

VIRGINIA ACTS OF ASSEMBLY -- 2018 SESSION

CHAPTER 55

An Act to amend and reenact §§ 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, 30-179, 33.2-1912, and 62.1-44.15:02 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 2.2-3708.2; and to repeal §§ 2.2-3708 and 2.2-3708.1 of the Code of Virginia, relating to the Virginia Freedom of Information Act; meetings conducted through electronic communication means.

[H 907]

Approved February 28, 2018

Be it enacted by the General Assembly of Virginia:

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, 30-179, 33.2-1912, and 62.1-44.15:02 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-3708.2 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

§ 2.2-3701. Definitions.

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

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

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

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

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

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through ~~telephonic or video equipment~~ *electronic communication* means pursuant to § ~~2.2-3708~~ or ~~2.2-3708.1~~ 2.2-3708.2, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. Neither the gathering of employees of a public body nor the gathering or attendance of two or more members of a public body ~~(i)~~ (a) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body, or ~~(ii)~~ (b) at a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be deemed a "meeting" subject to the provisions of this chapter.

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

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

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

"Public records" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Minutes shall be in writing and shall include ~~(i)~~ (a) the date, time, and location of the meeting; ~~(ii)~~ (b) the members of the public body recorded as present and absent; and ~~(iii)~~ (c) a summary of the discussion on matters proposed, deliberated or decided, and a record of any votes taken. In addition, for electronic communication meetings conducted in accordance with § ~~2.2-3708~~ 2.2-3708.2, minutes of state public bodies shall include ~~(a)~~ (1) the identity of the members of the public body at each remote location identified in the notice who participated in the meeting through electronic ~~communications~~ communication means, ~~(b)~~ (2) the identity of the members of the public body who were physically assembled at the primary or central meeting location, and ~~(c)~~ (3) the identity of the members of the public body who were not present at the locations identified in clauses ~~(a)~~ (1) and ~~(b)~~, (2) but who monitored such meeting through electronic ~~communications~~ communication means.

§ 2.2-3707.01. Meetings of the General Assembly.

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

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

C. Meetings of the respective political party caucuses of either house of the General Assembly, including meetings conducted by telephonic or other electronic communication means, without regard to (i) whether the General Assembly is in or out of regular or special session or (ii) whether such caucuses

invite staff or guests to participate in their deliberations, shall not be deemed meetings for the purposes of this chapter.

D. No regular, special, or reconvened session of the General Assembly held pursuant to Article IV, Section 6 of the Constitution of Virginia shall be conducted using electronic communication means pursuant to § 2.2-3708.2.2-3708.2.

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

A. The following provisions apply to all public bodies:

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

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

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

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

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

3. Any public body may meet by electronic communication means without a quorum of the public body physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17, provided that (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to address the emergency. The public body convening a meeting in accordance with this subdivision shall:

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

b. Make arrangements for public access to such meeting; and

c. Otherwise comply with the provisions of this section.

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

B. The following provisions apply to regional public bodies:

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

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

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

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

1. The public body has adopted a written policy allowing for and governing participation of its members by electronic communication means, including an approval process for such participation, subject to the express limitations imposed by this section. Once adopted, the policy shall be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting;

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

3. The public body makes arrangements for the voice of the remote participant to be heard by all

persons at the primary or central meeting location.

D. The following provisions apply to state public bodies:

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

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

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

The notice shall include the date, time, place, and purpose for the meeting, shall identify the locations for the meeting, and shall include a telephone number that may be used at remote locations to notify the primary or central meeting location of any interruption in the telephonic or video broadcast of the meeting to the remote locations. Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access is restored.

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

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

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

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

a. The total number of meetings held that year in which there was participation through electronic communication means;

b. The dates and purposes of such meetings;

c. A copy of the agenda for each such meeting;

d. The number of sites for each such meeting;

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

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

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

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

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

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

§ 2.2-3714. Violations and penalties.

In a proceeding commenced against any officer, employee, or member of a public body under § 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, 2.2-3708.1 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 knowingly made, shall impose upon such officer, employee, or member in his individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$500 nor more than \$2,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.

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

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

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

1. The name, mailing address, and telephone number of the requester;
2. The names and addresses of all persons for whom the requester is acting as a representative (for the purposes of this requirement, an unincorporated association is a person);
3. The reason why a public hearing or Board consideration is requested;
4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or tentative determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, modification, or revocation of the permit in question; and

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

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

1. That there is a significant public interest in the issuance, denial, modification, or revocation of the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public hearing or Board consideration;
2. That the requesters raise substantial, disputed issues relevant to the issuance, denial, modification, or revocation of the permit in question; and
3. That the action requested by the interested party is not on its face inconsistent with, or in violation of, the State Air Pollution Control Law (§ 10.1-1300 et seq.), federal law or any regulation promulgated thereunder.

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

For purposes of this subsection, if a Board meeting is held via electronic communication *means*, the meeting shall be held in compliance with the provisions of § ~~2.2-3708~~ 2.2-3708.2, except that a quorum of the Board is not required to be physically assembled at one primary or central meeting location. Discussions of the Board held via such electronic communication means shall be specifically limited to a (i) review of the Director's decision pursuant to subsection C, (ii) determination of the Board whether or not to grant a public hearing or Board consideration, or (iii) delegation of the permit to the Director for his decision. No other matter of public business shall be discussed or transacted by the Board during any such meeting held via electronic communication *means*.

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

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

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

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

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

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

K. The presiding Board member shall have the authority to maintain order, preserve the impartiality

of the decision process, and conclude the hearing process expeditiously. The presiding Board member, in order to carry out his responsibilities under this subsection, is authorized to exercise the following powers, including but not limited to:

1. Prescribing the methods and procedures to be used in the presentation of factual data, arguments, and proof orally and in writing including the imposition of reasonable limitations on the time permitted for oral testimony;
2. Consolidating the presentation of factual data, arguments, and proof to avoid repetitive presentation of them;
3. Ruling on procedural matters; and
4. Acting as custodian of the record of the public hearing causing all notices and written submittals to be entered in it.

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

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

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

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

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

§ 23.1-1301. Governing boards; powers.

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

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

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

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

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

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

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

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

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

7. Establish programs, in cooperation with the Council and the Office of the Attorney General, to promote (i) student compliance with state laws on the use of alcoholic beverages and (ii) the awareness

and prevention of sexual crimes committed upon students;

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

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

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

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

§ 23.1-2425. Confidential and public information.

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

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

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

The Council shall:

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

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

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

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

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

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

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

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

§ 33.2-1912. Quorum and action by commission.

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

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

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

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

1. The name, mailing address, and telephone number of the requester;
2. The names and addresses of all persons for whom the requester is acting as a representative (for the purposes of this requirement, an unincorporated association is a person);
3. The reason why a public hearing or Board consideration is requested;
4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or tentative determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, modification, or revocation of the permit in question; and

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

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

1. That there is a significant public interest in the issuance, denial, modification, or revocation of the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public hearing or Board consideration;
2. That the requesters raise substantial, disputed issues relevant to the issuance, denial, modification, or revocation of the permit in question; and
3. That the action requested is not on its face inconsistent with, or in violation of, the State Water Control Law (§ 62.1-44.2 et seq.), federal law or any regulation promulgated thereunder.

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

For purposes of this subsection, if a Board meeting is held via electronic communication *means*, the meeting shall be held in compliance with the provisions of § ~~2.2-3708~~ 2.2-3708.2, except that a quorum of the Board is not required to be physically assembled at one primary or central meeting location. Discussions of the Board held via such electronic communication means shall be specifically limited to a (i) review of the Director's decision pursuant to subsection C, (ii) determination of the Board whether or not to grant a public hearing or Board consideration, or (iii) delegation of the permit to the Director for his decision. No other matter of public business shall be discussed or transacted by the Board during any such meeting held via electronic communication *means*.

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

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

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

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

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

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

K. The presiding Board member shall have the authority to maintain order, preserve the impartiality of the decision process, and conclude the hearing process expeditiously. The presiding Board member, in

order to carry out his responsibilities under this subsection, is authorized to exercise the following powers, including but not limited to:

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

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

3. Ruling on procedural matters; and

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

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

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

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

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

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

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