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HOUSE BILL NO. 2930

House Amendments in [] - February 7, 2005

A *BILL to amend and reenact [§§ 2.2-3711 and 24.2-604 § 2.2-3711] of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 24.2-625.1, relating to authorization for closed meetings under the Freedom of Information Act; polling place activities; observers; and voting equipment security.*

Patron Prior to Engrossment—Delegate Hugo

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That [§§ 2.2-3711 and 24.2-604 of the Code of Virginia are § 2.2-3711 of the Code of Virginia is] amended and reenacted and that the Code of Virginia is amended by adding a section numbered 24.2-625.1 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

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HB2930E

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

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

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

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

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

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

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

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

84 16. Deliberations of the State Lottery Board in a licensing appeal action conducted pursuant to
85 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
86 discussion, consideration or review of State Lottery Department matters related to proprietary lottery
87 game information and studies or investigations exempted from disclosure under subdivision 6 of
88 § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

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

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

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

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

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

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

120 23. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern

Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, have been delegated, in which there is discussed proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties 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, Department of Health Professions, or the Board of Accountancy 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 11 of § 2.2-3705.6.

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

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

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

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

34. Discussion or consideration by the State Board of Elections or local electoral boards [concerning assessments or audits related to security policies, standards, and guidelines for the handling, storage, and use of voting and counting equipment and ballots as provided in 24.2-625.1. of voting security matters made confidential pursuant to § 24.2-625.1.]

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

182 obtain notice of the legal defect in their election.

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

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

194 [§ 24.2-604. Prohibited activities at polls; notice of prohibited area; presence of representatives of
195 parties or candidates; simulated elections; penalties; neutral observers; news media.

196 A. During the times the polls are open and ballots are being counted, it shall be unlawful for any
197 person (i) to loiter or congregate within 40 feet of any entrance of any polling place; (ii) within such
198 distance to give, tender, or exhibit any ballot, ticket, or other campaign material to any person or to
199 solicit or in any manner attempt to influence any person in casting his vote; or (iii) to hinder or delay a
200 qualified voter in entering or leaving a polling place.

201 B. Prior to opening the polls, the officers of election shall post, in the area within 40 feet of any
202 entrance to the polling place, sufficient notices which state "Prohibited Area" in two-inch type. The
203 notices shall also state the provisions of this section in not less than 24-point type. The officers of
204 election shall post the notices within the prohibited area to be visible to voters and the public.

205 C. The officers of election shall permit one authorized representative of each political party or
206 independent candidate in a general or special election, or one authorized representative of each candidate
207 in a primary election, to remain in the room in which the election is being conducted. If the pollbook is
208 divided into sections, the officers shall permit one such representative for each section, but no more than
209 three representatives of any political party or independent candidate shall be permitted in the room at
210 any one time. Each authorized representative shall be a qualified voter of the county or city within
211 which the polling place is located. Each representative shall present to the officers of election a written
212 statement designating him to be a representative of the party or candidate and signed by the county or
213 city chairman of his political party, the independent candidate, or the primary candidate, as appropriate.
214 Such statement, bearing the chairman's or candidate's original signature, may be photocopied, and such
215 photocopy shall be as valid as if the copy had been signed. No candidate whose name is printed on the
216 ballot shall serve as a representative of a party or candidate for purposes of this section.

217 D. It shall be unlawful for any authorized representative, voter, or any other person in the room to (i)
218 hinder or delay a qualified voter; (ii) give, tender, or exhibit any ballot, ticket, or other campaign
219 material to any person; (iii) solicit or in any manner attempt to influence any person in casting his vote;
220 (iv) hinder or delay any officer of election; or (v) otherwise impede the orderly conduct of the election.

221 E. The officers of election may require any person who is found by a majority of the officers present
222 to be in violation of this section to remain outside of the prohibited area. Any person violating
223 subsection A or D of this section shall be guilty of a Class 1 misdemeanor.

224 F. This section shall not be construed to prohibit a candidate from entering any polling place on the
225 day of the election to vote, or to visit a polling place for no longer than 10 minutes per polling place
226 per election day, provided that he complies with the restrictions stated in subsections A and D of this
227 section.

228 G. This section shall not be construed to prohibit a minor from entering a polling place on the day
229 of the election to vote in a simulated election at that polling place, provided that the local electoral
230 board has determined that such polling place can accommodate simulated election activities without
231 interference or substantial delay in the orderly conduct of the official voting process. Persons supervising
232 or working in a simulated election in which minors vote may remain within such polling place. The
233 local electoral board and the chief officer for the polling place shall exercise authority over, but shall
234 have no responsibility for the administration of, simulated election related activities at the polling place.

235 H. A local electoral board, and its general registrar, may conduct a special election day program for
236 high school students, selected by the electoral board in cooperation with high school authorities, in one
237 or more polling places designated by the electoral board, other than a central absentee voter precinct.
238 The program shall be designed to stimulate the students' interest in elections and registering to vote,
239 provide assistance to the officers of election, and ensure the safe entry and exit of elderly and disabled
240 voters from the polling place. Each student shall take and sign an oath as an election page, serve under
241 the direct supervision of the chief officer of election of his assigned polling place, and observe strict
242 impartiality at all times. Election pages may observe the electoral process and seek information from the
243 chief officer of election, but shall not handle or touch ballots, voting machines, or any other official

election materials, or enter any voting booth.

I. A local electoral board or the Secretary of the State Board may authorize in writing the presence of additional neutral observers as it the board or Secretary deems appropriate, except as otherwise prohibited or limited by this section. Such observers shall comply with the restrictions in subsections A and D of this section.

J. The officers of election shall permit representatives of the news media to visit and film or photograph inside the polling place for a reasonable and limited period of time while the polls are open. However, the media (i) shall comply with the restrictions in subsections A and D of this section; (ii) shall not film or photograph any person who specifically asks the media representative at that time that he not be filmed or photographed; (iii) shall not film or photograph the voter or the ballot in such a way that divulges how any individual voter is voting; and (iv) shall not film or photograph the voter list or any other voter record or material at the precinct in such a way that it divulges the name or other information concerning any individual voter. Any interviews with voters, candidates or other persons, live broadcasts, or taping of reporters' remarks, shall be conducted outside of the polling place and the prohibited area. The officers of election may require any person who is found by a majority of the officers present to be in violation of this subsection to leave the polling place and the prohibited area.

~~§ 24.2-625.1. Voting equipment security.~~

~~A. The State Board of Elections shall prescribe security policies, standards, and guidelines for the handling, storage, and use of voting and counting equipment and ballots.~~

~~B. Documents describing voting security assessments or audits conducted by or for a local electoral board for the sole purpose of complying with the standards of the State Board shall not be open to public inspection or copying.~~

~~C. Any electoral board meeting for the purpose of conducting such assessments or audits, or for preparing, discussing, or formally adopting documents describing such assessments or audits may be closed in accordance with the provisions of § 2.2-3712. The notice provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) shall not apply to closed meetings of an electoral board held solely for the purpose of conducting assessments or audits in order to comply with the standards of the State Board. Prior to any such closed meeting for the sole purpose of conducting assessments or audits, the electoral board shall announce in an open meeting that such closed meeting shall be held at a disclosed or undisclosed location within 15 days thereafter.~~

~~D. A meeting of the State Board to review or discuss documents describing such assessments or audits may be closed in accordance with the provisions of § 2.2-3712; however, any vote regarding such assessments or audits shall be made in an open meeting.~~

~~§ 24.2-625.1. Voting equipment security.~~

~~A. Records of the State Board of Elections or of a local electoral board, to the extent such records describe protocols for maintaining the security of ballots or voting and counting equipment, or reveal the results of risk assessments of specific local electoral procedures, the release of which would compromise the security of any election, shall be confidential and excluded from inspection and copying under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).~~

~~B. The State Board of Elections or a local electoral board may hold a closed meeting pursuant to the provisions of the Virginia Freedom of Information Act for the purpose of discussing protocols for maintaining the security of ballots or voting and counting equipment, or risk assessments of specific local electoral procedures, where discussion of such matters in open meeting would compromise the security of any election.~~

~~C. Two members of any local electoral board may conduct site visits for the sole purpose of investigating compliance with security policies and procedures. No such visit shall be deemed a meeting under the provisions of the Virginia Freedom of Information Act. However, prior to conducting such site visits, the board shall hold an open meeting, as defined in the Virginia Freedom of Information Act, and shall identify at that meeting its intention to conduct such site visits, the dates on which such visits will occur, and all polling places or other locations at which such visits will occur, withholding only information identifying secure sites at which voting and counting equipment or ballots are stored. No later than 30 days after any site visit has been conducted pursuant to this paragraph, the board shall hold an open meeting, as defined in the Virginia Freedom of Information Act, at which it shall identify each location visited and the date on which each such location was visited, withholding only information identifying secure sites at which voting and counting equipment or ballots are stored.~~

~~D. Nothing in this section shall be construed to prohibit the release of information concerning any breach of security in the conduct of an election.]~~