

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 2.2-3711 of the Code of Virginia, relating to exemption from the Virginia Freedom of Information Act.

[H 2738]

Approved

Be it enacted by the General Assembly of Virginia:

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

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

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

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

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

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

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

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

6. The investing of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.

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

8. In the case of boards of visitors of public institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants and contracts made by a foreign government, a foreign legal entity or a foreign person and accepted by a public institution of higher education in Virginia shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under the laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, *the Virginia Museum of*

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57 *Natural History*, and The Science Museum of Virginia, discussion or consideration of matters relating to
 58 specific gifts, bequests, and grants.

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

60 11. Discussion or consideration of tests, examinations or other records excluded from this chapter
 61 pursuant to subdivision A 11 of § 2.2-3705.

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

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

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

74 15. Discussion or consideration of medical and mental records excluded from this chapter pursuant to
 75 subdivision A 5 of § 2.2-3705.

76 16. Discussion, consideration or review of State Lottery Department matters related to proprietary
 77 lottery game information and studies or investigations exempted from disclosure under subdivisions A
 78 37 and A 38 of § 2.2-3705.

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

82 18. Discussion, consideration, review and deliberations by local community corrections resources
 83 boards regarding the placement in community diversion programs of individuals previously sentenced to
 84 state correctional facilities.

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

90 20. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by staff
 91 members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to
 92 respond to such activity or a related threat to public safety.

93 21. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or
 94 of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the
 95 University of Virginia, acting pursuant to § 23-76.1, regarding the acquisition, holding or disposition of
 96 a security or other ownership interest in an entity, where such security or ownership interest is not
 97 traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns
 98 confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the
 99 retirement system or provided to the retirement system under a promise of confidentiality, of the future
 100 value of such ownership interest or the future financial performance of the entity, and (ii) would have an
 101 adverse effect on the value of the investment to be acquired, held or disposed of by the retirement
 102 system or the Rector and Visitors of the University of Virginia. Nothing in this subdivision shall be
 103 construed to prevent the disclosure of information relating to the identity of any investment held, the
 104 amount invested or the present value of such investment.

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

110 23. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern
 111 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
 112 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
 113 Virginia Medical School, as the case may be, have been delegated, in which there is discussed
 114 proprietary, business-related information pertaining to the operations of the University of Virginia
 115 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
 116 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
 117 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case

may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

24. In the case of the Virginia Commonwealth University Health System Authority, discussion or consideration of any of the following: the acquisition or disposition of real or personal property where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; operational plans that could affect the value of such property, real or personal, owned or desirable for ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies where disclosure of such strategies would adversely affect the competitive position of the Authority; members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other employees.

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

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

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

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

29. Discussion or consideration by a responsible public entity or an affected local jurisdiction, as those terms are defined in § 56-557, of confidential proprietary records excluded from this chapter pursuant to subdivision A 56 of § 2.2-3705.

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

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

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

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