

**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.**

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: **\*\*7/29/2015 VWagner3text: et: If**  
83 **you renumber, cross-refs in other §§, e.g., 23-50.16:32, will have to be added to bill. If not, Lexis**  
84 **will insert [Repealed.] when they update the section.\*\*** Deletion of this exemption agreed to by  
85 Subcommittee on May 12, 2015]

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

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

96 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-  
97 124.30, or of any local retirement system, acting pursuant to § 51.1-803, ~~or by a local finance board or~~  
98 ~~board of trustees of a trust established by one or more local public bodies to invest funds for post-~~  
99 ~~retirement benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15~~  
100 ~~of Title 15.2~~ or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, or  
101 by the Board of the Virginia College Savings Plan, acting pursuant to § 23-38.80, regarding the  
102 acquisition, holding or disposition of a security or other ownership interest in an entity, where such  
103 security or ownership interest is not traded on a governmentally regulated securities exchange, to the  
104 extent that such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the

105 University of Virginia, prepared by the retirement system or by the Virginia College Savings Plan or  
106 provided to the retirement system, or by the local finance board or board of trustees of such a trust  
107 pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or the Virginia College Savings  
108 Plan under a promise of confidentiality, of the future value of such ownership interest or the future  
109 financial performance of the entity, and (ii) would have an adverse effect on the value of the investment  
110 to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of  
111 Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent  
112 the disclosure of information relating to the identity of any investment held, the amount invested or the  
113 present value of such investment.

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

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

130 23. In the case of the Virginia Commonwealth University Health System Authority, discussion  
131 or consideration of any of the following: the acquisition or disposition of real or personal property where

132 disclosure would adversely affect the bargaining position or negotiating strategy of the Authority;  
133 operational plans that could affect the value of such property, real or personal, owned or desirable for  
134 ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and  
135 contracts for services or work to be performed by the Authority; marketing or operational strategies  
136 where disclosure of such strategies would adversely affect the competitive position of the Authority;  
137 members of its medical and teaching staffs and qualifications for appointments thereto; and  
138 qualifications or evaluations of other employees. [See LD 0201 for recommended rewrite of this  
139 exemption eliminating redundancies, etc.]

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 wherein  
144 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees  
145 by or on behalf of individuals who have requested information about, applied for, or entered into prepaid  
146 tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title  
147 23 is discussed.

148 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee  
149 created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-  
150 336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of  
151 wireless E-911 service.

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

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

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

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

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

173 ~~32. [Expired.]~~

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

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

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

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

184 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program  
185 Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision  
186 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum  
187 scholarship award, review and consider scholarship applications and requests for scholarship award  
188 renewal, and cancel, rescind, or recover scholarship awards.

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

191 39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System  
192 acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-  
193 124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia  
194 College Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's  
195 Investment Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this  
196 chapter pursuant to subdivision 25 of § 2.2-3705.7.

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

199 41. Discussion or consideration by the Board of Education of records relating to the denial,  
200 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of §  
201 2.2-3705.3.

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

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

210 44. Discussion or consideration by the Virginia Tobacco Indemnification and Community  
211 Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of § 2.2-  
212 3705.6.

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

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

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

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

225 E. This section shall not be construed to (i) require the disclosure of any contract between the  
226 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§  
227 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to  
228 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered  
229 to issue industrial revenue bonds by general or special law, to identify a business or industry to which  
230 subdivision A 5 applies. However, such business or industry shall be identified as a matter of public  
231 record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such  
232 bonds.

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