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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; open meeting exemptions; providing more context for those meeting
3 exemptions that cross reference corollary records exemptions.

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

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

6 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

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

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

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

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

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

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

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

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

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

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

55 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia
56 Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of
57 Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

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

59 11. Discussion or consideration of tests, examinations, or other records used, administered or
60 prepared by any public body and excluded from this chapter pursuant to subdivision 4 of § 2.2-3705.1,
61 related to the evaluation of (i) any student or any student's performance, (ii) any employee or
62 employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii)
63 qualifications for any license or certificate issued by a public body.

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

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

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

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

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

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

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 of the Rector and Visitors of
98 the University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings
99 Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or
100 other ownership interest in an entity, where such security or ownership interest is not traded on a
101 governmentally regulated securities exchange, to the extent that such discussion (i) concerns
102 confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the

103 retirement system or by the Virginia College Savings Plan or provided to the retirement system or the
104 Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership
105 interest or the future financial performance of the entity, and (ii) would have an adverse effect on the
106 value of the investment to be acquired, held or disposed of by the retirement system, the Rector and
107 Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision
108 shall be construed to prevent the disclosure of information relating to the identity of any investment
109 held, the amount invested or the present value of such investment.

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

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

126 23. In the case of the Virginia Commonwealth University Health System Authority, discussion
127 or consideration of any of the following: the acquisition or disposition of real or personal property where
128 disclosure would adversely affect the bargaining position or negotiating strategy of the Authority;
129 operational plans that could affect the value of such property, real or personal, owned or desirable for

130 ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and
131 contracts for services or work to be performed by the Authority; marketing or operational strategies
132 where disclosure of such strategies would adversely affect the competitive position of the Authority;
133 members of its medical and teaching staffs and qualifications for appointments thereto; and
134 qualifications or evaluations of other employees.

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

138 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
139 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees
140 by or on behalf of individuals who have requested information about, applied for, or entered into prepaid
141 tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title
142 23 is discussed.

143 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee
144 created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-
145 336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of
146 wireless E-911 service.

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

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

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

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

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

168 32. [Expired.]

169 33. Discussion or consideration of confidential proprietary records and trade secrets developed
170 and held by a local public body providing certain telecommunication services or cable television
171 services excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6.

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

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

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

180 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program
181 Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision
182 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum

183 scholarship award, review and consider scholarship applications and requests for scholarship award
184 renewal, and cancel, rescind, or recover scholarship awards.

185 38. Discussion or consideration by the Virginia Port Authority of records excluded from this
186 chapter pursuant to subdivision 1 of § 2.2-3705.6, related to certain proprietary information gathered by
187 or for the Virginia Port Authority.

188 39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System
189 acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-
190 124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia
191 College Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's
192 Investment Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this
193 chapter pursuant to subdivision 25 of § 2.2-3705.7.

194 40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3
195 of § 2.2-3705.6, related to business, trade, or tourism development or retention.

196 41. Discussion or consideration by the Board of Education of records relating to the denial,
197 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of §
198 2.2-3705.3.

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

205 43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
206 records excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7, related to personally
207 identifiable information of donors.

208 44. Discussion or consideration by the Virginia Tobacco Indemnification and Community
209 Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of § 2.2-
210 3705.6, related to certain information contained in grant applications.

211 45. Discussion or consideration by the board of directors of the Commercial Space Flight
212 Authority of records excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6, related to
213 rate structures or charges for the use of projects of, the sale of products of, or services rendered by the
214 Authority and certain proprietary records of a private entity provided to the Authority.

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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