

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 context for those meeting exemptions that
3 cross-reference corollary records exclusions.

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~~
43 Discussion or consideration by boards of visitors of a public institution of higher education of matters
44 relating to gifts, bequests and fund-raising activities, and grants and contracts for services or work to be
45 performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and
46 contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a
47 public institution of higher education in Virginia shall be subject to public disclosure upon written
48 request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government"
49 means any government other than the United States government or the government of a state or a
50 political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the laws of
51 the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is
52 owned by foreign governments or foreign persons or if a majority of the membership of any such entity

53 is composed of foreign persons or foreign legal entities, or any legal entity created under the laws of a
54 foreign government; and (iii) "foreign person" means any individual who is not a citizen or national of
55 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~~ Discussion or consideration of matters relating to specific gifts, bequests, and grants
59 by boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, the
60 Jamestown-Yorktown Foundation, and the Science Museum of Virginia.

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

62 11. Discussion or consideration of tests, examinations, or other ~~records~~ information [HB817, C.
63 620 2016 Acts] used, administered, or prepared by a public body and excluded from this chapter
64 pursuant to subdivision 4 of § 2.2-3705.1.

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

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

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

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

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

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

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

92 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific
93 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-
94 enforcement or emergency service officials concerning actions taken to respond to such matters or a
95 related threat to public safety; discussion of ~~records~~ information [HB817, C. 620 2016 Acts] excluded
96 from this chapter pursuant to subdivision 3 or 4 of § 2.2-3705.2, where discussion in an open meeting
97 would jeopardize the safety of any person or the security of any facility, building, structure, information
98 technology system, or software program; or discussion of reports or plans related to the security of any
99 governmental facility, building or structure, or the safety of persons using such facility, building or
100 structure.

101 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-
102 124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of
103 the University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings
104 Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or
105 other ownership interest in an entity, where such security or ownership interest is not traded on a

106 governmentally regulated securities exchange, to the extent that such discussion (i) concerns
107 confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the
108 retirement system or by the Virginia College Savings Plan or provided to the retirement system or the
109 Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership
110 interest or the future financial performance of the entity, and (ii) would have an adverse effect on the
111 value of the investment to be acquired, held or disposed of by the retirement system, the Rector and
112 Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision
113 shall be construed to prevent the disclosure of information relating to the identity of any investment
114 held, the amount invested or the present value of such investment.

115 21. Those portions of meetings in which individual child death cases are discussed by the State
116 Child Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which
117 individual child death cases are discussed by a regional or local child fatality review team established
118 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by
119 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in
120 which individual adult death cases are discussed by the state Adult Fatality Review Team established
121 pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are
122 discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

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

132 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
133 Medical School, as the case may be.

134 23. ~~In the case of the Virginia Commonwealth University Health System Authority, discussion~~
135 Discussion or consideration by the Virginia Commonwealth University Health System Authority of any
136 of the following: the acquisition or disposition of real or personal property where disclosure would
137 adversely affect the bargaining position or negotiating strategy of the Authority; operational plans that
138 could affect the value of such property, real or personal, owned or desirable for ownership by the
139 Authority; matters relating to gifts, bequests and fund-raising activities; grants and contracts for services
140 or work to be performed by the Authority; marketing or operational strategies where disclosure of such
141 strategies would adversely affect the competitive position of the Authority; members of its medical and
142 teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other
143 employees. This ~~exemption~~ exclusion [HB817, C. 620 2016 Acts] shall also apply when the foregoing
144 discussions occur at a meeting of the Virginia Commonwealth University Board of Visitors.

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

148 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
149 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees
150 by or on behalf of individuals who have requested information about, applied for, or entered into prepaid
151 tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title
152 23 is discussed.

153 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee
154 created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-
155 336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of
156 wireless E-911 service.

157 27. Those portions of disciplinary proceedings by any regulatory board within the Department of
158 Professional and Occupational Regulation, Department of Health Professions, or the Board of

159 Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach
160 a decision or meetings of health regulatory boards or conference committees of such boards to consider
161 settlement proposals in pending disciplinary actions or modifications to previously issued board orders
162 as requested by either of the parties.

163 28. Discussion or consideration of ~~records~~ information [HB817, C. 620 2016 Acts] excluded
164 from this chapter pursuant to subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected
165 locality or public entity, as those terms are defined in § 33.2-1800, or any independent review panel
166 appointed to review information and advise the responsible public entity concerning such records.

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

171 30. Discussion or consideration of grant or loan application ~~records~~ information [HB817, C. 620
172 2016 Acts] excluded from this chapter pursuant to subdivision 17 of § 2.2-3705.6 by (i) the
173 Commonwealth Health Research Board or (ii) the Innovation and Entrepreneurship Investment
174 Authority or the Research and Technology Investment Advisory Committee appointed to advise the
175 Innovation and Entrepreneurship Investment Authority.

176 31. Discussion or consideration by the Commitment Review Committee of ~~records~~ information
177 [HB817, C. 620 2016 Acts] excluded from this chapter pursuant to subdivision 9 of § 2.2-3705.2
178 relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ 37.2-900
179 et seq.) of Title 37.2.

180 32. [Expired.]

181 33. Discussion or consideration of confidential proprietary ~~records~~ information [HB817, C. 620
182 2016 Acts] and trade secrets developed and held by a local public body providing certain
183 telecommunication services or cable television services excluded from this chapter pursuant to
184 subdivision 18 of § 2.2-3705.6. However, the exclusion provided by this subdivision shall not apply to

185 [any authority created pursuant to the BVU Authority Act \(§ 15.2-7200 et seq.\). \[SB 329, C. 724 2016](#)
186 [Acts \(Bristol Virginia Utilities\)\]](#)

187 34. Discussion or consideration by a local authority created in accordance with the Virginia
188 Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary ~~records~~ [information](#)
189 [\[HB817, C. 620 2016 Acts\]](#) and trade secrets excluded from this chapter pursuant to subdivision 19 of §
190 2.2-3705.6.

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

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

196 37. Discussion or consideration by the Brown v. Board of Education Scholarship ~~Program~~
197 [Awards](#) Committee of ~~records~~ [information \[HB817, C. 620 2016 Acts\]](#) or confidential matters excluded
198 from this chapter pursuant to subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate
199 concerning the annual maximum scholarship award, review and consider scholarship applications and
200 requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

201 38. Discussion or consideration by the Virginia Port Authority of ~~records~~ [information \[HB817,](#)
202 [C. 620 2016 Acts\]](#) excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.6, [relating to](#)
203 [certain proprietary information gathered by or for the Virginia Port Authority.](#)

204 39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System
205 acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-
206 124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia
207 College Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's
208 Investment Advisory Committee appointed pursuant to § 23-38.79:1 of ~~records~~ [information \[HB817, C.](#)
209 [620 2016 Acts\]](#) excluded from this chapter pursuant to subdivision 25 of § 2.2-3705.7.

210 40. Discussion or consideration of ~~records~~ [information \[HB817, C. 620 2016 Acts\]](#) excluded
211 from this chapter pursuant to subdivision 3 of § 2.2-3705.6, [relating to economic development.](#)

212 41. Discussion or consideration by the Board of Education of ~~records~~ information [HB817, C.
213 620 2016 Acts] relating to the denial, suspension, or revocation of teacher licenses excluded from this
214 chapter pursuant to subdivision 12 of § 2.2-3705.3.

215 42. Those portions of meetings of the Virginia Military Advisory Council or any commission
216 created by executive order for the purpose of studying and making recommendations regarding
217 preventing closure or realignment of federal military and national security installations and facilities
218 located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs
219 organization appointed by a local governing body, during which there is discussion of ~~records~~
220 information [HB817, C. 620 2016 Acts] excluded from this chapter pursuant to subdivision ~~12~~ 11
221 [HB817, C. 620 2016 Acts] of § 2.2-3705.2.

222 43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
223 ~~records~~ information [HB817, C. 620 2016 Acts] excluded from this chapter pursuant to subdivision 29
224 of § 2.2-3705.7, relating to personally identifiable information of donors.

225 44. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of
226 ~~records~~ information [HB817, C. 620 2016 Acts] excluded from this chapter pursuant to subdivision 23
227 of § 2.2-3705.6, relating to certain information contained in grant applications.

228 45. Discussion or consideration by the board of directors of the Commercial Space Flight
229 Authority of ~~records~~ information [HB817, C. 620 2016 Acts] excluded from this chapter pursuant to
230 subdivision 24 of § 2.2-3705.6, relating to rate structures or charges for the use of projects of, the sale of
231 products of, or services rendered by the Authority and certain proprietary information of a private entity
232 provided to the Authority.

233 46. Discussion or consideration of personal and proprietary ~~information that are~~ information
234 related to the resource management plan program and excluded from ~~the provisions of~~ this chapter
235 pursuant to (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of § 10.1-104.7. This ~~exemption~~
236 exclusion [HB817, C. 620 2016 Acts] shall not apply to the discussion or consideration of records that
237 contain information that has been certified for release by the person who is the subject of the

238 information or transformed into a statistical or aggregate form that does not allow identification of the
239 person who supplied, or is the subject of, the information.

240 47. (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the Virginia
241 Alcoholic Beverage Control Authority of ~~records information [HB817, C. 620 2016 Acts]~~ excluded
242 from this chapter pursuant to subdivision 1 of § 2.2-3705.3 ~~or subdivision 34 of § 2.2-3705.7 relating to~~
243 investigations of applicants for licenses and permits and of licensees and permittees.

244 48. Discussion or development of grant proposals by a regional council established pursuant to
245 Article 26 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth
246 and Opportunity Board.[HB 834/SB449--C. 779 2016 Acts]

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

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

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

257 E. This section shall not be construed to (i) require the disclosure of any contract between the
258 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§
259 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to
260 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered
261 to issue industrial revenue bonds by general or special law, to identify a business or industry to which
262 subdivision A 5 applies. However, such business or industry shall be identified as a matter of public
263 record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such
264 bonds.

265

#