

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

**Public-Private Education Facilities and Infrastructure P 4-22**

The Lynchburg City School Board has adopted procedures for considering proposals under the Public-Private Education Facilities and Infrastructure Act of 2002. The submission and consideration of proposals under the PPEA will comply with the requirements of the Act and the Board's procedures.

Legal Reference:**CHAPTER 571**

*An Act to amend and reenact § 2.2 -3705 of the Code of Virginia and to amend the Code of Virginia by adding in Title 56 a chapter numbered 22.1, consisting of sections numbered 56-575.1 through 56-575.16, relating to the Public-Private Education Facilities and Infrastructure Act of 2002.*

[S 681]

Approved April 6, 2002

Be it enacted by the General Assembly of Virginia:

1. That § [2.2-3705](#) of the Code of Virginia is amended and reenacted and the Code of Virginia is amended by adding in Title 56 a chapter numbered 22.1, consisting of sections numbered [56-575.1](#) through [56-575.16](#), as follows:

§ [2.2-3705](#). Exclusions to application of chapter.

A. 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. Confidential records of all investigations of applications for licenses and permits, and all licensees and permittees made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, or the Charitable Gaming Commission.
2. State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § [58.1-3](#).
3. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. However, no student shall have access to (i) financial records of a parent or guardian or (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, which are in the sole possession of the maker thereof and that are not accessible or revealed to any other person except a substitute.

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of eighteen years. For scholastic records of students under the age of eighteen years, the right of access may be asserted only by his legal guardian or parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic records of students who are emancipated or attending a state-supported institution of higher education, the right of access may be asserted by the student.

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

Any person who is the subject of any scholastic record and who is eighteen years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

4. Personnel records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of any personnel record and who is eighteen years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

5. Medical and mental records, except that such records may be personally reviewed by the subject person or a physician of the subject person's choice. However, the subject person's mental records may not be personally reviewed by such person when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being.

Where the person who is the subject of medical records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the medical records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Medical records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the medical records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall be open to inspection and copying as provided in [§ 2.2-3704](#). No such summaries or data shall include any patient-identifying information. Where the person who is the subject of medical and mental records is under the age of eighteen, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. In instances where the person who is the subject thereof is an emancipated minor or a student in a public institution of higher education, the right of access may be asserted by the subject person.

6. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the Attorney General; the members of the General Assembly or the Division of Legislative Services; 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 Virginia. However, no record which is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence.

As used in this subdivision:

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

"Working papers" means those records prepared by or for an above-named public official for his personal or deliberative use.

"Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet Secretaries, and the Director of the Virginia Liaison Office; and those individuals to whom the Governor has delegated his authority pursuant to § [2.2-104](#).

7. Written advice of legal counsel to state, regional or local public bodies or public officials and any other records protected by the attorney-client privilege.

8. Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter that is properly the subject of a closed meeting under § [2.2-3711](#).

9. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment, or (iii) receipt of an honor or honorary recognition.

10. Library records that can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.

11. Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by a public body. As used in this subdivision, "test or examination" shall include (i) any scoring key for any such test or examination and (ii) any other document that would jeopardize the security of the test or examination. Nothing contained in this subdivision shall prohibit the release of test scores or results as provided by law, or limit access to individual records as provided by law. However, the subject of such employment tests shall be entitled to review and inspect all records relative to his performance on such employment tests. When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, the test or examination shall be made available to the public. However, minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

12. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

13. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth.

14. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to § [2.2-3711](#). However, no record that is otherwise open to inspection under

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

this chapter shall be deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

15. Reports, documentary evidence and other information as specified in §§ [2.2-706](#) and [63.1-55.4](#).

16. Proprietary information gathered by or for the Virginia Port Authority as provided in § [62.1-132.4](#) or § [62.1-134.1](#).

17. 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.

18. Vendor proprietary information software that may be in the official records of a public body. For the purpose of this subdivision, "vendor proprietary software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.

19. Financial statements not publicly available filed with applications for industrial development financings.

20. Data, records or information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such data, records or information has not been publicly released, published, copyrighted or patented.

21. 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.

22. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from the Department of Business Assistance, the Virginia Economic Development Partnership, the Virginia Tourism Authority, or local or regional industrial or economic development authorities or organizations, used by the Department, the Partnership, the Authority, or such entities for business, trade and tourism development; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by the Partnership, where competition or bargaining is involved and where, if such records are made public, the financial interest of the governmental unit would be adversely affected.

23. 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.

24. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.

25. Computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth.

26. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management.

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

However, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.

27. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § [28.2-204](#).

28. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ [32.1-323](#) et seq.) of Title 32.1.

29. Records and writings 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.

30. 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 paid for such utility service.

31. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ [2.2-3900](#) et seq.) or under any local ordinance adopted in accordance with the authority specified in § [2.2-2638](#), or adopted pursuant to § [15.2-965](#), or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

32. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; and other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 9 (§ [63.1-172](#) et seq.) and 10 (§ [63.1-195](#) et seq.) of Title 63.1. However, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

33. Personal information, as defined in § [2.2-3801](#), (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and housing authority created pursuant to § [36-4](#) concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § [36-4](#) or any other local government agency

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

concerning persons who have applied for occupancy or who have occupied affordable dwelling units established pursuant to § [15.2-2304](#) or § [15.2-2305](#). However, access to one's own information shall not be denied.

34. Records regarding the siting of hazardous waste facilities, except as provided in § [10.1-1441](#), if disclosure of them would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions and provisions of the siting agreement.

35. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease.

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

37. Records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the State Lottery Department relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such official records have not been publicly released, published, copyrighted or patented. Whether released, published or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

38. Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ [58.1-4014](#) through [58.1-4018](#), (iv) defects in the law or regulations that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv) and (v) shall be open to inspection and copying upon completion of the study or investigation.

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

40. Records concerning reserves established in specific claims administered by the Department of the Treasury through its Division of Risk Management as provided in Article 5 (§ [2.2-1832](#) et seq.) of Chapter 18 of this title, or by any county, city, or town.

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

41. Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ [32.1-111.1](#) et seq.) of Chapter 4 of Title 32.1.

42. Reports and court documents required to be kept confidential pursuant to § [37.1-67.3](#).

43. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the (i) Auditor of Public Accounts; (ii) Joint Legislative Audit and Review Commission; (iii) Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline; or (iv) committee or the auditor with respect to an investigation or audit conducted pursuant to § [15.2-825](#). Records of completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person.

44. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or the expansion of existing clinical health services, acquisition of major medical equipment, or certain projects requiring capital expenditures pursuant to former § [32.1-102.3:4](#).

45. Documentation or other information that describes the design, function, operation or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.

46. 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.

47. In the case of corporations organized by the Virginia Retirement System (i) proprietary information provided by, and financial information concerning, coventurers, partners, lessors, lessees, or investors and (ii) records concerning the condition, acquisition, disposition, use, leasing, development, coventuring, or management of real estate, the disclosure of which would have a substantial adverse impact on the value of such real estate or result in a competitive disadvantage to the corporation or subsidiary.

48. Confidential proprietary records related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.

49. 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.

50. 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.

51. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information.

52. Information required to be provided pursuant to § [54.1-2506.1](#).

53. Confidential information designated as provided in subsection D 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](#).

54. All information and records acquired during a review of any child death by the State Child Fatality Review team established pursuant to § [32.1-283.1](#), during a review of any child death by a local or regional child fatality review team established pursuant to § [32.1-283.2](#), and all information and records acquired during a review of any death by a family violence fatality review team established pursuant to § [32.1-283.3](#).

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

56. Confidential proprietary records that are voluntarily provided by a private entity pursuant to a proposal filed with a public entity under the Public-Private Transportation Act of 1995 (§ [56-556](#) et seq.) or the *Public-Private Education Facilities and Infrastructure Act of 2002* (§ [56-575.1](#) et seq.), pursuant to a promise of confidentiality from the responsible public entity, used by the responsible public entity for purposes related to the development of a qualifying transportation facility or *qualifying project*, and memoranda, working papers or other records related to proposals filed under the Public-Private Transportation Act of 1995 or the *Public-Private Education Facilities and Infrastructure Act of 2002*, where, if such records were made public, the financial interest of the public or private entity involved with such proposal or the process of competition or bargaining would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the private

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

entity 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. For the purposes of this subdivision, the terms "public entity" and "private entity" shall be defined as they are defined in the Public-Private Transportation Act of 1995 *or in the Public-Private Education Facilities and Infrastructure Act of 2002*.

57. Records of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public; or records of emergency service agencies to the extent that such records contain specific tactical plans relating to antiterrorist activity.

58. All records of the University of Virginia or the University of Virginia Medical Center that contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center, including its business development or marketing strategies and its activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would be harmful to the competitive position of the Medical Center.

59. Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § [32.1-276.9](#), to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to § [32.1-276.4](#).

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

61. Confidential proprietary information or trade secrets, not publicly available, provided by a private person or entity to the Virginia Resources Authority or to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such information were made public, the financial

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

interest of the private person or entity would be adversely affected, and, after June 30, 1997, where such information was provided pursuant to a promise of confidentiality.

62. Confidential proprietary records that are provided by a franchisee under § [15.2-2108](#) to its franchising authority pursuant to a promise of confidentiality from the franchising authority that relates to the franchisee's potential provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such records were made public, the competitive advantage or financial interests of the franchisee would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the franchisee 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 reason why protection is necessary.

63. Records of the Intervention Program Committee within the Department of Health Professions, to the extent such records may identify any practitioner who may be, or who is actually, impaired to the extent disclosure is prohibited by § [54.1-2517](#).

64. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ [32.1-73.1](#) et seq.) of Chapter 2 of Title 32.1, to the extent such records contain (i) medical or mental records, or other data identifying individual patients or (ii) 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 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.

65. Information that would disclose the security aspects of a system safety program plan adopted pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety Oversight agency; and information in the possession of such agency, the release of which would jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway safety.

66. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Charitable Gaming Commission pursuant to subsection E of § [18.2-340.34](#).

67. Personal information, as defined in § [2.2-3801](#), provided to the Board of the Virginia College Savings Plan 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. Nothing in this subdivision shall be construed to prohibit disclosure or publication of information in a statistical or other form that does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

68. Any record copied, recorded or received by the Commissioner of Health in the course of an examination, investigation or review of a managed care health insurance

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

plan licensee pursuant to §§ [32.1-137.4](#) and [32.1-137.5](#), including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

69. Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security or employee safety of (i) the Virginia Museum of Fine Arts or any of its warehouses; (ii) any government store or warehouse controlled by the Department of Alcoholic Beverage Control; (iii) any courthouse, jail, detention or law-enforcement facility; or (iv) any correctional or juvenile facility or institution under the supervision of the Department of Corrections or the Department of Juvenile Justice.

70. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to §§ [3.1-622](#) and [3.1-624](#).

71. Records of the Department of Environmental Quality, the State Water Control Board, 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 records 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 prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.

72. As it pertains to any person, records related to the operation of toll facilities that identify an individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, 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.

73. Records of the Department for Rights of Virginians with Disabilities consisting of documentary evidence received or maintained by the Department or its agents in connection with specific complaints or investigations, and records of communications between employees and agents of the Department and its clients or prospective clients concerning specific complaints, investigations or cases. Upon the conclusion of an investigation of a complaint, this exclusion shall no longer apply, but the Department may not at any time release the identity of any complainant or person with mental illness, mental retardation, developmental disabilities or other disability, unless (i) such complainant or person or his legal representative consents in writing to such identification or (ii) such identification is required by court order.

74. Information furnished in confidence to the Department of Employment Dispute Resolution with respect to an investigation, consultation, or mediation under Chapter 10 (§ [2.2-1000](#) et seq.) of this title, and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

form that does not reveal the identity of the parties involved or other persons supplying information.

75. 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.

76. Records of the State Lottery Department 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.

77. Records, information and statistical registries required to be kept confidential pursuant to §§ [63.1-53](#) and [63.1-209](#).

B. Neither any provision of this chapter nor any provision of Chapter 38 (§ [2.2-3800](#) et seq.) of this title shall be construed as denying public access to (i) contracts between a public official and a public body, other than contracts settling public employee employment disputes held confidential as personnel records under subdivision 4. of subsection A; (ii) records of the position, job classification, official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to any officer, official or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees. The provisions of this subsection, however, shall not require public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

C. No provision of this chapter or Chapter 21 (§ [30-178](#) et seq.) of Title 30 shall be construed to afford any rights to any person incarcerated in a state, local or federal correctional facility, whether or not such facility is (i) located in the Commonwealth or (ii) operated pursuant to the Corrections Private Management Act (§ [53.1-261](#) et seq.). However, this subsection shall not be construed to prevent an incarcerated person from exercising his constitutionally protected rights, including, but not limited to, his rights to call for evidence in his favor in a criminal prosecution.

## CHAPTER 22.1.

## THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002.

§ [56-575.1](#). *Definitions.*

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

*"Affected local jurisdiction" means any county, city or town in which all or a portion of a qualifying project is located.*

*"Commission" means the State Corporation Commission.*

*"Comprehensive agreement" means the comprehensive agreement between the operator and the responsible public entity required by § [56-575.9](#).*

*"Lease payment" means any form of payment, including a land lease, by a public entity to the operator for the use of a qualifying project.*

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

*"Material default" means any default by the operator in the performance of its duties under subsection E of § 56-575.8 that jeopardizes adequate service to the public from a qualifying project.*

*"Operator" means the private or other non-governmental entity that is responsible for any and all of the stages of a qualifying project, or a portion thereof, including (i) acquisition, (ii) design, (iii) construction, (iv) improvement, (v) renovation, (vi) expansion, (vii) equipping, (viii) maintenance and (ix) operation.*

*"Private entity" means any natural person, corporation, limited liability company, partnership, joint venture or other private business entity.*

*"Public entity" means the Commonwealth and any agency or authority thereof, any county, city or town and any other political subdivision of the Commonwealth or any regional entity that serves a public purpose.*

*"Qualifying project" means (i) any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education; (ii) any building or facility for principal use by any public entity; (iii) any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity; (iv) utility and telecommunications and other communications infrastructure; or (v) a recreational facility.*

*"Responsible public entity" means a public entity that has the power to acquire, design, construct, improve, renovate, expand, equip, maintain, or operate the applicable qualifying project.*

*"Revenues" means user fees, lease payments, or other service payments generated by a qualifying project.*

*"Service contract" means a contract entered into between a public entity and the operator pursuant to § [56-575.5](#).*

*"Service payments" means payments to the operator of a qualifying project pursuant to a service contract.*

*"State" means the Commonwealth of Virginia.*

*"User fees" mean the rates, fees or other charges imposed by the operator of a qualifying project for use of all or a portion of such qualifying project pursuant to the comprehensive agreement pursuant to § [56-575.9](#).*

*§ [56-575.2](#). Declaration of public purpose.*

*A. The General Assembly finds that:*

- 1. There is a public need for timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of education facilities and other public infrastructure and government facilities within the Commonwealth that serve a public need and purpose;*
- 2. Such public need may not be wholly satisfied by existing methods of procurement in which qualifying projects are acquired, designed, constructed, improved, renovated, expanded, equipped, maintained, or operated;*

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

3. *There are inadequate resources to develop new education facilities and other public infrastructure and government facilities for the benefit of citizens of the Commonwealth, and there is demonstrated evidence that public-private partnerships can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public;*

4. *Financial incentives exist under state and federal tax provisions that promote public entities to enter into partnerships with private entities to develop qualifying projects; and*

5. *Authorizing private entities to acquire, design, construct, improve, renovate, expand, equip, maintain, or operate one or more qualifying projects may result in the availability of such projects to the public in a more timely or less costly fashion, thereby serving the public safety, benefit, and welfare.*

*B. An action under § 56-575.4 shall serve the public purpose of this chapter if such action facilitates the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of qualifying projects.*

*C. It is the intent of this chapter, among other things, to facilitate the bond financing provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 or other similar financing mechanisms, private capital and other funding sources that support the acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of qualifying projects, to the end that financing for qualifying projects be expanded and accelerated to improve and add to the convenience of the public, and such that public and private entities may have the greatest possible flexibility in contracting with each other for the provision of the public services that are the subject of this chapter.*

*D. This chapter shall be liberally construed in conformity with the purposes hereof.*

*§ 56-575.3. Prerequisite for operation of a qualifying project.*

*Any private entity seeking authorization under this chapter to acquire, design, construct, improve, renovate, expand, equip, maintain or operate a qualifying project shall first obtain approval of the responsible public entity under § 56-575.4. Such private entity may initiate the approval process by requesting approval pursuant to subsection A of § 56-575.4 or the responsible public entity may request proposals or invite bids pursuant to subsection B of § 56-575.4.*

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

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

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

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

*3. A statement setting forth the method by which the operator proposes to secure any necessary property interests required for the qualifying project. The statement shall*

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

include: (i) the names and addresses, if known, of the current owners of the property needed for the qualifying project, (ii) the nature of the property interests to be acquired, and (iii) any property that the responsible public entity expects it will be requested to condemn;

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

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

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

7. A statement setting forth the operator's general plans for financing the qualifying project including the sources of the operator's funds;

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

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

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

B. The responsible public entity may request proposals or invite bids from private entities for the acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance or operation of qualifying projects.

C. The responsible public entity may grant approval of the acquisition, construction, improvement, renovation, expansion, maintenance, or operation of the education facility or other public infrastructure or government facility needed by a public entity as a qualifying project, or the design or equipping of a qualifying project so acquired, constructed, improved, renovated, expanded, maintained, or operated, if the responsible public entity determines that the project serves the public purpose of this chapter. The responsible public entity may determine that the acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project as a qualifying project serves such public purpose if:

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

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

3. The private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.

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

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

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

*E. The approval of the responsible public entity shall be subject to the private entity's entering into a comprehensive agreement pursuant to § [56-575.9](#) with the responsible public entity.*

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

*G. The responsible public entity shall take appropriate action to protect confidential and proprietary information provided by the operator pursuant to an agreement under subdivision A 56 of § [2.2-3705](#).*

*H. Nothing in this chapter or in a comprehensive agreement entered into pursuant to this chapter shall be deemed to enlarge, diminish or affect the authority, if any, otherwise possessed by the responsible public entity to take action that would impact the debt capacity of the Commonwealth.*

*§ [56-575.5](#). Service contracts.*

*In addition to any authority otherwise conferred by law, any public entity may contract with an operator for the delivery of services to be provided as part of a qualifying project in exchange for such service payments and other consideration as such public entity may deem appropriate.*

*§ [56-575.6](#). Affected local jurisdictions.*

*A. Any private entity requesting approval from, or submitting a proposal to, a responsible public entity under § [56-575.4](#) shall notify each affected local jurisdiction by furnishing a copy of its request or proposal to each affected local jurisdiction.*

*B. Each affected local jurisdiction that is not a responsible public entity for the respective qualifying project shall, within sixty days after receiving such notice, submit any comments it may have in writing on the proposed qualifying project to the responsible public entity and indicate whether the facility is compatible with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan. Such comments shall be given consideration by the responsible public entity prior to entering a comprehensive agreement pursuant to § [56-575.9](#) with a private entity.*

*§ [56-575.7](#). Dedication of public property.*

*Any public entity may dedicate any property interest, including land, improvements, and tangible personal property, that it has for public use in a qualifying project if it finds that so doing will serve the public purpose of this chapter by minimizing the cost of a qualifying project to the public entity or reducing the delivery time of a qualifying project. In connection with such dedication, a public entity may convey any property interest that it has, subject to the conditions imposed by general law, to the operator subject to the provisions of this chapter, for such consideration as such public entity may determine. The aforementioned consideration may include, without limitation, the agreement of the operator to operate the qualifying project.*

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

§ [56-575.8](#). Powers and duties of the operator.

A. The operator shall have all power allowed by law generally to a private entity having the same form of organization as the operator and shall have the power to acquire, design, construct, improve, renovate, maintain, expand, equip or operate the qualifying project and collect lease payments, impose user fees or enter into service contracts in connection with the use thereof.

B. The operator may own, lease or acquire any other right to use or operate the qualifying project.

C. Any financing of the qualifying project may be in such amounts and upon such terms and conditions as may be determined by the operator. Without limiting the generality of the foregoing, the operator may issue debt, equity or other securities or obligations, enter into sale and leaseback transactions and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying project.

D. In operating the qualifying project, the operator may:

1. Make classifications according to reasonable categories for assessment of user fees; and

2. With the consent of the responsible public entity, make and enforce reasonable rules to the same extent that the responsible public entity may make and enforce rules with respect to similar facilities.

E. The operator shall:

1. Acquire, design, construct, improve, renovate, expand, equip, maintain, or operate the qualifying project in a manner that is acceptable to the responsible public entity, all in accordance with the provisions of the comprehensive agreement pursuant to § [56-575.9](#);

2. Keep the qualifying project open for use by the members of the public at all times, or as appropriate based upon the use of the facility, after its initial opening upon payment of the applicable user fees, lease payments, or service payments; provided that the qualifying project may be temporarily closed because of emergencies or, with the consent of the responsible public entity, to protect the safety of the public or for reasonable construction or maintenance procedures;

3. Maintain, or provide by contract for the maintenance of the qualifying project, if required by the comprehensive agreement;

4. Cooperate with the responsible public entity in making best efforts to establish any interconnection with the qualifying project requested by the responsible public entity; and

5. Comply with the provisions of the comprehensive agreement and any service contract.

F. Nothing shall prohibit an operator of a qualifying project from providing additional services for the qualifying project to public or private entities other than the responsible public entity so long as the provision of additional service does not impair the operator's ability to meet its commitments to the responsible public entity pursuant to the comprehensive agreement as provided for in § [56-575.9](#).

§ [56-575.9](#). Comprehensive agreement.

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

*A. Prior to acquiring, designing, constructing, improving, renovating, expanding, equipping, maintaining, or operating the qualifying project, the private entity shall enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement shall provide for:*

- 1. Delivery of maintenance, performance and payment bonds or letters of credit in connection with the acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project, in the forms and amounts satisfactory to the responsible public entity;*
- 2. Review of plans and specifications for the qualifying project by the responsible public entity and approval by the responsible public entity if the plans and specifications conform to standards acceptable to the responsible public entity. This shall not be construed as requiring the private entity to complete design of a qualifying project prior to the execution of a comprehensive agreement;*
- 3. Inspection of the qualifying project by the responsible public entity to ensure that the operator's activities are acceptable to the responsible public entity in accordance with the provisions of the comprehensive agreement;*
- 4. Maintenance of a policy or policies of public liability insurance (copies of which shall be filed with the responsible public entity accompanied by proofs of coverage), self-insurance, in form and amount satisfactory to the responsible public entity and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project;*
- 5. Monitoring of the practices of the operator by the responsible public entity to ensure that the qualifying project is properly maintained;*
- 6. Reimbursement to be paid to the responsible public entity for services provided by the responsible public entity;*
- 7. Filing of appropriate financial statements on a periodic basis; and*
- 8. Policies and procedures governing the rights and responsibilities of the responsible public entity and the operator in the event the comprehensive agreement is terminated or there is a material default by the operator. Such policies and procedures shall include conditions governing assumption of the duties and responsibilities of the operator by the responsible public entity and the transfer or purchase of property or other interests of the operator by the responsible public entity.*

*B. The comprehensive agreement shall provide for such user fees, lease payments, or service payments as may be established from time to time by agreement of the parties. A copy of any service contract shall be filed with the responsible public entity. In negotiating user fees under this section, the parties shall establish payments or fees that are the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying project. The execution of the comprehensive agreement or any amendment thereto shall constitute conclusive evidence that the user fees, lease payments, or service payments provided for comply with this chapter. User fees or lease payments established in the comprehensive agreement as a source of revenues may be in addition to, or in lieu of, service payments.*

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

*C. In the comprehensive agreement, the responsible public entity may agree to make grants or loans to the operator from time to time from amounts received from the federal, state, or local government or any agency or instrumentality thereof.*

*D. The comprehensive agreement shall incorporate the duties of the operator under this chapter and may contain such other terms and conditions that the responsible public entity determines serve the public purpose of this chapter. Without limitation, the comprehensive agreement may contain provisions under which the responsible public entity agrees to provide notice of default and cure rights for the benefit of the operator and the persons specified therein as providing financing for the qualifying project. The comprehensive agreement may contain such other lawful terms and conditions to which the operator and the responsible public entity mutually agree, including, without limitation, provisions regarding unavoidable delays or provisions providing for a loan of public funds to the operator to acquire, design, construct, improve, renovate, expand, equip, maintain or operate one or more qualifying projects. The comprehensive agreement may also contain provisions where the authority and duties of the operator under this chapter shall cease, and the qualifying project is dedicated to the responsible public entity or, if the qualifying project was initially dedicated by an affected local jurisdiction, to such affected local jurisdiction for public use.*

*E. Any changes in the terms of the comprehensive agreement, as may be agreed upon by the parties from time to time, shall be added to the comprehensive agreement by written amendment.*

*F. When a responsible public entity that is not an agency or authority of the Commonwealth enters into a comprehensive agreement pursuant to this chapter, it shall within thirty days thereafter submit a copy of the comprehensive agreement to the Auditor of Public Accounts.*

*§ [56-575.10](#). Federal, state and local assistance.*

*The responsible public entity may take any action to obtain federal, state, or local assistance for a qualifying project that serves the public purpose of this chapter and may enter into any contracts required to receive such assistance. If the responsible public entity is a state agency, any funds received from the state or federal government or any agency or instrumentality thereof shall be subject to appropriation by the General Assembly. The responsible public entity may determine that it serves the public purpose of this chapter for all or any portion of the costs of a qualifying project to be paid, directly or indirectly, from the proceeds of a grant or loan made by the local, state, or federal government or any agency or instrumentality thereof.*

*§ [56-575.11](#). Material default; remedies.*

*A. In the event of a material default by the operator, the responsible public entity may elect to assume the responsibilities and duties of the operator of the qualifying project, and in such case, it shall succeed to all of the right, title and interest in such qualifying project, subject to any liens on revenues previously granted by the operator to any person providing financing thereof.*

*B. Any responsible public entity having the power of condemnation under state law may exercise such power of condemnation to acquire the qualifying project in the event of a material default by the operator. Any person who has provided financing for the*

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

*qualifying project, and the operator, to the extent of its capital investment, may participate in the condemnation proceedings with the standing of a property owner.*

*C. The responsible public entity may terminate, with cause, the comprehensive agreement and exercise any other rights and remedies that may be available to it at law or in equity.*

*D. The responsible public entity may make or cause to be made any appropriate claims under the maintenance, performance, or payment bonds; or lines of credit required by subsection A 1 of § [56-575.9](#).*

*E. In the event the responsible public entity elects to take over a qualifying project pursuant to subsection A, the responsible public entity may acquire, design, construct, improve, renovate, operate, expand, equip, or maintain the qualifying project, impose user fees, impose and collect lease payments for the use thereof and comply with any service contracts as if it were the operator. Any revenues that are subject to a lien shall be collected for the benefit of and paid to secured parties, as their interests may appear, to the extent necessary to satisfy the operator's obligations to secured parties, including the maintenance of reserves. Such liens shall be correspondingly reduced and, when paid off, released. Before any payments to, or for the benefit of, secured parties, the responsible public entity may use revenues to pay current operation and maintenance costs of the qualifying project, including compensation to the responsible public entity for its services in operating and maintaining the qualifying project. The right to receive such payment, if any, shall be considered just compensation for the qualifying project. The full faith and credit of the responsible public entity shall not be pledged to secure any financing of the operator by the election to take over the qualifying project.*

*Assumption of operation of the qualifying project shall not obligate the responsible public entity to pay any obligation of the operator from sources other than revenues.*

*§ [56-575.12](#). Condemnation.*

*At the request of the operator, the responsible public entity may exercise any power of condemnation that it has under law for the purpose of acquiring any lands or estates or interests therein to the extent that the responsible public entity finds that such action serves the public purpose of this chapter. Any amounts to be paid in any such condemnation proceeding shall be paid by the operator.*

*§ [56-575.13](#). Utility crossing.*

*The operator and each public service company, public utility, railroad, and cable television provider, whose facilities are to be crossed or affected shall cooperate fully with the other entity in planning and arranging the manner of the crossing or relocation of the facilities. Any such entity possessing the power of condemnation is hereby expressly granted such powers in connection with the moving or relocation of facilities to be crossed by the qualifying project or that must be relocated to the extent that such moving or relocation is made necessary or desirable by construction of, renovation to, or improvements to the qualifying project, which shall be construed to include construction of, renovation to, or improvements to temporary facilities for the purpose of providing service during the period of construction or improvement. Any amount to be paid for such crossing, construction, moving or relocating of facilities shall be paid for by the operator. Should the operator and any such public service company, public utility,*

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

railroad, and cable television provider not be able to agree upon a plan for the crossing or relocation, the Commission may determine the manner in which the crossing or relocation is to be accomplished and any damages due arising out of the crossing or relocation. The Commission may employ expert engineers who shall examine the location and plans for such crossing or relocation, hear any objections and consider modifications, and make a recommendation to the Commission. In such a case, the cost of the experts is to be borne by the operator. Such determination shall be made by the Commission within ninety days of notification by the private entity that the qualifying project will cross utilities subject to the Commission's jurisdiction.

§ [56-575.14](#). Police powers; violations of law.

All police officers of the Commonwealth and of each affected local jurisdiction shall have the same powers and jurisdiction within the limits of such qualifying project as they have in their respective areas of jurisdiction and such police officers shall have access to the qualifying project at any time for the purpose of exercising such powers and jurisdiction.

§ [56-575.15](#). Sovereign immunity.

Nothing in this chapter shall be construed as or deemed a waiver of the sovereign immunity of the Commonwealth, any responsible public entity or any affected local jurisdiction or any officer or employee thereof with respect to the participation in, or approval of all or any part of the qualifying project or its operation, including but not limited to interconnection of the qualifying project with any other infrastructure or project. Counties, cities and towns in which a qualifying project is located shall possess sovereign immunity with respect to its design, construction, and operation.

§ [56-575.16](#). Procurement.

The Virginia Public Procurement Act (§ [2.2-4300](#) et seq.) and any interpretations, regulations, or guidelines of the Division of Engineering and Buildings of the Department of General Services, including the Capital Outlay Manual and those interpretations, regulations or guidelines developed pursuant to §§ [2.2-1131](#), [2.2-1132](#), [2.2-1133](#), [2.2-1149](#), and [2.2-1502](#), except those developed by the Division in accordance with this chapter when the Commonwealth is the responsible public entity, shall not apply to this chapter. However, a responsible public entity may enter into a comprehensive agreement only in accordance with procedures adopted by it as follows:

1. A responsible public entity may enter into a comprehensive agreement in accordance with procedures adopted by it that are consistent with procurement through competitive sealed bidding as defined in § [2.2-4301](#) and subsection B of § [2.2-4310](#).
2. A responsible public entity may enter into a comprehensive agreement in accordance with procedures adopted by it that are consistent with the procurement of "other than professional services" through competitive negotiation as defined in § [2.2-4301](#) and subsection B of § [2.2-4310](#). Such responsible public entity shall not be required to select the proposal with the lowest price offer, but may consider price as one factor in evaluating the proposals received. A responsible public entity shall proceed in accordance with the procedures adopted by it pursuant to subdivision 1 unless it determines that proceeding in accordance with the procedures adopted by it pursuant to this subdivision is likely to be advantageous to the responsible public entity and the public, based on (i) the probable scope, complexity or urgency of the project, or (ii) risk

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

*sharing, added value, an increase in funding or economic benefit from the project that would not otherwise be available. When the responsible public entity determines to proceed according to the procedures adopted by it pursuant to this subdivision, it shall state the reasons for its determination in writing. If a state agency is the responsible public entity, the approval of the responsible Governor's Secretary, or the Governor, shall be required before the responsible public entity may enter into a comprehensive agreement pursuant to this subdivision.*

3. Nothing in this chapter shall authorize or require that a responsible public entity obtain professional services through any process except in accordance with procedures adopted by it that are consistent with the procurement of "professional services" through competitive negotiation as defined in § [2.2-4301](#) and subsection B of § [2.2-4310](#).

4. A responsible public entity shall not proceed to consider any request by a private entity for approval of a qualifying project pursuant to subsection A of § [56-575.4](#) until the responsible public entity has adopted and made publicly available procedures that are sufficient to enable the responsible public entity to comply with this chapter. Such procedures shall include provision for the posting and publishing of public notice of a private entity's request for approval of a qualifying project pursuant to subsection A of § [56-575.4](#) and a reasonable time period, to be no less than forty-five days, during which the responsible public entity will receive competing proposals pursuant to that subsection.

5. A responsible public entity that is a school board or a county, city or town may enter into a comprehensive agreement under this chapter only with the approval of the local governing body.

2. That it is the intent of the General Assembly that the Governor and the chairs of the General Laws Committees of the Senate and House of Delegates, or their respective designees, will facilitate the development of model procedures to assist in the implementation of this act, that public entities and private sector businesses, including but not limited to construction management firms, contractors, and design professionals, will be consulted in the development of such procedures, and that such model procedures will be completed and made available to public entities covered by this act not later than September 30, 2002.

3. That it is the intent of the General Assembly that the Auditor of Public Accounts periodically review the comprehensive agreements approved under this chapter for compliance with this chapter.

Code of Va., § 56-575.1. Definitions. "As used in this chapter, unless the context requires a different meaning: "Affected local jurisdiction" means any county, city or town in which all or a portion of a qualifying project is located. "Commission" means the State Corporation Commission. "Comprehensive agreement" means the comprehensive agreement between the operator and the responsible public entity required by § [56-575.9](#). "Lease payment" means any form of payment, including a land lease, by a public entity to the operator for the use of a qualifying project. "Material default" means any default by the operator in the performance of its duties under subsection E of § [56-575.8](#) that jeopardizes adequate service to the public from a qualifying project. "Operator"

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

means the private or other non-governmental entity that is responsible for any and all of the stages of a qualifying project, or a portion thereof, including (i) acquisition, (ii) design, (iii) construction, (iv) improvement, (v) renovation, (vi) expansion, (vii) equipping, (viii) maintenance, (ix) operation, (x) implementation, and (xi) installation.

"Private entity" means any natural person, corporation, limited liability company, partnership, joint venture or other private business entity. "Public entity" means the Commonwealth and any agency or authority thereof, any county, city or town and any other political subdivision of the Commonwealth or any regional entity that serves a public purpose. "Qualifying project" means (i) any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education; (ii) any building or facility for principal use by any public entity; (iii) any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity; (iv) utility and telecommunications and other communications infrastructure; (v) a recreational facility; or (vi) technology infrastructure, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services. "Responsible public entity" means a public entity that has the power to acquire, design, construct, improve, renovate, expand, equip, maintain, operate, implement, or install the applicable qualifying project.

"Revenues" means user fees, lease payments, or other service payments generated by a qualifying project. "Service contract" means a contract entered into between a public entity and the operator pursuant to § [56-575.5](#). "Service payments" means payments to the operator of a qualifying project pursuant to a service contract. "State" means the Commonwealth of Virginia. "User fees" mean the rates, fees or other charges imposed by the operator of a qualifying project for use of all or a portion of such qualifying project pursuant to the comprehensive agreement pursuant to § [56-575.9](#)."

(2002, c. 571; 2003, c. 1034.)

Code of Va., § 56-575.2. Declaration of public purpose. "A. The General Assembly finds that: 1. There is a public need for timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of education facilities, technology infrastructure and other public infrastructure and government facilities within the Commonwealth that serve a public need and purpose; 2. Such public need may not be wholly satisfied by existing methods of procurement in which qualifying projects are acquired, designed, constructed, improved, renovated, expanded, equipped, maintained, operated, implemented, or installed; 3. There are inadequate resources to develop new education facilities, technology infrastructure and other public infrastructure and government facilities for the benefit of citizens of the Commonwealth, and there is demonstrated evidence that public-private partnerships can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public;

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

4. Financial incentives exist under state and federal tax provisions that promote public entities to enter into partnerships with private entities to develop qualifying projects; and  
 5. Authorizing private entities to acquire, design, construct, improve, renovate, expand, equip, maintain, operate, implement, or install one or more qualifying projects may result in the availability of such projects to the public in a more timely or less costly fashion, thereby serving the public safety, benefit, and welfare.

B. An action under § [56-575.4](#) shall serve the public purpose of this chapter if such action facilitates the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of qualifying projects.

C. It is the intent of this chapter, among other things, to facilitate the bond financing provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 or other similar financing mechanisms, private capital and other funding sources that support the acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of qualifying projects, to the end that financing for qualifying projects be expanded and accelerated to improve and add to the convenience of the public, and such that public and private entities may have the greatest possible flexibility in contracting with each other for the provision of the public services that are the subject of this chapter.

D. This chapter shall be liberally construed in conformity with the purposes hereof.” (2002, c. 571; 2003, c. 1034.)

Code of Va., § 56-575.3. Prerequisite for operation of a qualifying project. “A. Any private entity seeking authorization under this chapter to acquire, design, construct, improve, renovate, expand, equip, maintain, operate, implement, or install a qualifying project shall first obtain approval of the responsible public entity under § [56-575.4](#). Such private entity may initiate the approval process by requesting approval pursuant to subsection A of § [56-575.4](#) or the responsible public entity may request proposals or invite bids pursuant to subsection B of § [56-575.4](#).

B. Any facility, building, infrastructure or improvement included in a proposal as a part of a qualifying project shall be identified specifically or conceptually.

C. Upon receipt by the responsible public entity of a proposal submitted by a private entity initiating the approval process pursuant to subsection A of § [56-575.4](#), the responsible public entity shall determine whether to accept such proposal for consideration in accordance with § [56-575.16](#). If the responsible public entity determines not to accept for consideration the proposal submitted by the private entity pursuant to subsection A of § [56-575.4](#), it shall return the proposal, together with all fees and accompanying documentation, to the private entity.

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

D. The responsible public entity may reject any proposal initiated by a private entity pursuant to subsection A of § [56-575.4](#) at any time.”  
(2002, c. 571; 2003, cc. 292, 1034.)

Code of Va., § 56-575.4. Approval of qualifying projects by the responsible public entity.  
“A. A private entity may request approval of a qualifying project by the responsible public entity. Any such request shall be accompanied by the following material and information unless waived by the responsible public entity: 1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the qualifying project; 2. A description of the qualifying project, including the conceptual design of such facility or facilities or a conceptual plan for the provision of services or technology infrastructure, and a schedule for the initiation of and completion of the qualifying project to include the proposed major responsibilities and timeline for activities to be performed by both the public and private entity; 3. A statement setting forth the method by which the operator proposes to secure any necessary property interests required for the qualifying project. The statement shall include: (i) the names and addresses, if known, of the current owners of the property needed for the qualifying project, (ii) the nature of the property interests to be acquired, and (iii) any property that the responsible public entity expects it will be requested to condemn; 4. Information relating to the current plans for development of facilities or technology infrastructure to be used by a public entity that are similar to the qualifying project being proposed by the private entity, if any, of each affected local jurisdiction; 5. A list of all permits and approvals required for the qualifying project from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals; 6. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the operator to accommodate such crossings; 7. A statement setting forth the operator's general plans for financing the qualifying project including the sources of the operator's funds; 8. The names and addresses of the persons who may be contacted for further information concerning the request; 9. User fees, lease payments, and other service payments over the term of the comprehensive agreement pursuant to § [56-575.9](#) and the methodology and circumstances for changes to such user fees, lease payments, and other service payments over time; and 10. Such additional material and information as the responsible public entity may reasonably request.

B. The responsible public entity may request proposals or invite bids from private entities for the acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of qualifying projects.

C. The responsible public entity may grant approval of the acquisition, construction, improvement, renovation, expansion, maintenance, operation, implementation, or installation of the education facility, technology infrastructure or other public infrastructure or government facility needed by a public entity as a qualifying project, or the design or equipping of a qualifying project so acquired, constructed, improved, renovated, expanded, maintained, operated, implemented, or installed, if the

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

responsible public entity determines that the project serves the public purpose of this chapter. The responsible public entity may determine that the acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of the qualifying project as a qualifying project serves such public purpose if: 1. There is a public need for or benefit derived from the qualifying project of the type the private entity proposes as a qualifying project; 2. The estimated cost of the qualifying project is reasonable in relation to similar facilities; and 3. The private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of the qualifying project. In evaluating any request, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of outside advisors or consultants having relevant experience.

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

E. The approval of the responsible public entity shall be subject to the private entity's entering into a comprehensive agreement pursuant to § [56-575.9](#) with the responsible public entity.

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

G. The responsible public entity shall take appropriate action to protect confidential and proprietary information provided by the operator pursuant to an agreement under subdivision A 56 of § [2.2-3705](#).

H. Nothing in this chapter or in a comprehensive agreement entered into pursuant to this chapter shall be deemed to enlarge, diminish or affect the authority, if any, otherwise possessed by the responsible public entity to take action that would impact the debt capacity of the Commonwealth.”

(2002, c. 571; 2003, c. 1034.)

Code of Va., § 56-575.5. Service contracts. "In addition to any authority otherwise conferred by law, any public entity may contract with an operator for the delivery of services to be provided as part of a qualifying project in exchange for such service payments and other consideration as such public entity may deem appropriate.”  
(2002, c. 571.)

Code of Va., § 56-575.6. Affected local jurisdictions. "A. Any private entity requesting approval from, or submitting a proposal to, a responsible public entity under § [56-575.4](#)

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

shall notify each affected local jurisdiction by furnishing a copy of its request or proposal to each affected local jurisdiction.

B. Each affected local jurisdiction that is not a responsible public entity for the respective qualifying project shall, within sixty days after receiving such notice, submit any comments it may have in writing on the proposed qualifying project to the responsible public entity and indicate whether the facility is compatible with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan. Such comments shall be given consideration by the responsible public entity prior to entering a comprehensive agreement pursuant to § [56-575.9](#) with a private entity.”  
(2002, c. 571.)

Code of Va., § 56-575.7. Dedication of public property “ Any public entity may dedicate any property interest, including land, improvements, and tangible personal property, that it has for public use in a qualifying project if it finds that so doing will serve the public purpose of this chapter by minimizing the cost of a qualifying project to the public entity or reducing the delivery time of a qualifying project. In connection with such dedication, a public entity may convey any property interest that it has, subject to the conditions imposed by general law, to the operator subject to the provisions of this chapter, for such consideration as such public entity may determine. The aforementioned consideration may include, without limitation, the agreement of the operator to operate the qualifying project.”  
(2002, c. 571.)

Code of Va., § 56-575.8. Powers and duties of the operator. “A. The operator shall have all power allowed by law generally to a private entity having the same form of organization as the operator and shall have the power to acquire, design, construct, improve, renovate, maintain, expand, equip, operate, implement, or install the qualifying project and collect lease payments, impose user fees or enter into service contracts in connection with the use thereof.

B. The operator may own, lease or acquire any other right to use or operate the qualifying project.

C. Any financing of the qualifying project may be in such amounts and upon such terms and conditions as may be determined by the operator. Without limiting the generality of the foregoing, the operator may issue debt, equity or other securities or obligations, enter into sale and leaseback transactions and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying project.

D. In operating the qualifying project, the operator may: 1. Make classifications according to reasonable categories for assessment of user fees; and 2. With the

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

consent of the responsible public entity, make and enforce reasonable rules to the same extent that the responsible public entity may make and enforce rules with respect to similar facilities.

E. The operator shall: 1. Acquire, design, construct, improve, renovate, expand, equip, maintain, operate, implement, or install the qualifying project in a manner that is acceptable to the responsible public entity, all in accordance with the provisions of the comprehensive agreement pursuant to § [56-575.9](#); 2. Keep the qualifying project open for use by the members of the public at all times, or as appropriate based upon the use of the facility, after its initial opening upon payment of the applicable user fees, lease payments, or service payments; provided that the qualifying project may be temporarily closed because of emergencies or, with the consent of the responsible public entity, to protect the safety of the public or for reasonable construction or maintenance procedures. In the event that a qualifying project is technology infrastructure, access may be limited as determined by the conditions of the comprehensive agreement; 3. Maintain, or provide by contract for the maintenance or upgrade of the qualifying project, if required by the comprehensive agreement; 4. Cooperate with the responsible public entity in making best efforts to establish any interconnection with the qualifying project requested by the responsible public entity; and 5. Comply with the provisions of the comprehensive agreement and any service contract.

F. Nothing shall prohibit an operator of a qualifying project from providing additional services for the qualifying project to public or private entities other than the responsible public entity so long as the provision of additional service does not impair the operator's ability to meet its commitments to the responsible public entity pursuant to the comprehensive agreement as provided for in § [56-575.9](#).”  
(2002, c. 571; 2003, c. 1034.)

Code of Va., § 56-575.9. Comprehensive agreement. “A. Prior to acquiring, designing, constructing, improving, renovating, expanding, equipping, maintaining, operating, implementing, or installing the qualifying project, the private entity shall enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement shall provide for: 1. Delivery of maintenance, performance and payment bonds or letters of credit in connection with the acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of the qualifying project, in the forms and amounts satisfactory to the responsible public entity; 2. Review of plans and specifications for the qualifying project by the responsible public entity and approval by the responsible public entity if the plans and specifications conform to standards acceptable to the responsible public entity. This shall not be construed as requiring the private entity to complete design of a qualifying project prior to the execution of a comprehensive agreement; 3. Inspection of the qualifying project by the responsible public entity to ensure that the operator's activities are acceptable to the responsible public entity in accordance with the provisions of the comprehensive agreement; 4. Maintenance of a policy or policies

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

of public liability insurance (copies of which shall be filed with the responsible public entity accompanied by proofs of coverage), self-insurance, in form and amount satisfactory to the responsible public entity and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project; 5. Monitoring of the practices of the operator by the responsible public entity to ensure that the qualifying project is properly maintained; 6. Reimbursement to be paid to the responsible public entity for services provided by the responsible public entity; 7. Filing of appropriate financial statements on a periodic basis; and 8. Policies and procedures governing the rights and responsibilities of the responsible public entity and the operator in the event the comprehensive agreement is terminated or there is a material default by the operator. Such policies and procedures shall include conditions governing assumption of the duties and responsibilities of the operator by the responsible public entity and the transfer or purchase of property or other interests of the operator by the responsible public entity.

B. The comprehensive agreement shall provide for such user fees, lease payments, or service payments as may be established from time to time by agreement of the parties. A copy of any service contract shall be filed with the responsible public entity. In negotiating user fees under this section, the parties shall establish payments or fees that are the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying project. The execution of the comprehensive agreement or any amendment thereto shall constitute conclusive evidence that the user fees, lease payments, or service payments provided for comply with this chapter. User fees or lease payments established in the comprehensive agreement as a source of revenues may be in addition to, or in lieu of, service payments.

C. In the comprehensive agreement, the responsible public entity may agree to make grants or loans to the operator from time to time from amounts received from the federal, state, or local government or any agency or instrumentality thereof.

D. The comprehensive agreement shall incorporate the duties of the operator under this chapter and may contain such other terms and conditions that the responsible public entity determines serve the public purpose of this chapter. Without limitation, the comprehensive agreement may contain provisions under which the responsible public entity agrees to provide notice of default and cure rights for the benefit of the operator and the persons specified therein as providing financing for the qualifying project. The comprehensive agreement may contain such other lawful terms and conditions to which the operator and the responsible public entity mutually agree, including, without limitation, provisions regarding unavoidable delays or provisions providing for a loan of public funds to the operator to acquire, design, construct, improve, renovate, expand, equip, maintain, operate, implement, or install one or more qualifying projects. The comprehensive agreement may also contain provisions where the authority and duties of the operator under this chapter shall cease, and the qualifying project is dedicated to

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

the responsible public entity or, if the qualifying project was initially dedicated by an affected local jurisdiction, to such affected local jurisdiction for public use.

E. Any changes in the terms of the comprehensive agreement, as may be agreed upon by the parties from time to time, shall be added to the comprehensive agreement by written amendment.

F. When a responsible public entity that is not an agency or authority of the Commonwealth enters into a comprehensive agreement pursuant to this chapter, it shall within 30 days thereafter submit a copy of the comprehensive agreement to the Auditor of Public Accounts.”

(2002, c. 571; 2003, c. 1034.)

Code of Va., § 56-575.10. Federal, state and local assistance. “The responsible public entity may take any action to obtain federal, state, or local assistance for a qualifying project that serves the public purpose of this chapter and may enter into any contracts required to receive such assistance. If the responsible public entity is a state agency, any funds received from the state or federal government or any agency or instrumentality thereof shall be subject to appropriation by the General Assembly. The responsible public entity may determine that it serves the public purpose of this chapter for all or any portion of the costs of a qualifying project to be paid, directly or indirectly, from the proceeds of a grant or loan made by the local, state, or federal government or any agency or instrumentality thereof.”

(2002, c. 571.)

Code of Va., § 56-575.11. Material default; remedies. “A. In the event of a material default by the operator, the responsible public entity may elect to assume the responsibilities and duties of the operator of the qualifying project, and in such case, it shall succeed to all of the right, title and interest in such qualifying project, subject to any liens on revenues previously granted by the operator to any person providing financing thereof.

B. Any responsible public entity having the power of condemnation under state law may exercise such power of condemnation to acquire the qualifying project in the event of a material default by the operator. Any person who has provided financing for the qualifying project, and the operator, to the extent of its capital investment, may participate in the condemnation proceedings with the standing of a property owner.

C. The responsible public entity may terminate, with cause, the comprehensive agreement and exercise any other rights and remedies that may be available to it at law or in equity.

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

D. The responsible public entity may make or cause to be made any appropriate claims under the maintenance, performance, or payment bonds; or lines of credit required by subsection A 1 of § [56-575.9](#).

E. In the event the responsible public entity elects to take over a qualifying project pursuant to subsection A, the responsible public entity may acquire, design, construct, improve, renovate, operate, expand, equip, maintain, implement, or install the qualifying project, impose user fees, impose and collect lease payments for the use thereof and comply with any service contracts as if it were the operator. Any revenues that are subject to a lien shall be collected for the benefit of and paid to secured parties, as their interests may appear, to the extent necessary to satisfy the operator's obligations to secured parties, including the maintenance of reserves. Such liens shall be correspondingly reduced and, when paid off, released. Before any payments to, or for the benefit of, secured parties, the responsible public entity may use revenues to pay current operation and maintenance costs of the qualifying project, including compensation to the responsible public entity for its services in operating and maintaining the qualifying project. The right to receive such payment, if any, shall be considered just compensation for the qualifying project. The full faith and credit of the responsible public entity shall not be pledged to secure any financing of the operator by the election to take over the qualifying project. Assumption of operation of the qualifying project shall not obligate the responsible public entity to pay any obligation of the operator from sources other than revenues.”

(2002, c. 571; 2003, c. 1034.)

Code of Va., § 56-575.12. Condemnation. “At the request of the operator, the responsible public entity may exercise any power of condemnation that it has under law for the purpose of acquiring any lands or estates or interests therein to the extent that the responsible public entity finds that such action serves the public purpose of this chapter. Any amounts to be paid in any such condemnation proceeding shall be paid by the operator.”

(2002, c. 571.)

Code of Va., § 56-575.13. Utility crossing. “The operator and each public service company, public utility, railroad, and cable television provider, whose facilities are to be crossed or affected shall cooperate fully with the other entity in planning and arranging the manner of the crossing or relocation of the facilities. Any such entity possessing the power of condemnation is hereby expressly granted such powers in connection with the moving or relocation of facilities to be crossed by the qualifying project or that must be relocated to the extent that such moving or relocation is made necessary or desirable by construction of, renovation to, or improvements to the qualifying project, which shall be construed to include construction of, renovation to, or improvements to temporary facilities for the purpose of providing service during the period of construction or improvement. Any amount to be paid for such crossing, construction, moving or relocating of facilities shall be paid for by the operator. Should the operator and any

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

such public service company, public utility, railroad, and cable television provider not be able to agree upon a plan for the crossing or relocation, the Commission may determine the manner in which the crossing or relocation is to be accomplished and any damages due arising out of the crossing or relocation. The Commission may employ expert engineers who shall examine the location and plans for such crossing or relocation, hear any objections and consider modifications, and make a recommendation to the Commission. In such a case, the cost of the experts is to be borne by the operator. Such determination shall be made by the Commission within ninety days of notification by the private entity that the qualifying project will cross utilities subject to the Commission's jurisdiction. “

(2002, c. 571.)

Code of Va., § 56-575.14. Police powers; violations of law. “All police officers of the Commonwealth and of each affected local jurisdiction shall have the same powers and jurisdiction within the limits of such qualifying project as they have in their respective areas of jurisdiction and such police officers shall have access to the qualifying project at any time for the purpose of exercising such powers and jurisdiction.”

(2002, c. 571.)

Code of Va., § 56-575.15. Sovereign immunity. “Nothing in this chapter shall be construed as or deemed a waiver of the sovereign immunity of the Commonwealth, any responsible public entity or any affected local jurisdiction or any officer or employee thereof with respect to the participation in, or approval of all or any part of the qualifying project or its operation, including but not limited to interconnection of the qualifying project with any other infrastructure or project. Counties, cities and towns in which a qualifying project is located shall possess sovereign immunity with respect to its design, construction, and operation.”

(2002, c. 571.)

Code of Va., § 56-575.16. Procurement. “The Virginia Public Procurement Act (§ [2.2-4300](#) et seq.) and any interpretations, regulations, or guidelines of the Division of Engineering and Buildings of the Department of General Services or the Virginia Information Technologies Agency, including the Capital Outlay Manual and those interpretations, regulations or guidelines developed pursuant to §§ [2.2-1131](#), [2.2-1132](#), [2.2-1133](#), [2.2-1149](#), and [2.2-1502](#), except those developed by the Division or the Virginia Information Technologies Agency in accordance with this chapter when the Commonwealth is the responsible public entity, shall not apply to this chapter. However, a responsible public entity may enter into a comprehensive agreement only in accordance with procedures adopted by it as follows: 1. A responsible public entity may enter into a comprehensive agreement in accordance with procedures adopted by it that are consistent with procurement through competitive sealed bidding as defined in § [2.2-4301](#) and subsection B of § [2.2-4310](#). 2. A responsible public entity may enter into a comprehensive agreement in accordance with procedures adopted by it that are consistent with the procurement of "other than professional services" through

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

competitive negotiation as defined in § [2.2-4301](#) and subsection B of § [2.2-4310](#). Such responsible public entity shall not be required to select the proposal with the lowest price offer, but may consider price as one factor in evaluating the proposals received. A responsible public entity shall proceed in accordance with the procedures adopted by it pursuant to subdivision 1 unless it determines that proceeding in accordance with the procedures adopted by it pursuant to this subdivision is likely to be advantageous to the responsible public entity and the public, based on (i) the probable scope, complexity or urgency of the project, or (ii) risk sharing, added value, an increase in funding or economic benefit from the project that would not otherwise be available. When the responsible public entity determines to proceed according to the procedures adopted by it pursuant to this subdivision, it shall state the reasons for its determination in writing. If a state agency is the responsible public entity, the approval of the responsible Governor's Secretary, or the Governor, shall be required before the responsible public entity may enter into a comprehensive agreement pursuant to this subdivision.

3. Nothing in this chapter shall authorize or require that a responsible public entity obtain professional services through any process except in accordance with procedures adopted by it that are consistent with the procurement of "professional services" through competitive negotiation as defined in § 2.2-4301 and subsection B of § 2.2-4310. 4. A responsible public entity shall not proceed to consider any request by a private entity for approval of a qualifying project pursuant to subsection A of § [56-575.4](#) until the responsible public entity has adopted and made publicly available procedures that are sufficient to enable the responsible public entity to comply with this chapter. Such procedures shall include provision for the posting and publishing of public notice of a private entity's request for approval of a qualifying project pursuant to subsection A of § [56-575.4](#) and a reasonable time period, determined by the responsible public entity to be appropriate to encourage competition and public-private partnerships pursuant to the goals of this chapter, such reasonable period not to be less than 45 days, during which the responsible public entity will receive competing proposals pursuant to that subsection. Such procedures shall include advertising such notice in the Virginia Business Opportunities publication and, in the case of a state agency, posting a notice on the Commonwealth's electronic procurement website. 5. Once a comprehensive agreement has been entered into, and the process of bargaining of all phases or aspects of the comprehensive agreement is complete, a responsible public entity shall make available, upon request, procurement records in accordance with § 2.2-4342. 6. A responsible public entity that is a school board or a county, city or town may enter into a comprehensive agreement under this chapter only with the approval of the local governing body."

(2002, c. 571; 2003, cc. 292, 968, 1034.)

Code of Va., § 2.2-3700. Short title; policy. "A. This chapter may be cited as "The Virginia Freedom of Information Act."

B. By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to public records in the custody of a public body or its

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Public-Private Education Facilities and Infrastructure (continued)

officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked. The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law. This chapter shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth. All public bodies and their officers and employees shall make reasonable efforts to reach an agreement with a requester concerning the production of the records requested. Any ordinance adopted by a local governing body that conflicts with the provisions of this chapter shall be void.”

(1968, c. 479, § 2.1-340; 1976, c. 467, § 2.1-340.1; 1989, c. 358; 1990, c. 538; 1999, cc. 703, 726; 2001, c. 844; 2002, c. 393.)

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