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SENATE BILL NO. 1090

Offered January 9, 2019

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A BILL to amend and reenact § 2.2-3711 of the Code of Virginia, relating to the Freedom of Information Act; Fort Monroe Authority; closed meeting exemption.

Patron—Locke

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. Nothing in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body or an elected school board to discuss compensation matters that affect the membership of such body or board collectively.

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 public institution of higher education in the Commonwealth 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. 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. Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. 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.

9. Discussion or consideration by governing boards of public institutions of higher education of matters relating to gifts, bequests and fund-raising activities, and of 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 the Commonwealth shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,

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59 (i) "foreign government" means any government other than the United States government or the
60 government of a state or a political subdivision thereof, (ii) "foreign legal entity" means any legal entity
61 (a) created under the laws of the United States or of any state thereof if a majority of the ownership of
62 the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
63 membership of any such entity is composed of foreign persons or foreign legal entities or (b) created
64 under the laws of a foreign government, and (iii) "foreign person" means any individual who is not a
65 citizen or national of the United States or a trust territory or protectorate thereof.

66 10. Discussion or consideration by the boards of trustees of the Virginia Museum of Fine Arts, the
67 Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, *the Fort Monroe Authority*,
68 and The Science Museum of Virginia of matters relating to specific gifts, bequests, and grants from
69 private sources.

70 11. Discussion or consideration of honorary degrees or special awards.

71 12. Discussion or consideration of tests, examinations, or other information used, administered, or
72 prepared by a public body and subject to the exclusion in subdivision 4 of § 2.2-3705.1.

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

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

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

85 16. Discussion or consideration of medical and mental health records subject to the exclusion in
86 subdivision 1 of § 2.2-3705.5.

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

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

97 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific
98 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement
99 or emergency service officials concerning actions taken to respond to such matters or a related threat to
100 public safety; discussion of information subject to the exclusion in subdivision 2 or 14 of § 2.2-3705.2,
101 where discussion in an open meeting would jeopardize the safety of any person or the security of any
102 facility, building, structure, information technology system, or software program; or discussion of reports
103 or plans related to the security of any governmental facility, building or structure, or the safety of
104 persons using such facility, building or structure.

105 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or
106 of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of
107 trustees of a trust established by one or more local public bodies to invest funds for postemployment
108 benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title
109 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the
110 Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition,
111 holding or disposition of a security or other ownership interest in an entity, where such security or
112 ownership interest is not traded on a governmentally regulated securities exchange, to the extent that
113 such discussion (i) concerns confidential analyses prepared for the board of visitors of the University of
114 Virginia, prepared by the retirement system, or a local finance board or board of trustees, or the Virginia
115 College Savings Plan or provided to the retirement system, a local finance board or board of trustees, or
116 the Virginia College Savings Plan under a promise of confidentiality, of the future value of such
117 ownership interest or the future financial performance of the entity, and (ii) would have an adverse
118 effect on the value of the investment to be acquired, held, or disposed of by the retirement system, a
119 local finance board or board of trustees, the board of visitors of the University of Virginia, or the
120 Virginia College Savings Plan. 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.

21. 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, 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, those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in which individual adult death cases are discussed by the state Adult Fatality Review Team established pursuant to § 32.1-283.5, those portions of meetings in which individual adult death cases are discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6, and those portions of meetings in which individual death cases are discussed by overdose fatality review teams established pursuant to § 32.1-283.7.

22. Those portions of meetings of the board of visitors of the University of Virginia 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. Discussion or consideration by the Virginia Commonwealth University Health System Authority or the board of visitors of Virginia Commonwealth University of any of the following: the acquisition or disposition by the Authority of real property, equipment, or technology software or hardware and related goods or services, where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; matters relating to gifts or bequests to, and fund-raising activities of, the Authority; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies plans of the Authority where disclosure of such strategies or plans would adversely affect the competitive position of the Authority; and members of the Authority's medical and teaching staffs and qualifications for appointments thereto.

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 7 (§ 23.1-700 et seq.) of Title 23.1 is discussed.

26. Discussion or consideration, by the former Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to former § 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 information subject to the exclusion in 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 information subject to the exclusion in 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

182 Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

183 31. Discussion or consideration by the Commitment Review Committee of information subject to the
184 exclusion in subdivision 5 of § 2.2-3705.2 relating to individuals subject to commitment as sexually
185 violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

186 32. Discussion or consideration of confidential proprietary information and trade secrets developed
187 and held by a local public body providing certain telecommunication services or cable television services
188 and subject to the exclusion in subdivision 18 of § 2.2-3705.6. However, the exemption provided by this
189 subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et
190 seq.).

191 33. Discussion or consideration by a local authority created in accordance with the Virginia Wireless
192 Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and trade secrets
193 subject to the exclusion in subdivision 19 of § 2.2-3705.6.

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

196 35. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee
197 created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of criminal investigative
198 files subject to the exclusion in subdivision B 1 of § 2.2-3706.

199 36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of
200 information or confidential matters subject to the exclusion in subdivision A 3 of § 2.2-3705.4, and
201 meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and
202 consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or
203 recover scholarship awards.

204 37. Discussion or consideration by the Virginia Port Authority of information subject to the exclusion
205 in subdivision 1 of § 2.2-3705.6 related to certain proprietary information gathered by or for the Virginia
206 Port Authority.

207 38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting
208 pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26,
209 by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College
210 Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's Investment
211 Advisory Committee appointed pursuant to § 23.1-702 of information subject to the exclusion in
212 subdivision 24 of § 2.2-3705.7.

213 39. Discussion or consideration of information subject to the exclusion in subdivision 3 of
214 § 2.2-3705.6 related to economic development.

215 40. Discussion or consideration by the Board of Education of information relating to the denial,
216 suspension, or revocation of teacher licenses subject to the exclusion in subdivision 11 of § 2.2-3705.3.

217 41. Those portions of meetings of the Virginia Military Advisory Council or any commission created
218 by executive order for the purpose of studying and making recommendations regarding preventing
219 closure or realignment of federal military and national security installations and facilities located in
220 Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization
221 appointed by a local governing body, during which there is discussion of information subject to the
222 exclusion in subdivision 8 of § 2.2-3705.2.

223 42. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
224 information subject to the exclusion in subdivision 28 of § 2.2-3705.7 related to personally identifiable
225 information of donors.

226 43. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of
227 information subject to the exclusion in subdivision 23 of § 2.2-3705.6 related to certain information
228 contained in grant applications.

229 44. Discussion or consideration by the board of directors of the Commercial Space Flight Authority
230 of information subject to the exclusion in subdivision 24 of § 2.2-3705.6 related to rate structures or
231 charges for the use of projects of, the sale of products of, or services rendered by the Authority and
232 certain proprietary information of a private entity provided to the Authority.

233 45. Discussion or consideration of personal and proprietary information related to the resource
234 management plan program and subject to the exclusion in (i) subdivision 25 of § 2.2-3705.6 or (ii)
235 subsection E of § 10.1-104.7. This exclusion shall not apply to the discussion or consideration of
236 records that contain information that has been certified for release by the person who is the subject of
237 the information or transformed into a statistical or aggregate form that does not allow identification of
238 the person who supplied, or is the subject of, the information.

239 46. Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control
240 Authority of information subject to the exclusion in subdivision 1 of § 2.2-3705.3 related to
241 investigations of applicants for licenses and permits and of licensees and permittees.

242 47. Discussion or consideration of grant or loan application records subject to the exclusion in
243 subdivision 28 of § 2.2-3705.6 related to the submission of an application for an award from the

Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title 23.1 or interviews of parties to an application by a reviewing entity pursuant to subsection D of § 23.1-3133 or by the Virginia Research Investment Committee.

48. Discussion or development of grant proposals by a regional council established pursuant to Article 26 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth and Opportunity Board.

49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault team established pursuant to § 15.2-1627.4 or (ii) individual child abuse or neglect cases or sex offenses involving a child by a child abuse team established pursuant to § 15.2-1627.5.

50. Discussion or consideration by the Board of the Virginia Economic Development Partnership Authority, the Joint Legislative Audit and Review Commission, or any subcommittees thereof, of the portions of the strategic plan, marketing plan, or operational plan exempt from disclosure pursuant to subdivision 33 of § 2.2-3705.7.

51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic Development Partnership Authority established pursuant to subsection F of § 2.2-2237.3 to review and discuss information received from the Virginia Employment Commission pursuant to subdivision C 2 of § 60.2-114.

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.

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