

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 2.2-3711 of the Code of Virginia, relating to the Freedom of Information*
3 *Act; open meeting exemption; Virginia Port Authority.*

[H 1467]

Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 2.2-3711 of the Code of Virginia is amended and reenacted as follows:**

8 § 2.2-3711. Closed meetings authorized for certain limited purposes.

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

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

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

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

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

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

32 6. Discussion or consideration of the investment of public funds where competition or bargaining is
33 involved, where, if made public initially, the financial interest of the governmental unit would be
34 adversely affected.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.), 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 Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

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 of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6.

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

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

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

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

179 provisions of this section shall be de facto officers and, as such, their official actions are valid until they
180 obtain notice of the legal defect in their election.

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

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