

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3701, 2.2-3707, 2.2-3708, 10.1-1322.01, 23-38.95, and 62.1-
2 44.15:02 of the Code of Virginia, relating to the Virginia Freedom of Information Act; electronic
3 communication meetings.

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

5 **1. That §§ 2.2-3701, 2.2-3707, 2.2-3708, 10.1-1322.01, 23-38.95, and 62.1-44.15:02 of the Code of**
6 **Virginia are amended and reenacted as follows:**

7 **§ 2.2-3701. Definitions.**

8 As used in this chapter, unless the context requires a different meaning:

9 "Closed meeting" means a meeting from which the public is excluded.

10 "Electronic communication means" means any audio or combined audio and visual
11 communication method.

12 "Emergency" means an unforeseen circumstance rendering the notice required by this chapter
13 impossible or impracticable and which circumstance requires immediate action.

14 "Meeting" or "meetings" means the meetings including work sessions, when sitting physically,
15 or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as
16 an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the
17 constituent membership, wherever held, with or without minutes being taken, whether or not votes are
18 cast, of any public body. The gathering of employees of a public body shall not be deemed a "meeting"
19 subject to the provisions of this chapter.

20 "Open meeting" or "public meeting" means a meeting at which the public may be present.

21 "Public body" means any legislative body, authority, board, bureau, commission, district or
22 agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities,
23 towns and counties, municipal councils, governing bodies of counties, school boards and planning
24 commissions; boards of visitors of public institutions of higher education; and other organizations,
25 corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall

26 include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of
27 directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee,
28 subcommittee, or other entity however designated, of the public body created to perform delegated
29 functions of the public body or to advise the public body. It shall not exclude any such committee,
30 subcommittee or entity because it has private sector or citizen members. Corporations organized by the
31 Virginia Retirement System are "public bodies" for purposes of this chapter.

32 For the purposes of the provisions of this chapter applicable to access to public records,
33 constitutional officers shall be considered public bodies and, except as otherwise expressly provided by
34 law, shall have the same obligations to disclose public records as other custodians of public records.

35 "Public records" means all writings and recordings that consist of letters, words or numbers, or
36 their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic
37 impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data
38 compilation, however stored, and regardless of physical form or characteristics, prepared or owned by,
39 or in the possession of a public body or its officers, employees or agents in the transaction of public
40 business. Records that are not prepared for or used in the transaction of public business are not public
41 records.

42 "Regional public body" means a unit of government organized as provided by law within defined
43 boundaries, as determined by the General Assembly, whose members are appointed by the participating
44 local governing bodies, and such unit includes two or more counties or cities.

45 "Scholastic records" means those records containing information directly related to a student or
46 an applicant for admission and maintained by a public body that is an educational agency or institution
47 or by a person acting for such agency or institution.

48 **§ 2.2-3707. Meetings to be public; notice of meetings; recordings; minutes.**

49 A. All meetings of public bodies shall be open, except as provided in §§ 2.2-3707.01 and 2.2-
50 3711.

51 B. No meeting shall be conducted through telephonic, video, electronic or other communication
52 means where the members are not physically assembled to discuss or transact public business, except as

53 provided in § 2.2-3708, 2.2-3708.1 or as may be specifically provided in Title 54.1 for the summary
54 suspension of professional licenses.

55 C. Every public body shall give notice of the date, time, and location of its meetings by placing
56 the notice in a prominent public location at which notices are regularly posted and in the office of the
57 clerk of the public body, or in the case of a public body that has no clerk, in the office of the chief
58 administrator. All state public bodies subject to the provisions of this chapter shall also post notice of
59 their meetings on their websites and on the electronic calendar maintained by the Virginia Information
60 Technologies Agency commonly known as the Commonwealth Calendar. Publication of meeting notices
61 by electronic means by other public bodies shall be encouraged. The notice shall be posted at least three
62 working days prior to the meeting. Notices for meetings of state public bodies on which there is at least
63 one member appointed by the Governor shall state whether or not public comment will be received at
64 the meeting and, if so, the approximate point during the meeting when public comment will be received.

65 D. Notice, reasonable under the circumstance, of special or emergency meetings shall be given
66 contemporaneously with the notice provided members of the public body conducting the meeting.

67 E. Any person may annually file a written request for notification with a public body. The
68 request shall include the requester's name, address, zip code, daytime telephone number, electronic mail
69 address, if available, and organization, if any. The public body receiving such request shall provide
70 notice of all meetings directly to each such person. Without objection by the person, the public body
71 may provide electronic notice of all meetings in response to such requests.

72 F. At least one copy of all agenda packets and, unless exempt, all materials furnished to members
73 of a public body for a meeting shall be made available for public inspection at the same time such
74 documents are furnished to the members of the public body.

75 G. Nothing in this chapter shall be construed to prohibit the gathering or attendance of two or
76 more members of a public body (i) at any place or function where no part of the purpose of such
77 gathering or attendance is the discussion or transaction of any public business, and such gathering or
78 attendance was not called or prearranged with any purpose of discussing or transacting any business of
79 the public body or (ii) at a public forum, candidate appearance, or debate, the purpose of which is to

80 inform the electorate and not to transact public business or to hold discussions relating to the transaction
81 of public business, even though the performance of the members individually or collectively in the
82 conduct of public business may be a topic of discussion or debate at such public meeting. The notice
83 provisions of this chapter shall not apply to informal meetings or gatherings of the members of the
84 General Assembly.

85 H. Any person may photograph, film, record, or otherwise reproduce any portion of a meeting
86 required to be open. The public body conducting the meeting may adopt rules governing the placement
87 and use of equipment necessary for broadcasting, photographing, filming, or recording a meeting to
88 prevent interference with the proceedings, but shall not prohibit or otherwise prevent any person from
89 photographing, filming, recording, or otherwise reproducing any portion of a meeting required to be
90 open. No public body shall conduct a meeting required to be open in any building or facility where such
91 recording devices are prohibited.

92 I. Minutes shall be recorded at all open meetings. However, minutes shall not be required to be
93 taken at deliberations of (i) standing and other committees of the General Assembly; (ii) legislative
94 interim study commissions and committees, including the Virginia Code Commission; (iii) study
95 committees or commissions appointed by the Governor; or (iv) study commissions or study committees,
96 or any other committees or subcommittees appointed by the governing bodies or school boards of
97 counties, cities and towns, except where the membership of any such commission, committee or
98 subcommittee includes a majority of the governing body of the county, city or town or school board.

99 Minutes, including draft minutes, and all other records of open meetings, including audio or
100 audio/visual records, shall be deemed public records and subject to the provisions of this chapter.

101 Minutes shall be in writing and shall include (i) the date, time, and location of the meeting; (ii)
102 the members of the public body recorded as present and absent; and (iii) a summary of the discussion on
103 matters proposed, deliberated or decided, and a record of any votes taken. In addition, for electronic
104 communication meetings conducted in accordance with § 2.2-3708, minutes of state public bodies shall
105 include (a) the identity of the members of the public body at each remote location identified in the notice
106 who participated in the meeting through electronic communications means, (b) the identity of the

107 members of the public body who were physically assembled at the primary or central meeting location,
108 and (c) the identity of the members of the public body who were not present at the locations identified in
109 clauses (a) and (b), but who monitored such meeting through electronic communications means.

110 **§ 2.2-3708. Electronic communication meetings; notice; report.**

111 A. ~~Except as expressly provided in subsection G of this section or § 2.2-3708.1, no local~~
112 ~~governing body, school board, or any authority, board, bureau, commission, district or agency of local~~
113 ~~government, any committee thereof, or any entity created by a local governing body, school board, or~~
114 ~~any local authority, board, or commission shall conduct a meeting wherein the public business is~~
115 ~~discussed or transacted through telephonic, video, electronic or other communication means where the~~
116 ~~members are not physically assembled. Nothing in this section shall be construed to prohibit the use of~~
117 ~~interactive audio or video means to expand public participation.~~

118 B. ~~Except as provided in subsection D of § 2.2-3707.01, state public bodies~~ a public body may
119 conduct any meeting wherein the public business is discussed or transacted through electronic
120 communication means, provided (i) at least three members of the public body are physically present at
121 the primary meeting location identified in the notice; (ii) a quorum of the public body is physically
122 assembled present, either in person or by electronic communication means, at one primary or central the
123 meeting location; (iii) notice of the meeting has been given in
124 accordance with subsection C, and (iii); (iv) at the beginning of the meeting, each member present at the
125 meeting is identified in roll-call fashion, and the meeting location where the member is present is
126 identified; (v) all members of the public body are able to hear or see, as applicable, each other and to be
127 seen or heard, as applicable, by all persons attending the meeting at any of the meeting locations; and
128 (vi) the remote locations, from which any additional members of the public body participate through
129 electronic communication means, are open to the public. All persons attending the meeting at any of the
130 meeting locations shall be afforded the same opportunity to address the public body as persons attending
131 the primary or central location. State public bodies, however, may meet by electronic communication
132 means without a quorum of the public body physically assembled at one location when (a) the Governor
133 has declared a state of emergency in accordance with § 44-146.17, (b) the meeting is necessary to take

134 ~~action to address the emergency, and (c) the public body otherwise complies with the provisions of this~~
135 ~~section.~~

136 ~~If an authorized~~ B. No more than 50 percent of the meetings held by a public body in any
137 calendar year shall be held by electronic communication means. Any public body that holds an
138 electronic a meeting pursuant to this section, it shall also hold at least one meeting annually where
139 members in attendance at the meeting are physically assembled at one location and where no members
140 participate by electronic communication means, except pursuant to the provisions of § 2.2-3708.1.

141 C. Notice of any meetings held pursuant to this section shall be provided at least three working
142 days in advance of the date scheduled for the meeting. The notice shall include the date, time, place, and
143 purpose for the meeting; shall identify the locations for the meeting; and shall include a telephone
144 number that may be used at remote locations to notify the primary or central meeting location of any
145 interruption in the telephonic or video broadcast of the meeting to the remote locations. Any interruption
146 in the telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting
147 until repairs are made and public access restored.

148 D. Agenda packets and, unless exempt, all materials that will be distributed to members of the
149 public body and that have been made available to the staff of the public body in sufficient time for
150 duplication and forwarding to all locations where public access will be provided shall be made available
151 to the public at the time of the meeting. Minutes of all meetings held by electronic communication
152 means shall be recorded as required by § 2.2-3707. Votes taken during any meeting conducted through
153 electronic communication means shall be recorded by name in roll-call fashion and included in the
154 minutes.

155 E. Three working days' notice shall not be required for meetings authorized under this section
156 held in accordance with subsection ~~G~~H or that are continued to address an emergency or to conclude the
157 agenda of the meeting for which proper notice has been given, when the date, time, place, and purpose
158 of the continued meeting are set during the meeting prior to adjournment. Public bodies conducting
159 emergency meetings through electronic communication means shall comply with the provisions of

160 subsection D requiring minutes of the meeting. The nature of the emergency shall be stated in the
161 minutes.

162 F. Nothing in this section shall be construed to prohibit the use of interactive audio or video
163 means to expand public participation.

164 G. ~~Any authorized~~ public body that meets by electronic communication means shall make a
165 written report of the following to the Virginia Freedom of Information Advisory Council and the Joint
166 Commission on Technology and Science by December 15 of each year:

- 167 1. The total number of electronic communication meetings held that year;
- 168 2. The dates and purposes of the meetings;
- 169 3. The number of sites for each meeting;
- 170 4. The types of electronic communication means by which the meetings were held;
- 171 5. The number of participants, including members of the public, at each meeting location;
- 172 6. The identity of the members of the public body recorded as absent and those recorded as
173 present at each meeting location;
- 174 7. A summary of any public comment received about the electronic communication meetings;
- 175 and
- 176 8. A written summary of the public body's experience using electronic communication meetings,
177 including its logistical and technical experience.

178 ~~G.H. Any local governing body, school board, or any authority, board, bureau, commission,~~
179 ~~district, or agency of local government~~ public body may meet by electronic communication means
180 without a quorum at least three of the members of the public body being physically assembled at one
181 location when the Governor has declared a state of emergency in accordance with § 44-146.17, provided
182 (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a
183 quorum in a single location and (ii) the purpose of the meeting is to address the emergency. The ~~local~~
184 public body convening a meeting in accordance with this subsection shall (a) give public notice using
185 the best available method given the nature of the emergency, which notice shall be given
186 contemporaneously with the notice provided members of the ~~local~~ public body conducting the meeting;

187 (b) make arrangements for public access to such meeting; and (c) otherwise comply with the provisions
188 of this section. The nature of the emergency and the fact that the meeting was held by electronic
189 communication means shall be stated in the minutes.

190 **§ 10.1-1322.01. Permits; procedures for public hearings and permits before the Board.**

191 A. During the public comment period on a permit action, interested persons may request a public
192 hearing to contest such action or the terms and conditions thereof. Where public hearings are mandatory
193 under state or federal law or regulation, interested persons may request, during the public comment
194 period on the permit action, that the Board consider the permit action pursuant to the requirements of
195 this section.

196 B. Requests for a public hearing or Board consideration shall contain the following information:

- 197 1. The name, mailing address, and telephone number of the requester;
- 198 2. The names and addresses of all persons for whom the requester is acting as a representative
199 (for the purposes of this requirement, an unincorporated association is a person);
- 200 3. The reason why a public hearing or Board consideration is requested;
- 201 4. A brief, informal statement setting forth the factual nature and the extent of the interest of the
202 requester or of the persons for whom the requester is acting as representative in the application or
203 tentative determination, including an explanation of how and to what extent such interest would be
204 directly and adversely affected by the issuance, denial, modification, or revocation of the permit in
205 question; and
- 206 5. Where possible, specific references to the terms and conditions of the permit in question,
207 together with suggested revisions and alterations of those terms and conditions that the requester
208 considers are needed to conform the permit to the intent and provisions of the State Air Pollution
209 Control Law (§ 10.1-1300 et seq.).

210 C. Upon completion of the public comment period on a permit action, the Director shall review
211 all timely requests for public hearing or Board consideration filed during the public comment period on
212 the permit action and within 30 calendar days following the expiration of the time period for the
213 submission of requests shall grant a public hearing or Board consideration after the public hearing

214 required by state or federal law or regulation, unless the permittee or applicant agrees to a later date, if
215 the Director finds the following:

216 1. That there is a significant public interest in the issuance, denial, modification, or revocation of
217 the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public
218 hearing or Board consideration;

219 2. That the requesters raise substantial, disputed issues relevant to the issuance, denial,
220 modification, or revocation of the permit in question; and

221 3. That the action requested by the interested party is not on its face inconsistent with, or in
222 violation of, the State Air Pollution Control Law (§ 10.1-1300 et seq.), federal law or any regulation
223 promulgated thereunder.

224 D. Either the Director or a majority of the Board members, acting independently, may request a
225 meeting of the Board to be convened within 20 days of the Director's decision pursuant to subsection C
226 in order to review such decision and determine by a majority vote of the Board whether or not to grant a
227 public hearing or Board consideration, or to delegate the permit to the Director for his decision.

228 For purposes of this subsection, if a Board meeting is held via electronic communication, the
229 meeting shall be held in compliance with the provisions § 2.2-3708, ~~except that a quorum of the Board is~~
230 ~~not required to be physically assembled at one primary or central meeting location. Discussions and~~
231 discussions of the Board held via such electronic communication means shall be specifically limited to a
232 (i) review of the Director's decision pursuant to subsection C, (ii) determination of the Board whether or
233 not to grant a public hearing or Board consideration, or (iii) delegation of the permit to the Director for
234 his decision. No other matter of public business shall be discussed or transacted by the Board during any
235 such meeting held via electronic communication.

236 E. The Director shall, forthwith, notify by mail at his last known address (i) each requester and
237 (ii) the applicant or permittee of the decision to grant or deny a public hearing or Board consideration.

238 F. In addition to subsections C, D, and E, the Director may, in his discretion, convene a public
239 hearing on a permit action or submit a permit action to the Board for its consideration.

240 G. If a determination is made to hold a public hearing, the Director shall schedule the hearing at
241 a time between 45 and 75 days after mailing of the notice required by subsection E.

242 H. The Director shall cause, or require the applicant to publish, notice of a public hearing to be
243 published once, in a newspaper of general circulation in the city or county where the facility or operation
244 that is the subject of the permit or permit application is located, at least 30 days before the hearing date.

245 I. The Director may, on his own motion or at the request of the applicant or permittee, for good
246 cause shown, reschedule the date of the public hearing. In the event the Director reschedules the date for
247 the public hearing after notice has been published, he shall, or require the applicant to, provide
248 reasonable notice of the new date of the public hearing. Such notice shall be published once in the same
249 newspaper where the original notice was published.

250 J. Public hearings held pursuant to these procedures may be conducted by (i) the Board at a
251 regular or special meeting of the Board or (ii) one or more members of the Board. A member of the
252 Board shall preside over the public hearing.

253 K. The presiding Board member shall have the authority to maintain order, preserve the
254 impartiality of the decision process, and conclude the hearing process expeditiously. The presiding
255 Board member, in order to carry out his responsibilities under this subsection, is authorized to exercise
256 the following powers, including but not limited to:

257 1. Prescribing the methods and procedures to be used in the presentation of factual data,
258 arguments, and proof orally and in writing including the imposition of reasonable limitations on the time
259 permitted for oral testimony;

260 2. Consolidating the presentation of factual data, arguments, and proof to avoid repetitive
261 presentation of them;

262 3. Ruling on procedural matters; and

263 4. Acting as custodian of the record of the public hearing causing all notices and written
264 submittals to be entered in it.

265 L. The public comment period will remain open for 15 days after the close of the public hearing
266 if required by § 10.1-1307.01.

267 M. When the public hearing is conducted by less than a quorum of the Board, the Department
268 shall, promptly after the close of the public hearing comment period, make a report to the Board.

269 N. After the close of the public hearing comment period, the Board shall, at a regular or special
270 meeting, take final action on the permit. Such decision shall be issued within 90 days of the close of the
271 public comment period or from a later date, as agreed to by the permittee or applicant and the Board or
272 the Director. The Board shall not take any action on a permit where a public hearing was convened
273 solely to satisfy the requirements of state or federal law or regulation unless the permit was provided to
274 the Board for its consideration pursuant to the provisions of this section.

275 O. When the public hearing was conducted by less than a quorum of the Board, persons who
276 commented during the public comment period shall be afforded an opportunity at the Board meeting
277 when final action is scheduled to respond to any summaries of the public comments prepared by the
278 Department for the Board's consideration subject to such reasonable limitations on the time permitted
279 for oral testimony or presentation of repetitive material as are determined by the Board.

280 P. In making its decision, the Board shall consider (i) the verbal and written comments received
281 during the public comment period made part of the record, (ii) any explanation of comments previously
282 received during the public comment period made at the Board meeting, (iii) the comments and
283 recommendation of the Department, and (iv) the agency files. When the decision of the Board is to
284 adopt the recommendation of the Department, the Board shall provide in writing a clear and concise
285 statement of the legal basis and justification for the decision reached. When the decision of the Board
286 varies from the recommendation of the Department, the Board shall, in consultation with legal counsel,
287 provide a clear and concise statement explaining the reason for the variation and how the Board's
288 decision is in compliance with applicable laws and regulations. The written statement shall be provided
289 contemporaneously with the decision of the Board. Copies of the decision, certified by the Director,
290 shall be mailed by certified mail to the permittee or applicant.

291 **§ 23-38.95. Public access to information.**

292 A covered institution shall continue to be subject to § 2.2-4342 and to the provisions of the
293 Virginia Freedom of Information Act (§ 2.2-3700 et seq.), but shall be entitled to conduct business

294 pursuant to § 2.2-3709, in the case of a public institution of higher education to which that section
295 applies, and, in all cases, may conduct business as a "state-public body" for purposes of § 2.2-3708.

296 **§ 62.1-44.15:02. Permits; procedures for public hearings and permits before the Board.**

297 A. During the public comment period on a permit action, interested persons may request a public
298 hearing to contest such action or the terms and conditions thereof. Where public hearings are mandatory
299 under state or federal law or regulation, interested persons may request, during the public comment
300 period on the permit action, that the Board consider the permit action pursuant to the requirements of
301 this section.

302 B. Requests for a public hearing or Board consideration shall contain the following information:

- 303 1. The name, mailing address, and telephone number of the requester;
- 304 2. The names and addresses of all persons for whom the requester is acting as a representative
305 (for the purposes of this requirement, an unincorporated association is a person);
- 306 3. The reason why a public hearing or Board consideration is requested;
- 307 4. A brief, informal statement setting forth the factual nature and the extent of the interest of the
308 requester or of the persons for whom the requester is acting as representative in the application or
309 tentative determination, including an explanation of how and to what extent such interest would be
310 directly and adversely affected by the issuance, denial, modification, or revocation of the permit in
311 question; and
- 312 5. Where possible, specific references to the terms and conditions of the permit in question,
313 together with suggested revisions and alterations of those terms and conditions that the requester
314 considers are needed to conform the permit to the intent and provisions of the State Water Control Law
315 (§ 62.1-44.2 et seq.).

316 C. Upon completion of the public comment period on a permit action, the Director shall review
317 all timely requests for public hearing or Board consideration filed during the public comment period on
318 the permit action and within 30 calendar days following the expiration of the time period for the
319 submission of requests shall grant a public hearing or Board consideration after the public hearing

320 required by state or federal law or regulation, unless the permittee or applicant agrees to a later date, if
321 the Director finds the following:

322 1. That there is a significant public interest in the issuance, denial, modification, or revocation of
323 the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public
324 hearing or Board consideration;

325 2. That the requesters raise substantial, disputed issues relevant to the issuance, denial,
326 modification, or revocation of the permit in question; and

327 3. That the action requested is not on its face inconsistent with, or in violation of, the State Water
328 Control Law (§ 62.1-44.2 et seq.), federal law or any regulation promulgated thereunder.

329 D. Either the Director or a majority of the Board members, acting independently, may request a
330 meeting of the Board to be convened within 20 days of the Director's decision pursuant to subsection C
331 in order to review such decision and determine by a majority vote of the Board whether or not to grant a
332 public hearing or Board consideration, or to delegate the permit to the Director for his decision.

333 For purposes of this subsection, if a Board meeting is held via electronic communication, the
334 meeting shall be held in compliance with the provisions § 2.2-3708, ~~except that a quorum of the Board is~~
335 ~~not required to be physically assembled at one primary or central meeting location. Discussions and~~
336 discussions of the Board held via such electronic communication means shall be specifically limited to a
337 (i) review of the Director's decision pursuant to subsection C, (ii) determination of the Board whether or
338 not to grant a public hearing or Board consideration, or (iii) delegation of the permit to the Director for
339 his decision. No other matter of public business shall be discussed or transacted by the Board during any
340 such meeting held via electronic communication.

341 E. The Director shall, forthwith, notify by mail at his last known address (i) each requester and
342 (ii) the applicant or permittee of the decision to grant or deny a public hearing or Board consideration.

343 F. In addition to subsections C, D, and E, the Director may, in his discretion, convene a public
344 hearing on a permit action or submit a permit action to the Board for its consideration.

345 G. If a determination is made to hold a public hearing, the Director shall schedule the hearing at
346 a time between 45 and 75 days after mailing of the notice required by subsection E.

347 H. The Director shall cause, or require the applicant to publish, notice of a public hearing to be
348 published once, in a newspaper of general circulation in the city or county where the facility or operation
349 that is the subject of the permit or permit application is located, at least 30 days before the hearing date.

350 I. The Director may, on his own motion or at the request of the applicant or permittee, for good
351 cause shown, reschedule the date of the public hearing. In the event the Director reschedules the date for
352 the public hearing after notice has been published, he shall, or require the applicant to, provide
353 reasonable notice of the new date of the public hearing. Such notice shall be published once in the same
354 newspaper where the original notice was published.

355 J. Public hearings held pursuant to these procedures may be conducted by (i) the Board at a
356 regular or special meeting of the Board or (ii) one or more members of the Board. A member of the
357 Board shall preside over the public hearing.

358 K. The presiding Board member shall have the authority to maintain order, preserve the
359 impartiality of the decision process, and conclude the hearing process expeditiously. The presiding
360 Board member, in order to carry out his responsibilities under this subsection, is authorized to exercise
361 the following powers, including but not limited to:

362 1. Prescribing the methods and procedures to be used in the presentation of factual data,
363 arguments, and proof orally and in writing including the imposition of reasonable limitations on the time
364 permitted for oral testimony;

365 2. Consolidating the presentation of factual data, arguments, and proof to avoid repetitive
366 presentation of them;

367 3. Ruling on procedural matters; and

368 4. Acting as custodian of the record of the public hearing causing all notices and written
369 submittals to be entered in it.

370 L. The public comment period will remain open for 15 days after the close of the public hearing
371 if required by § 62.1-44.15:01.

372 M. When the public hearing is conducted by less than a quorum of the Board, the Department
373 shall, promptly after the close of the public hearing comment period, make a report to the Board.

374 N. After the close of the public hearing comment period, the Board shall, at a regular or special
375 meeting, take final action on the permit. Such decision shall be issued within 90 days of the close of the
376 public comment period or from a later date, as agreed to by the permittee or applicant and the Board or
377 the Director. The Board shall not take any action on a permit where a public hearing was convened
378 solely to satisfy the requirements of state or federal law or regulation unless the permit was provided to
379 the Board for its consideration pursuant to the provisions of this section.

380 O. When the public hearing was conducted by less than a quorum of the Board, persons who
381 commented during the public comment period shall be afforded an opportunity at the Board meeting
382 when final action is scheduled to respond to any summaries of the public comments prepared by the
383 Department for the Board's consideration subject to such reasonable limitations on the time permitted
384 for oral testimony or presentation of repetitive material as are determined by the Board.

385 P. In making its decision, the Board shall consider (i) the verbal and written comments received
386 during the public comment period made part of the record, (ii) any explanation of comments previously
387 received during the public comment period made at the Board meeting, (iii) the comments and
388 recommendation of the Department, and (iv) the agency files. When the decision of the Board is to
389 adopt the recommendation of the Department, the Board shall provide in writing a clear and concise
390 statement of the legal basis and justification for the decision reached. When the decision of the Board
391 varies from the recommendation of the Department, the Board shall, in consultation with legal counsel,
392 provide a clear and concise statement explaining the reason for the variation and how the Board's
393 decision is in compliance with applicable laws and regulations. The written statement shall be provided
394 contemporaneously with the decision of the Board. Copies of the decision, certified by the Director,
395 shall be mailed by certified mail to the permittee or applicant.

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