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**SENATE BILL NO. 329**

Offered January 13, 2016

Prefiled January 8, 2016

*A BILL to amend and reenact §§ 2.2-3705.6, 2.2-3711, 15.2-2160, 15.2-7202, 15.2-7203, 15.2-7205 through 15.2-7208, and 56-265.4:4 of the Code of Virginia and to repeal § 15.2-2108.18 of the Code of Virginia, relating to the BVU Authority.*

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Patron—Carrico

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Referred to Committee on Local Government

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

**1. That §§ 2.2-3705.6, 2.2-3711, 15.2-2160, 15.2-7202, 15.2-7203, 15.2-7205 through 15.2-7208, and 56-265.4:4 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 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; 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 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

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59 Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (i) if such records were  
60 made public prior to or after the execution of an interim or a comprehensive agreement, § 33.2-1820 or  
61 56-575.17 notwithstanding, the financial interest or bargaining position of the public entity would be  
62 adversely affected, and (ii) the basis for the determination required in clause (i) is documented in writing  
63 by the responsible public entity; and

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

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

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

78 3. Stating the reasons why protection is necessary.

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

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

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

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

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

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

182 General shall make a written determination of the nature and scope of the protection to be afforded by it  
183 under this subdivision.

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

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

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

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

201 3. Stating the reasons why protection is necessary.

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

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

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

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

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

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

221 3. Stating the reasons why protection is necessary.

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

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

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

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

243 In order for the records 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:

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.

**§ 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.

13. 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.

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

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

16. 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 exempted from disclosure under subdivision 6 of § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

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

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 records excluded from this chapter pursuant to subdivision 3 or 4 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 of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23-38.80, 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 Rector and Visitors of the University of Virginia, prepared by the retirement system or by the Virginia College Savings Plan or provided to the retirement system 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, the Rector and 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, and 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.

22. Those portions of meetings of the University of Virginia Board of Visitors 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. 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. *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.).*

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.

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.

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

A. Any locality that operates an electric distribution system may provide telecommunications services, including local exchange telephone service as defined in § 56-1, within or outside its boundaries if the locality obtains a certificate pursuant to § 56-265.4:4. Such locality may provide telecommunications services within any locality in which it has electric distribution system facilities as



of March 1, 2002. Any locality providing telecommunications services on March 1, 2002, may provide telecommunications, Internet access, broadband, information, and data transmission services within any locality within 75 miles of the geographic boundaries of its electric distribution system as such system existed on March 1, 2002. *The BVU Authority may provide telecommunications, Internet access, broadband, information, and data transmission services as provided in the BVU Authority Act (§ 15.2-7200 et seq.).*

B. A locality that has obtained a certificate pursuant to § 56-265.4:4 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) 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.).

C. Each locality that has obtained a certificate pursuant to § 56-265.4:4 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.

D. 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 B 5 of § 56-265.4:4. The provisions of this subsection shall not apply to Internet access, broadband, information, and data transmission services provided by any locality providing telecommunications services on March 1, 2002.

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

F. Public records of a locality that has obtained a certificate pursuant to § 56-265.4:4, 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 subsection, 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 subsection shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).*

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

#### **§ 15.2-7202. Definitions.**

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

"Authority" means the BVU Authority created by entity conversion of Bristol Virginia Utilities by this chapter.

"Board," "Authority Board," or "Board of Directors" means the governing body of the Authority.

"Bonds" means any bonds, notes, debentures, bond acceptance notes, or other evidence of financial indebtedness either issued or assumed by the Authority pursuant to this chapter.

"Bristol Virginia Utilities Board" means the Board of Directors of Bristol Virginia Utilities governing that entity until the Authority Board takes office on July 1, 2010.

"City" means the City of Bristol, Virginia.

"City Council" means the City Council of the City of Bristol, Virginia.

"Commission" means the Virginia State Corporation Commission.

"Commonwealth" means the Commonwealth of Virginia.

"Infrastructure" means all property, whether attached to real property or not, now used by Bristol

Virginia Utilities and hereafter used by the Authority for the provision of (i) electric, water, sewer, telecommunications, internet, and cable television services and (ii) all other utility, ~~management, and consulting~~ services the Authority may lawfully provide.

"MLEC" means any city, county, or town certificated to provide local exchange and/or interexchange telecommunications services pursuant to § 56-265.4:4 and any authority granted such powers pursuant to § 15.2-7209.

"Political subdivision" means, *when referring to an entity other than the Authority*, a locality, authority, or other public body of the Commonwealth or of any state in which the Authority does business.

"Utility," "utilities," or "utility services" means and includes electric, water, sewer, and telecommunications, internet and cable television services, including all other services that might be lawfully rendered by use of its fiber optic system.

**§ 15.2-7203. BVU Authority; operating name or names.**

The name of the Authority shall be "BVU Authority."

The BVU Authority is hereby authorized to operate under the names BVU, BVU OptiNet, CPC OptiNet, and BVU Focus. The name of the Authority and any division or operating name may be changed upon approval of a simple majority of the Board of Directors. The Board of Directors may adopt additional operating names in the future. ~~If it does so, it~~ *The Authority* shall comply with requisite fictitious name recording requirements for any areas in which it is doing business.

**§ 15.2-7205. Board of Directors; membership.**

A. The powers of the Authority shall be vested in ~~an~~ *the* Authority Board of Directors consisting of ~~nine~~ *seven* directors. The number of Directors ~~on the Board may directors shall not be increased~~ *altered* by the Authority Board.

B. ~~The Authority's Authority Board, which will initially take office on July 1, 2010. However, beginning on July 1, 2016, the Authority Board shall be constituted as follows:~~

1. ~~Four~~ *One* director who is a citizen of the City of Bristol, Virginia, ~~citizen appointees and is not a member of the Bristol City Council, appointed by the Governor. The four Bristol, Virginia, citizen appointees currently on the Bristol Virginia Utilities Board are hereby directors on the Authority's Board and their respective terms are extended on the Authority Board as follows:~~

a. The term ending June 30, 2010, will be extended to end June 30, 2014.

b. The term ending June 30, 2011, will be extended to end June 30, 2015.

c. The second term ending June 30, 2011, will be extended to end June 30, 2016.

d. The term ending June 30, 2012, will be extended to end June 30, 2016.

Each of said members will thereafter be eligible for one additional consecutive four-year term pursuant to the limitation set forth herein.

2. ~~Two members appointed by One director who is a member of the Bristol City Council who are members of, appointed by the Bristol City Council serving on the Bristol Virginia Utilities Board as of June 1, 2010. Such members shall to serve a four-year term, coterminous with their his term on the Council, commencing July 1, 2010. Should no present member of Council serving on the Bristol Virginia Utilities Board be a member of Council on that date, Council may appoint two other members of Council to serve on the initial Authority Board for a term that is coterminous with that member's term on Council.~~

3. ~~One new Bristol, Virginia, citizen, who is not a city council member. Such citizen will be director who is a citizen of Washington County and is not a member of the Washington County Board of Supervisors, appointed by the Bristol, Virginia, City Council and shall serve a term from July 1, 2010, until June 30, 2015 Senate Committee on Rules.~~

4. ~~One new member, a director who is a citizen of Washington County or the City of Bristol, Virginia, citizen, appointed by the Bristol Virginia Utilities Board whose term will start July 1, 2010, and end June 30, 2014 who is engaged in business and is not a member of the Washington County Board of Supervisors or Bristol City Council, appointed by the Authority Board.~~

5. ~~One director who is a member of the Board of Supervisors of Washington County, Virginia, who will be Board of Supervisors, appointed by that the Washington County Board of Supervisors to serve a four-year term coterminous with his or her term on the Board of Supervisors commencing July 1, 2010.~~

6. ~~One director who is a member of the Abingdon Town Council, appointed by the Abingdon Town Council to serve a four-year term coterminous with his term on the Town Council.~~

7. ~~One director who is a Scott County citizen and is not a member of the Scott County Board of Supervisors, appointed by the Speaker of the House of Delegates.~~

C. If any appointments to the initial Board are made prior to the effective date of this chapter, such appointments shall be deemed valid and effective as of such date *The four-year term of all directors shall begin July 1, 2016. The term of Authority Board membership for any director thereafter shall be four years.*

D. The City Council shall elect, in addition to its Council members, three of the Bristol, Virginia,

citizen Board members when the above terms expire. The remaining three Bristol, Virginia, citizen members will be elected by the Authority Board when the above terms expire. The City Council and the Authority Board will alternate electing persons to fill an expiring term until each has appointed the number it appoints to the Board. Any vacancy in a term shall be filled by the body making the original appointment and shall be for the remainder of the term. Said appointment shall be made within 30 days from the date the vacancy occurs.

E. The term of the Council members shall be for four years coterminous with those members' terms of office on the City Council. Those City Council Members *Each director who is a member of the Abingdon Town Council, Bristol City Council, or Washington County Board of Supervisors* may serve as many terms as the City Council appointing governing body decides as long as the appointees are members *appointee remains a member of the City Council relevant governing body.* The City Council governing body may appoint other members a different member of the City Council or Board of Supervisors at the end of any appointee's four-year Council or Board term or upon the exit of the Council member from the Council governing body. In the latter case, the Council Member will new appointee shall serve for the remainder of the term vacated by an exiting City Council member of the governing body.

F. All other directors shall serve four-year terms, except for the longer appointments to the initial Board. Those directors may serve a maximum of two terms and then must be off the Board for one full year before election to fill another full term or to fill the remainder of a vacated term.

G. E. If funds are available, each director may be reimbursed by the Authority for the amount of actual expenses incurred by him in the performance of his duties. Such expense allowance shall constitute a cost of operation and maintenance of such utility systems and shall be prorated among each of the systems it manages using the "3-Factor" *"Three-Factor"* allocation method approved by the Commission. The three factors consist of the percentages that each division comprises of total plant in service, total operating revenues, and total customer accounts. Once each operating division's percentage of each of the three factors is calculated, the sum of the three factors divided by 3 *three* results in the operating division's share of the total direct or indirect costs.

#### **§ 15.2-7206. Organization; compensation.**

A. *The following provisions apply to the Board of Directors:*

A simple majority 1. Five of the directors in office shall constitute a quorum. No vacancy in the Board of Directors shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

2. The Board of Directors shall hold regular meetings at such times and places as may be established by its bylaws. *The Board shall hold its meetings as provided in § 2.2-3707.*

3. The Board of Directors shall hold its first organizational meeting on July 1, 2010.

Bylaws 4. *The Board shall adopt bylaws governing the conduct of business by the Board and the Authority. Proposed bylaws shall be made available before being duly adopted and published at said at each annual meeting. The Board is authorized to adopt bylaws governing the amendment of bylaws at any time.*

Also at said meeting, the 5. The Board of Directors shall annually elect a chairman and a vice-chairman from its membership and a secretary of the Board from *either its membership or* the staff of the Authority to take office as of that same date. Thereafter the Board of Directors shall annually elect a chairman and a vice-chairman from its membership and a secretary from the staff of the Authority at its June annual meeting, to take office on the following July 1. The terms of such officers shall be for one year.

The Board of Directors shall continue to appoint and contract with a president and CEO to manage the operations of the Authority and a licensed attorney to serve as general counsel for the Authority, and the contracts with the president and general counsel of Bristol Virginia Utilities shall continue in effect and be binding upon the Authority. The Board of Directors shall also authorize the position of executive vice-president and CFO, to be filled and managed by the president. The president shall have the authority to hire, fire, and manage such staff as the president deems expedient to the operation of the Authority, subject to the availability of budgeted funds, and to assign such positions, titles, powers, and duties at such salaries as the president deems most effective for the efficient operation of the Authority.

Except for the purpose of inquiry, the 6. The Board and its individual members shall deal with Authority employees solely through the president. Neither the Board nor any member thereof shall *The Board shall not* give orders to any of the subordinates of the president, either publicly or privately. Any such orders or other interferences on the part of the Board or any of its members with subordinates or appointees of the president, instead of dealing or communicating directly with the president, are prohibited.

Neither shall the Board or any of its members 7. *The Board shall not* direct the appointment or removal of any person from any office or employment by Authority contractor or employee other than

the president or any of his subordinates. Nothing herein shall be construed to limit or prohibit contact with the president and general counsel, both of whom report directly to the Board.

The Board of Directors shall make and, by recorded affirmative vote of three-fourths of all members, amend and repeal bylaws governing the manner in which the Authority's business may be transacted and in which the power granted to it may be enjoyed not inconsistent with this chapter. The initial set of such bylaws shall be adopted at the first regular meeting of the Board following the Board's first organizational meeting. The Board of Directors may appoint such committees as it may deem advisable and fix the duties and responsibilities of such committees. The Board of Directors shall have the power to request amendments to this chapter as set forth by the Code of Virginia that the Board deems necessary and expedient for the proper operation of the Authority.

8. The Board may appoint committees from among its membership in accordance with its bylaws.

9. No Board member shall receive any financial compensation for service on the Board. The Board may reimburse members for reasonable expenses they incur while serving on the Board. Any member seeking reimbursement shall itemize and document by receipts such expenses pursuant to subsection E of § 15.2-7205.

B. The following provisions apply to the president:

1. The Board shall continue to appoint and contract with a president to manage the operations of the Authority, and the contract with the president that is in effect as of January 1, 2016, shall continue in effect and be binding upon the Authority.

2. The term of the president's employment contract shall not exceed three years. The board may vote to renew the contract of the president for additional terms not to exceed three years each.

3. The president's employment contract shall not contain a severance payout upon termination amounting to more than 12 months of his base salary.

4. The president shall have the sole authority to hire, fire, and manage such staff and contractors as the president deems expedient to the operation of the Authority, subject to the availability of budgeted funds, and to assign such positions, titles, powers, and duties at such salaries as the president deems most effective for the efficient operation of the Authority.

5. The president shall not have the power to enter into an employment contract with any employee of the Authority unless the Board ratifies such contract by a majority vote in an open meeting. Such contract shall be subject to the term and severance payout restrictions applicable to the president's contract as provided in subdivisions 2 and 3.

6. The Board may appoint an employee as acting president during any period of vacancy. The Board shall advertise the vacancy of the presidency and accept applications from candidates interested in filling the vacancy.

C. The Board shall vote annually to retain outside legal counsel to advise the Authority on legal matters. The legal counsel shall be licensed to practice law in the Commonwealth, shall not be an employee of the Authority, and shall be separate from and independent of any legal counsel for the City of Bristol, Scott County, or Washington County.

D. The Board shall authorize the position of executive vice-president/CFO, to be filled and managed by the president.

#### § 15.2-7207. Powers generally.

A. The Authority is hereby granted all powers reasonably necessary or appropriate to carry out the purposes of this chapter in order to provide electric, water, sewer, and telecommunication and related services, including without limitation, cable television internet, and all other services that might be lawfully rendered by use of the Authority's fiber optic system, subject to all existing applicable limitations and restrictions thereon. Such powers include, without limitation, except as set forth hereafter, the following:

1. To adopt bylaws for the regulation of its affairs and the conduct of its business;

2. To sue and be sued in the Authority's name;

3. To have perpetual succession;

4. To adopt a corporate seal and alter the same at its pleasure;

5. 4. To maintain offices at such places as it may designate;

6. 5. To appoint, employ, or engage such officers, employees, architects, engineers, attorneys, accountants, financial advisors, investment bankers, and other advisors, consultants, and agents as may be necessary or appropriate, and to fix their duties and compensation;

7. 6. To establish personnel rules;

8. 7. To make, assume, and enter into all contracts, leases, and arrangements necessary or incidental to the exercise of its powers, including contracts for the management or operation of all or any part of its facilities;

9. 8. To borrow money, as hereinafter provided, and to borrow money for the purpose of meeting casual deficits in its revenues;

10. 9. To provide electric, water, sewer, and telecommunication and related services, including

without limitation, cable television, internet, and all other services that might be lawfully rendered by use of the Authority's fiber optic system as set forth in § 15.2-7208 subject to all ~~existing~~ *applicable* restrictions and limitations thereon;

~~11.~~ 10. To determine fees, rates, and charges for the services and products it provides, subject only to such state or federal regulation as the Tennessee Valley Authority (TVA) or other cognizant state or federal agency may impose by order, rulemaking, contract or otherwise, including, without limitation, electric, water and sewer, and internet and cable television services, including all other services that might be rendered by use of its fiber optic system, furnished by the Authority. MLEC telephone service, including rates, is regulated by the Commission. All rate increases for services other than electric, which are set by the TVA, and telephone, which are set by the Commission and applicable law, shall require a favorable vote at two meetings, one of which must be a regular meeting of the BVU Authority Board.

~~The Authority may assess such rates and charges for such services or products in such manner mutatis mutandis as BVU or the City has the authority to do so at present subject to the same restrictions and limitations thereon;~~

~~12.~~ 11. To adopt, amend, and repeal rules and regulations for the use, maintenance, and operation of its facilities and utility services and governing the conduct of persons and organizations using its facilities or obtaining its utility services and to enforce such rules and regulations and all other rules, regulations, ordinances, and statutes relating to its facilities and services, as authorized by the enacting body of such rules, regulations, ordinances, and statutes. The civil penalty for violation of any such rules and regulations shall be set forth in the rules and may be enforced by the Authority by direct action in terminating services and by the imposition of monetary penalties to be billed to the customer. The Authority may request the governing body of each locality in which it does business to impose by ordinance such penal liability for violation of such rules and regulations as such body deems appropriate;

~~13. To~~ 12. *Subject to subdivision 20, to apply for and accept gifts or grants of money or gifts, grants or loans of other property or other financial assistance from the United States of America and agencies and instrumentalities thereof, this Commonwealth and political subdivisions, agencies and instrumentalities thereof, or any other person or entity, for or in aid of the construction, acquisition, ownership, operation, maintenance, or repair of its infrastructure or for the payment of principal of any indebtedness of the Authority, interest thereon, or other cost incident thereto, or for the operation of any of its services, or for any other purpose of the Authority, and to this end the Authority shall have the power to render such services, comply with such conditions, and execute such agreements and legal instruments as may be necessary, convenient or desirable or imposed as a condition to such financial aid;*

~~14.~~ 13. Subject to subdivision ~~16~~ 15 and all existing limitations and restrictions thereon, to acquire, establish, construct, enlarge, improve, maintain, equip, operate, and regulate electric, water, sewer, telecommunications, internet and cable television services, including all other services that might be rendered by use of its fiber optic system, and other infrastructure and facilities that are owned or managed by the Authority within the territorial areas in which it operates or provides services;

~~15.~~ 14. To construct, install, maintain, and operate facilities and infrastructure for managing its utility, consulting and operational management services. The Authority shall have the power and duty to manage and operate the electric, public lighting, water, sewerage, telecommunications, internet and cable television services, including all other services that might be rendered by use of its fiber optic system directly subject to all existing limitations and restrictions thereon, or it may subcontract such functions. The Authority shall construct, maintain, and operate all facilities necessary thereto; shall sell and distribute to the public electric power, light, water, sewer, telecommunications, internet and cable television, and other services as they now exist or may exist in the future subject to all existing limitations and restrictions thereon; and shall collect the rates and charges provided for all such services;

~~16.~~ 15. To own, purchase, lease, obtain options upon, acquire by gift, grant, or bequest or otherwise acquire any property, real or personal, or any interest therein, and in connection therewith to assume or take subject to any indebtedness secured by such property and dispose of any or all such properties as is deemed appropriate by the Board. The Authority shall have the power of eminent domain to acquire property and easements as needed for its ~~various utility~~ *electric power, light, water, and sewer* services within the areas it provides or can provide such services. The power of eminent domain shall not include the power to acquire existing telecommunications, internet or cable facilities, which is expressly prohibited, and the Authority shall not accept or receive any telecommunications, internet or cable facilities from an entity that acquired such facilities by use of eminent domain *for the purpose of conveying them to the Authority*;

~~17.~~ 16. To purchase and maintain insurance or provide indemnification on behalf of any person who is or was a director, officer, employee, or agent of the Authority and on behalf of the Authority itself against any liability asserted against it or him or incurred by it or him in any such capacity or arising

797 out of his status as such;

798 ~~18.~~ 17. To establish and charge such fees as it deems appropriate for attachment to or inclusion in  
799 the Authority's infrastructure, including but not limited to its poles, conduits, and collocation co-location  
800 sites, subject to all existing limitations and restrictions thereon. Such fees shall be designed to encourage  
801 third-party use of such infrastructure as provided in subdivision 20 and shall be based upon the  
802 principles established by the Federal Communications Commission for pole attachments, conduit  
803 occupancy, and co-location, including terms and price;

804 ~~19.~~ 18. To fund economic development projects that provide broadband infrastructure to unserved  
805 areas as set forth in subdivision 20 and subsection C and, in advance of economic development  
806 projects, to enter into contracts, to borrow money and to do all other such acts as will allow it to  
807 encourage and support economic development; and

808 ~~20.~~ 19. To have police powers on all of the properties of the Authority within the Commonwealth,  
809 exercised through appointment of an armed conservator of the peace. The President president of the  
810 Authority may apply to the circuit court for any locality in which the Authority has property for the  
811 appointment of one or more special conservators of the peace under procedures specified by Chapter 2  
812 (§ 19.2-12 et seq.) of Title 19.2 of the Code of Virginia or any successor provisions. Any such special  
813 conservator of the peace shall have, within the lands and facilities controlled by the Authority, the  
814 powers, functions, duties, responsibilities, and authority of any other armed conservator of the peace.  
815 Nothing in this section shall be construed to prevent the conservator of the peace currently serving  
816 Bristol Virginia Utilities from continuing as an armed special conservator of the peace for the Authority  
817 during the remainder of his term, if not removed for cause; and

818 20. To build or facilitate the building of, as the first broadband priority of the Authority, wired  
819 broadband infrastructure to serve residents in the Authority's lawful service area who are not served by  
820 any wired broadband service provider. The president of the Authority shall annually provide the Board  
821 with a report detailing (i) the number of requests for broadband services received from residents in  
822 unserved areas, (ii) the number of such requests for which the Authority has provided a connection to  
823 broadband services, and (iii) the costs of providing such broadband service.

824 B. The Authority is authorized to (i) operate only in Virginia and Tennessee; (ii) offer broadband  
825 services only in Sullivan County, Tennessee; the City of Bristol, Virginia; and Buchanan, Dickinson,  
826 Russell, Scott, Smyth, Tazewell, Washington, and Wythe Counties in Virginia, together with any towns  
827 located in such counties; and (iii) offer cable television services or other video services only within the  
828 electric utility service territory of Bristol Virginia Utilities as it existed on December 31, 2009, in the  
829 City of Bristol, Virginia, and Washington County.

830 C. Whenever any grant, loan, or application for such grant or loan includes or refers to funding for  
831 broadband deployment, the Authority shall ensure that (i) funds are allocated to the maximum extent  
832 possible to projects that expand broadband deployment to areas, residents, or businesses that are  
833 unserved by wired broadband; (ii) in any funding of grants for broadband deployment that include  
834 areas already served by wired broadband, such areas already served are incidental to and are crossed  
835 only for the purpose of reaching an unserved area; and (iii) any broadband network built will be  
836 operated on an open-access basis, available to multiple broadband providers, with dark fibers and  
837 capacity sufficient for competitive broadband providers to lease the same from the Authority at  
838 commercially reasonable rates.

839 D. The Authority shall not seek to become or establish a wireless service authority under the  
840 Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) or contract for services with such an  
841 authority.

842 E. The Authority shall not solicit or contract with any locality or other entity possessing the power  
843 of eminent domain in order to cause such a third party to exercise its power of eminent domain to  
844 acquire any easements or other property where the Authority itself lacks such power.

845 F. The Authority shall not have the power to make charitable donations.

846 **§ 15.2-7208. Powers.**

847 ~~The~~ Unless limited elsewhere in this chapter, the Authority shall have those powers possessed by the  
848 City of Bristol necessary and convenient for the provision of electric, water and sanitary sewer services,  
849 and those powers possessed by the Bristol Virginia Utilities Board and the division of the city known as  
850 Bristol Virginia Utilities as they existed on July 1, 2001, in the Charter of the City of Bristol, Virginia,  
851 and the general laws of the Commonwealth. ~~The~~ Unless limited elsewhere in this chapter, the Authority  
852 shall also possess all those powers, subject to the limitations and restrictions thereon, as granted to the  
853 City, the Bristol Virginia Utilities Board, and BVU by Chapter 479 of the Acts of Assembly of 2002,  
854 Chapters 539, 546, and 677 of the Acts of Assembly 2003, Chapter 586 of the Acts of Assembly of  
855 2004, Chapter 258 of the Acts of Assembly of 2005, Chapters 607 and 682 of the Acts of Assembly of  
856 2007, and Chapters 99 and 323 of the Acts of Assembly of 2008.

857 **§ 56-265.4:4. Certificate to operate as a telephone utility.**

858 A. The Commission may grant certificates to competing telephone companies, or any county, city or

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

B. 1. After notice to all local exchange carriers certificated in the Commonwealth and other interested parties and following an opportunity for hearing, the Commission may grant certificates to any telephone company, or any county, city or town that operates an electric distribution system, proposing to furnish local exchange telephone service in the Commonwealth. In determining whether to grant a certificate under this subsection, the Commission may require that the applicant show that it possesses sufficient technical, financial, and managerial resources. Before granting any such certificate, the Commission shall: (i) consider whether such action reasonably protects the affordability of basic local exchange telephone service, as such service is defined by the Commission, and reasonably assures the continuation of quality local exchange telephone service; and (ii) find that such action will not unreasonably prejudice or disadvantage any class of telephone company customers or telephone service 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 § 15.2-2160, 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; (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 of this subsection.

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, (ii) shall have the same duties and obligations as other certificated

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

932 6. A locality that has obtained a certificate pursuant to this section shall (i) comply with all  
933 applicable laws and regulations for the provision of telecommunications services; (ii) make a reasonable  
934 estimate of the amount of all federal, state, and local taxes (including income taxes and consumer utility  
935 taxes) that would be required to be paid or collected for each fiscal year if the locality were a for-profit  
936 provider of telecommunications services, (iii) prepare reasonable estimates of the amount of any  
937 franchise fees and other state and local fees (including permit fees and pole rental fees), and  
938 right-of-way charges that would be incurred in each fiscal year if the locality were a for-profit provider  
939 of telecommunications services, (iv) prepare and publish annually financial statements in accordance  
940 with generally accepted accounting principles showing the results of operations of its provision of  
941 telecommunications services, and (v) maintain records demonstrating compliance with the provisions of  
942 this section that shall be made available for inspection and copying pursuant to the Virginia Freedom of  
943 Information Act (§ 2.2-3700 et seq.).

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

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

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

961 10. Public records of a locality that has obtained a certificate pursuant to this section, which records  
962 contain confidential proprietary information or trade secrets pertaining to the provision of  
963 telecommunications service, shall be exempt from disclosure under the Freedom of Information Act  
964 (§ 2.2-3700 et seq.). As used in this subdivision, a public record contains confidential proprietary  
965 information or trade secrets if its acquisition by a competing provider of telecommunications services  
966 would provide the competing provider with a competitive benefit. *However, the exemption provided by*  
967 *this subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200*  
968 *et seq.).*

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

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

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



- 982 2. That § 15.2-2108.18 of the Code of Virginia is repealed.  
983 3. That this act shall not be construed to affect the contract of employment existing between the  
984 BVU Authority or BVU Board of Directors and the Executive Vice-President and Chief Financial  
985 Officer of the BVU Authority as of the effective date of this act.  
986 4. That the members of the Board of Directors of the BVU Authority in office on June 30, 2016,  
987 are hereby removed from office as of July 1, 2016. Notwithstanding the appointment of any  
988 director on or before July 1, 2010, or of his successor, any term of office begun before July 1,  
989 2016, and scheduled to end after that date is hereby terminated.  
990 5. That no later than July 1, 2016, the Auditor of Public Accounts shall examine the accounts and  
991 books of the BVU Authority.  
992 6. That an emergency exists and this act is in force from its passage.

**INTRODUCED**

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