

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact § of the Code of Virginia, relating to the Virginia Freedom of
2 Information Act; open meeting exemption for personnel discussions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

76 16. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant
77 to subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent;

78 and discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game
79 information and studies or investigations exempted from disclosure under subdivision 6 of § 2.2-3705.3
80 and subdivision 11 of § 2.2-3705.7.

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

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 of the Rector and Visitors of
96 the University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings
97 Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or
98 other ownership interest in an entity, where such security or ownership interest is not traded on a
99 governmentally regulated securities exchange, to the extent that such discussion (i) concerns
100 confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the
101 retirement system or by the Virginia College Savings Plan or provided to the retirement system or the
102 Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership
103 interest or the future financial performance of the entity, and (ii) would have an adverse effect on the
104 value of the investment to be acquired, held or disposed of by the retirement system, the Rector and

105 Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision
106 shall be construed to prevent the disclosure of information relating to the identity of any investment
107 held, the amount invested or the present value of such investment.

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

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

124 23. In the case of the Virginia Commonwealth University Health System Authority, discussion
125 or consideration of any of the following: the acquisition or disposition of real or personal property where
126 disclosure would adversely affect the bargaining position or negotiating strategy of the Authority;
127 operational plans that could affect the value of such property, real or personal, owned or desirable for
128 ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and
129 contracts for services or work to be performed by the Authority; marketing or operational strategies
130 where disclosure of such strategies would adversely affect the competitive position of the Authority;

131 members of its medical and teaching staffs and qualifications for appointments thereto; and
132 qualifications or evaluations of other employees.

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

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

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

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

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

155 29. Discussion of the award of a public contract involving the expenditure of public funds,
156 including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where

157 discussion in an open session would adversely affect the bargaining position or negotiating strategy of
158 the public body.

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

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

166 32. [Expired.]

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

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

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

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

177 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program
178 Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision
179 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum
180 scholarship award, review and consider scholarship applications and requests for scholarship award
181 renewal, and cancel, rescind, or recover scholarship awards.

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

184 39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System
185 acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-
186 124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia
187 College Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's
188 Investment Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this
189 chapter pursuant to subdivision 25 of § 2.2-3705.7.

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

192 41. Discussion or consideration by the Board of Education of records relating to the denial,
193 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of §
194 2.2-3705.3.

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

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

203 44. Discussion or consideration by the Virginia Tobacco Indemnification and Community
204 Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of § 2.2-
205 3705.6.

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

208 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a
209 closed meeting shall become effective unless the public body, following the meeting, reconvenes in

210 open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract,
211 regulation, or motion that shall have its substance reasonably identified in the open meeting.

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

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

218 E. This section shall not be construed to (i) require the disclosure of any contract between the
219 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§
220 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to
221 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered
222 to issue industrial revenue bonds by general or special law, to identify a business or industry to which
223 subdivision A 5 applies. However, such business or industry shall be identified as a matter of public
224 record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such
225 bonds.

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