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HOUSE BILL NO. 907

Offered January 10, 2018

Prefiled January 9, 2018

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, 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.*

 Patron—Robinson

 Referred to Committee on General Laws

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

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59 and voting shall constitute a decision of the Board.

60 E. For each day or part thereof spent in the performance of his duties, each member of the Board
61 shall receive such compensation and reimbursement for his reasonable expenses as provided in
62 § 2.2-2104.

63 F. The Board shall adopt rules and procedures for the conduct of its business, including a provision
64 that Board members shall abstain or otherwise recuse themselves from voting on any matter in which
65 they or a member of their immediate family have a personal interest in a transaction as defined in
66 § 2.2-3101. The Board shall meet at least four times a year, and other meetings may be held at any time
67 or place determined by the Board or upon call of the chairman or upon a written request to the
68 chairman by any two members. Except for emergency meetings and meetings governed by § ~~2.2-3708~~
69 ~~2.2-3708.2~~ requiring a longer notice, all members shall be duly notified of the time and place of any
70 regular or other meeting at least 10 days in advance of such meeting.

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

72 **§ 2.2-3701. Definitions.**

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

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

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

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

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

81 "Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or
82 through ~~telephonic or video equipment~~ *electronic communication means* pursuant to § ~~2.2-3708~~ or
83 ~~2.2-3708.1~~ 2.2-3708.2, as a body or entity, or as an informal assemblage of (i) as many as three
84 members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or
85 without minutes being taken, whether or not votes are cast, of any public body. Neither the gathering of
86 employees of a public body nor the gathering or attendance of two or more members of a public body
87 ~~(i)~~ (a) at any place or function where no part of the purpose of such gathering or attendance is the
88 discussion or transaction of any public business, and such gathering or attendance was not called or
89 prearranged with any purpose of discussing or transacting any business of the public body, or ~~(ii)~~ (b) at
90 a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and
91 not to transact public business or to hold discussions relating to the transaction of public business, even
92 though the performance of the members individually or collectively in the conduct of public business
93 may be a topic of discussion or debate at such public meeting, shall be deemed a "meeting" subject to
94 the provisions of this chapter.

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

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

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

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

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

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

121 **§ 2.2-3707. Meetings to be public; notice of meetings; recordings; minutes.**

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

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

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

128 1. Posting such notice on its official public government website, if any;

129 2. Placing such notice in a prominent public location at which notices are regularly posted; and

130 3. Placing such notice at the office of the clerk of the public body or, in the case of a public body
131 that has no clerk, at the office of the chief administrator.

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

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

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

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

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

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

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

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

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

176 **§ 2.2-3707.01. Meetings of the General Assembly.**

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

182 Advisory Council.

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

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

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

196 **§ 2.2-3708.2. Meetings held through electronic communication means.**

197 A. *The following provisions apply to all public bodies:*

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

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

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

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

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

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

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

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

228 c. *Otherwise comply with the provisions of this section.*

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

232 B. *The following provisions apply to regional public bodies:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

288 5. Minutes of all meetings held by electronic communication means shall be recorded as required by
 289 § 2.2-3707. Votes taken during any meeting conducted through electronic communication means shall be
 290 recorded by name in roll-call fashion and included in the minutes. For emergency meetings held by
 291 electronic communication means, the nature of the emergency shall be stated in the minutes.

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

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

297 b. The dates and purposes of such meetings;

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

299 d. The number of sites for each such meeting;

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

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

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

304 h. A summary of any public comment received about the process of conducting the meeting through

305 *electronic communication means; and*

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

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

310 **§ 2.2-3714. Violations and penalties.**

311 In a proceeding commenced against any officer, employee, or member of a public body under
 312 § 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,~~
 313 ~~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
 314 and knowingly made, shall impose upon such officer, employee, or member in his individual capacity,
 315 whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$500
 316 nor more than \$2,000, which amount shall be paid into the State Literary Fund. For a second or
 317 subsequent violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.

318 **§ 10.1-1322.01. Permits; procedures for public hearings and permits before the Board.**

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

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

325 1. The name, mailing address, and telephone number of the requester;

326 2. The names and addresses of all persons for whom the requester is acting as a representative (for
 327 the purposes of this requirement, an unincorporated association is a person);

328 3. The reason why a public hearing or Board consideration is requested;

329 4. A brief, informal statement setting forth the factual nature and the extent of the interest of the
 330 requester or of the persons for whom the requester is acting as representative in the application or
 331 tentative determination, including an explanation of how and to what extent such interest would be
 332 directly and adversely affected by the issuance, denial, modification, or revocation of the permit in
 333 question; and

334 5. Where possible, specific references to the terms and conditions of the permit in question, together
 335 with suggested revisions and alterations of those terms and conditions that the requester considers are
 336 needed to conform the permit to the intent and provisions of the State Air Pollution Control Law
 337 (§ 10.1-1300 et seq.).

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

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

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

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

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

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

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

366 F. In addition to subsections C, D, and E, the Director may, in his discretion, convene a public

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

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

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

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

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

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

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

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

391 3. Ruling on procedural matters; and

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

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

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

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

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

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

420 **§ 23.1-1301. Governing boards; powers.**

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

423 1. Make regulations and policies concerning the institution;

424 2. Manage the funds of the institution and approve an annual budget;

425 3. Appoint the chief executive officer of the institution;

426 4. Appoint professors and fix their salaries; and

427 5. Fix the rates charged to students for tuition, mandatory fees, and other necessary charges.

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

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

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

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

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

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

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

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

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

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

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

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

468 **§ 23.1-2425. Confidential and public information.**

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

471 B. For purposes of the Freedom of Information Act (§ 2.2-3700 et seq.), meetings of the board are
472 not considered meetings of the board of visitors of the University. Meetings of the board may be
473 conducted through ~~telephonic or video~~ *electronic communication* means as provided in § ~~2.2-3708~~
474 2.2-3708.2.

475 **§ 30-179. Powers and duties of the Council.**

476 The Council shall:

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

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

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

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

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

489 6. Develop the public comment form for use by designated public bodies in accordance with

490 subsection F of ~~§ 2.2-3708 subdivision D 4 of § 2.2-3708.2;~~

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

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

497 **§ 33.2-1912. Quorum and action by commission.**

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

510 **§ 62.1-44.15:02. Permits; procedures for public hearings and permits before the Board.**

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

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

517 1. The name, mailing address, and telephone number of the requester;

518 2. The names and addresses of all persons for whom the requester is acting as a representative (for
519 the purposes of this requirement, an unincorporated association is a person);

520 3. The reason why a public hearing or Board consideration is requested;

521 4. A brief, informal statement setting forth the factual nature and the extent of the interest of the
522 requester or of the persons for whom the requester is acting as representative in the application or
523 tentative determination, including an explanation of how and to what extent such interest would be
524 directly and adversely affected by the issuance, denial, modification, or revocation of the permit in
525 question; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

582 3. Ruling on procedural matters; and

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

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

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

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

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

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

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