

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *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,*  
 3 *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*  
 4 *Code of Virginia by adding a section numbered 2.2-3708.2; and to repeal §§ 2.2-3708 and*  
 5 *2.2-3708.1 of the Code of Virginia, relating to the Virginia Freedom of Information Act; meetings*  
 6 *conducted through electronic communication means.*

7 [H 907]  
 8 Approved

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

10 **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,**  
 11 **30-179, 33.2-1912, and 62.1-44.15:02 of the Code of Virginia are amended and reenacted and that**  
 12 **the Code of Virginia is amended by adding a section numbered 2.2-3708.2 as follows:**

13 **§ 2.2-2455. Charitable Gaming Board; membership; terms; quorum; compensation; staff.**

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

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

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

31 2. Three nonlegislative citizen members appointed by the Speaker of the House of Delegates as  
 32 follows: two members who are members of a charitable organization subject to Article 1.1:1  
 33 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 in good standing with the Department and one  
 34 member who does not have an interest in or is not affiliated with a charitable organization, charitable  
 35 gaming supplier, or owner, lessor, or lessee of premises where charitable gaming is conducted; and

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

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

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

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

56 E. For each day or part thereof spent in the performance of his duties, each member of the Board

57 shall receive such compensation and reimbursement for his reasonable expenses as provided in  
58 § 2.2-2104.

59 F. The Board shall adopt rules and procedures for the conduct of its business, including a provision  
60 that Board members shall abstain or otherwise recuse themselves from voting on any matter in which  
61 they or a member of their immediate family have a personal interest in a transaction as defined in  
62 § 2.2-3101. The Board shall meet at least four times a year, and other meetings may be held at any time  
63 or place determined by the Board or upon call of the chairman or upon a written request to the  
64 chairman by any two members. Except for emergency meetings and meetings governed by § ~~2.2-3708~~  
65 2.2-3708.2 requiring a longer notice, all members shall be duly notified of the time and place of any  
66 regular or other meeting at least 10 days in advance of such meeting.

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

68 **§ 2.2-3701. Definitions.**

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

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

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

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

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

77 "Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or  
78 through ~~telephonic or video equipment~~ *electronic communication means* pursuant to § ~~2.2-3708~~ or  
79 ~~2.2-3708.1~~ 2.2-3708.2, as a body or entity, or as an informal assemblage of (i) as many as three  
80 members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or  
81 without minutes being taken, whether or not votes are cast, of any public body. Neither the gathering of  
82 employees of a public body nor the gathering or attendance of two or more members of a public body  
83 ~~(i)~~ (a) at any place or function where no part of the purpose of such gathering or attendance is the  
84 discussion or transaction of any public business, and such gathering or attendance was not called or  
85 prearranged with any purpose of discussing or transacting any business of the public body, or ~~(ii)~~ (b) at  
86 a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and  
87 not to transact public business or to hold discussions relating to the transaction of public business, even  
88 though the performance of the members individually or collectively in the conduct of public business  
89 may be a topic of discussion or debate at such public meeting, shall be deemed a "meeting" subject to  
90 the provisions of this chapter.

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

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

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

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

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

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

117 **§ 2.2-3707. Meetings to be public; notice of meetings; recordings; minutes.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

172 **§ 2.2-3707.01. Meetings of the General Assembly.**

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

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

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

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

192 **§ 2.2-3708.2. Meetings held through electronic communication means.**

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

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

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

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

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

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

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

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

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

224 c. Otherwise comply with the provisions of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

284 5. Minutes of all meetings held by electronic communication means shall be recorded as required by  
285 § 2.2-3707. Votes taken during any meeting conducted through electronic communication means shall be  
286 recorded by name in roll-call fashion and included in the minutes. For emergency meetings held by  
287 electronic communication means, the nature of the emergency shall be stated in the minutes.

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

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

293 b. The dates and purposes of such meetings;

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

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

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

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

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

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

301 *electronic communication means; and*

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

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

306 **§ 2.2-3714. Violations and penalties.**

307 In a proceeding commenced against any officer, employee, or member of a public body under  
 308 § 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,~~  
 309 ~~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  
 310 and knowingly made, shall impose upon such officer, employee, or member in his individual capacity,  
 311 whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$500  
 312 nor more than \$2,000, which amount shall be paid into the State Literary Fund. For a second or  
 313 subsequent violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.

314 **§ 10.1-1322.01. Permits; procedures for public hearings and permits before the Board.**

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

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

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

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

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

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

330 5. Where possible, specific references to the terms and conditions of the permit in question, together  
 331 with suggested revisions and alterations of those terms and conditions that the requester considers are  
 332 needed to conform the permit to the intent and provisions of the State Air Pollution Control Law  
 333 (§ 10.1-1300 et seq.).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

387 3. Ruling on procedural matters; and

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

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

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

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

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

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

416 **§ 23.1-1301. Governing boards; powers.**

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

- 419 1. Make regulations and policies concerning the institution;
- 420 2. Manage the funds of the institution and approve an annual budget;
- 421 3. Appoint the chief executive officer of the institution;
- 422 4. Appoint professors and fix their salaries; and

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

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

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

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

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

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

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

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

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

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

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

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

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

464 **§ 23.1-2425. Confidential and public information.**

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

467 B. For purposes of the Freedom of Information Act (§ 2.2-3700 et seq.), meetings of the board are  
468 not considered meetings of the board of visitors of the University. Meetings of the board may be  
469 conducted through ~~telephonic or video~~ *electronic communication* means as provided in § ~~2.2-3708~~  
470 2.2-3708.2.

471 **§ 30-179. Powers and duties of the Council.**

472 The Council shall:

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

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

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

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

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

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

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

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

493 **§ 33.2-1912. Quorum and action by commission.**

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

506 **§ 62.1-44.15:02. Permits; procedures for public hearings and permits before the Board.**

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

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

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

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

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

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

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

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

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

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

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

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

543 For purposes of this subsection, if a Board meeting is held via electronic communication *means*, the  
544 meeting shall be held in compliance with the provisions of ~~§ 2.2-3708~~ 2.2-3708.2, except that a quorum

545 of the Board is not required to be physically assembled at one primary or central meeting location.  
 546 Discussions of the Board held via such electronic communication means shall be specifically limited to a  
 547 (i) review of the Director's decision pursuant to subsection C, (ii) determination of the Board whether or  
 548 not to grant a public hearing or Board consideration, or (iii) delegation of the permit to the Director for  
 549 his decision. No other matter of public business shall be discussed or transacted by the Board during  
 550 any such meeting held via electronic communication *means*.

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

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

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

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

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

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

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

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

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

578 3. Ruling on procedural matters; and

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

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

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

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

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

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

**606** shall be mailed by certified mail to the permittee or applicant.  
**607** 2. That §§ 2.2-3708 and 2.2-3708.1 of the Code of Virginia are repealed.

**ENROLLED**

HB907ER