

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-2455, 2.2-3701, 2.2-3707, 2.2-3707.01, 2.2-3714, 10.1-1322.01,
2 23.1-1301, 23.1-2425, 30-179, 33.2-1912, and 62.1-44.15:02 of the Code of Virginia; to amend
3 the Code of Virginia by adding a section numbered 2.2-3708.2; and to repeal §§ 2.2-3708 and 2.2-
4 3708.1 of the Code of Virginia, relating to the Virginia Freedom of Information Act; meetings
5 conducted through electronic communication means.

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

7 **1. That §§ 2.2-2455, 2.2-3701, 2.2-3707, 2.2-3707.01, 2.2-3714, 10.1-1322.01, 23.1-1301, 23.1-2425, 30-**
8 **179, 33.2-1912, and 62.1-44.15:02 of the Code of Virginia are amended and reenacted and that the**
9 **Code of Virginia is amended by adding a section numbered 2.2-3708.2 as follows:**

10 **§ 2.2-2455. Charitable Gaming Board; membership; terms; quorum; compensation; staff.**

11 A. The Charitable Gaming Board (the Board) is hereby established as a policy board within the
12 meaning of § 2.2-2100 in the executive branch of state government. The purpose of the Board shall be to
13 advise the Department of Agriculture and Consumer Services on all aspects of the conduct of charitable
14 gaming in Virginia.

15 B. The Board shall consist of eleven members who shall be appointed in the following manner:

16 1. Six nonlegislative citizen members appointed by the Governor subject to confirmation by the
17 General Assembly as follows: one member who is a member of a charitable organization subject to Article
18 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 in good standing with the Department; one member
19 who is a charitable gaming supplier registered and in good standing with the Department; one member
20 who is an owner, lessor, or lessee of premises where charitable gaming is conducted; one member who is
21 or has been a law-enforcement officer in Virginia but who (i) is not a charitable gaming supplier registered
22 with the Department, (ii) is not a lessor of premises where charitable gaming is conducted, (iii) is not a
23 member of a charitable organization, or (iv) does not have an interest in or is not affiliated with such
24 supplier or charitable organization or owner, lessor, or lessee of premises where charitable gaming is
25 conducted; and two members who do not have an interest in or are not affiliated with a charitable

26 organization, charitable gaming supplier, or owner, lessor, or lessee of premises where charitable gaming
27 is conducted;

28 2. Three nonlegislative citizen members appointed by the Speaker of the House of Delegates as
29 follows: two members who are members of a charitable organization subject to Article 1.1:1 (§ 18.2-
30 340.15 et seq.) of Chapter 8 of Title 18.2 in good standing with the Department and one member who does
31 not have an interest in or is not affiliated with a charitable organization, charitable gaming supplier, or
32 owner, lessor, or lessee of premises where charitable gaming is conducted; and

33 3. Two nonlegislative citizen members appointed by the Senate Committee on Rules as follows:
34 one member who is a member of a charitable organization subject to Article 1.1:1 (§ 18.2-340.15 et seq.)
35 of Chapter 8 of Title 18.2 in good standing with the Department and one member who does not have an
36 interest in or is not affiliated with a charitable organization, charitable gaming supplier, or owner, lessor,
37 or lessee of premises where charitable gaming is conducted.

38 To the extent practicable, the Board shall consist of individuals from different geographic regions
39 of the Commonwealth. Each member of the Board shall have been a resident of the Commonwealth for a
40 period of at least three years next preceding his appointment, and his continued residency shall be a
41 condition of his tenure in office. Members shall be appointed for four-year terms. Vacancies shall be filled
42 by the appointing authority in the same manner as the original appointment for the unexpired portion of
43 the term. Each Board member shall be eligible for reappointment for a second consecutive term at the
44 discretion of the appointing authority. Persons who are first appointed to initial terms of less than four
45 years shall thereafter be eligible for reappointment to two consecutive terms of four years each. No sitting
46 member of the General Assembly shall be eligible for appointment to the Board. The members of the
47 Board shall serve at the pleasure of the appointing authority.

48 C. The Board shall elect from among its members a chairman who is a member of a charitable
49 organization subject to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2. The Board shall
50 elect a vice-chairman from among its members.

51 D. A quorum shall consist of five members. The decision of a majority of those members present
52 and voting shall constitute a decision of the Board.

53 E. For each day or part thereof spent in the performance of his duties, each member of the Board
54 shall receive such compensation and reimbursement for his reasonable expenses as provided in § 2.2-
55 2104.

56 F. The Board shall adopt rules and procedures for the conduct of its business, including a provision
57 that Board members shall abstain or otherwise recuse themselves from voting on any matter in which they
58 or a member of their immediate family have a personal interest in a transaction as defined in § 2.2-3101.
59 The Board shall meet at least four times a year, and other meetings may be held at any time or place
60 determined by the Board or upon call of the chairman or upon a written request to the chairman by any
61 two members. Except for emergency meetings and meetings governed by § ~~2.2-3708~~ 2.2-3708.2 requiring
62 a longer notice, all members shall be duly notified of the time and place of any regular or other meeting
63 at least 10 days in advance of such meeting.

64 G. Staff to the Board shall be provided by the Department of Agriculture and Consumer Services.

65 **§ 2.2-3701. Definitions.**

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

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

68 "Electronic communication" means any audio or combined audio and visual communication
69 method.

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

72 "Information" as used in the exclusions established by §§ 2.2-3705.1 through 2.2-3705.7, means
73 the content within a public record that references a specifically identified subject matter, and shall not be
74 interpreted to require the production of information that is not embodied in a public record.

75 "Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or
76 through ~~telephonic or video equipment~~ electronic communication means pursuant to § ~~2.2-3708 or 2.2-~~
77 ~~3708.1~~ 2.2-3708.2, as a body or entity, or as an informal assemblage of (i) as many as three members or
78 (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes
79 being taken, whether or not votes are cast, of any public body. Neither the gathering of employees of a

80 public body nor the gathering or attendance of two or more members of a public body ~~(i)~~ (a) at any place
81 or function where no part of the purpose of such gathering or attendance is the discussion or transaction
82 of any public business, and such gathering or attendance was not called or prearranged with any purpose
83 of discussing or transacting any business of the public body, or ~~(ii)~~ (b) at a public forum, candidate
84 appearance, or debate, the purpose of which is to inform the electorate and not to transact public business
85 or to hold discussions relating to the transaction of public business, even though the performance of the
86 members individually or collectively in the conduct of public business may be a topic of discussion or
87 debate at such public meeting, shall be deemed a "meeting" subject to the provisions of this chapter.

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

89 "Public body" means any legislative body, authority, board, bureau, commission, district or agency
90 of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and
91 counties, municipal councils, governing bodies of counties, school boards and planning commissions;
92 governing boards of public institutions of higher education; and other organizations, corporations or
93 agencies in the Commonwealth supported wholly or principally by public funds. It shall include (i) the
94 Virginia Birth-Related Neurological Injury Compensation Program and its board of directors established
95 pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee, subcommittee, or other
96 entity however designated, of the public body created to perform delegated functions of the public body
97 or to advise the public body. It shall not exclude any such committee, subcommittee or entity because it
98 has private sector or citizen members. Corporations organized by the Virginia Retirement System are
99 "public bodies" for purposes of this chapter.

100 For the purposes of the provisions of this chapter applicable to access to public records,
101 constitutional officers and private police departments as defined in § 9.1-101 shall be considered public
102 bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose
103 public records as other custodians of public records.

104 "Public records" means all writings and recordings that consist of letters, words or numbers, or
105 their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic
106 impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data

107 compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or
108 in the possession of a public body or its officers, employees or agents in the transaction of public business.

109 "Regional public body" means a unit of government organized as provided by law within defined
110 boundaries, as determined by the General Assembly, which unit includes two or more localities.

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

114 **§ 2.2-3707. Meetings to be public; notice of meetings; recordings; minutes.**

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

116 B. No meeting shall be conducted through telephonic, video, electronic or other electronic
117 communication means where the members are not physically assembled to discuss or transact public
118 business, except as provided in § ~~2.2-3708, 2.2-3708.1~~ 2.2-3708.2 or as may be specifically provided in
119 Title 54.1 for the summary suspension of professional licenses.

120 C. Every public body shall give notice of the date, time, and location of its meetings by:

- 121 1. Posting such notice on its official public government website, if any;
122 2. Placing such notice in a prominent public location at which notices are regularly posted; and
123 3. Placing such notice at the office of the clerk of the public body or, in the case of a public body
124 that has no clerk, at the office of the chief administrator.

125 All state public bodies subject to the provisions of this chapter shall also post notice of their
126 meetings on a central, publicly available electronic calendar maintained by the Commonwealth.
127 Publication of meeting notices by electronic means by other public bodies shall be encouraged.

128 The notice shall be posted at least three working days prior to the meeting.

129 D. Notice, reasonable under the circumstance, of special, emergency, or continued meetings shall
130 be given contemporaneously with the notice provided to the members of the public body conducting the
131 meeting.

132 E. Any person may annually file a written request for notification with a public body. The request
133 shall include the requester's name, address, zip code, daytime telephone number, electronic mail address,

134 if available, and organization, if any. The public body receiving such request shall provide notice of all
135 meetings directly to each such person. Without objection by the person, the public body may provide
136 electronic notice of all meetings in response to such requests.

137 F. At least one copy of the proposed agenda and all agenda packets and, unless exempt, all
138 materials furnished to members of a public body for a meeting shall be made available for public
139 inspection at the same time such documents are furnished to the members of the public body. The proposed
140 agendas for meetings of state public bodies where at least one member has been appointed by the Governor
141 shall state whether or not public comment will be received at the meeting and, if so, the approximate point
142 during the meeting when public comment will be received.

143 G. Any person may photograph, film, record or otherwise reproduce any portion of a meeting
144 required to be open. The public body conducting the meeting may adopt rules governing the placement
145 and use of equipment necessary for broadcasting, photographing, filming or recording a meeting to
146 prevent interference with the proceedings, but shall not prohibit or otherwise prevent any person from
147 photographing, filming, recording, or otherwise reproducing any portion of a meeting required to be open.
148 No public body shall conduct a meeting required to be open in any building or facility where such
149 recording devices are prohibited.

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

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

159 Minutes shall be in writing and shall include ~~(i)~~ (a) the date, time, and location of the meeting; ~~(ii)~~
160 (b) the members of the public body recorded as present and absent; and ~~(iii)~~ (c) a summary of the

161 discussion on matters proposed, deliberated or decided, and a record of any votes taken. In addition, for
162 electronic communication meetings conducted in accordance with § ~~2.2-3708~~ 2.2-3708.2, minutes of state
163 public bodies shall include ~~(a) (1)~~ the identity of the members of the public body at each remote location
164 identified in the notice who participated in the meeting through electronic ~~communications~~
165 communication means, ~~(b) (2)~~ the identity of the members of the public body who were physically
166 assembled at the primary or central meeting location, and ~~(c) (3)~~ the identity of the members of the public
167 body who were not present at the locations identified in clauses ~~(a) (1)~~ and ~~(b) (2)~~, but who monitored
168 such meeting through electronic ~~communications~~ communication means.

169 **§ 2.2-3707.01. Meetings of the General Assembly.**

170 A. Except as provided in subsection B, public access to any meeting of the General Assembly or
171 a portion thereof shall be governed by rules established by the Joint Rules Committee and approved by a
172 majority vote of each house at the next regular session of the General Assembly. At least 60 days before
173 the adoption of such rules, the Joint Rules Committee shall (i) hold regional public hearings on such
174 proposed rules and (ii) provide a copy of such proposed rules to the Virginia Freedom of Information
175 Advisory Council.

176 B. Floor sessions of either house of the General Assembly; meetings, including work sessions, of
177 any standing or interim study committee of the General Assembly; meetings, including work sessions, of
178 any subcommittee of such standing or interim study committee; and joint committees of conference of the
179 General Assembly; or a quorum of any such committees or subcommittees, shall be open and governed
180 by this chapter.

181 C. Meetings of the respective political party caucuses of either house of the General Assembly,
182 including meetings conducted by telephonic or other electronic communication means, without regard to
183 (i) whether the General Assembly is in or out of regular or special session or (ii) whether such caucuses
184 invite staff or guests to participate in their deliberations, shall not be deemed meetings for the purposes of
185 this chapter.

186 D. No regular, special, or reconvened session of the General Assembly held pursuant to Article
187 IV, Section 6 of the Constitution of Virginia shall be conducted using electronic communication means
188 pursuant to ~~§ 2.2-3708~~ 2.2-3708.2.

189 **§ 2.2-3708.2. Meetings held through electronic communication means.**

190 A. The following provisions apply to all public bodies:

191 1. Subject to the requirements of subsection C, all public bodies may conduct any meeting wherein
192 the public business is discussed or transacted through electronic communication means if, on or before
193 the day of a meeting, a member of the public body holding the meeting notifies the chair of the public
194 body that:

195 a. Such member is unable to attend the meeting due to a temporary or permanent disability or other
196 medical condition that prevents the member's physical attendance; or

197 b. Such member is unable to attend the meeting due to a personal matter and identifies with
198 specificity the nature of the personal matter. Participation by a member pursuant to this subdivision is
199 limited each calendar year to two meetings.

200 2. If participation by a member through electronic communication means is approved pursuant to
201 subdivision 1, the public body holding the meeting shall record in its minutes the remote location from
202 which the member participated; however, the remote location need not be open to the public. If
203 participation is approved pursuant to subdivision 1 a, the public body shall also include in its minutes the
204 fact that the member participated through electronic communication means due to a temporary or
205 permanent disability or other medical condition that prevented the member's physical attendance. If
206 participation is approved pursuant to subdivision 1 b, the public body shall also include in its minutes the
207 specific nature of the personal matter cited by the member.

208 If a member's participation from a remote location pursuant to subdivision 1 b is disapproved
209 because such participation would violate the policy adopted pursuant to subsection C, such disapproval
210 shall be recorded in the minutes with specificity.

211 3. Any public body may meet by electronic communication means without a quorum of the public
212 body physically assembled at one location when the Governor has declared a state of emergency in

213 accordance with § 44-146.17, provided that (i) the catastrophic nature of the declared emergency makes
214 it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is
215 to address the emergency. The public body convening a meeting in accordance with this subdivision shall:

216 (a) Give public notice using the best available method given the nature of the emergency, which
217 notice shall be given contemporaneously with the notice provided to members of the public body
218 conducting the meeting;

219 (b) Make arrangements for public access to such meeting; and

220 (c) Otherwise comply with the provisions of this section.

221 The nature of the emergency, the fact that the meeting was held by electronic communication
222 means, and the type of electronic communication means by which the meeting was held shall be stated in
223 the minutes.

224 B. The following provisions apply to regional public bodies:

225 1. Subject to the requirements in subsection C, regional public bodies may also conduct any
226 meeting wherein the public business is discussed or transacted through electronic communication means
227 if, on the day of a meeting, a member of a regional public body notifies the chair of the public body that
228 such member's principal residence is more than 60 miles from the meeting location identified in the
229 required notice for such meeting.

230 2. If participation by a member through electronic communication means is approved pursuant to
231 this subsection, the public body holding the meeting shall record in its minutes the remote location from
232 which the member participated; however, the remote location need not be open to the public.

233 If a member's participation from a remote location is disapproved because such participation would
234 violate the policy adopted pursuant to subsection C, such disapproval shall be recorded in the minutes
235 with specificity.

236 C. Participation by a member of a public body in a meeting through electronic communication
237 means pursuant to subsections A and B shall be authorized only if the following conditions are met:

238 1. The public body has adopted a written policy allowing for and governing participation of its
239 members by electronic communication means, including an approval process for such participation,

240 subject to the express limitations imposed by this section. Once adopted, the policy shall be applied strictly
241 and uniformly, without exception, to the entire membership and without regard to the identity of the
242 member requesting remote participation or the matters that will be considered or voted on at the meeting;

243 2. A quorum of the public body is physically assembled at one primary or central meeting location;
244 and

245 3. The public body makes arrangements for the voice of the remote participant to be heard by all
246 persons at the primary or central meeting location.

247 D. The following provisions apply to state public bodies:

248 1. Except as provided in subsection D of § 2.2-3707.01, state public bodies may also conduct any
249 meeting wherein the public business is discussed or transacted through electronic communication means,
250 provided that (i) a quorum of the public body is physically assembled at one primary or central meeting
251 location, (ii) notice of the meeting has been given in accordance with subdivision 2, and (iii) the remote
252 locations, from which additional members of the public body participate through electronic
253 communication means, are open to the public.

254 If a state public body holds a meeting through electronic communication means pursuant to this
255 subsection, it shall also hold at least one meeting annually where members in attendance at the meeting
256 are physically assembled at one location and where no members participate by electronic communication
257 means.

258 2. Notice of any regular meeting held pursuant to this subsection shall be provided at least three
259 working days in advance of the date scheduled for the meeting. Notice, reasonable under the circumstance,
260 of special, emergency, or continued meetings held pursuant to this section shall be given
261 contemporaneously with the notice provided to members of the public body conducting the meeting. For
262 the purposes of this subsection, "continued meeting" means a meeting that is continued to address an
263 emergency or to conclude the agenda of a meeting for which proper notice was given.

264 The notice shall include the date, time, place, and purpose for the meeting, shall identify the
265 locations for the meeting, and shall include a telephone number that may be used at remote locations to
266 notify the primary or central meeting location of any interruption in the telephonic or video broadcast of

267 the meeting to the remote locations. Any interruption in the telephonic or video broadcast of the meeting
268 shall result in the suspension of action at the meeting until repairs are made and public access is restored.

269 3. A copy of the proposed agenda and agenda packets and, unless exempt, all materials that will
270 be distributed to members of the public body and that have been made available to the staff of the public
271 body in sufficient time for duplication and forwarding to all locations where public access will be provided
272 shall be made available to the public at the time of the meeting.

273 4. All persons attending the meeting at any of the meeting locations shall be afforded the same
274 opportunity to address the public body as persons attending the meeting at the primary or central meeting
275 location. In addition, the public body shall make available to the public at any meeting conducted in
276 accordance with this subsection a public comment form prepared by the Virginia Freedom of Information
277 Advisory Council in accordance with § 30-179.

278 5. Minutes of all meetings held by electronic communication means shall be recorded as required
279 by § 2.2-3707. Votes taken during any meeting conducted through electronic communication means shall
280 be recorded by name in roll-call fashion and included in the minutes. For emergency meetings held by
281 electronic communication means, the nature of the emergency shall be stated in the minutes.

282 E. Any authorized public body that meets by electronic communication means pursuant to this
283 subsection shall make a written report of the following to the Virginia Freedom of Information Advisory
284 Council by December 15 of each year:

285 1. The total number of meetings held that year in which there was participation through electronic
286 communications means;

287 2. The dates and purposes of such meetings;

288 3. A copy of the agenda for each such meeting;

289 4. The number of sites for each such meeting;

290 5. The types of electronic communication means by which the meetings were held;

291 6. The number of participants, including members of the public, at each meeting location;

292 7. The identity of the members of the public body recorded as absent and those recorded as present
293 at each meeting location;

294 8. A summary of any public comment received about the process of conducting the meeting
295 through electronic communication means; and

296 9. A written summary of the public body's experience conducting meetings through electronic
297 communication means, including its logistical and technical experience.

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

300 **§ 2.2-3714. Violations and penalties.**

301 In a proceeding commenced against any officer, employee, or member of a public body under §
302 2.2-3713 for a violation of § 2.2-3704, 2.2-3705.1 through 2.2-3705.7, 2.2-3706, 2.2-3707, ~~2.2-3708, 2.2-~~
303 ~~3708.1~~ 2.2-3708.2, 2.2-3710, 2.2-3711 or 2.2-3712, the court, if it finds that a violation was willfully and
304 knowingly made, shall impose upon such officer, employee, or member in his individual capacity, whether
305 a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$500 nor more
306 than \$2,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation,
307 such civil penalty shall be not less than \$2,000 nor more than \$5,000.

308 **§ 10.1-1322.01. Permits; procedures for public hearings and permits before the Board.**

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

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

- 314 1. The name, mailing address, and telephone number of the requester;
- 315 2. The names and addresses of all persons for whom the requester is acting as a representative (for
316 the purposes of this requirement, an unincorporated association is a person);
- 317 3. The reason why a public hearing or Board consideration is requested;
- 318 4. A brief, informal statement setting forth the factual nature and the extent of the interest of the
319 requester or of the persons for whom the requester is acting as representative in the application or tentative

320 determination, including an explanation of how and to what extent such interest would be directly and
321 adversely affected by the issuance, denial, modification, or revocation of the permit in question; and

322 5. Where possible, specific references to the terms and conditions of the permit in question,
323 together with suggested revisions and alterations of those terms and conditions that the requester considers
324 are needed to conform the permit to the intent and provisions of the State Air Pollution Control Law (§
325 10.1-1300 et seq.).

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

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

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

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

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

344 For purposes of this subsection, if a Board meeting is held via electronic communication means,
345 the meeting shall be held in compliance with the provisions of § ~~2.2-3708~~ 2.2-3708.2, except that a quorum
346 of the Board is not required to be physically assembled at one primary or central meeting location.

347 Discussions of the Board held via such electronic communication means shall be specifically limited to a
348 (i) review of the Director's decision pursuant to subsection C, (ii) determination of the Board whether or
349 not to grant a public hearing or Board consideration, or (iii) delegation of the permit to the Director for
350 his decision. No other matter of public business shall be discussed or transacted by the Board during any
351 such meeting held via electronic communication means.

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

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

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

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

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

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

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

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

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

378 3. Ruling on procedural matters; and

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

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

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

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

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

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

400 the recommendation of the Department, the Board shall provide in writing a clear and concise statement
401 of the legal basis and justification for the decision reached. When the decision of the Board varies from
402 the recommendation of the Department, the Board shall, in consultation with legal counsel, provide a clear
403 and concise statement explaining the reason for the variation and how the Board's decision is in
404 compliance with applicable laws and regulations. The written statement shall be provided
405 contemporaneously with the decision of the Board. Copies of the decision, certified by the Director, shall
406 be mailed by certified mail to the permittee or applicant.

407 **§ 23.1-1301. Governing boards; powers.**

408 A. The board of visitors of each baccalaureate public institution of higher education or its designee
409 may:

- 410 1. Make regulations and policies concerning the institution;
- 411 2. Manage the funds of the institution and approve an annual budget;
- 412 3. Appoint the chief executive officer of the institution;
- 413 4. Appoint professors and fix their salaries; and
- 414 5. Fix the rates charged to students for tuition, mandatory fees, and other necessary charges.

415 B. The governing board of each public institution of higher education or its designee may:

416 1. In addition to the powers set forth in Restructured Higher Education Financial and
417 Administrative Operations Act (§ 23.1-1000 et seq.), lease or sell and convey its interest in any real
418 property that it has acquired by purchase, will, or deed of gift, subject to the prior approval of the Governor
419 and any terms and conditions of the will or deed of gift, if applicable. The proceeds shall be held, used,
420 and administered in the same manner as all other gifts and bequests;

421 2. Grant easements for roads, streets, sewers, waterlines, electric and other utility lines, or other
422 purposes on any property owned by the institution;

423 3. Adopt regulations or institution policies for parking and traffic on property owned, leased,
424 maintained, or controlled by the institution;

425 4. Adopt regulations or institution policies for the employment and dismissal of professors,
426 teachers, instructors, and other employees;

427 5. Adopt regulations or institution policies for the acceptance and assistance of students in addition
428 to the regulations or institution policies required pursuant to § 23.1-1303;

429 6. Adopt regulations or institution policies for the conduct of students in attendance and for the
430 rescission or restriction of financial aid, suspension, and dismissal of students who fail or refuse to abide
431 by such regulations or policies;

432 7. Establish programs, in cooperation with the Council and the Office of the Attorney General, to
433 promote (i) student compliance with state laws on the use of alcoholic beverages and (ii) the awareness
434 and prevention of sexual crimes committed upon students;

435 8. Establish guidelines for the initiation or induction of students into any social fraternity or
436 sorority in accordance with the prohibition against hazing as defined in § 18.2-56;

437 9. Assign any interest it possesses in intellectual property or in materials in which the institution
438 claims an interest, provided such assignment is in accordance with the terms of the institution's intellectual
439 property policies adopted pursuant to § 23.1-1303. The Governor's prior written approval is required for
440 transfers of such property (i) developed wholly or predominantly through the use of state general funds,
441 exclusive of capital assets and (ii)(a) developed by an employee of the institution acting within the scope
442 of his assigned duties or (b) for which such transfer is made to an entity other than (1) the Innovation and
443 Entrepreneurship Investment Authority, (2) an entity whose purpose is to manage intellectual properties
444 on behalf of nonprofit organizations, colleges, and universities, or (3) an entity whose purpose is to benefit
445 the respective institutions. The Governor may attach conditions to these transfers as he deems necessary.
446 In the event the Governor does not approve such transfer, the materials shall remain the property of the
447 respective institutions and may be used and developed in any manner permitted by law;

448 10. Conduct closed meetings pursuant to §§ 2.2-3711 and 2.2-3712 and conduct business as a
449 "state public body" for purposes of subsection ~~B D~~ of § ~~2.2-3708~~ 2.2-3708.2; and

450 11. Adopt a resolution to require the governing body of a locality that is contiguous to the
451 institution to enforce state statutes and local ordinances with respect to offenses occurring on the property
452 of the institution. Upon receipt of such resolution, the governing body of such locality shall enforce
453 statutes and local ordinances with respect to offenses occurring on the property of the institution.

454 **§ 23.1-2425. Confidential and public information.**

455 A. The Authority is subject to the provisions of the Freedom of Information Act (§ 2.2-3700 et
456 seq.), including the exclusions set forth in subdivision 14 of § 2.2-3705.7 and subdivision A 23 of § 2.2-
457 3711.

458 B. For purposes of the Freedom of Information Act (§ 2.2-3700 et seq.), meetings of the board are
459 not considered meetings of the board of visitors of the University. Meetings of the board may be conducted
460 through ~~telephonic or video~~ electronic communication means as provided in § ~~2.2-3708~~ 2.2-3708.2.

461 **§ 30-179. Powers and duties of the Council.**

462 The Council shall:

463 1. Furnish, upon request, advisory opinions or guidelines, and other appropriate information
464 regarding the Freedom of Information Act (§ 2.2-3700 et seq.) to any person or agency of state or local
465 government, in an expeditious manner;

466 2. Conduct training seminars and educational programs for the members and staff of public bodies
467 and other interested persons on the requirements of the Freedom of Information Act (§ 2.2-3700 et seq.);

468 3. Publish such educational materials as it deems appropriate on the provisions of the Freedom of
469 Information Act (§ 2.2-3700 et seq.);

470 4. Request from any agency of state or local government such assistance, services and information
471 as will enable the Council to effectively carry out its responsibilities. Information provided to the Council
472 by an agency of state or local government shall not be released to any other party unless authorized by
473 such agency;

474 5. Assist in the development and implementation of the provisions of § 2.2-3704.1;

475 6. Develop the public comment form for use by designated public bodies in accordance with
476 ~~subsection F of § 2.2-3708~~ subdivision D 4 of § 2.2-3708.2;

477 7. Develop an online public comment form to be posted on the Council's official public
478 government website to enable any requester to comment on the quality of assistance provided to the
479 requester by a public body; and

480 8. Report annually on or before December 1 of each year on its activities and findings regarding
481 the Freedom of Information Act (§ 2.2-3700 et seq.), including recommendations for changes in the law,
482 to the General Assembly and the Governor. The annual report shall be published as a state document.

483 **§ 33.2-1912. Quorum and action by commission.**

484 A majority of the commission, which majority shall include at least one commissioner from a
485 majority of the component governments, shall constitute a quorum. Members of the commission who are
486 members of the General Assembly shall not be counted in determining a quorum while the General
487 Assembly is in session. The Chairman of the Commonwealth Transportation Board or his designee shall
488 be included for the purposes of constituting a quorum. The presence of a quorum and a vote of the majority
489 of the members necessary to constitute a quorum of all the members appointed to the commission,
490 including an affirmative vote from a majority of the members, shall be necessary to take any action. The
491 Chairman of the Commonwealth Transportation Board or his designee shall have voting rights equal to
492 appointees of component governments on all matters brought before the commission. Notwithstanding the
493 provisions of § ~~2.2-3708~~ 2.2-3708.2, members of the General Assembly may participate in the meetings
494 of the commission through electronic communications while the General Assembly is in session.

495 **§ 62.1-44.15:02. Permits; procedures for public hearings and permits before the Board.**

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

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

- 501 1. The name, mailing address, and telephone number of the requester;
- 502 2. The names and addresses of all persons for whom the requester is acting as a representative (for
503 the purposes of this requirement, an unincorporated association is a person);
- 504 3. The reason why a public hearing or Board consideration is requested;
- 505 4. A brief, informal statement setting forth the factual nature and the extent of the interest of the
506 requester or of the persons for whom the requester is acting as representative in the application or tentative

507 determination, including an explanation of how and to what extent such interest would be directly and
508 adversely affected by the issuance, denial, modification, or revocation of the permit in question; and

509 5. Where possible, specific references to the terms and conditions of the permit in question,
510 together with suggested revisions and alterations of those terms and conditions that the requester considers
511 are needed to conform the permit to the intent and provisions of the State Water Control Law (§ 62.1-44.2
512 et seq.).

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

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

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

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

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

530 For purposes of this subsection, if a Board meeting is held via electronic communication means,
531 the meeting shall be held in compliance with the provisions of § ~~2.2-3708~~ 2.2-3708.2, except that a quorum
532 of the Board is not required to be physically assembled at one primary or central meeting location.
533 Discussions of the Board held via such electronic communication means shall be specifically limited to a

534 (i) review of the Director's decision pursuant to subsection C, (ii) determination of the Board whether or
535 not to grant a public hearing or Board consideration, or (iii) delegation of the permit to the Director for
536 his decision. No other matter of public business shall be discussed or transacted by the Board during any
537 such meeting held via electronic communication means.

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

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

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

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

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

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

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

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

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

564 3. Ruling on procedural matters; and

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

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

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

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

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

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

586 the recommendation of the Department, the Board shall provide in writing a clear and concise statement
587 of the legal basis and justification for the decision reached. When the decision of the Board varies from
588 the recommendation of the Department, the Board shall, in consultation with legal counsel, provide a clear
589 and concise statement explaining the reason for the variation and how the Board's decision is in
590 compliance with applicable laws and regulations. The written statement shall be provided
591 contemporaneously with the decision of the Board. Copies of the decision, certified by the Director, shall
592 be mailed by certified mail to the permittee or applicant.

593 **2. That §§ 2.2-3708 and 2.2-3708.1 of the Code of Virginia are repealed.**

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