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HOUSE BILL NO. 282

Offered January 13, 2016

Prefiled January 1, 2016

A BILL to amend and reenact §§ 2.2-3705.6 and 2.2-3711 of the Code of Virginia, relating to Freedom of Information Act; exclusion of records pursuant to nondisclosure agreement; vote on agreement.

Patron—Marshall, R.G.

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

- 1. That §§ 2.2-3705.6 and 2.2-3711 of the Code of Virginia are amended and reenacted as follows:**
§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

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

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

3. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention, *except as provided in subdivision A 40 of § 2.2-3711*; and memoranda, working papers, or other records related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where, if such records ~~are~~ were made public, the financial interest of the public body would be adversely affected.

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

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

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

7. Confidential proprietary records related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.

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

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

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

11. a. Memoranda, staff evaluations, or other records prepared by the responsible public entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (i) if such records were made public prior to or after the execution of an interim or a comprehensive agreement, § 33.2-1820 or

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

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

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

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

76 3. Stating the reasons why protection is necessary.

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

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

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

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

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

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

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

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

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

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

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

17. Records submitted as 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 22 (§ 23-277 et seq.) of Title 23 to the extent such records contain 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, if the disclosure of such information would be harmful to the competitive position of the applicant.

18. Confidential proprietary records 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, to the extent that disclosure of such records 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 records or portions thereof for which protection is sought, and (c) state the reasons why protection is necessary.

19. Confidential proprietary records 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 records required to be maintained in accordance with § 15.2-2160 shall be released.

20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial records 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 records 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. Documents and other information of a proprietary or confidential nature disclosed by a carrier to the State Health Commissioner pursuant to §§ 32.1-276.5:1 and 32.1-276.7:1.

22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including, but not limited to, financial records, 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 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 State Inspector General:

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

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

3. Stating the reasons why protection is necessary.

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

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

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

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

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

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

198 3. Stating the reasons why protection is necessary.

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

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

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

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

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

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

218 3. Stating the reasons why protection is necessary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. 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. In the case of boards of visitors of public institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-raising activities, and 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 Virginia 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 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 any legal entity 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.

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

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

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

12. 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.

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

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

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

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

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

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

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

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

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

358 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern
359 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
360 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
361 Virginia Medical School, as the case may be, have been delegated, in which there is discussed
362 proprietary, business-related information pertaining to the operations of the University of Virginia
363 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
364 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
365 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
366 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. In the case of the Virginia Commonwealth University Health System Authority, discussion or consideration of any of the following: the acquisition or disposition of real or personal property where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; operational plans that could affect the value of such property, real or personal, owned or desirable for ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies where disclosure of such strategies would adversely affect the competitive position of the Authority; members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other employees. This exemption shall also apply when the foregoing discussions occur at a meeting of the Virginia Commonwealth University Board of Visitors.

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 4.9 (§ 23-38.75 et seq.) of Title 23 is discussed.

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

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

28. Discussion or consideration of records excluded from this chapter pursuant to 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 records excluded from this chapter pursuant to 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 records excluded from this chapter pursuant to subdivision 9 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. [Expired.]

33. Discussion or consideration of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6.

34. 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 records and trade secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

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

36. 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 records excluded from this chapter pursuant to subdivision A 2 a of § 2.2-3706.

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

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

39. 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 § 23-38.80, or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this chapter pursuant to subdivision 25 of § 2.2-3705.7.

40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.6, *provided that no such exclusion on the basis of a promise of confidentiality pursuant to subdivision 3 of § 2.2-3705.6 shall be effective unless the public body approves the promise at an open meeting, and no such approval shall be effective for more than three months, subject to further three-month renewals.*

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

42. 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 records excluded from this chapter pursuant to subdivision 12 of § 2.2-3705.2.

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

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

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

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

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

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

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

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

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