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HOUSE BILL NO. 520

Offered January 9, 2008

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A BILL to amend and reenact §§ 2.2-3705.2 and 2.2-3711 of the Code of Virginia, relating to the Freedom of Information Act; exemptions for the Virginia Military Advisory Council and the Virginia National Defense Industrial Authority.

 Patron—Suit

 Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 2.2-3705.2 and 2.2-3711 of the Code of Virginia are amended and reenacted as follows:**

§ 2.2-3705.2. Exclusions to application of chapter; records relating to public safety.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.

2. Those portions of engineering and construction drawings and plans submitted for the sole purpose of complying with the Building Code in obtaining a building permit that would identify specific trade secrets or other information, the disclosure of which would be harmful to the competitive position of the owner or lessee. However, such information shall be exempt only until the building is completed. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure.

Those portions of engineering and construction drawings and plans that reveal critical structural components, security equipment and systems, ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, and other utility equipment and systems submitted for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.), the disclosure of which would jeopardize the safety or security of any public or private commercial office, multifamily residential or retail building or its occupants in the event of terrorism or other threat to public safety, to the extent that the owner or lessee of such property, equipment or system in writing (i) invokes the protections of this paragraph; (ii) identifies the drawings, plans, or other materials to be protected; and (iii) states the reasons why protection is necessary.

Nothing in this subdivision shall prevent the disclosure of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster or other catastrophic event.

3. Documentation or other information that describes the design, function, operation or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.

4. Plans and information to prevent or respond to terrorist activity, the disclosure of which would jeopardize the safety of any person, including (i) critical infrastructure sector or structural components; (ii) vulnerability assessments, operational, procedural, transportation, and tactical planning or training manuals, and staff meeting minutes or other records; and (iii) engineering or architectural records, or records containing information derived from such records, to the extent such records reveal the location or operation of security equipment and systems, elevators, ventilation, fire protection, emergency, electrical, telecommunications or utility equipment and systems of any public building, structure or information storage facility, or telecommunications or utility equipment or systems. The same categories of records of any governmental or nongovernmental person or entity submitted to a public body for the purpose of antiterrorism response planning may be withheld from disclosure if such person or entity in writing (a) invokes the protections of this subdivision, (b) identifies with specificity the records or portions thereof for which protection is sought, and (c) states with reasonable particularity why the protection of such records from public disclosure is necessary to meet the objective of antiterrorism planning or protection. Such statement shall be a public record and shall be disclosed upon request. Nothing in this subdivision shall be construed to prohibit the disclosure of records relating to the structural or environmental soundness of any building, nor shall it prevent the disclosure of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster or other catastrophic event.

5. Information that would disclose the security aspects of a system safety program plan adopted

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59 pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety
60 Oversight agency; and information in the possession of such agency, the release of which would
61 jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway
62 safety.

63 6. Engineering and architectural drawings, operational, procedural, tactical planning or training
64 manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance
65 techniques, personnel deployments, alarm or security systems or technologies, or operational and
66 transportation plans or protocols, to the extent such disclosure would jeopardize the security of any
67 governmental facility, building or structure or the safety of persons using such facility, building or
68 structure.

69 7. Security plans and specific assessment components of school safety audits, as provided in
70 § 22.1-279.8.

71 Nothing in this subdivision shall be construed to prohibit the disclosure of records relating to the
72 effectiveness of security plans after (i) any school building or property has been subjected to fire,
73 explosion, natural disaster or other catastrophic event, or (ii) any person on school property has suffered
74 or been threatened with any personal injury.

75 8. —Expired.]

76 9. Records of the Commitment Review Committee concerning the mental health assessment of an
77 individual subject to commitment as a sexually violent predator under Chapter 9 (§ 37.2-900 et seq.) of
78 Title 37.2; except that in no case shall records identifying the victims of a sexually violent predator be
79 disclosed.

80 10. Subscriber data, which for the purposes of this subdivision, means the name, address, telephone
81 number, and any other information identifying a subscriber of a telecommunications carrier, provided
82 directly or indirectly by a telecommunications carrier to a public body that operates a 911 or E-911
83 emergency dispatch system or an emergency notification or reverse 911 system, if the data is in a form
84 not made available by the telecommunications carrier to the public generally. Nothing in this subdivision
85 shall prevent the release of subscriber data generated in connection with specific calls to a 911
86 emergency system, where the requester is seeking to obtain public records about the use of the system
87 in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

88 11. Subscriber data, which for the purposes of this subdivision, means the name, address, telephone
89 number, and any other information identifying a subscriber of a telecommunications carrier, collected by
90 a local governing body in accordance with the Enhanced Public Safety Telephone Services Act
91 (§ 56-484.12 et seq.), and other identifying information of a personal, medical, or financial nature
92 provided to a local governing body in connection with a 911 or E-911 emergency dispatch system or an
93 emergency notification or reverse 911 system, if such records are not otherwise publicly available.
94 Nothing in this subdivision shall prevent the release of subscriber data generated in connection with
95 specific calls to a 911 emergency system, where the requester is seeking to obtain public records about
96 the use of the system in response to a specific crime, emergency or other event as to which a citizen has
97 initiated a 911 call.

98 12. *Records of the Virginia Military Advisory Council, the Virginia National Defense Industrial*
99 *Authority, or a local or regional military affairs organization appointed by a local governing body, to*
100 *the extent such records (i) contain information relating to strategies under consideration or development*
101 *by the Council, the Authority, or such organizations to prevent the closure or realignment of federal*
102 *military installations located in Virginia, to limit the adverse economic effect of such realignment or*
103 *closure, or to seek additional tenant activity growth from the Department of Defense or (ii) disclose*
104 *trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to the Council,*
105 *the Authority, or such organizations in connection with their work. In order to invoke the trade secret*
106 *protection provided by clause (ii), the submitting entity shall, in writing and at the time of submission*
107 *(a) invoke this exclusion, (b) identify with specificity the information for which such protection is sought,*
108 *and (c) state the reason why such protection is necessary. Nothing in this subdivision shall be construed*
109 *to authorize the withholding of all or part of any record, other than a trade secret that has been*
110 *specifically identified as required by this subdivision, after the Department of Defense has issued a final,*
111 *unappealable decision, or in the event of litigation, a court of competent jurisdiction has entered a final,*
112 *unappealable order concerning the closure, realignment, or expansion of the military installation or*
113 *tenant activities for which records are sought.*

114 § 2.2-3711. Closed meetings authorized for certain limited purposes.

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

116 1. Discussion, consideration, or interviews of prospective candidates for employment; assignment,
117 appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public
118 officers, appointees, or employees of any public body; and evaluation of performance of departments or
119 schools of public institutions of higher education where such evaluation will necessarily involve
120 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 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 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

182 subdivision 1 of § 2.2-3705.5.

183 16. Deliberations of the State Lottery Board in a licensing appeal action conducted pursuant to
184 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
185 discussion, consideration or review of State Lottery Department matters related to proprietary lottery
186 game information and studies or investigations exempted from disclosure under subdivision 6 of
187 § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

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

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

196 19. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by staff
197 members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to
198 respond to such activity or a related threat to public safety; or discussion of reports or plans related to
199 the security of any governmental facility, building or structure, or the safety of persons using such
200 facility, building or structure.

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

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

218 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern
219 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
220 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
221 Virginia Medical School, as the case may be, have been delegated, in which there is discussed
222 proprietary, business-related information pertaining to the operations of the University of Virginia
223 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
224 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
225 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
226 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
227 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
228 Medical School, as the case may be.

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

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

241 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
242 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees
243 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.

26. 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.

27. 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.

28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected local jurisdiction, as those terms are defined in § 56-557, or any independent review panel appointed to review information and advise the responsible public entity concerning such records.

29. 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.

30. 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.

31. 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.

32. —Expired.]

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

34. 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.

35. 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.

36. 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 subdivision F 1 of § 2.2-3706.

37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

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

39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § 51.1-124.30, or the Investment Advisory Committee appointed pursuant to § 51.1-124.26, or by any local retirement system, acting pursuant to § 51.1-803 of records excluded from this chapter pursuant to subdivision 25 of § 2.2-3705.7.

40. *Those portions of meetings of the Virginia Military Advisory Council, the Virginia National Defense Industrial Authority, or a local or regional military affairs organization appointed by a local governing body, during which there is discussion of records excluded from this chapter pursuant to subdivision 12 of § 2.2-3705.2.*

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.

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