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REVISED June 16, 2015 after Subcommittee discussion on May 12, 2015

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact § 2.2-3711 of the Code of Virginia, relating to the Virginia Freedom of
2 Information Act; exemptions from open meetings.

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

4 **1. That § 2.2-3711 of the Code of Virginia is amended and reenacted as follows:**

5 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

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

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

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

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

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

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

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

32 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to
33 actual or probable litigation, where such consultation or briefing in open meeting would adversely affect
34 the negotiating or litigating posture of the public body; and consultation with legal counsel employed or
35 retained by a public body regarding specific legal matters requiring the provision of legal advice by such
36 counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been
37 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe
38 will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit
39 the closure of a meeting merely because an attorney representing the public body is in attendance or is
40 consulted on a matter.

41 8. In the case of boards of visitors of public institutions of higher education, discussion or
42 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts
43 for services or work to be performed by such institution. However, the terms and conditions of any such
44 gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign
45 person and accepted by a public institution of higher education in Virginia shall be subject to public
46 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
47 (i) "foreign government" means any government other than the United States government or the
48 government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity

49 created under the laws of the United States or of any state thereof if a majority of the ownership of the
50 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
51 membership of any such entity is composed of foreign persons or foreign legal entities, or any legal
52 entity created under the laws of a foreign government; and (iii) "foreign person" means any individual
53 who is not a citizen or national of the United States or a trust territory or protectorate thereof.

54 **9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia**
55 **Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of**
56 **Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants from**
57 **private sources. [NOTE: amendment agreed to by Subcommittee on May 12, 2015]**

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

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

61 12. Discussion, consideration, or review by the appropriate House or Senate committees of
62 possible disciplinary action against a member arising out of the possible inadequacy of the disclosure
63 statement filed by the member, provided the member may request in writing that the committee meeting
64 not be conducted in a closed meeting.

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

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

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

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

80 17. ~~Those portions of meetings by local government crime commissions where the identity of, or~~
81 ~~information tending to identify, individuals providing information about crimes or criminal activities~~
82 ~~under a promise of anonymity is discussed or disclosed.~~ [NOTE: **VWagner3**] Deletion of this
83 exemption agreed to by Subcommittee on May 12, 2015]

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

89 19. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by
90 staff members, legal counsel, or law-enforcement or emergency service officials concerning actions
91 taken to respond to such activity or a related threat to public safety; or discussion of reports or plans
92 related to the security of any governmental facility, building or structure, or the safety of persons using
93 such facility, building or structure.

94 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-
95 124.30, or of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or
96 board of trustees of a trust established by one or more local public bodies to invest funds for post-
97 retirement benefits other than pensions, acting pursuant to §§ 15.2-1544 through 15.2-1549. **VWagner2**
98 or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, or by the Board
99 of the Virginia College Savings Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding
100 or disposition of a security or other ownership interest in an entity, where such security or ownership
101 interest is not traded on a governmentally regulated securities exchange, to the extent that such

102 discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University of
103 Virginia, prepared by the retirement system or by the Virginia College Savings Plan or provided to the
104 retirement system, or by the local finance board or board of trustees of such a trust, or the Virginia
105 College Savings Plan under a promise of confidentiality, of the future value of such ownership interest
106 or the future financial performance of the entity, and (ii) would have an adverse effect on the value of
107 the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of
108 the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be
109 construed to prevent the disclosure of information relating to the identity of any investment held, the
110 amount invested or the present value of such investment. **[ISSUE: Suggestion to include cross
111 reference to Article 8 of Chapter 15 of Title 15.2 relating to local trusts to fund postemployment
112 benefits other than pensions.]**

113 21. Those portions of meetings in which individual child death cases are discussed by the State
114 Child Fatality Review team established pursuant to § 32.1-283.1, and those portions of meetings in
115 which individual child death cases are discussed by a regional or local child fatality review team
116 established pursuant to § 32.1-283.2, and those portions of meetings in which individual death cases are
117 discussed by family violence fatality review teams established pursuant to § 32.1-283.3.

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

129 **23. In the case of the Virginia Commonwealth University Health System Authority,**
130 **discussion or consideration of any of the following: the acquisition or disposition of real or**
131 **personal property where disclosure would adversely affect the bargaining position or negotiating**
132 **strategy of the Authority; operational plans that could affect the value of such property, real or**
133 **personal, owned or desirable for ownership by the Authority; matters relating to gifts, bequests,**
134 **and fund-raising activities; grants and contracts for services or work to be performed by the**
135 **Authority; marketing or operational strategies where disclosure of such strategies would**
136 **adversely affect the competitive position of the Authority; members of its medical and teaching**
137 **staffs and qualifications for appointments thereto; and qualifications or evaluations of other**
138 **employees. [ISSUE: consider eliminating redundancy with other exemptions; issue deferred by**
139 **Subcommittee pending work with VCU and staff]**

140 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee
141 within the Department of Health Professions to the extent such discussions identify any practitioner who
142 may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

143 **25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan**
144 **wherein personal contact information, ~~as defined in § 2.2-3801, which that~~ has been provided to**
145 **the Board or its employees by or on behalf of individuals who have requested information about,**
146 **applied for, or entered into prepaid tuition contracts or savings trust account agreements**
147 **pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23 is discussed. As used in this subdivision,**
148 **"personal contact information" means home address, home telephone number, personal cell phone**
149 **number, or personal email address. [Consideration of amendment deferred at Subcommittee**
150 **meeting on May 12, 2015]**

151 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee
152 created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-
153 336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of
154 wireless E-911 service.

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

161 28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11
162 of § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are
163 defined in § 33.2-1800, or any independent review panel appointed to review information and advise the
164 responsible public entity concerning such records.

165 29. Discussion of the award of a public contract involving the expenditure of public funds,
166 including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where
167 discussion in an open session would adversely affect the bargaining position or negotiating strategy of
168 the public body.

169 30. Discussion or consideration of grant or loan application records excluded from this chapter
170 pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the
171 Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment
172 Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

173 31. Discussion or consideration by the Commitment Review Committee of records excluded
174 from this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to
175 commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

176 ~~32. [Expired.]~~ [NOTE: [VWagner4](#) Deletion [LHausenfluck6](#) agreed to by Subcommittee on
177 May 12, 2015]

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

180 34. Discussion or consideration by a local authority created in accordance with the Virginia
181 Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade
182 secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

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

185 36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory
186 Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records
187 excluded from this chapter pursuant to subdivision A 2 a of § 2.2-3706.

188 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program
189 Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision
190 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum
191 scholarship award, review and consider scholarship applications and requests for scholarship award
192 renewal, and cancel, rescind, or recover scholarship awards.

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

195 39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System
196 acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-
197 124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia
198 College Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's
199 Investment Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this
200 chapter pursuant to subdivision 25 of § 2.2-3705.7.

201 40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3
202 of § 2.2-3705.6.

203 41. Discussion or consideration by the Board of Education of records relating to the denial,
204 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of §
205 2.2-3705.3.

206 42. Those portions of meetings of the Virginia Military Advisory Council or any commission
207 created by executive order for the purpose of studying and making recommendations regarding
208 preventing closure or realignment of federal military and national security installations and facilities
209 located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs
210 organization appointed by a local governing body, during which there is discussion of records excluded
211 from this chapter pursuant to subdivision 12 of § 2.2-3705.2.

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

214 44. Discussion or consideration by the Virginia Tobacco Indemnification and Community
215 Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of § 2.2-
216 3705.6.

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

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

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

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

229 E. This section shall not be construed to (i) require the disclosure of any contract between the
230 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§
231 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to
232 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered

233 to issue industrial revenue bonds by general or special law, to identify a business or industry to which
234 subdivision A 5 applies. However, such business or industry shall be identified as a matter of public
235 record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such
236 bonds.

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