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HOUSE BILL NO. 2672

Offered January 12, 2005

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A *BILL to amend and reenact § 2.2-3711 of the Code of Virginia, relating to the Virginia Freedom of Information Act; meetings exemption.*

Patrons—Plum and Scott, J.M.

Referred to Committee on General Laws

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. Discussion or consideration of the investment 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

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59 entity created under the laws of a foreign government; and (iii) "foreign person" means any individual
60 who is not a citizen or national of the United States or a trust territory or protectorate thereof.

61 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum
62 of Natural History, and The Science Museum of Virginia, discussion or consideration of matters relating
63 to specific gifts, bequests, and grants.

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

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

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

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

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

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

81 16. Deliberations of the State Lottery Board in a licensing appeal action conducted pursuant to
82 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
83 discussion, consideration or review of State Lottery Department matters related to proprietary lottery
84 game information and studies or investigations exempted from disclosure under subdivision 6 of
85 § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

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

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

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

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

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

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

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

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

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

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

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

155 29. Discussion or consideration by a responsible public entity or an affected local jurisdiction, as
 156 those terms are defined in §§ 56-557 and 56-575.1, of confidential proprietary records excluded from
 157 this chapter pursuant to subdivision 11 of § 2.2-3705.6.

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

162 31. Discussion or consideration by the Commonwealth Health Research Board of grant application
 163 records excluded from this chapter pursuant to subdivision 17 of § 2.2-3705.6.

164 32. Discussion or consideration by the Commitment Review Committee of records excluded from
 165 this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to commitment as
 166 sexually violent predators under Article 1.1 (§ 37.1-70.1 et seq.) of Chapter 2 of Title 37.1.

167 33. (Expires July 1, 2006) Discussion or consideration by the Virginia Commission on Military Bases
 168 of records excluded from this chapter pursuant to subdivision 8 of § 2.2-3705.2.

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

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

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

179 E. This section shall not be construed to (i) require the disclosure of any contract between the
 180 Intervention Program Committee within the Department of Health Professions and an impaired
 181 practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the

182 board of directors of any authority created pursuant to the Industrial Development and Revenue Bond
183 Act (§ 15.2-4900 et seq.), or any public body empowered to issue industrial revenue bonds by general or
184 special law, to identify a business or industry to which subdivision A 5 applies. However, such business
185 or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the
186 board's authorization of the sale or issuance of such bonds.