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SENATE BILL NO. 557

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact § 2.2-3711 of the Code of Virginia, relating to the Freedom of Information Act; closed meeting exemption; Forensic Science Board and Scientific Advisory Committee.

Patrons—Stolle, Howell and Norment; Delegates: Albo, Kilgore, Melvin and Moran

Referred to Committee on General Laws and Technology

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

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SB557

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

118 23. 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

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 Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from this chapter pursuant to subsection F 1 of § 2.2-3706.*

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

182 meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or
183 motion that shall have its substance reasonably identified in the open meeting.

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

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

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