

HOUSE BILL NO. 444

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Bennett-Parker)

A BILL to amend and reenact §§ 2.2-2455, 2.2-3701, 2.2-3707, 2.2-3707.01, 2.2-3708.2, 2.2-3714, 10.1-1322.01, 15.2-1627.4, 23.1-1301, 23.1-2425, 30-179, and 62.1-44.15:02 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-3708.3, relating to the Virginia Freedom of Information Act; meetings conducted by electronic communication means; situations other than declared states of emergency.

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

**1. That §§ 2.2-2455, 2.2-3701, 2.2-3707, 2.2-3707.01, 2.2-3708.2, 2.2-3714, 10.1-1322.01, 15.2-1627.4, 23.1-1301, 23.1-2425, 30-179, 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 2.2-3708.3 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

27 with the Department, (ii) is not a lessor of premises where charitable gaming is conducted, (iii) is not a  
28 member of a charitable organization, or (iv) does not have an interest in or is not affiliated with such  
29 supplier or charitable organization or owner, lessor, or lessee of premises where charitable gaming is  
30 conducted; and two members who do not have an interest in or are not affiliated with a charitable  
31 organization, charitable gaming supplier, or owner, lessor, or lessee of premises where charitable gaming  
32 is conducted;

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

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

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

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

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

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

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

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

70 **§ 2.2-3701. Definitions.**

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

72 "All-virtual public meeting" means a public meeting (i) conducted by a public body using  
73 electronic communication means, (ii) during which all members of the public body who participate do so  
74 remotely rather than being assembled in one physical location, and (iii) to which public access is provided  
75 through electronic communication means.

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

77 "Electronic communication" means the use of technology having electrical, digital, magnetic,  
78 wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.

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

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

84 "Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or  
85 through electronic communication means pursuant to § 2.2-3708.2 or 2.2-3708.3, as a body or entity, or  
86 as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the  
87 constituent membership, wherever held, with or without minutes being taken, whether or not votes are  
88 cast, of any public body. Neither the gathering of employees of a public body nor the gathering or  
89 attendance of two or more members of a public body (a) at any place or function where no part of the  
90 purpose of such gathering or attendance is the discussion or transaction of any public business, and such  
91 gathering or attendance was not called or prearranged with any purpose of discussing or transacting any  
92 business of the public body, or (b) at a public forum, candidate appearance, or debate, the purpose of  
93 which is to inform the electorate and not to transact public business or to hold discussions relating to the  
94 transaction of public business, even though the performance of the members individually or collectively  
95 in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be  
96 deemed a "meeting" subject to the provisions of this chapter.

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

98 "Public body" means any legislative body, authority, board, bureau, commission, district, or  
99 agency of the Commonwealth or of any political subdivision of the Commonwealth, including counties,  
100 cities, and towns ~~and counties~~, municipal councils, governing bodies of counties, school boards, and  
101 planning commissions; governing boards of public institutions of higher education; and other  
102 organizations, corporations, or agencies in the Commonwealth supported wholly or principally by public  
103 funds. It shall include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its  
104 board of directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any  
105 committee, subcommittee, or other entity however designated, of the public body created to perform

106 delegated functions of the public body or to advise the public body. It shall not exclude any such  
107 committee, subcommittee, or entity because it has private sector or citizen members. Corporations  
108 organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

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

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

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

120 "Remote participation" means participation by an individual member of a public body by  
121 electronic communication means in a public meeting where a quorum of the public body is otherwise  
122 physically assembled.

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

126 "Trade secret" means the same as that term is defined in the Uniform Trade Secrets Act (§ 59.1-  
127 336 et seq.).

128 **§ 2.2-3707. Meetings to be public; notice of meetings; recordings; minutes.**

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

130 B. No meeting shall be conducted through telephonic, video, electronic, or other electronic  
131 communication means where the members are not physically assembled to discuss or transact public

132 business, except as provided in ~~§§ 2.2-3708.2-07~~ and 2.2-3708.3 or as may be specifically provided in  
133 Title 54.1 for the summary suspension of professional licenses.

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

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

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

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

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

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

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

157 G. Any person may photograph, film, record, or otherwise reproduce any portion of a meeting  
158 required to be open. The public body conducting the meeting may adopt rules governing the placement

159 and use of equipment necessary for broadcasting, photographing, filming, or recording a meeting to  
160 prevent interference with the proceedings, but shall not prohibit or otherwise prevent any person from  
161 photographing, filming, recording, or otherwise reproducing any portion of a meeting required to be open.  
162 No public body shall conduct a meeting required to be open in any building or facility where such  
163 recording devices are prohibited.

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

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

173 Minutes shall be in writing and shall include (a) the date, time, and location of the meeting; (b) the  
174 members of the public body recorded as present and absent; and (c) a summary of the discussion on matters  
175 proposed, deliberated, or decided, and a record of any votes taken. In addition, for electronic  
176 communication meetings conducted in accordance with § 2.2-3708.2 or 2.2-3708.3, ~~minutes of state~~  
177 ~~public bodies~~ shall include (1) the identity of the members of the public body ~~at each remote location~~  
178 ~~identified in the notice~~ who participated in the meeting through electronic communication means, (2) the  
179 identity of the members of the public body who were physically assembled ~~at the primary or central~~  
180 ~~meeting~~ one physical location, and (3) the identity of the members of the public body who were not present  
181 at the ~~locations~~ location identified in ~~clauses (1) and clause (2)~~ but who monitored such meeting through  
182 electronic communication means.

183 **§ 2.2-3707.01. Meetings of the General Assembly.**

184 A. Except as provided in subsection B, public access to any meeting of the General Assembly or  
185 a portion thereof shall be governed by rules established by the Joint Rules Committee and approved by a

186 majority vote of each house at the next regular session of the General Assembly. At least 60 days before  
187 the adoption of such rules, the Joint Rules Committee shall (i) hold regional public hearings on such  
188 proposed rules and (ii) provide a copy of such proposed rules to the Virginia Freedom of Information  
189 Advisory Council.

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

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

200 D. No regular, special, or reconvened session of the General Assembly held pursuant to Article  
201 IV, Section 6 of the Constitution of Virginia shall be conducted using electronic communication means  
202 pursuant to § 2.2-3708.2 or 2.2-3708.3.

203 **§ 2.2-3708.2. Meetings held through electronic communication means during declared states**  
204 **of emergency.**

205 ~~A. The following provisions apply to all public bodies:~~

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

210 ~~a. Such member is unable to attend the meeting due to (i) a temporary or permanent disability or~~  
211 ~~other medical condition that prevents the member's physical attendance or (ii) a family member's medical~~



212 ~~condition that requires the member to provide care for such family member, thereby preventing the~~  
213 ~~member's physical attendance; or~~

214 ~~b. Such member is unable to attend the meeting due to a personal matter and identifies with~~  
215 ~~specificity the nature of the personal matter. Participation by a member pursuant to this subdivision b is~~  
216 ~~limited each calendar year to two meetings or 25 percent of the meetings held per calendar year rounded~~  
217 ~~up to the next whole number, whichever is greater.~~

218 ~~2. If participation by a member through electronic communication means is approved pursuant to~~  
219 ~~subdivision 1, the public body holding the meeting shall record in its minutes the remote location from~~  
220 ~~which the member participated; however, the remote location need not be open to the public. If~~  
221 ~~participation is approved pursuant to subdivision 1 a, the public body shall also include in its minutes the~~  
222 ~~fact that the member participated through electronic communication means due to (i) a temporary or~~  
223 ~~permanent disability or other medical condition that prevented the member's physical attendance or (ii) a~~  
224 ~~family member's medical condition that required the member to provide care for such family member,~~  
225 ~~thereby preventing the member's physical attendance. If participation is approved pursuant to subdivision~~  
226 ~~1 b, the public body shall also include in its minutes the specific nature of the personal matter cited by the~~  
227 ~~member.~~

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

231 ~~3. Any public body, or any joint meetings thereof, may meet by electronic communication means~~  
232 ~~without a quorum of the public body physically assembled at one location when the Governor has declared~~  
233 ~~a state of emergency in accordance with § 44-146.17 or the locality in which the public body is located~~  
234 ~~has declared a local state of emergency pursuant to § 44-146.21, provided that (i) the catastrophic nature~~  
235 ~~of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and~~  
236 ~~(ii) the purpose of the meeting is to provide for the continuity of operations of the public body or the~~  
237 ~~discharge of its lawful purposes, duties, and responsibilities. The public body convening a meeting in~~  
238 ~~accordance with this subdivision section shall:~~

239           ~~a-1.~~ Give public notice using the best available method given the nature of the emergency, which  
240 notice shall be given contemporaneously with the notice provided to members of the public body  
241 conducting the meeting;

242           ~~b-2.~~ Make arrangements for public access to such meeting through electronic communication  
243 means, including videoconferencing if already used by the public body;

244           ~~e-3.~~ Provide the public with the opportunity to comment at those meetings of the public body  
245 when public comment is customarily received; and

246           ~~d-4.~~ Otherwise comply with the provisions of this chapter.

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

250           The provisions of this ~~subdivision 3~~ section shall be applicable only for the duration of the  
251 emergency declared pursuant to § 44-146.17 or 44-146.21.

252           ~~B. The following provisions apply to regional public bodies:~~

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

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

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

264 ~~C. Participation by a member of a public body in a meeting through electronic communication~~  
265 ~~means pursuant to subdivisions A 1 and 2 and subsection B shall be authorized only if the following~~  
266 ~~conditions are met:~~

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

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

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

276 ~~D. The following provisions apply to state public bodies:~~

277 ~~1. Except as provided in subsection D of § 2.2-3707.01, state public bodies may also conduct any~~  
278 ~~meeting wherein the public business is discussed or transacted through electronic communication means,~~  
279 ~~provided that (i) a quorum of the public body is physically assembled at one primary or central meeting~~  
280 ~~location, (ii) notice of the meeting has been given in accordance with subdivision 2, and (iii) members of~~  
281 ~~the public are provided a substantially equivalent electronic communication means through which to~~  
282 ~~witness the meeting. For the purposes of this subsection, "witness" means observe or listen.~~

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

287 ~~2. Notice of any regular meeting held pursuant to this subsection shall be provided at least three~~  
288 ~~working days in advance of the date scheduled for the meeting. Notice, reasonable under the circumstance,~~  
289 ~~of special, emergency, or continued meetings held pursuant to this section shall be given~~  
290 ~~contemporaneously with the notice provided to members of the public body conducting the meeting. For~~

291 ~~the purposes of this subsection, "continued meeting" means a meeting that is continued to address an~~  
292 ~~emergency or to conclude the agenda of a meeting for which proper notice was given.~~

293 ~~The notice shall include the date, time, place, and purpose for the meeting; shall identify the~~  
294 ~~primary or central meeting location and any remote locations that are open to the public pursuant to~~  
295 ~~subdivision 4; shall include notice as to the electronic communication means by which members of the~~  
296 ~~public may witness the meeting; and shall include a telephone number that may be used to notify the~~  
297 ~~primary or central meeting location of any interruption in the telephonic or video broadcast of the meeting.~~  
298 ~~Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action~~  
299 ~~at the meeting until repairs are made and public access is restored.~~

300 ~~3. A copy of the proposed agenda and agenda packets and, unless exempt, all materials that will~~  
301 ~~be distributed to members of a public body for a meeting shall be made available for public inspection at~~  
302 ~~the same time such documents are furnished to the members of the public body conducting the meeting.~~

303 ~~4. Public access to the remote locations from which additional members of the public body~~  
304 ~~participate through electronic communication means shall be encouraged but not required. However, if~~  
305 ~~three or more members are gathered at the same remote location, then such remote location shall be open~~  
306 ~~to the public.~~

307 ~~5. If access to remote locations is afforded, (i) all persons attending the meeting at any of the~~  
308 ~~remote locations shall be afforded the same opportunity to address the public body as persons attending~~  
309 ~~at the primary or central location and (ii) a copy of the proposed agenda and agenda packets and, unless~~  
310 ~~exempt, all materials that will be distributed to members of the public body for the meeting shall be made~~  
311 ~~available for inspection by members of the public attending the meeting at any of the remote locations at~~  
312 ~~the time of the meeting.~~

313 ~~6. The public body shall make available to the public at any meeting conducted in accordance with~~  
314 ~~this subsection a public comment form prepared by the Virginia Freedom of Information Advisory~~  
315 ~~Council in accordance with § 30-179.~~

316 ~~7. Minutes of all meetings held by electronic communication means shall be recorded as required~~  
317 ~~by § 2.2-3707. Votes taken during any meeting conducted through electronic communication means shall~~

318 ~~be recorded by name in roll call fashion and included in the minutes. For emergency meetings held by~~  
319 ~~electronic communication means, the nature of the emergency shall be stated in the minutes.~~

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

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

325 ~~b. The dates and purposes of each such meeting;~~

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

327 ~~d. The primary or central meeting location of each such meeting;~~

328 ~~e. The types of electronic communication means by which each meeting was held;~~

329 ~~f. If possible, the number of members of the public who witnessed each meeting through electronic~~  
330 ~~communication means;~~

331 ~~g. The identity of the members of the public body recorded as present at each meeting, and whether~~  
332 ~~each member was present at the primary or central meeting location or participated through electronic~~  
333 ~~communication means;~~

334 ~~h. The identity of any members of the public body who were recorded as absent at each meeting~~  
335 ~~and any members who were recorded as absent at a meeting but who monitored the meeting through~~  
336 ~~electronic communication means;~~

337 ~~i. If members of the public were granted access to a remote location from which a member~~  
338 ~~participated in a meeting through electronic communication means, the number of members of the public~~  
339 ~~at each such remote location;~~

340 ~~j. A summary of any public comment received about the process of conducting a meeting through~~  
341 ~~electronic communication means; and~~

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

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

346 **§ 2.2-3708.3. Meetings held through electronic communication means; situations other than**  
347 **declared states of emergency.**

348 A. Public bodies are encouraged to (i) provide public access, both in person and through electronic  
349 communication means, to public meetings and (ii) provide avenues for public comment at public meetings  
350 when public comment is customarily received, which may include public comments made in person or by  
351 electronic communication means or other methods.

352 B. Individual members of a public body may use remote participation instead of attending a public  
353 meeting in person if, in advance of the public meeting, the public body has adopted a policy as described  
354 in subsection D and the member notifies the public body chair that:

355 1. The member has a temporary or permanent disability or other medical condition that prevents  
356 the member's physical attendance;

357 2. A medical condition of a member of the member's family requires the member to provide care  
358 that prevents the member's physical attendance;

359 3. The member's principal residence is more than 60 miles from the meeting location identified in  
360 the required notice for such meeting; or

361 4. The member is unable to attend the meeting due to a personal matter and identifies with  
362 specificity the nature of the personal matter. However, the member may not use remote participation due  
363 to personal matters more than two meetings per calendar year or 25 percent of the meetings held per  
364 calendar year rounded up to the next whole number, whichever is greater.

365 If participation by a member through electronic communication means is approved pursuant to this  
366 subsection, the public body holding the meeting shall record in its minutes the remote location from which  
367 the member participated; however, the remote location need not be open to the public and may be  
368 identified in the minutes by a general description. If participation is approved pursuant to subdivision 1 or  
369 2, the public body shall also include in its minutes the fact that the member participated through electronic  
370 communication means due to a (i) temporary or permanent disability or other medical condition that

371 prevented the member's physical attendance or (ii) family member's medical condition that required the  
372 member to provide care for such family member, thereby preventing the member's physical attendance. If  
373 participation is approved pursuant to subdivision 3, the public body shall also include in its minutes the  
374 fact that the member participated through electronic communication means due to the distance between  
375 the member's principal residence and the meeting location. If participation is approved pursuant to  
376 subdivision 4, the public body shall also include in its minutes the specific nature of the personal matter  
377 cited by the member.

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

381 C. Any public body may hold all-virtual public meetings, provided that the public body follows  
382 the other requirements in this chapter for meetings, the public body has adopted a policy as described in  
383 subsection D, and:

384 1. An indication of whether the meeting will be an in-person or all-virtual public meeting is  
385 included in the required meeting notice along with a statement notifying the public that the method by  
386 which a public body chooses to meet shall not be changed unless the public body provides a new meeting  
387 notice in accordance with the provisions of § 2.2-3707;

388 2. Public access to the all-virtual public meeting is provided via electronic communication means;

389 3. The electronic communication means used allows the public to hear all members of the public  
390 body participating in the all-virtual public meeting and, when audio-visual technology is available, to see  
391 the members of the public body as well;

392 4. A phone number or other live contact information is provided to alert the public body if the  
393 audio or video transmission of the meeting provided by the public body fails, the public body monitors  
394 such designated means of communication during the meeting, and the public body takes a recess until  
395 public access is restored if the transmission fails for the public;

396 5. A copy of the proposed agenda and all agenda packets and, unless exempt, all materials  
397 furnished to members of a public body for a meeting is made available to the public in electronic format  
398 at the same time that such materials are provided to members of the public body;

399 6. The public is afforded the opportunity to comment through electronic means, including by way  
400 of written comments, at those public meetings when public comment is customarily received;

401 7. No more than two members of the public body are together in any one remote location unless  
402 that remote location is open to the public to physically access it;

403 8. If a closed session is held during an all-virtual public meeting, transmission of the meeting to  
404 the public resumes before the public body votes to certify the closed meeting as required by subsection D  
405 of § 2.2-3712;

406 9. The public body does not convene an all-virtual public meeting (i) more than two times per  
407 calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number,  
408 whichever is greater, or (ii) consecutively with another all-virtual public meeting; and

409 10. Minutes of all-virtual public meetings held by electronic communication means are taken as  
410 required by § 2.2-3707 and include the fact that the meeting was held by electronic communication means  
411 and the type of electronic communication means by which the meeting was held. If a member's  
412 participation from a remote location pursuant to this subsection is disapproved because such participation  
413 would violate the policy adopted pursuant to subsection D, such disapproval shall be recorded in the  
414 minutes with specificity.

415 D. Before a public body uses all-virtual public meetings as described in subsection C or allows  
416 members to use remote participation as described in subsection B, the public body shall first adopt a  
417 policy, by recorded vote at a public meeting, that shall be applied strictly and uniformly, without  
418 exception, to the entire membership and without regard to the identity of the member requesting remote  
419 participation or the matters that will be considered or voted on at the meeting. The policy shall:

420 1. Describe the circumstances under which an all-virtual public meeting and remote participation  
421 will be allowed and the process the public body will use for making requests to use remote participation,  
422 approving or denying such requests, and creating a record of such requests; and



423 2. Fix the number of times remote participation for personal matters or all-virtual public meetings  
424 can be used per calendar year, not to exceed the limitations set forth in subdivisions B 4 and C 9.

425 Any public body that creates a committee, subcommittee, or other entity however designated of  
426 the public body to perform delegated functions of the public body or to advise the public body may also  
427 adopt a policy on behalf of its committee, subcommittee, or other entity that shall apply to the committee,  
428 subcommittee, or other entity's use of individual remote participation and all-virtual public meetings.

429 **§ 2.2-3714. Violations and penalties.**

430 A. In a proceeding commenced against any officer, employee, or member of a public body under  
431 § 2.2-3713 for a violation of § 2.2-3704, 2.2-3705.1 through 2.2-3705.7, 2.2-3706, 2.2-3706.1, 2.2-3707,  
432 2.2-3708.2, 2.2-3708.3, 2.2-3710, 2.2-3711<sub>2</sub> or 2.2-3712, the court, if it finds that a violation was willfully  
433 and knowingly made, shall impose upon such officer, employee, or member in his individual capacity,  
434 whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$500  
435 nor more than \$2,000, which amount shall be paid into the Literary Fund. For a second or subsequent  
436 violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.

437 B. In addition to any penalties imposed pursuant to subsection A, if the court finds that any officer,  
438 employee, or member of a public body failed to provide public records to a requester in accordance with  
439 the provisions of this chapter because such officer, employee, or member altered or destroyed the  
440 requested public records with the intent to avoid the provisions of this chapter with respect to such request  
441 prior to the expiration of the applicable record retention period set by the retention regulations  
442 promulgated pursuant to the Virginia Public Records Act (§ 42.1-76 et seq.) by the State Library Board,  
443 the court may impose upon such officer, employee, or member in his individual capacity, whether or not  
444 a writ of mandamus or injunctive relief is awarded, a civil penalty of up to \$100 per record altered or  
445 destroyed, which amount shall be paid into the Literary Fund.

446 C. In addition to any penalties imposed pursuant to subsections A and B, if the court finds that a  
447 public body voted to certify a closed meeting in accordance with subsection D of § 2.2-3712 and such  
448 certification was not in accordance with the requirements of clause (i) or (ii) of subsection D of § 2.2-  
449 3712, the court may impose on the public body, whether or not a writ of mandamus or injunctive relief is

450 awarded, a civil penalty of up to \$1,000, which amount shall be paid into the Literary Fund. In determining  
451 whether a civil penalty is appropriate, the court shall consider mitigating factors, including reliance of  
452 members of the public body on (i) opinions of the Attorney General, (ii) court cases substantially  
453 supporting the rationale of the public body, and (iii) published opinions of the Virginia Freedom of  
454 Information Advisory Council.

455 **§ 10.1-1322.01. Permits; procedures for public hearings and permits before the Board.**

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

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

- 461 1. The name, mailing address, and telephone number of the requester;
- 462 2. The names and addresses of all persons for whom the requester is acting as a representative (for  
463 the purposes of this requirement, an unincorporated association is a person);
- 464 3. The reason why a public hearing or Board consideration is requested;
- 465 4. A brief, informal statement setting forth the factual nature and the extent of the interest of the  
466 requester or of the persons for whom the requester is acting as representative in the application or tentative  
467 determination, including an explanation of how and to what extent such interest would be directly and  
468 adversely affected by the issuance, denial, modification, or revocation of the permit in question; and
- 469 5. Where possible, specific references to the terms and conditions of the permit in question,  
470 together with suggested revisions and alterations of those terms and conditions that the requester considers  
471 are needed to conform the permit to the intent and provisions of the State Air Pollution Control Law (§  
472 10.1-1300 et seq.).

473 C. Upon completion of the public comment period on a permit action, the Director shall review all  
474 timely requests for public hearing or Board consideration filed during the public comment period on the  
475 permit action and within 30 calendar days following the expiration of the time period for the submission  
476 of requests shall grant a public hearing or Board consideration after the public hearing required by state

477 or federal law or regulation, unless the permittee or applicant agrees to a later date, if the Director finds  
478 the following:

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

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

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

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

491 For purposes of this subsection, if a Board meeting is held via electronic communication means,  
492 the meeting shall be held in compliance with the provisions of § ~~2.2-3708.2, except that a quorum of the~~  
493 ~~Board is not required to be physically assembled at one primary or central meeting location~~ 2.2-3708.3.

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

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

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

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

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

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

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

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

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

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

525 3. Ruling on procedural matters; and

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

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

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

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

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

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

554 **§ 15.2-1627.4. Coordination of multidisciplinary response to sexual assault.**

555 A. The attorney for the Commonwealth in each political subdivision in the Commonwealth shall  
556 coordinate the establishment of a multidisciplinary response to criminal sexual assault as set forth in

557 Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, and hold a meeting, at least annually, to (i) discuss  
558 implementation of protocols and policies for sexual assault response teams consistent with those  
559 established by the Department of Criminal Justice Services pursuant to subdivision 37 d of § 9.1-102 and  
560 (ii) establish and review guidelines for the community's response, including the collection, preservation,  
561 and secure storage of evidence from Physical Evidence Recovery Kit examinations consistent with § 19.2-  
562 165.1.

563 B. The following persons or their designees shall be invited to participate in the annual meeting:  
564 the attorney for the Commonwealth; the sheriff; the director of the local sexual assault crisis center  
565 providing services in the jurisdiction, if any; the chief of each police department and the chief of each  
566 campus police department of any institution of higher education in the jurisdiction, if any; a forensic nurse  
567 examiner or other health care provider who performs Physical Evidence Recovery Kit examinations in the  
568 jurisdiction, if any; the Title IX coordinator of any institution of higher education in the jurisdiction, if  
569 any; representatives from the offices of student affairs, human resources, and counseling services of any  
570 institution of higher education in the jurisdiction, if any; a representative of campus security of any  
571 institution of higher education in the jurisdiction that has not established a campus police department, if  
572 any; and the director of the victim/witness program in the jurisdiction, if any. In addition, the attorney for  
573 the Commonwealth shall invite other individuals, or their designees, to participate in the annual meeting,  
574 including (i) local health department district directors; (ii) the administrator of each licensed hospital  
575 within the jurisdiction; (iii) the director of each health safety net clinic within the jurisdiction, including  
576 those clinics created by 42 C.F.R. § 491.1 and the free and charitable clinics; and (iv) as determined by  
577 the attorney for the Commonwealth, any other local health care providers.

578 C. Attorneys for the Commonwealth are authorized to conduct the sexual assault response team  
579 annual meetings using other methods to encourage attendance, including electronic communication means  
580 as provided in ~~§ 2.2-3708.2~~ 2.2-3708.3.

581 **§ 23.1-1301. Governing boards; powers.**

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

- 584 1. Make regulations and policies concerning the institution;
  - 585 2. Manage the funds of the institution and approve an annual budget;
  - 586 3. Appoint the chief executive officer of the institution;
  - 587 4. Appoint professors and fix their salaries; and
  - 588 5. Fix the rates charged to students for tuition, mandatory fees, and other necessary charges.
- 589 B. The governing board of each public institution of higher education or its designee may:
- 590 1. In addition to the powers set forth in Restructured Higher Education Financial and  
591 Administrative Operations Act (§ 23.1-1000 et seq.), lease or sell and convey its interest in any real  
592 property that it has acquired by purchase, will, or deed of gift, subject to the prior approval of the Governor  
593 and any terms and conditions of the will or deed of gift, if applicable. The proceeds shall be held, used,  
594 and administered in the same manner as all other gifts and bequests;
  - 595 2. Grant easements for roads, streets, sewers, waterlines, electric and other utility lines, or other  
596 purposes on any property owned by the institution;
  - 597 3. Adopt regulations or institution policies for parking and traffic on property owned, leased,  
598 maintained, or controlled by the institution;
  - 599 4. Adopt regulations or institution policies for the employment and dismissal of professors,  
600 teachers, instructors, and other employees;
  - 601 5. Adopt regulations or institution policies for the acceptance and assistance of students in addition  
602 to the regulations or institution policies required pursuant to § 23.1-1303;
  - 603 6. Adopt regulations or institution policies for the conduct of students in attendance and for the  
604 rescission or restriction of financial aid, suspension, and dismissal of students who fail or refuse to abide  
605 by such regulations or policies;
  - 606 7. Establish programs, in cooperation with the Council and the Office of the Attorney General, to  
607 promote (i) student compliance with state laws on the use of alcoholic beverages and (ii) the awareness  
608 and prevention of sexual crimes committed upon students;
  - 609 8. Establish guidelines for the initiation or induction of students into any social fraternity or  
610 sorority in accordance with the prohibition against hazing as defined in § 18.2-56;

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

622 10. Conduct closed meetings pursuant to §§ 2.2-3711 and 2.2-3712 and conduct business ~~as a~~  
623 ~~"state public body" for purposes of subsection D of~~ through electronic communication means pursuant to  
624 ~~§ 2.2-3708.2~~ 2.2-3708.3; and

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

629 **§ 23.1-2425. Confidential and public information.**

630 A. The Authority is subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-  
631 3700 et seq.), including the exclusions set forth in subdivision 14 of § 2.2-3705.7 and subdivision A 23 of  
632 § 2.2-3711.

633 B. For purposes of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), meetings of the  
634 board are not considered meetings of the board of visitors of the University. Meetings of the board may  
635 be conducted through electronic communication means as provided in ~~§ 2.2-3708.2~~ 2.2-3708.3.

636 **§ 30-179. Powers and duties of the Council.**

637 The Council shall:



638 1. Furnish, upon request, advisory opinions or guidelines, and other appropriate information  
639 regarding the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) to any person or public body, in  
640 an expeditious manner;

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

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

646 4. Request from any public body such assistance, services, and information as will enable the  
647 Council to effectively carry out its responsibilities. Information provided to the Council by a public body  
648 shall not be released to any other party unless authorized by such public body;

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

650 ~~6. Develop the public comment form for use by designated public bodies in accordance with~~  
651 ~~subdivision D 6 of § 2.2-3708.2;~~

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

655 ~~8-7.~~ Report annually on or before December 1 of each year on its activities and findings regarding  
656 the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), including recommendations for changes in  
657 the law, to the General Assembly and the Governor. The annual report shall be published as a state  
658 document.

659 **§ 62.1-44.15:02. Permits; procedures for public hearings and permits before the Board.**

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

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

- 665 1. The name, mailing address, and telephone number of the requester;
- 666 2. The names and addresses of all persons for whom the requester is acting as a representative (for  
667 the purposes of this requirement, an unincorporated association is a person);
- 668 3. The reason why a public hearing or Board consideration is requested;
- 669 4. A brief, informal statement setting forth the factual nature and the extent of the interest of the  
670 requester or of the persons for whom the requester is acting as representative in the application or tentative  
671 determination, including an explanation of how and to what extent such interest would be directly and  
672 adversely affected by the issuance, denial, modification, or revocation of the permit in question; and
- 673 5. Where possible, specific references to the terms and conditions of the permit in question,  
674 together with suggested revisions and alterations of those terms and conditions that the requester considers  
675 are needed to conform the permit to the intent and provisions of the State Water Control Law (§ 62.1-44.2  
676 et seq.).

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

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

690 D. Either the Director or a majority of the Board members, acting independently, may request a  
691 meeting of the Board to be convened within 20 days of the Director's decision pursuant to subsection C in

692 order to review such decision and determine by a majority vote of the Board whether or not to grant a  
693 public hearing or Board consideration, or to delegate the permit to the Director for his decision.

694 For purposes of this subsection, if a Board meeting is held via electronic communication means,  
695 the meeting shall be held in compliance with the provisions of § ~~2.2-3708.2~~, ~~except that a quorum of the~~  
696 ~~Board is not required to be physically assembled at one primary or central meeting location~~ 2.2-3708.3.  
697 Discussions of the Board held via such electronic communication means shall be specifically limited to a  
698 (i) review of the Director's decision pursuant to subsection C, (ii) determination of the Board whether or  
699 not to grant a public hearing or Board consideration, or (iii) delegation of the permit to the Director for  
700 his decision. No other matter of public business shall be discussed or transacted by the Board during any  
701 such meeting held via electronic communication means.

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

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

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

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

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

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

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

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

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

728 3. Ruling on procedural matters; and

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

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

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

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

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

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

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