



DRAFTS
RECOMMENDED
BY
MEETINGS
SUBCOMMITTEE

DRAFT

Agreed to by city subc in 2014

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3711, 23-50.16:32, 32.1-283.1, 32.1-283.2, 32.1-283.3, and 54.1-
2 2517 of the Code of Virginia, relating to the Virginia Freedom of Information Act; open meeting
3 exemption for legal matters and litigation.

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

5 **1. That §§ 2.2-3711, 23-50.16:32, 32.1-283.1, 32.1-283.2, 32.1-283.3, and 54.1-2517 of the Code of**
6 **Virginia are amended and reenacted as follows:**

7 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

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

9 1. Discussion, consideration, or interviews of prospective candidates for employment;
10 assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of
11 specific public officers, appointees, or employees of any public body; and evaluation of performance of
12 departments or schools of public institutions of higher education where such evaluation will necessarily
13 involve discussion of the performance of specific individuals. Any teacher shall be permitted to be
14 present during a closed meeting in which there is a discussion or consideration of a disciplinary matter
15 that involves the teacher and some student and the student involved in the matter is present, provided the
16 teacher makes a written request to be present to the presiding officer of the 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. Consultation with legal counsel employed or retained by a public body regarding specific legal
44 matters requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be
45 construed to permit the closure of a meeting merely because an attorney representing the public body is
46 in attendance or is consulted on a matter.

47 9. In the case of boards of visitors of public institutions of higher education, discussion or
48 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts
49 for services or work to be performed by such institution. However, the terms and conditions of any such
50 gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign

51 person and accepted by a public institution of higher education in Virginia shall be subject to public
52 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
53 (i) "foreign government" means any government other than the United States government or the
54 government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity
55 created under the laws of the United States or of any state thereof if a majority of the ownership of the
56 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
57 membership of any such entity is composed of foreign persons or foreign legal entities, or any legal
58 entity created under the laws of a foreign government; and (iii) "foreign person" means any individual
59 who is not a citizen or national of the United States or a trust territory or protectorate thereof.

60 ~~9-10.~~ In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia
61 Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of
62 Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

63 ~~10-11.~~ Discussion or consideration of honorary degrees or special awards.

64 ~~11-12.~~ Discussion or consideration of tests, examinations, or other records excluded from this
65 chapter pursuant to subdivision 4 of § 2.2-3705.1.

66 ~~12-13.~~ Discussion, consideration, or review by the appropriate House or Senate committees of
67 possible disciplinary action against a member arising out of the possible inadequacy of the disclosure
68 statement filed by the member, provided the member may request in writing that the committee meeting
69 not be conducted in a closed meeting.

70 ~~13-14.~~ Discussion of strategy with respect to the negotiation of a hazardous waste siting
71 agreement or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if
72 the governing body in open meeting finds that an open meeting will have an adverse effect upon the
73 negotiating position of the governing body or the establishment of the terms, conditions and provisions
74 of the siting agreement, or both. All discussions with the applicant or its representatives may be
75 conducted in a closed meeting.

76 ~~14-15.~~ Discussion by the Governor and any economic advisory board reviewing forecasts of
77 economic activity and estimating general and nongeneral fund revenues.

78 | ~~15-16.~~ Discussion or consideration of medical and mental health records excluded from this
79 | chapter pursuant to subdivision 1 of § 2.2-3705.5.

80 | ~~16-17.~~ Deliberations of the Virginia Lottery Board in a licensing appeal action conducted
81 | pursuant to subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales
82 | agent; and discussion, consideration or review of Virginia Lottery matters related to proprietary lottery
83 | game information and studies or investigations exempted from disclosure under subdivision 6 of § 2.2-
84 | 3705.3 and subdivision 11 of § 2.2-3705.7.

85 | ~~17-18.~~ Those portions of meetings by local government crime commissions where the identity
86 | of, or information tending to identify, individuals providing information about crimes or criminal
87 | activities under a promise of anonymity is discussed or disclosed.

88 | ~~18-19.~~ Those portions of meetings in which the Board of Corrections discusses or discloses the
89 | identity of, or information tending to identify, any prisoner who (i) provides information about crimes or
90 | criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the
91 | apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders
92 | other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

93 | ~~19-20.~~ Discussion of plans to protect public safety as it relates to terrorist activity and briefings
94 | by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions
95 | taken to respond to such activity or a related threat to public safety; or discussion of reports or plans
96 | related to the security of any governmental facility, building or structure, or the safety of persons using
97 | such facility, building or structure.

98 | ~~20-21.~~ Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-
99 | 124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of
100 | the University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings
101 | Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or
102 | other ownership interest in an entity, where such security or ownership interest is not traded on a
103 | governmentally regulated securities exchange, to the extent that such discussion (i) concerns
104 | confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the

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

112 ~~21-22.~~ Those portions of meetings in which individual child death cases are discussed by the
113 State Child Fatality Review team established pursuant to § 32.1-283.1, and those portions of meetings in
114 which individual child death cases are discussed by a regional or local child fatality review team
115 established pursuant to § 32.1-283.2, and those portions of meetings in which individual death cases are
116 discussed by family violence fatality review teams established pursuant to § 32.1-283.3.

117 ~~22-23.~~ Those portions of meetings of the University of Virginia Board of Visitors or the Eastern
118 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
119 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
120 Virginia Medical School, as the case may be, have been delegated, in which there is discussed
121 proprietary, business-related information pertaining to the operations of the University of Virginia
122 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
123 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
124 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
125 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
126 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
127 Medical School, as the case may be.

128 ~~23-24.~~ In the case of the Virginia Commonwealth University Health System Authority,
129 discussion or consideration of any of the following: the acquisition or disposition of real or personal
130 property where disclosure would adversely affect the bargaining position or negotiating strategy of the
131 Authority; operational plans that could affect the value of such property, real or personal, owned or

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

137 ~~24-25.~~ Those portions of the meetings of the Health Practitioners' Monitoring Program
138 Committee within the Department of Health Professions to the extent such discussions identify any
139 practitioner who may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of
140 Title 54.1.

141 ~~25-26.~~ Meetings or portions of meetings of the Board of the Virginia College Savings Plan
142 wherein personal information, as defined in § 2.2-3801, which has been provided to the Board or its
143 employees by or on behalf of individuals who have requested information about, applied for, or entered
144 into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et
145 seq.) of Title 23 is discussed.

146 ~~26-27.~~ Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee
147 created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-
148 336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of
149 wireless E-911 service.

150 ~~27-28.~~ Those portions of disciplinary proceedings by any regulatory board within the
151 Department of Professional and Occupational Regulation, Department of Health Professions, or the
152 Board of Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates
153 to reach a decision or meetings of health regulatory boards or conference committees of such boards to
154 consider settlement proposals in pending disciplinary actions or modifications to previously issued board
155 orders as requested by either of the parties.

156 ~~28-29.~~ Discussion or consideration of records excluded from this chapter pursuant to subdivision
157 11 of § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms

158 are defined in § 56-557, or any independent review panel appointed to review information and advise
159 the responsible public entity concerning such records.

160 ~~29.~~30. Discussion of the award of a public contract involving the expenditure of public funds,
161 including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where
162 discussion in an open session would adversely affect the bargaining position or negotiating strategy of
163 the public body.

164 ~~30.~~31. Discussion or consideration of grant or loan application records excluded from this
165 chapter pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or
166 (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology
167 Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment
168 Authority.

169 ~~31.~~32. Discussion or consideration by the Commitment Review Committee of records excluded
170 from this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to
171 commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

172 ~~32.~~ [Expired.]

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

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

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

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

183 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program
184 Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision

185 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum
186 scholarship award, review and consider scholarship applications and requests for scholarship award
187 renewal, and cancel, rescind, or recover scholarship awards.

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

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

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

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

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

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

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

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

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

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

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

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

232 **§ 23-50.16:32. Confidential and public information.**

233 A. The Authority shall be subject to the provisions of the Freedom of Information Act (§ 2.2-
234 3700 et seq.), which shall include the exclusions set forth in subdivision 15 of § 2.2-3705.7 and
235 subdivision ~~23~~ of subsection A 24 of § 2.2-3711.

236 B. For purposes of the Freedom of Information Act (§ 2.2-3700 et seq.), meetings of the Board
237 shall not be considered meetings of the Board of Visitors of the University. Meetings of the Board may

238 be conducted through telephonic or video means as provided in § 2.2-3708 or similar provisions of any
239 successor law.

240 **§ 32.1-283.1. State Child Fatality Review Team; membership; access to and maintenance of**
241 **records; confidentiality; etc.**

242 A. There is hereby created the State Child Fatality Review Team, referred to in this section as
243 "the Team," which shall develop and implement procedures to ensure that child deaths occurring in
244 Virginia are analyzed in a systematic way. The Team shall review (i) violent and unnatural child deaths,
245 (ii) sudden child deaths occurring within the first 18 months of life, and (iii) those fatalities for which
246 the cause or manner of death was not determined with reasonable medical certainty. No child death
247 review shall be initiated by the Team until conclusion of any law-enforcement investigation or criminal
248 prosecution. The Team shall (i) develop and revise as necessary operating procedures for the review of
249 child deaths, including identification of cases to be reviewed and procedures for coordination among the
250 agencies and professionals involved, (ii) improve the identification, data collection, and record keeping
251 of the causes of child death, (iii) recommend components for prevention and education programs, (iv)
252 recommend training to improve the investigation of child deaths, and (v) provide technical assistance,
253 upon request, to any local child fatality teams that may be established. The operating procedures for the
254 review of child deaths shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.)
255 pursuant to subdivision B 17 of § 2.2-4002.

256 B. The 16-member Team shall be chaired by the Chief Medical Examiner and shall be composed
257 of the following persons or their designees: the Commissioner of Behavioral Health and Developmental
258 Services; the Director of Child Protective Services within the Department of Social Services; the
259 Superintendent of Public Instruction; the State Registrar of Vital Records; and the Director of the
260 Department of Criminal Justice Services. In addition, one representative from each of the following
261 entities shall be appointed by the Governor to serve for a term of three years: local law-enforcement
262 agencies, local fire departments, local departments of social services, the Medical Society of Virginia,
263 the Virginia College of Emergency Physicians, the Virginia Pediatric Society, local emergency medical
264 services personnel, attorneys for the Commonwealth, and community services boards.

265 C. Upon the request of the Chief Medical Examiner in his capacity as chair of the Team, made
266 after the conclusion of any law-enforcement investigation or prosecution, information and records
267 regarding a child whose death is being reviewed by the Team may be inspected and copied by the Chief
268 Medical Examiner or his designee, including, but not limited to, any report of the circumstances of the
269 event maintained by any state or local law-enforcement agency or medical examiner, and information or
270 records maintained on such child by any school, social services agency or court. Information, records, or
271 reports maintained by any attorney for the Commonwealth shall be made available for inspection and
272 copying by the Chief Medical Examiner pursuant to procedures which shall be developed by the Chief
273 Medical Examiner and the Commonwealth's Attorneys' Services Council established by § 2.2-2617. Any
274 presentence report prepared pursuant to § 19.2-299 for any person convicted of a crime that led to the
275 death of the child shall be made available for inspection and copying by the Office of the Chief Medical
276 Examiner pursuant to procedures which shall be developed by the Chief Medical Examiner. In addition,
277 the Office of the Chief Medical Examiner may inspect and copy from any Virginia health care provider,
278 on behalf of the Team, (i) without obtaining consent, the health and mental health records of the child
279 and those perinatal medical records of the child's mother that related to such child and (ii) upon
280 obtaining consent from each adult regarding his personal records, or from a parent regarding the records
281 of a minor child, the health and mental health records of the child's family. All such information and
282 records shall be confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-
283 3700 et seq.) pursuant to subdivision 9 of § 2.2-3705.5. Upon the conclusion of the child death review,
284 all information and records concerning the child and the child's family shall be shredded or otherwise
285 destroyed by the Office of the Chief Medical Examiner in order to ensure confidentiality. Such
286 information or records shall not be subject to subpoena or discovery or be admissible in any criminal or
287 civil proceeding. If available from other sources, however, such information and records shall not be
288 immune from subpoena, discovery, or introduction into evidence when obtained through such other
289 sources solely because the information and records were presented to the Team during a child death
290 review. Further, the findings of the Team may be disclosed or published in statistical or other form
291 which shall not identify individuals. The portions of meetings in which individual child death cases are

292 | discussed by the Team shall be closed pursuant to subdivision A-~~21~~ 22 of § 2.2-3711. In addition to the
293 requirements of § 2.2-3712, all team members, persons attending closed team meetings, and persons
294 presenting information and records on specific child deaths to the Team during closed meetings shall
295 execute a sworn statement to honor the confidentiality of the information, records, discussions, and
296 opinions disclosed during any closed meeting to review a specific child death. Violations of this
297 subsection are punishable as a Class 3 misdemeanor.

298 D. Upon notification of a child death, any state or local government agency maintaining records
299 on such child or such child's family which are periodically purged shall retain such records for the
300 longer of 12 months or until such time as the State Child Fatality Review Team has completed its child
301 death review of the specific case.

302 E. The Team shall compile annual data which shall be made available to the Governor and the
303 General Assembly as requested. These statistical data compilations shall not contain any personally
304 identifying information and shall be public records.

305 **§ 32.1-283.2. Local and regional child fatality review teams established; membership;**
306 **authority; confidentiality; immunity.**

307 A. Upon the initiative of any local or regional law-enforcement agency, fire department,
308 department of social services, emergency medical services agency, attorney for the Commonwealth's
309 office, or community services board, local or regional child fatality teams may be established for the
310 purpose of conducting contemporaneous reviews of local child deaths in order to develop interventions
311 and strategies for prevention specific to the locality or region. Each team shall establish rules and
312 procedures to govern the review process. Agencies may share information but shall be bound by
313 confidentiality and execute a sworn statement to honor the confidentiality of the information they share.
314 Violations are punishable as a Class 3 misdemeanor. The State Child Fatality Review Team shall
315 provide technical assistance and direction as provided for in subsection A of § 32.1-283.1.

316 B. Local and regional teams may be composed of the following persons from the localities
317 represented on a particular board or their designees: a medical examiner appointed pursuant to § 32.1-
318 282, a local social services official in charge of child protective services, a director of the relevant local

319 or district health department, a chief law-enforcement officer, a local fire marshal, the attorney for the
320 Commonwealth, an executive director of the local community services board or other local mental
321 health agency, and such additional persons, not to exceed five, as may be appointed to serve by the
322 chairperson of the local or regional team. The chairperson shall be elected from among the designated
323 membership. The additional members appointed by the chairperson may include, but are not restricted
324 to, representatives of local human services agencies; local public education agencies; local pediatricians,
325 psychiatrists and psychologists; and local child advocacy organizations.

326 C. Each team shall establish local rules and procedures to govern the review process prior to
327 conducting the first child fatality review. The review of a death shall be delayed until any criminal
328 investigations connected with the death are completed or the Commonwealth consents to the
329 commencement of such review prior to the completion of the criminal investigation.

330 D. All information and records obtained or created regarding the review of a fatality shall be
331 confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.)
332 pursuant to subdivision 9 of § 2.2-3705.5. All such information and records shall be used by the team
333 only in the exercise of its proper purpose and function and shall not be disclosed. Such information or
334 records shall not be subject to subpoena, subpoena duces tecum, or discovery or be admissible in any
335 criminal or civil proceeding. If available from other sources, however, such information and records
336 shall not be immune from subpoena, subpoena duces tecum, discovery, or introduction into evidence
337 when obtained through such other sources solely because the information and records were presented to
338 the team during a fatality review. No person who participated in the reviews nor any member of the
339 team shall be required to make any statement as to what transpired during the review or what
340 information was collected during the review. Upon the conclusion of the fatality review, all information
341 and records concerning the victim and the family shall be returned to the originating agency or
342 destroyed. However, the findings of the team may be disclosed or published in statistical or other form
343 which shall not identify individuals. The portions of meetings in which individual cases are discussed by
344 the team shall be closed pursuant to subdivision A-~~24~~ 22 of § 2.2-3711. All team members, persons
345 attending closed team meetings, and persons presenting information and records on specific fatalities to

346 the team during closed meetings shall execute a sworn statement to honor the confidentiality of the
347 information, records, discussions, and opinions disclosed during any closed meeting to review a specific
348 death. Violations of this subsection are punishable as a Class 3 misdemeanor.

349 E. Members of teams, as well as their agents and employees, shall be immune from civil liability
350 for any act or omission made in connection with participation in a child fatality review team review,
351 unless such act or omission was the result of gross negligence or willful misconduct. Any organization,
352 institution, or person furnishing information, data, testimony, reports or records to review teams as part
353 of such review, shall be immune from civil liability for any act or omission in furnishing such
354 information, unless such act or omission was the result of gross negligence or willful misconduct.

355 **§ 32.1-283.3. Family violence fatality review teams established; model protocol and data**
356 **management; membership; authority; confidentiality, etc.**

357 A. The Office of the Chief Medical Examiner shall develop a model protocol for the
358 development and implementation of local family violence fatality review teams (teams) and such model
359 protocol shall include relevant procedures for conducting reviews of fatal family violence incidents. A
360 "fatal family violence incident" means any fatality, whether homicide or suicide, occurring as a result of
361 abuse between family members or intimate partners. The Office of the Chief Medical Examiner shall
362 provide technical assistance to the local teams and serve as a clearinghouse for information.

363 B. Subject to available funding, the Office of the Chief Medical Examiner shall provide ongoing
364 surveillance of fatal family violence occurrences and promulgate an annual report based on accumulated
365 data.

366 C. Any county or city, or combination of counties, cities, or counties and cities, may establish a
367 family violence fatality review team to examine fatal family violence incidents and to create a body of
368 information to help prevent future family violence fatalities. The team shall have the authority to review
369 the facts and circumstances of all fatal family violence incidents that occur within its designated
370 geographic area.

371 D. Membership in the team may include, but shall not be limited to, health care professionals,
372 representatives from the local bar, attorneys for the Commonwealth, judges, law-enforcement officials,

373 criminologists, medical examiners appointed pursuant to § 32.1-282, other experts in forensic medicine
374 and pathology, family violence victim advocates, health department professionals, probation and parole
375 professionals, adult and child protective services professionals, and representatives of family violence
376 local coordinating councils.

377 E. Each team shall establish local rules and procedures to govern the review process prior to the
378 first fatal family violence incident review conducted. The review of a death shall be delayed until any
379 criminal investigations or prosecutions connected with the death are completed.

380 F. All information and records obtained or created regarding the review of a fatality shall be
381 confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.)
382 pursuant to subdivision 9 of § 2.2-3705.5. All such information and records shall be used by the team
383 only in the exercise of its proper purpose and function and shall not be disclosed. Such information or
384 records shall not be subject to subpoena, subpoena duces tecum or discovery or be admissible in any
385 criminal or civil proceeding. If available from other sources, however, such information and records
386 shall not be immune from subpoena, subpoena duces tecum, discovery or introduction into evidence
387 when obtained through such other sources solely because the information and records were presented to
388 the team during a fatality review. No person who participated in the review nor any member of the team
389 shall be required to make any statement as to what transpired during the review or what information was
390 collected during the review. Upon the conclusion of the fatality review, all information and records
391 concerning the victim and the family shall be returned to the originating agency or destroyed. However,
392 the findings of the team may be disclosed or published in statistical or other form which shall not
393 identify individuals. The portions of meetings in which individual cases are discussed by the team shall
394 be closed pursuant to subdivision A-21 22 of § 2.2-3711. All team members, persons attending closed
395 team meetings, and persons presenting information and records on specific fatalities to the team during

373 criminologists, medical examiners appointed pursuant to § 32.1-282, other experts in forensic medicine
374 and pathology, family violence victim advocates, health department professionals, probation and parole
375 professionals, adult and child protective services professionals, and representatives of family violence
376 local coordinating councils.

377 E. Each team shall establish local rules and procedures to govern the review process prior to the
378 first fatal family violence incident review conducted. The review of a death shall be delayed until any
379 criminal investigations or prosecutions connected with the death are completed.

380 F. All information and records obtained or created regarding the review of a fatality shall be
381 confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.)
382 pursuant to subdivision 9 of § 2.2-3705.5. All such information and records shall be used by the team
383 only in the exercise of its proper purpose and function and shall not be disclosed. Such information or
384 records shall not be subject to subpoena, subpoena duces tecum or discovery or be admissible in any
385 criminal or civil proceeding. If available from other sources, however, such information and records
386 shall not be immune from subpoena, subpoena duces tecum, discovery or introduction into evidence
387 when obtained through such other sources solely because the information and records were presented to
388 the team during a fatality review. No person who participated in the review nor any member of the team
389 shall be required to make any statement as to what transpired during the review or what information was
390 collected during the review. Upon the conclusion of the fatality review, all information and records
391 concerning the victim and the family shall be returned to the originating agency or destroyed. However,
392 the findings of the team may be disclosed or published in statistical or other form which shall not
393 identify individuals. The portions of meetings in which individual cases are discussed by the team shall
394 be closed pursuant to subdivision A-24 22 of § 2.2-3711. All team members, persons attending closed
395 team meetings, and persons presenting information and records on specific fatalities to the team during
396 closed meetings shall execute a sworn statement to honor the confidentiality of the information, records,
397 discussions, and opinions disclosed during any closed meeting to review a specific death. Violations of
398 this subsection are punishable as a Class 3 misdemeanor.

399 G. Members of teams, as well as their agents and employees, shall be immune from civil liability
400 for any act or omission made in connection with participation in a family violence fatality review, unless
401 such act or omission was the result of gross negligence or willful misconduct. Any organization,
402 institution, or person furnishing information, data, testimony, reports or records to review teams as part
403 of such review, shall be immune from civil liability for any act or omission in furnishing such
404 information, unless such act or omission was the result of gross negligence or willful misconduct.

405 **§ 54.1-2517. Health Practitioners' Monitoring Program Committee; certain meetings,**
406 **decisions to be excepted from the Freedom of Information Act; confidentiality of records;**
407 **immunity from liability.**

408 A. The Health Practitioners' Monitoring Program Committee shall consist of seven persons who
409 are licensed, certified, or registered practitioners appointed by the Director to advise and assist in the
410 operation of the Program, at least one of whom shall be licensed to practice medicine or osteopathy in
411 Virginia and who shall be engaged in active clinical practice, and at least one of whom shall be a
412 registered nurse who shall be engaged in active practice. All members of the Committee shall be
413 knowledgeable about impairment and rehabilitation, particularly as related to the monitoring of health
414 care practitioners. The Health Practitioners' Monitoring Program Committee shall have the following
415 powers and duties:

- 416 1. To determine, in accordance with the regulations, eligibility to enter into the Program;
- 417 2. To determine, in accordance with the regulations, those Program participants who are eligible
418 for stayed disciplinary action;
- 419 3. To enter into written contracts with practitioners which may include, among other terms and
420 conditions, withdrawal from practice or limitations on the scope of the practice for a period of time;
- 421 4. To report to the Director and the health regulatory boards as necessary on the status of
422 applicants for and participants in the Program;
- 423 5. To report to the Director, at least annually, on the performance of the Program; and
- 424 6. To assist the Director in carrying out the provisions of this chapter.

425 B. Records of the Health Practitioners' Monitoring Program, to the extent such records identify
426 individual practitioners in the program, shall be privileged and confidential, and shall not be disclosed
427 consistent with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). Such records shall be used
428 only in the exercise of the proper functions as set forth in this chapter and shall not be public records nor
429 shall such records be subject to court order, except as provided in subdivision C 4 below, or be subject
430 to discovery or introduction as evidence in any civil, criminal, or administrative proceedings except
431 those conducted by a health regulatory board.

432 C. Notwithstanding the provisions of subsection B above and of subdivision 11 of § 2.2-3705.5,
433 the Committee may disclose such records relative to an impaired practitioner only:

434 1. When disclosure of the information is essential to the monitoring needs of the impaired
435 practitioner;

436 2. When release of the information has been authorized in writing by the impaired practitioner;

437 3. To a health regulatory board within the Department of Health Professions; or

438 4. When an order by a court of competent jurisdiction has been granted, upon a showing of good
439 cause therefor, including the need to avert a substantial risk of death or serious bodily harm. In assessing
440 good cause, the court shall weigh the public interest and the need for disclosure against the injury to the
441 patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such
442 order, the court, in determining the extent to which any disclosure of all or any part of any record is
443 necessary, shall impose appropriate protections against unauthorized disclosures.

444 D. Pursuant to subdivision A-24 25 of § 2.2-3711, the proceedings of the Committee which in
445 any way pertain or refer to a specific practitioner who may be, or who is actually, impaired and who
446 may be or is, by reason of such impairment, subject to disciplinary action by the relevant board shall be
447 excluded from the requirements of the Freedom of Information Act (§ 2.2-3700 et seq.) and may be
448 closed. Such proceedings shall be privileged and confidential.

449 E. The members of the Committee shall be immune from liability resulting from the exercise of
450 the powers and duties of the Committee as provided in § 8.01-581.13.

451 #

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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: Deletion of this exemption agreed to**
83 **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.

237 #

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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 exemption for Virginia Commonwealth University Health
3 System Authority.

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 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.

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

88 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific
89 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-
90 enforcement or emergency service officials concerning actions taken to respond to such matters or a
91 related threat to public safety; discussion of records excluded from this chapter pursuant to subdivision 3
92 or 4 of § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of any person or
93 the security of any facility, building, structure, information technology system, or software program; or
94 discussion of reports or plans related to the security of any governmental facility, building or structure,
95 or the safety of persons using 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, those portions of meetings in which
112 individual child death cases are discussed by a regional or local child fatality review team established
113 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by
114 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in
115 which individual adult death cases are discussed by the state Adult Fatality Review Team established
116 pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are
117 discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

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 Discussion or consideration by the Virginia Commonwealth University Health~~
130 ~~System Authority, discussion or consideration or the Virginia Commonwealth University Board of~~
131 ~~Visitors of any of the following: the acquisition or disposition by the Authority of real or personal~~
132 ~~property, equipment, technology, software or hardware, and related goods or services, where disclosure~~
133 ~~would adversely affect the bargaining position or negotiating strategy of the Authority; operational plans~~

134 ~~that could affect the value of such property, real or personal, owned or desirable for ownership by the~~
135 ~~Authority; matters relating to gifts, or bequests to, and fund-raising activities of, the Authority; grants~~
136 ~~and contracts for services or work to be performed by the Authority; marketing or operational strategies~~
137 ~~or plans of the Authority where disclosure of such strategies or plans would adversely affect the~~
138 ~~competitive position of the Authority; and members of its the Authority's medical and teaching staffs~~
139 ~~and qualifications for appointments thereto; and qualifications or evaluations of other employees. This~~
140 ~~exemption shall also apply when the foregoing discussions occur at a meeting of the Virginia~~
141 ~~Commonwealth University Board of Visitors.~~

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

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

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

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

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

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

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

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

175 32. [Expired.]

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

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

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

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

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

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

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

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

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

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

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

212 44. Discussion or consideration by the Tobacco Region Revitalization Commission of records
213 excluded from this chapter pursuant to subdivision 23 of § 2.2-3705.6.

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

216 46. Discussion or consideration of personal and proprietary information that are excluded from
217 the provisions of this chapter pursuant to (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of §
218 10.1-104.7. This exemption shall not apply to the discussion or consideration of records that contain
219 information that has been certified for release by the person who is the subject of the information or
220 transformed into a statistical or aggregate form that does not allow identification of the person who
221 supplied, or is the subject of, the information.

222 47. (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the Virginia
223 Alcoholic Beverage Control Authority of records excluded from this chapter pursuant to subdivision 1
224 of § 2.2-3705.3 or subdivision 34 of § 2.2-3705.7.

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

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

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

235 E. This section shall not be construed to (i) require the disclosure of any contract between the
236 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§
237 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to
238 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered

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

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