised. Such tax may be levied on taxable real estate zoned for residential, commercial, industrial or other uses, or any combination of such use classification, within the geographic boundaries of the service district; however, such tax shall only be levied upon the specific classification of real estate that the local governing body deems the provided governmental services to benefit. In addition to the tax on property authorized herein, in the City of Virginia Beach, the city council shall have the power to impose a tax on the base transient room rentals, excluding hotels, motels, and travel campgrounds, within such service district at a rate or percentage not higher than five percent which is in addition to any other transient room rental tax imposed by the city. The proceeds from such additional transient room rental tax shall be deposited in a special fund to be used only for the purpose of beach and shoreline management and restoration. Any locality imposing a tax pursuant to this subdivision may base the tax on the full assessed value of the taxable property within the service district, notwithstanding any special use value assessment of property within the service district for land preservation pursuant to Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1, provided the owner of such property has given written consent. In addition to the taxes and assessments described herein, a locality creating a service district may contribute from its general fund any amount of funds it deems appropriate to pay for the governmental services authorized by subdivisions 1, 2, and 11 of this section.

7. To accept the allocation, contribution or funds of, or to reimburse from, any available source, including, but not limited to, any person, authority, transportation district, locality, or state or federal agency for either the whole or any part of the costs, expenses and charges incident to the acquisition, construction, reconstruction, maintenance, alteration, improvement, expansion, and the operation or maintenance of any facilities and services in the district.

8. To employ and fix the compensation of any technical, clerical, or other force and help which from time to time, in their judgment may be necessary or desirable to provide the governmental services authorized by subdivisions 1, 2 and 11 or for the construction, operation, or maintenance of any such facilities and equipment as may be necessary or desirable in connection therewith.



9. To create and terminate a development board or other body to which shall be granted and assigned such powers and responsibilities with respect to a special service district as are delegated to it by ordinance adopted by the governing body of such locality or localities. Any such board or alternative body created shall be responsible for control and management of funds appropriated for its use by the governing body or bodies, and such funds may be used to employ or contract with, on such terms and conditions as the board or other body shall determine, persons, municipal or other governmental entities or such other entities as the development board or alternative body deems necessary to accomplish the purposes for which the development board or alternative body has been created. If the district was created by court order, the ordinance creating the development board or alternative body may provide that the members appointed to the board or alternative body shall consist of a majority of the landowners who petitioned for the creation of the district, or their designees or nominees.

10. To negotiate and contract with any person or municipality with regard to the connections of any such system or systems with any other system or systems now in operation or hereafter established, and with regard to any other matter necessary and proper for the construction or operation and maintenance of any such system within the district.

11. To acquire by purchase, gift, devise, bequest, grant, or otherwise title to or any interests or rights of not less than five years' duration in real property that will provide a means for the preservation or provision of open-space land as provided for in the Open-Space Land Act (§ 10.1-1700 et seq.). Notwithstanding the provisions of subdivision 3, the governing body shall not use the power of condemnation to acquire any interest in land for the purposes of this subdivision.

12. To contract with any state agency or state or local authority for services within the power of the agency or authority related to the financing, construction, or operation of the facilities and services to be provided within the district; however, nothing in this subdivision shall authorize a locality to obligate its general tax revenues, or to pledge its full faith and credit.

13. In the Town of Front Royal, to construct, maintain, and operate facilities, equipment, and programs as may be necessary or desirable to control, eradicate, and prevent the infestation of rats and removal of skunks and the conditions that harbor them.

14. In Accomack County, to construct, maintain, and operate in the Wallops Research Park, consistent with all applicable federal, state, and local laws and regulations, such infrastructure, services, or amenities as may be necessary or desirable to provide access for aerospace-related economic development to the NASA/Wallops Flight Facility runway and related facilities, and to create and terminate a Wallops Research Park Partnership body, which shall consist of one representative of the NASA/Wallops Research Flight Facility, one representative of the U.S. Navy Surface Combat Systems Center, one representative of the Marine Science Consortium, one representative of the Accomack County government, the Chancellor of the Virginia Community College System, and one representative of the Virginia Economic Development Partnership. The Partnership body shall have all of the powers enumerated in § 15.2-2403. Federal appointees to the Partnership body shall maintain their absolute duties of loyalty to the U.S. government.

15. To contract with a ~~nongovernmental~~ any broadband service provider ~~who, including any locality that provides telecommunications service pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21, that will construct, maintain, and own communications facilities and equipment required to facilitate delivery of last-mile broadband services to unserved areas of the service district, provided that the locality documents that less than 10 percent of residential and commercial units within the project area are capable of receiving broadband service at the time the construction project is approved by the locality.~~

As used in this subdivision:

"Area unserved by broadband" means a designated area in which less than 10 percent of residential and commercial units are capable of receiving broadband service, provided that the Department of Housing and Community Development for its Virginia Telecommunication Initiative may by guidelines modify such percentage from time to time.

"Broadband", "broadband" means Internet access at speeds greater than 10 Mbps download speed and one Mbps upload speed, provided that the Department of Housing and Community Development for its Virginia Telecommunication Initiative may by guidelines modify such speeds from time to time.

#### **§ 15.2-2419. Definitions.**

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

"Authority" means the Virginia Resources Authority created in Chapter 21 (§ 62.1-197 et seq.) of Title 62.1.

"Cost," as applied to any project financed under the provisions of this chapter, means the total of all costs incurred by the local government as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project.

"Fund" means the Virginia Broadband Infrastructure Loan Fund.

1043 "Local government" means any county, city, town, municipal corporation, authority, district,  
1044 commission, or political subdivision created by the General Assembly or pursuant to the Constitution or  
1045 laws of the Commonwealth.

1046 "Project" means any undertaking by a local government to build or facilitate the building of  
1047 broadband infrastructure, including wireless broadband infrastructure ~~which will provide broadband~~  
1048 ~~services only to areas within the Commonwealth which are currently unserved by broadband services.~~

1049 **§ 15.2-5431.2. Definitions.**

1050 As used in this chapter, unless the context requires a different meaning:

1051 "Authority" means an authority created under the provisions of this chapter or, if any such authority  
1052 has been abolished, the entity succeeding to the principal functions thereof.

1053 "Bonds" and "revenue bonds" include notes, bonds, bond anticipation notes, and other obligations of  
1054 an authority for the payment of money.

1055 "Cost" or "cost of a project" means, but shall not be limited to, the cost of acquisition, construction,  
1056 reconstruction, improvement, enlargement, betterment or extension of any project, including the cost of  
1057 studies, plans, specifications, surveys, and estimates of costs and revenues relating thereto, the cost of  
1058 labor and materials; the cost of land, land rights, rights-of-way and easements, water rights, fees,  
1059 permits, approvals, licenses, certificates, franchises, and the preparation of applications for and securing  
1060 the same; administrative, legal, engineering and inspection expenses; financing fees, expenses and costs;  
1061 working capital; interest on bonds during the period of construction and for such reasonable period  
1062 thereafter as may be determined by the issuing authority; establishment of reserves; and all other  
1063 expenditures of the issuing authority incidental, necessary or convenient to the acquisition, construction,  
1064 reconstruction, improvement, enlargement, betterment or extension of any project and the placing of the  
1065 project in operation.

1066 "Project" means any system of facilities for provision of ~~qualifying communications~~  
1067 ~~telecommunications~~ services as authorized by *Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21* or *Article*  
1068 *5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of Title 56.*

1069 **§ 15.2-5431.35. Powers of localities to make grants and conveyances to and contracts with**  
1070 **authority.**

1071 Each political subdivision may:

1072 1. Convey or lease to any authority, with or without consideration, any systems or facilities for the  
1073 provision of ~~qualifying communications~~ ~~telecommunications~~ services as authorized by *Article 1.1*  
1074 *(§ 15.2-2108.2 et seq.) of Chapter 21* or *Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of Title 56;*

1075 2. Contract, jointly or severally, with any authority for the provision of ~~qualifying communications~~  
1076 ~~telecommunications~~ services as authorized by *Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21* or  
1077 *Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of Title 56;*

1078 3. Contract with any authority for terminating any service furnished by the authority to any premises  
1079 that is connected to the system of the authority if the owner, tenant or occupant of such premises fails  
1080 to pay any rates, fees or charges for the use of or for the services furnished by the authority within the  
1081 time or times specified in such contract; and

1082 4. In any instance in which a locality makes rights-of-way, poles, conduits or other permanent  
1083 distribution facilities available to the authority, the authority shall make these facilities available to  
1084 private providers of communications services in a nondiscriminatory basis unless the facilities have  
1085 insufficient capacity for such access and additional capacity cannot reasonably be added to the facilities.

1086 **§ 56-265.4:4. Certificate to operate as a telephone utility.**

1087 A. The Commission may grant certificates to competing telephone companies, or any county, city or  
1088 town ~~that operates an electric distribution system~~, for interexchange service where it finds that such  
1089 action is justified by public interest, and is in accordance with such terms, conditions, limitations, and  
1090 restrictions as may be prescribed by the Commission for competitive telecommunications services. A  
1091 certificate to provide interexchange services shall not authorize the holder to provide local exchange  
1092 services. The Commission may grant a certificate to a carrier, or any county, city or town ~~that operates~~  
1093 ~~an electric distribution system~~, to furnish local exchange services as provided in subsection B.

1094 B. 1. After notice to all local exchange carriers certificated in the Commonwealth and other  
1095 interested parties and following an opportunity for hearing, the Commission may grant certificates to any  
1096 telephone company, or any county, city or town ~~that operates an electric distribution system~~, proposing  
1097 to furnish local exchange telephone service in the Commonwealth. In determining whether to grant a  
1098 certificate under this subsection, the Commission may require that the applicant show that it possesses  
1099 sufficient technical, financial, and managerial resources. Before granting any such certificate, the  
1100 Commission shall: (i) consider whether such action reasonably protects the affordability of basic local  
1101 exchange telephone service, as such service is defined by the Commission, and reasonably assures the  
1102 continuation of quality local exchange telephone service; and (ii) find that such action will not  
1103 unreasonably prejudice or disadvantage any class of telephone company customers ~~or telephone service~~  
1104 ~~providers, including the new entrant and any incumbent local exchange telephone company~~, and is in the

public interest. Except as provided in subsection A of § ~~45.2-2160~~ 15.2-2108.4, all local exchange certificates granted by the Commission after July 1, 2002, shall be to provide service in any territory in the Commonwealth unless the applicant specifically requests a different certificated service territory. The Commission shall amend the certificated service territory of each local exchange carrier that was previously certificated to provide service in only part of the Commonwealth to permit such carrier's provision of local exchange service throughout the Commonwealth beginning on September 1, 2002, unless that local exchange carrier notifies the Commission prior to September 1, 2002, that it elects to retain its existing certificated service territory. A local exchange carrier shall only be considered an incumbent in any certificated service territory in which it was considered an incumbent prior to July 1, 2002, except that the Commission may make changes to a local exchange carrier's incumbent certificated service territory at the request of those incumbent local exchange carriers that are directly involved in a proposed change in the certificated service territory.

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

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

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

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

6. A locality that has obtained a certificate pursuant to this section shall (i) comply with all applicable laws and regulations for the provision of telecommunications services; (ii) make a reasonable estimate of the amount of all federal, state, and local taxes (including income taxes and consumer utility taxes) that would be required to be paid or collected for each fiscal year if the locality were a for-profit provider of telecommunications services; (iii) prepare reasonable estimates of the amount of any

franchise fees and other state and local fees (including permit fees and pole rental fees); and right-of-way charges that would be incurred in each fiscal year if the locality were a for-profit provider of telecommunications services; (iv) prepare and publish annually financial statements in accordance with generally accepted accounting principles showing the results of operations of its provision of telecommunications services; and (v) (iii) maintain records demonstrating compliance with the provisions of this section that shall be made available for inspection and copying pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

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

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

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

10. 9. Public records of a locality that has obtained a certificate pursuant to this section, which records contain confidential proprietary information or trade secrets pertaining to the provision of telecommunications service, shall be exempt from disclosure under the Freedom of Information Act (§ 2.2-3700 et seq.). As used in this subdivision, a public record contains confidential proprietary information or trade secrets if its acquisition by a competing provider of telecommunications services would provide the competing provider with a competitive benefit. 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.).

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

D. Any county, city, or town that has obtained a certificate pursuant to this section may construct, own, maintain, and operate a fiber optic or communications infrastructure to provide consumers with Internet services, data transmission services, and any other ~~communications~~ telecommunications service as defined in § 15.2-2108.2 that its infrastructure is capable of delivering; provided, however, nothing. Nothing in this subsection shall authorize prohibit the provision of cable television services or other multi-channel video programming service by a locality pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2. Furthermore, nothing in this subsection shall alter the authority of the Commission.

E. Any county, city, or town that has obtained a certificate pursuant to this section and that had installed a cable television headend prior to December 31, 2002, is authorized to own and operate a cable television system or other multi-channel video programming service and shall be exempt from the provisions of §§ 15.2-2108.4 through 15.2-2108.8 Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2. Nothing in this subsection shall authorize the Commission to regulate cable television service.

#### **§ 56-479.2. Anti-competitive acts; injunctive relief.**

A. No telecommunications service provider shall engage in anti-competitive acts or practices in connection with its provision of telecommunications services including price discrimination, predatory pricing or tying arrangements, as such terms are commonly applied in antitrust law.

B. Any telecommunications service provider injured or threatened with injury by a violation of any of the provisions of this section or § 15.2-2160 15.2-2108.4 may maintain a cause of action for injunctive relief, damages, or both, and for reasonable costs and attorney's fees before the circuit court for the locality in which the injury occurs.

#### **§ 56-484.7:1. Offering of communications services.**

A. A county, city, town, electric commission or board, industrial development authority, or economic development authority, other than one in a locality that (i) is eligible to provide telecommunications services pursuant to § 15.2-2160 and (ii) has a population in excess of 30,000 has obtained a certificate from the Commission pursuant to § 56-265.4:4, may offer qualifying communications telecommunications services, or enter into public-private partnerships to offer such qualifying telecommunications telecommunications services, in accordance with the provisions of this article. For

purposes of this article, a "qualifying communications service" is a communications service, which shall include but is not limited to, high-speed data service and Internet access service, of general application, but excluding any cable television or other multi-channel video programming services. The county, city, town, electric commission or board, industrial development authority, or economic development authority shall demonstrate in its petition that the qualifying communications services do not meet the standard set forth in § 56-484.7:2 within the geographic area specified in the petition. No such services shall be offered unless, pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2 if prior to offering such services: (i) the county, city, town, electric commission or board, industrial development authority or economic development authority petitions the Commission to approve the offering of such qualifying communications telecommunications services within a specified geographic area the locality and (ii) the Commission, after notice and an opportunity for hearing in the affected area, issues a written order approving the petition or fails to approve or disapprove the petition within 60 days after notice. The 60-day period may be extended by Commission order for a period not to exceed an additional 60 days. The petition shall be deemed approved if the Commission fails to act within 60 days after notice or any extended period ordered by the Commission.

B. Each county, city, town, electric commission or board, industrial development authority, or economic development authority that provides communications telecommunications services pursuant to this article shall provide nondiscriminatory access to for-profit providers of communications services on a first-come, first-served basis to rights-of-way, poles, conduits or other permanent distribution facilities owned, leased or operated by the county, city, town, electric commission or board, industrial development authority, or economic development authority unless the facilities have insufficient capacity for such access and additional capacity cannot reasonably be added to the facilities.

C. The prices charged by a county, city, town, electric commission or board, industrial development authority, or economic development authority for providing communications services shall not be set at a price for the service lower than the prices charged by any incumbent provider for a functionally equivalent service that is as generally available from such incumbent as it is from such governmental entity.

D. No county, city, town, electric commission or board, industrial development authority, or economic development authority providing such qualifying communications services shall acquire by eminent domain the facilities or other property of any communications service provider to offer cable, telephone, data transmission or other information or online programming services except as provided in § 15.2-2108.12.

D. As used in this article, "telecommunications service" has the same meaning ascribed to such term in § 15.2-2108.2.

E. The Commission may promulgate rules necessary to implement this section.

#### **§ 56-484.7:2. Approval.**

The Commission shall find that it is in the public interest to approve the offering of qualifying communications services as defined in a petition filed pursuant to § 56-484.7:1 unless it shall be demonstrated to the Commission and found that, within the geographic area specified in the petition: (i) the qualifying communications service specified in the petition as provided for in § 56-484.7:1 is readily and generally in the specified geographic area available from each of three or more nonaffiliated companies and is functionally equivalent for consumers in that specified geographic area to one or more services offered by each of the three or more competitors; (ii) the petition is not in compliance with the requirements of § 56-484.7:1; or (iii) the offering of the proposed qualifying communications services will not benefit consumers.

#### **§ 56-484.7:4. Application of article to intragovernmental use of equipment and services.**

The Commission may revoke its approval of a petition under § 56-484.7:1 no earlier than five years after such approval if it finds (i) that the factors described in § 56-484.7:2 on which the approval was based no longer exist or are no longer being satisfied; or (ii) that the petitioner has not made satisfactory progress toward making generally available the qualifying communications services specified in the petition. If the Commission finds that such approval should be revoked, it shall determine a date by which the county, city, town, electric commission or board, or authority shall cease to offer such qualifying communications services. In determining such date the Commission shall allow a reasonable time for the entity to offer its equipment, infrastructure and other assets related to such qualifying communications services for sale at fair market value, which shall be deemed to be no less than the amount of the indebtedness, for such equipment, infrastructure and other assets related to such qualifying communications services. The provisions of this section article shall not apply to the use of telecommunications equipment and services for intragovernmental purposes as specified in § 15.2-1500.

2. That §§ 15.2-2108.6, 15.2-2108.7, 15.2-2108.8, 15.2-2108.13, and 15.2-2160 of the Code of Virginia are repealed.