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SENATE BILL NO. 1402

Offered January 22, 2015

A BILL to amend and reenact § 2.2-3711 of the Code of Virginia, relating to the Virginia Freedom of Information Act; open meeting exemption for gang-related activities.

Patron—Cosgrove

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 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

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59 who is not a citizen or national of the United States or a trust territory or protectorate thereof.

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

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

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

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

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

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

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

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

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

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

93 19. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by staff
94 members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to
95 respond to such activity or a related threat to public safety; ~~or~~ discussion of reports or plans related to
96 the security of any governmental facility, building, or structure, or the safety of persons using such
97 facility, building, or structure; *or consultation with or briefings by staff members, legal counsel, or*
98 *law-enforcement or emergency service officials concerning criminal street gang-related activities. For*
99 *the purposes of this subdivision, "criminal street gang" means the same as that term is defined in*
100 *§ 18.2-46.1.*

101 20. 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, or by the Board of the Virginia College Savings
104 Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or
105 other ownership interest in an entity, where such security or ownership interest is not traded on a
106 governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential
107 analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement
108 system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia
109 College Savings Plan under a promise of confidentiality, of the future value of such ownership interest
110 or the future financial performance of the entity, and (ii) would have an adverse effect on the value of
111 the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of
112 the University of Virginia, or the Virginia College Savings Plan. 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 21. 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 22. 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.

23. 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.

24. Those portions of the meetings of the Health Practitioners' Monitoring 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.

25. 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.

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 locality or public entity, as those terms are defined in § 33.2-1800, 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 of grant or loan application records excluded from this chapter pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

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

182 created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from
183 this chapter pursuant to subdivision A 2 a of § 2.2-3706.

184 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards
185 Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of
186 § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship
187 award, review and consider scholarship applications and requests for scholarship award renewal, and
188 cancel, rescind, or recover scholarship awards.

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

191 39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting
192 pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26,
193 by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College
194 Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's Investment
195 Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this chapter pursuant
196 to subdivision 25 of § 2.2-3705.7.

197 40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of
198 § 2.2-3705.6.

199 41. Discussion or consideration by the Board of Education of records relating to the denial,
200 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of
201 § 2.2-3705.3.

202 42. Those portions of meetings of the Virginia Military Advisory Council or any commission created
203 by executive order for the purpose of studying and making recommendations regarding preventing
204 closure or realignment of federal military and national security installations and facilities located in
205 Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization
206 appointed by a local governing body, during which there is discussion of records excluded from this
207 chapter pursuant to subdivision 12 of § 2.2-3705.2.

208 43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
209 records excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.

210 44. Discussion or consideration by the Virginia Tobacco Indemnification and Community
211 Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of
212 § 2.2-3705.6.

213 45. Discussion or consideration by the board of directors of the Commercial Space Flight Authority
214 of records excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6.

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

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

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

225 E. This section shall not be construed to (i) require the disclosure of any contract between the
226 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1
227 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant
228 to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body
229 empowered to issue industrial revenue bonds by general or special law, to identify a business or industry
230 to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of
231 public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance
232 of such bonds.