

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 2.2-3711 and 10.1-104.7 of the Code of Virginia, relating to resource*
 3 *management plans; closed meetings.*

4 [S 1126]
 5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That §§ 2.2-3711 and 10.1-104.7 of the Code of Virginia are 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.

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

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

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

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

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

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

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

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

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

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

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

95 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or
96 of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the
97 University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings
98 Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or
99 other ownership interest in an entity, where such security or ownership interest is not traded on a
100 governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential
101 analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement
102 system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia
103 College Savings Plan under a promise of confidentiality, of the future value of such ownership interest
104 or the future financial performance of the entity, and (ii) would have an adverse effect on the value of
105 the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of
106 the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be
107 construed to prevent the disclosure of information relating to the identity of any investment held, the
108 amount invested or the present value of such investment.

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

114 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern
115 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
116 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
117 Virginia Medical School, as the case may be, have been delegated, in which there is discussed

118 proprietary, business-related information pertaining to the operations of the University of Virginia
 119 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
 120 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
 121 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
 122 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
 123 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
 124 Medical School, as the case may be.

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

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

137 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
 138 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees
 139 by or on behalf of individuals who have requested information about, applied for, or entered into
 140 prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.)
 141 of Title 23 is discussed.

142 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created
 143 pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et
 144 seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of wireless
 145 E-911 service.

146 27. Those portions of disciplinary proceedings by any regulatory board within the Department of
 147 Professional and Occupational Regulation, Department of Health Professions, or the Board of
 148 Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach
 149 a decision or meetings of health regulatory boards or conference committees of such boards to consider
 150 settlement proposals in pending disciplinary actions or modifications to previously issued board orders as
 151 requested by either of the parties.

152 28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11 of
 153 § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are
 154 defined in § 33.2-1800, or any independent review panel appointed to review information and advise the
 155 responsible public entity concerning such records.

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

160 30. Discussion or consideration of grant or loan application records excluded from this chapter
 161 pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the
 162 Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment
 163 Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

164 31. Discussion or consideration by the Commitment Review Committee of records excluded from
 165 this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to commitment as
 166 sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

167 32. [Expired.]

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

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

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

175 36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee
 176 created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from
 177 this chapter pursuant to subdivision A 2 a of § 2.2-3706.

178 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards

179 Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of
180 § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship
181 award, review and consider scholarship applications and requests for scholarship award renewal, and
182 cancel, rescind, or recover scholarship awards.

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

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

191 40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of
192 § 2.2-3705.6.

193 41. Discussion or consideration by the Board of Education of records relating to the denial,
194 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of
195 § 2.2-3705.3.

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

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

204 44. Discussion or consideration by the Virginia Tobacco Indemnification and Community
205 Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of
206 § 2.2-3705.6.

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

209 46. *Discussion or consideration of personal and proprietary information that are excluded from the*
210 *provisions of this chapter pursuant to (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of*
211 *§ 10.1-104.7. This exemption shall not apply to the discussion or consideration of records that contain*
212 *information that has been certified for release by the person who is the subject of the information or*
213 *transformed into a statistical or aggregate form that does not allow identification of the person who*
214 *supplied, or is the subject of, the information.*

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.

233 **§ 10.1-104.7. Resource management plans; effect of implementation; exclusions.**

234 A. Notwithstanding any other provision of law, agricultural landowners or operators who fully
235 implement and maintain the applicable components of their resource management plan, in accordance
236 with the criteria for such plans set out in § 10.1-104.8 and any regulations adopted thereunder, shall be
237 deemed to be in full compliance with (i) any load allocation contained in a total maximum daily load
238 (TMDL) established under § 303(d) of the federal Clean Water Act addressing benthic, bacteria, nutrient,
239 or sediment impairments; (ii) any requirements of the Virginia Chesapeake Bay TMDL Watershed

240 Implementation Plan; and (iii) applicable state water quality requirements for nutrients and sediment.

241 B. The presumption of full compliance provided in subsection A shall not prevent or preclude
242 enforcement of provisions pursuant to (i) a resource management plan or a nutrient management plan
243 otherwise required by law for such operation, (ii) a Virginia Pollutant Discharge Elimination System
244 permit, (iii) a Virginia Pollution Abatement permit, or (iv) requirements of the Chesapeake Bay
245 Preservation Act (§ 62.1-44.15:67 et seq.).

246 C. Landowners or operators who implement and maintain a resource management plan in accordance
247 with this article shall be eligible for matching grants for agricultural best management practices provided
248 through the Virginia Agricultural Best Management Practices Cost-Share Program administered by the
249 Department in accordance with program eligibility rules and requirements. Such landowners and
250 operators may also be eligible for state tax credits in accordance with §§ 58.1-339.3 and 58.1-439.5.

251 D. Nothing in this article shall be construed to limit, modify, impair, or supersede the authority
252 granted to the Commissioner of Agriculture and Consumer Services pursuant to Chapter 4 (§ 3.2-400 et
253 seq.) of Title 3.2.

254 E. Any personal or proprietary information collected pursuant to this article shall be exempt from the
255 Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that the Director may release
256 information that has been transformed into a statistical or aggregate form that does not allow
257 identification of the persons who supplied, or are the subject of, particular information. This subsection
258 shall not preclude the application of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) in all
259 other instances of federal or state regulatory actions. *Pursuant to subdivision A 46 of § 2.2-3711, public
260 bodies may hold closed meetings for discussion or consideration of certain records excluded from the
261 provisions of this article and the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).*