

SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

1 A BILL to amend and reenact §§ 10.1-1322.01 and 62.1-44.15:02 of the Code of Virginia, relating to  
2 electronic meetings by the Air Pollution Control Board and the State Water Control Board.

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

4 **1. That §§ 10.1-1322.01 and 62.1-44.15:02 of the Code of Virginia are amended and reenacted as**  
5 **follows:**

6 § 10.1-1322.01. Permits; procedures for public hearings and permits before the Board.

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

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

- 13 1. The name, mailing address, and telephone number of the requester;
- 14 2. The names and addresses of all persons for whom the requester is acting as a representative  
15 (for the purposes of this requirement, an unincorporated association is a person);
- 16 3. The reason why a public hearing or Board consideration is requested;
- 17 4. A brief, informal statement setting forth the factual nature and the extent of the interest of the  
18 requester or of the persons for whom the requester is acting as representative in the application or  
19 tentative determination, including an explanation of how and to what extent such interest would be  
20 directly and adversely affected by the issuance, denial, modification, or revocation of the permit in  
21 question; and
- 22 5. Where possible, specific references to the terms and conditions of the permit in question,  
23 together with suggested revisions and alterations of those terms and conditions that the requester

24 considers are needed to conform the permit to the intent and provisions of the State Air Pollution  
25 Control Law (§ 10.1-1300 et seq.).

26 C. Upon completion of the public comment period on a permit action, the Director shall review  
27 all timely requests for public hearing or Board consideration filed during the public comment period on  
28 the permit action and within 30 calendar days following the expiration of the time period for the  
29 submission of requests shall grant a public hearing or Board consideration after the public hearing  
30 required by state or federal law or regulation, unless the permittee or applicant agrees to a later date, if  
31 the Director finds the following:

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

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

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

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

44 For purposes of this subsection, if a Board meeting is held via electronic communication, ~~the~~  
45 ~~Board shall have at least one forum open to the public and individual Board members may participate~~  
46 ~~from any location regardless of whether it is open to the public~~ the meeting shall be held in compliance  
47 with the provisions § 2.2-3708, except that a quorum of the Board is not required to be physically  
48 assembled at one primary or central meeting location. Discussions of the Board held via such electronic  
49 communication means shall be specifically limited to a (i) review of the Director's decision pursuant to  
50 subsection C, (ii) determination of the Board whether or not to grant a public hearing or Board

51 consideration, or (iii) delegation of the permit to the Director for his decision. No other matter of public  
52 business shall be discussed or transacted by the Board during any such meeting held via electronic  
53 communication.

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

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

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

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

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

68 J. Public hearings held pursuant to these procedures may be conducted by ~~the Board at a regular~~  
69 ~~or special meeting of the Board and shall be presided over by a member of the Board. Public hearings~~  
70 ~~may be held before less than a quorum of the Board~~ (i) the Board at a regular or special meeting of the  
71 Board or (ii) one or more members of the Board. A member of the Board shall preside over the public  
72 hearing.

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

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

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

82 3. Ruling on procedural matters; and

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

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

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

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

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

100 P. In making its decision, the Board shall consider (i) the verbal and written comments received  
101 during the public comment period made part of the record, (ii) any explanation of comments previously  
102 received during the public comment period made at the Board meeting, (iii) the comments and  
103 recommendation of the Department, and (iv) the agency files. When the decision of the Board is to

104 adopt the recommendation of the Department, the Board shall provide in writing a clear and concise  
105 statement of the legal basis and justification for the decision reached. When the decision of the Board  
106 varies from the recommendation of the Department, the Board shall, in consultation with legal counsel,  
107 provide a clear and concise statement explaining the reason for the variation and how the Board's  
108 decision is in compliance with applicable laws and regulations. The written statement shall be provided  
109 contemporaneously with the decision of the Board. Copies of the decision, certified by the Director,  
110 shall be mailed by certified mail to the permittee or applicant.

111 § 62.1-44.15:02. Permits; procedures for public hearings and permits before the Board.

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

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- 119 2. The names and addresses of all persons for whom the requester is acting as a representative  
120 (for the purposes of this requirement, an unincorporated association is a person);
- 121 3. The reason why a public hearing or Board consideration is requested;
- 122 4. A brief, informal statement setting forth the factual nature and the extent of the interest of the  
123 requester or of the persons for whom the requester is acting as representative in the application or  
124 tentative determination, including an explanation of how and to what extent such interest would be  
125 directly and adversely affected by the issuance, denial, modification, or revocation of the permit in  
126 question; and
- 127 5. Where possible, specific references to the terms and conditions of the permit in question,  
128 together with suggested revisions and alterations of those terms and conditions that the requester  
129 considers are needed to conform the permit to the intent and provisions of the State Water Control Law  
130 (§ 62.1-44.2 et seq.).

131 C. Upon completion of the public comment period on a permit action, the Director shall review  
132 all timely requests for public hearing or Board consideration filed during the public comment period on  
133 the permit action and within 30 calendar days following the expiration of the time period for the  
134 submission of requests shall grant a public hearing or Board consideration after the public hearing  
135 required by state or federal law or regulation, unless the permittee or applicant agrees to a later date, if  
136 the Director finds the following:

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

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

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

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

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149 ~~Board shall have at least one forum open to the public and individual Board members may participate~~  
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151 with the provisions § 2.2-3708, except that a quorum of the Board is not required to be physically  
152 assembled at one primary or central meeting location. Discussions of the Board held via such electronic  
153 communication means shall be specifically limited to a (i) review of the Director's decision pursuant to  
154 subsection C, (ii) determination of the Board whether or not to grant a public hearing or Board  
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159 (ii) the applicant or permittee of the decision to grant or deny a public hearing or Board consideration.

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161 hearing on a permit action or submit a permit action to the Board for its consideration.

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163 a time between 45 and 75 days after mailing of the notice required by subsection E.

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

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

172 J. Public hearings held pursuant to these procedures may be conducted by ~~the Board at a regular~~  
173 ~~or special meeting of the Board and shall be presided over by a member of the Board. Public hearings~~  
174 ~~may be held before less than a quorum of the Board.~~ (i) the Board at a regular or special meeting of the  
175 Board or (ii) one or more members of the Board. A member of the Board shall preside over the public  
176 hearing.

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

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

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

186 3. Ruling on procedural matters; and

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

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

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

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

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

204 P. In making its decision, the Board shall consider (i) the verbal and written comments received  
205 during the public comment period made part of the record, (ii) any explanation of comments previously  
206 received during the public comment period made at the Board meeting, (iii) the comments and  
207 recommendation of the Department, and (iv) the agency files. When the decision of the Board is to  
208 adopt the recommendation of the Department, the Board shall provide in writing a clear and concise  
209 statement of the legal basis and justification for the decision reached. When the decision of the Board  
210 varies from the recommendation of the Department, the Board shall, in consultation with legal counsel,



211 provide a clear and concise statement explaining the reason for the variation and how the Board's  
212 decision is in compliance with applicable laws and regulations. The written statement shall be provided  
213 contemporaneously with the decision of the Board. Copies of the decision, certified by the Director,  
214 shall be mailed by certified mail to the permittee or applicant.

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