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**SENATE BILL NO. 290**

Offered January 10, 2018

Prefiled January 8, 2018

*A BILL to amend and reenact §§ 2.2-3705.7, 15.2-2304, and 55-58.3 of the Code of Virginia and to repeal § 15.2-2305 of the Code of Virginia, relating to affordable dwelling unit ordinances.*

Patrons—McClellan and Dunnivant

Referred to Committee on General Laws and Technology

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

**1. That §§ 2.2-3705.7, 15.2-2304, and 55-58.3 of the Code of Virginia are amended and reenacted as follows:**

**§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain other limited exclusions.**

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. State income, business, and estate tax returns, personal property tax returns, and confidential records held pursuant to § 58.1-3.

2. Working papers and correspondence of the Office of the Governor, the Lieutenant Governor, or the Attorney General; the members of the General Assembly, the Division of Legislative Services, or the Clerks of the House of Delegates or the Senate of Virginia; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in the Commonwealth. However, no information that is otherwise open to inspection under this chapter shall be deemed excluded by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence. Further, information publicly available or not otherwise subject to an exclusion under this chapter or other provision of law that has been aggregated, combined, or changed in format without substantive analysis or revision shall not be deemed working papers. Nothing in this subdivision shall be construed to authorize the withholding of any resumes or applications submitted by persons who are appointed by the Governor pursuant to § 2.2-106 or 2.2-107.

As used in this subdivision:

"Members of the General Assembly" means each member of the Senate of Virginia and the House of Delegates and their legislative aides when working on behalf of such member.

"Office of the Governor" means the Governor; the Governor's chief of staff, counsel, director of policy, and Cabinet Secretaries; the Assistant to the Governor for Intergovernmental Affairs; and those individuals to whom the Governor has delegated his authority pursuant to § 2.2-104.

"Working papers" means those records prepared by or for a public official identified in this subdivision for his personal or deliberative use.

3. Information contained in library records that can be used to identify (i) both (a) any library patron who has borrowed material from a library and (b) the material such patron borrowed or (ii) any library patron under 18 years of age. For the purposes of clause (ii), access shall not be denied to the parent, including a noncustodial parent, or guardian of such library patron.

4. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services, and records and automated systems prepared for the Department's Bid Analysis and Monitoring Program.

5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by the political subdivision.

6. Information furnished by a member of the General Assembly to a meeting of a standing committee, special committee, or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of formulating advisory opinions to members on standards of conduct, or both.

7. Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but excluding the amount of utility service provided and the amount of money charged or paid for such utility service.

8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development

59 Authority concerning individuals who have applied for or received loans or other housing assistance or  
60 who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by  
61 the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the  
62 waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and  
63 housing authority created pursuant to § 36-4 concerning persons participating in or persons on the  
64 waiting list for housing assistance programs funded by local governments or by any such authority; or  
65 (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other  
66 local government agency concerning persons who have applied for occupancy or who have occupied  
67 affordable dwelling units established pursuant to § 15.2-2304 ~~or 15.2-2305~~. However, access to one's  
68 own information shall not be denied.

69 9. Information regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if  
70 disclosure of such information would have a detrimental effect upon the negotiating position of a  
71 governing body or on the establishment of the terms, conditions, and provisions of the siting agreement.

72 10. Information on the site-specific location of rare, threatened, endangered, or otherwise imperiled  
73 plant and animal species, natural communities, caves, and significant historic and archaeological sites if,  
74 in the opinion of the public body that has the responsibility for such information, disclosure of the  
75 information would jeopardize the continued existence or the integrity of the resource. This exclusion  
76 shall not apply to requests from the owner of the land upon which the resource is located.

77 11. Memoranda, graphics, video or audio tapes, production models, data, and information of a  
78 proprietary nature produced by or for or collected by or for the Virginia Lottery relating to matters of a  
79 specific lottery game design, development, production, operation, ticket price, prize structure, manner of  
80 selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of  
81 drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such  
82 information not been publicly released, published, copyrighted, or patented. Whether released, published,  
83 or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon  
84 the first day of sales for the specific lottery game to which it pertains.

85 12. Information held by the Virginia Retirement System, acting pursuant to § 51.1-124.30, or a local  
86 retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of trustees of a  
87 trust established by one or more local public bodies to invest funds for post-retirement benefits other  
88 than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the  
89 board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Virginia  
90 College Savings Plan, acting pursuant to § 23.1-704, relating to the acquisition, holding, or disposition  
91 of a security or other ownership interest in an entity, where such security or ownership interest is not  
92 traded on a governmentally regulated securities exchange, if disclosure of such information would (i)  
93 reveal confidential analyses prepared for the board of visitors of the University of Virginia, prepared by  
94 the retirement system, a local finance board or board of trustees, or the Virginia College Savings Plan,  
95 or provided to the retirement system, a local finance board or board of trustees, or the Virginia College  
96 Savings Plan under a promise of confidentiality of the future value of such ownership interest or the  
97 future financial performance of the entity and (ii) have an adverse effect on the value of the investment  
98 to be acquired, held, or disposed of by the retirement system, a local finance board or board of trustees,  
99 the board of visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this  
100 subdivision shall be construed to prevent the disclosure of information relating to the identity of any  
101 investment held, the amount invested, or the present value of such investment.

102 13. Financial, medical, rehabilitative, and other personal information concerning applicants for or  
103 recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority  
104 under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

105 14. Information held by the Virginia Commonwealth University Health System Authority pertaining  
106 to any of the following: an individual's qualifications for or continued membership on its medical or  
107 teaching staffs; proprietary information gathered by or in the possession of the Authority from third  
108 parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in  
109 awarding contracts for construction or the purchase of goods or services; information of a proprietary  
110 nature produced or collected by or for the Authority or members of its medical or teaching staffs;  
111 financial statements not publicly available that may be filed with the Authority from third parties; the  
112 identity, accounts, or account status of any customer of the Authority; consulting or other reports paid  
113 for by the Authority to assist the Authority in connection with its strategic planning and goals; the  
114 determination of marketing and operational strategies where disclosure of such strategies would be  
115 harmful to the competitive position of the Authority; and information of a proprietary nature produced  
116 or collected by or for employees of the Authority, other than the Authority's financial or administrative  
117 records, in the conduct of or as a result of study or research on medical, scientific, technical, or  
118 scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body  
119 or a private concern, when such information has not been publicly released, published, copyrighted, or  
120 patented. This exclusion shall also apply when such information is in the possession of Virginia

Commonwealth University.

15. Information held by the Department of Environmental Quality, the State Water Control Board, the State Air Pollution Control Board, or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such information shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prevent the disclosure of information related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.

16. Information related to the operation of toll facilities that identifies an individual, vehicle, or travel itinerary, including vehicle identification data or vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

17. Information held by the Virginia Lottery pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed.

18. Information held by the Board for Branch Pilots relating to the chemical or drug testing of a person regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary action by the Board for a positive test result.

19. Information pertaining to the planning, scheduling, and performance of examinations of holder records pursuant to the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer or his agents or employees or persons employed to perform an audit or examination of holder records.

20. Information held by the Virginia Department of Emergency Management or a local governing body relating to citizen emergency response teams established pursuant to an ordinance of a local governing body that reveal the name, address, including e-mail address, telephone or pager numbers, or operating schedule of an individual participant in the program.

21. Information held by state or local park and recreation departments and local and regional park authorities concerning identifiable individuals under the age of 18 years. However, nothing in this subdivision shall operate to prevent the disclosure of information defined as directory information under regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out requirements provided by such regulations. Access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For such information of persons who are emancipated, the right of access may be asserted by the subject thereof. Any parent or emancipated person who is the subject of the information may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such information for inspection and copying.

22. Information submitted for inclusion in the Statewide Alert Network administered by the Department of Emergency Management that reveal names, physical addresses, email addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless or portable communications device information, or operating schedules of individuals or agencies, where the release of such information would compromise the security of the Statewide Alert Network or individuals participating in the Statewide Alert Network.

23. Information held by the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

24. Information held by the Virginia Retirement System acting pursuant to § 51.1-124.30, a local retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement system), or the Virginia College Savings Plan, acting pursuant to § 23.1-704 relating to:

a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings Plan on the pursuit of particular investment strategies, or the selection or termination of investment managers, prior to the execution of such investment strategies or the selection or termination of such managers, if disclosure of such information would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan; and

b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a private entity to the retirement system or the Virginia College Savings Plan if disclosure of such records would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan.

For the records specified in subdivision b to be excluded from the provisions of this chapter, the entity shall make a written request to the retirement system or the Virginia College Savings Plan:

(1) Invoking such exclusion prior to or 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 retirement system or the Virginia College Savings Plan shall determine whether the requested exclusion from disclosure meets the requirements set forth in subdivision b.

Nothing in this subdivision shall be construed to prevent the disclosure of the identity or amount of any investment held or the present value and performance of all asset classes and subclasses.

25. Information held by the Department of Corrections made confidential by § 53.1-233.

26. Information maintained by the Department of the Treasury or participants in the Local Government Investment Pool (§ 2.2-4600 et seq.) and required to be provided by such participants to the Department to establish accounts in accordance with § 2.2-4602.

27. Personal information, as defined in § 2.2-3801, contained in the Veterans Care Center Resident Trust Funds concerning residents or patients of the Department of Veterans Services Care Centers, except that access shall not be denied to the person who is the subject of the information.

28. Information maintained in connection with fundraising activities by the Veterans Services Foundation pursuant to § 2.2-2716 that reveal the address, electronic mail address, facsimile or telephone number, social security number or other identification number appearing on a driver's license, or credit card or bank account data of identifiable donors, except that access shall not be denied to the person who is the subject of the information. Nothing in this subdivision, however, shall be construed to prevent the disclosure of information relating to the amount, date, purpose, and terms of the pledge or donation or the identity of the donor, unless the donor has requested anonymity in connection with or as a condition of making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the foundation for the performance of services or other work or (ii) the terms and conditions of such grants or contracts.

29. Information prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state prosecutors or law-enforcement personnel, where such information is not otherwise available to the public and the disclosure of such information would reveal confidential strategies, methods, or procedures to be employed in law-enforcement activities or materials created for the investigation and prosecution of a criminal case.

30. Information provided to the Department of Aviation by other entities of the Commonwealth in connection with the operation of aircraft where the information would not be subject to disclosure by the entity providing the information. The entity providing the information to the Department of Aviation shall identify the specific information to be protected and the applicable provision of this chapter that excludes the information from mandatory disclosure.

31. Information created or maintained by or on the behalf of the judicial performance evaluation program related to an evaluation of any individual justice or judge made confidential by § 17.1-100.

32. Information reflecting the substance of meetings in which (i) individual sexual assault cases are discussed by any sexual assault team established pursuant to § 15.2-1627.4 or (ii) individual child abuse or neglect cases or sex offenses involving a child are discussed by multidisciplinary child abuse teams established pursuant to § 15.2-1627.5. The findings of any such team may be disclosed or published in statistical or other aggregated form that does not disclose the identity of specific individuals.

33. Information contained in the strategic plan, marketing plan, or operational plan prepared by the Virginia Economic Development Partnership Authority pursuant to § 2.2-2237.1 regarding target companies, specific allocation of resources and staff for marketing activities, and specific marketing activities that would reveal to the Commonwealth's competitors for economic development projects the strategies intended to be deployed by the Commonwealth, thereby adversely affecting the financial interest of the Commonwealth. The executive summaries of the strategic plan, marketing plan, and operational plan shall not be redacted or withheld pursuant to this subdivision.

#### **§ 15.2-2304. Affordable dwelling unit ordinances.**

In furtherance of the purpose of providing affordable shelter for all residents of the Commonwealth, the governing body of any county where the urban county executive form of government or the county manager plan of government is in effect, the Counties of Albemarle and Loudoun, and the Cities of Alexandria and Fairfax locality may by amendment to the zoning ordinances of such locality provide for an affordable housing dwelling unit program. The program shall address housing needs, promote a full range of housing choices, and encourage the construction and continued existence of moderately priced and affordable housing by providing for optional increases in density in order to reduce land costs for such moderately priced housing. Any project that is subject to an affordable housing dwelling unit program adopted pursuant to this section shall not be subject to an additional requirement outside of

such program to contribute to a county or city housing fund.

Any local ordinance of any other locality providing optional increases in density for provision of low and moderate income housing adopted before December 31, 1988, shall continue in full force and effect.

**§ 55-58.3. Priority of residential refinance mortgage over subordinate mortgage.**

A. As used in this section:

"Prior mortgage" means a mortgage, deed of trust, or other instrument encumbering or conveying an interest in residential real estate containing not more than one dwelling unit to secure a financing.

"Refinance mortgage" means a mortgage, deed of trust, or other instrument encumbering or conveying an interest in residential real estate containing not more than one dwelling unit to secure a refinancing.

"Refinancing" means the replacement of a loan secured by a prior mortgage with a new loan secured by a refinance mortgage and the payment in full of the debt owed under the original loan secured by the prior mortgage.

"Subordinate mortgage" means a mortgage or deed of trust securing an original principal amount not exceeding \$150,000, encumbering or conveying an interest in residential real estate containing not more than one dwelling unit that is subordinate in priority (i) under subdivision A 1 of § 55-96 or (ii) as a result of a previous refinancing.

B. Upon the refinancing of a prior mortgage, a subordinate mortgage shall retain the same subordinate position with respect to a refinance mortgage as the subordinate mortgage had with the prior mortgage, provided that:

1. Such refinance mortgage states on the first page thereof in bold or capitalized letters: "THIS IS A REFINANCE OF A (DEED OF TRUST, MORTGAGE OR OTHER SECURITY INTEREST) RECORDED IN THE CLERK'S OFFICE, CIRCUIT COURT OF (NAME OF COUNTY OR CITY), VIRGINIA, IN DEED BOOK \_\_\_\_\_, PAGE \_\_\_\_\_, IN THE ORIGINAL PRINCIPAL AMOUNT OF \_\_\_\_\_, AND WITH THE OUTSTANDING PRINCIPAL BALANCE WHICH IS \_\_\_\_\_.";

2. The principal amount secured by such refinance mortgage does not exceed the outstanding principal balance secured by the prior mortgage plus \$5,000; and

3. The interest rate is stated in the refinance mortgage at the time it is recorded and does not exceed the interest rate set forth in the prior mortgage.

C. The priorities among two or more subordinate mortgages shall be governed by subdivision A 1 of § 55-96.

D. The provisions of subsection B shall not apply to a subordinate mortgage securing a promissory note payable to any county, city or town or any agency, authority or political subdivision of the Commonwealth if such subordinate mortgage is financed pursuant to an affordable dwelling unit ordinance adopted pursuant to § 15.2-2304 ~~or 15.2-2305~~, or pursuant to any program authorized by federal or state law or local ordinance or resolution, for (i) low- and moderate-income persons or households or (ii) improvements to residential potable water supplies and sanitary sewage disposal systems made to address an existing or potential public health hazard, and which mortgage, if recorded on or after July 1, 2003, states on the first page thereof in bold or capitalized letters: "THIS (DEED OF TRUST, MORTGAGE OR OTHER SECURITY INTEREST) SHALL NOT, WITHOUT THE CONSENT OF THE SECURED PARTY HEREUNDER, BE SUBORDINATED UPON THE REFINANCING OF ANY PRIOR MORTGAGE."

**2. That § 15.2-2305 of the Code of Virginia is repealed.**