



FAIRFAX COUNTY PARK AUTHORITY



M E M O R A N D U M

TO: Chairman and Members
Park Authority Board

VIA: Jai Cole, Executive Director

FROM: Sara Baldwin, Deputy Director/COO

DATE: July 22, 2022

Agenda

**Administration and Board Management Committee
(Committee of the Whole)**

Wednesday, July 27, 2022 – 6:00 pm

Virtual

Chairman: Faisal Khan

Vice Chair: Maggie Godbold

1. Adoption of the Revised Policy for Remote Participation in Public Meetings – Policy 111 and the New Policy for All-Virtual Public Meetings – Policy 112 - Action*

*Enclosures



If accommodations and/or alternative formats are needed, please call (703) 324-8563. TTY (703) 803-3354

Board Agenda Item
July 27, 2022

ACTION – 1

Adoption of the Revised Policy for Remote Participation in Public Meetings - Policy 111 and the New Policy for All-Virtual Public Meetings – Policy 112

ISSUE:

Revisions are required to the Park Board Policies regarding Remote Participation in Public Meetings and All-Virtual Public Meetings due to recently adopted state legislation.

RECOMMENDATION:

The Acting Executive Director recommends the Park Board adopt the revisions to Policy 111-Administration for Remote Participation in Public Meetings and the adoption of Policy 112 for All-Virtual Public Meetings.

TIMING:

Approval is requested on July 27, 2022, to ensure that a policy is in place at the time that the County Executive rescinds the Emergency Executive Order that allows meetings to be conducted electronically with remote participation and fully virtual.

BACKGROUND:

The Virginia Governor recently signed into law new guidelines regarding holding public meetings using electronic communications. There are new requirements for remote participation by board members and for all-virtual public meetings that will go into effect on September 1, 2022. This new legislation requires the Park Authority Board to update their existing policy regarding board members participating in public meetings remotely and adopt a new policy regarding holding all-virtual public meetings. These Policy adoptions ensure that these meetings shall be conducted lawfully under FOIA.

To meet FIOA, meetings must be conducted either (1) in-person, with a quorum of the public body physically present and the public also able to physically attend; or (2) completely via electronic communication with the members and the public calling in to a central phone line or connecting to a video platform. The new legislation provides a mechanism to allow all-virtual meetings even when the emergency orders are rescinded.

In June 2021, the Park Authority Board approved Policy 111, that allows for remote participation, where a meeting can be conducted with some members physically present and others participating remotely. This Policy must be strictly and uniformly applied to

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requests to participate remotely. Significantly, a quorum of the public body must be physically present for other members to participate remotely pursuant to the policy. If a physical quorum of the public body is not present, then the meeting cannot occur.

There are a host of provisions that must be met by those members that are participating remotely. The significant changes to the policy, as required by the legislation, include:

- Clarifying the policy applies to the Park Authority Board, as well as any committee, subcommittee, or other entity of the Board.
- Clarifying that the remote participation policy only applies to public meetings that are primarily conducted in person, with a quorum present, and a few board members participating remotely.
- The written request to participate remotely and the response will be kept by the Chair for a period of one year.

If a quorum is met in person, and the requirements of remote participation are met, then the public meeting can occur. The proposed Policy revision includes those provisions which make it lawful to conduct a Public Meeting with Remote Participation.

The new legislation also outlines requirements for public bodies who wish to hold all-virtual public meetings as a part of their normal operating procedures when an emergency order is no longer in place. In this case, all members of the board would be participating virtually and the public would have access to the meeting virtually as well. A public body may opt to hold no more than two all-virtual public meetings, or no more than 25% of its meetings rounded up to the next whole number, whichever is greater, during the calendar year. The all-virtual public meetings may not be scheduled consecutively.

Some additional requirements must be met:

- The standard VFOIA notice requirements must be met for all-virtual public meetings.
- The public must be able to hear all participating members of the board and see them also, if possible.
- The public must be provided an email or phone contact to alert the Board if electronic transmission to the public of the meeting has failed. If the transmission is deemed to have failed, the Board must recess until public access is restored.
- The public has the opportunity to provide comment where public comment is customarily received.
- There are no more than two members of the Board in one physical location participating in the all-virtual meeting.

Provided these requirements are met, the all-virtual public meeting would be a lawful meeting of the Park Authority Board under the new legislation.

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FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:

- Attachment 1: Proposed Revisions to Policy 111 for Remote Participation in Public Meetings
- Attachment 2: Proposed Policy 112 – All Virtual Public Meetings
- Attachment 3: Virginia General Assembly HB 444 – Meetings by Electronic Communication

STAFF:

Jai Cole, Executive Director
Sara Baldwin, Deputy Director/COO
Aimee Vosper, Deputy Director/CBD
Judy Pedersen, Director, Marketing and Communications
Allison Rankin, Management Analyst



FAIRFAX COUNTY PARK AUTHORITY POLICY MANUAL

Policy 111	Title: Fairfax County Park Authority Board Policy for Remote Participation in Public Meetings Held by Electronic Communication
Date Approved: 06/23/2021	Last reviewed:
Objective: Administration Establish policies for the Park Authority that provide direction for the implementation of sustainable management practices in accordance with community needs.	

Purpose: To allow for remote participation during Park Authority Board meetings and to ensure these meetings are conducted lawfully under the Virginia Freedom of Information Act.

Policy Statement:

1. **AUTHORITY AND SCOPE.**

a. —This policy is adopted pursuant to the authorization of Va. Code § 2.2-3708.23 and is to be strictly construed in conformance with the Virginia Freedom of Information Act (VFOIA), Va. Code §§ 2.2-3700—3715.

b. This policy shall not govern an electronic meeting conducted to address a state of emergency declared by the Governor or the Fairfax County Board of Supervisors. Any meeting conducted by electronic communication means under such circumstances shall be governed by the provisions of Va. Code § 2.2-3708.2(A)(3). This policy also does not apply to an all-virtual public meeting.

2. **DEFINITIONS.**

a. **“PAB”** means the FAIRFAX COUNTY PARK AUTHORITY BOARD or any committee, subcommittee, or other entity of the FAIRFAX COUNTY PARK AUTHORITY BOARD.

b. **“Member”** means any member of the FAIRFAX COUNTY PARK AUTHORITY BOARD.

c. **“Remote participation”**, ~~“remotely participate”~~, or ~~“participate remotely”~~ means participation by a member of the PAB by electronic communication means in a public meeting where a quorum of the PAB is physically assembled, as defined by Va. Code § 2.2-3701 via telephonic, video, or other audio or combined audio and video electronic communication method where the member is not physically assembled with the other members.



FAIRFAX COUNTY PARK AUTHORITY POLICY MANUAL

of the PAB.

- d. **"Meeting"** means a meeting as defined by Va. Code § 2.2-3701.
- e. **"Notify"** or **"notifies,"** for purposes of this policy, means ~~actual notice, including,~~

Policy 111 Fairfax County Park Authority Board Policy for Participation in Meetings Held by Electronic Communication (continuation)

~~but not limited to, email, text, telephone, or in person notice.~~ Written notice, such as email or letter. Notice does not include text message or communications via social media.

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3. MANDATORY REQUIREMENTS

Regardless of the reasons why the member is participating in a meeting from a remote location by electronic communication means, the following conditions must be met for the member to participate remotely:

- a. A quorum of the PAB must be physically assembled at the primary or central meeting location; and
- b. Arrangements have been made for the voice of the remotely participating member to be heard by all persons at the primary or central meeting location. If at any point during the meeting the voice of the remotely participating member is no longer able to be heard by all persons at the meeting location, the remotely participating member shall no longer be permitted to participate remotely.

4. PROCESS TO REQUEST REMOTE PARTICIPATION

- a. On or before the day of the meeting, and at any point before the meeting begins, the requesting member must notify the PAB Chair (or the Vice-Chair if the requesting member is the Chair) that they are unable to physically attend a meeting due to (i) a temporary or permanent disability or other medical condition that prevents the member's physical attendance or (ii) a family member's medical condition that requires the member to provide care for such family member, thereby preventing the member's physical attendance or (iii) a personal matter and identifies with specificity the nature of the personal matter.
- b. The requesting member shall also notify the Executive Director of the Park Authority of their request, but their failure to do so shall not affect their ability to remotely participate.
- c. If the requesting member is unable to physically attend the meeting due to a personal matter, the requesting member must state with specificity the nature of the personal matter. Remote participation due to a personal matter is limited each calendar year to two meetings or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater. There is no limit to the number of times that a member may participate remotely due to a temporary or permanent disability or other medical condition or that of a family member that requires the member to provide care.

Policy 111 Fairfax County Park Authority Board Policy for Participation in Meetings Held by Electronic Communication (continuation)

d. The requesting member is not obligated to provide independent verification regarding the reason for their nonattendance, including the temporary or permanent disability or other medical condition or the family member's medical condition that prevents their physical attendance at the meeting.

e. The Chair (or the Vice-Chair ~~or other designee if the requesting member is the~~ Chair) shall promptly notify the requesting member whether their request is in conformance with this policy, and therefore approved or disapproved.

5. **PROCESS TO CONFIRM APPROVAL OR DISAPPROVAL OF PARTICIPATION FROM A REMOTE LOCATION**

When a quorum of the PAB has assembled for the meeting, the PAB shall vote to determine whether:

a. The Chair's (or their designee's) decision to approve or disapprove the requesting member's request to participate from a remote location was in conformance with this policy; and

b. The voice of the remotely participating member can be heard by all persons at the primary or central meeting location.

6. **RECORDING IN MINUTES:**

a. If the member is allowed to participate remotely due to a temporary or permanent disability or other medical condition, or a family member's medical condition that requires the member to provide care to the family member the PAB shall record in its minutes (1) the PAB's approval of the member's remote participation; and (2) the remote location from which the member participated.

b. If the member is allowed to participate remotely due to a personal matter, such matter shall be cited in the minutes with specificity, as well as how many times the member has attended remotely due to a personal matter, and the remote location from which the member participated.

c. If a member's request to participate remotely is disapproved, the disapproval, including the grounds upon which the requested participation violates this policy or VFOIA, shall be recorded in the minutes with specificity.

7. **CLOSED SESSION**

Policy 111 Fairfax County Park Authority Board Policy for Participation in Meetings Held by Electronic Communication (continuation)

If the PAB goes into closed session, the member participating remotely shall ensure that no third party is able to hear or otherwise observe the closed meeting.

8. STRICT AND UNIFORM APPLICATION OF THIS POLICY

This Policy shall be applied strictly and uniformly, without exception, to the entire membership, and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting.

The Chair (or Vice-Chair) shall maintain the member's written request to participate remotely and the written response for a period of one year, or other such time required by records retention laws, regulations, and policies.

References:

1. Virginia Code § 2.2-3708.2. Meetings held through electronic communication means
<https://law.lis.virginia.gov/vacode/title2.2/chapter37/section2.2-3708.2/>
[§ 2.2-3708.2. \(Effective September 1, 2022\) Meetings held through electronic communication means during declared states of emergency \(virginia.gov\)](#)
2. [Virginia Code Chapter 37. Virginia Freedom of Information Act](#)
[Code of Virginia Code - Chapter 37. Virginia Freedom of Information Act](#)

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Policy 112 Fairfax County Park Authority Board Policy for All-Virtual Public Meetings

Policy 112	Title: All-Virtual Public Meetings
Date Approved:	Last reviewed:
Objective: <u>Administration</u> Establish policies for the Park Authority that provide direction for the implementation of sustainable management practices in accordance with community needs.	

Purpose: To allow for participation by board members and the public during all-virtual Park Authority Board meetings and to ensure these meetings are conducted lawfully under the Virginia Freedom of Information Act.

Policy Statement:

1. **AUTHORITY AND SCOPE.**
 - a. This policy is adopted pursuant to the authorization of Va. Code § 2.2-3708.3 and is to be strictly construed in conformance with the Virginia Freedom of Information Act (VFOIA), Va. Code §§ 2.2-3700—3715.
 - b. This policy shall not govern an electronic meeting conducted to address a state of emergency declared by the Governor or the Fairfax County Board of Supervisors. Any meeting conducted by electronic communication means under such circumstances shall be governed by the provisions of Va. Code § 2.2-3708.2.

2. **DEFINITIONS.**
 - a. **“PAB”** means the FAIRFAX COUNTY PARK AUTHORITY BOARD or any committee, subcommittee or other entity of the FAIRFAX COUNTY PARK AUTHORITY BOARD.
 - b. **“Member”** means any member of the FAIRFAX COUNTY PARK AUTHORITY BOARD.
 - c. **“All-virtual public meeting,”** means a public meeting conducted by the PAB using electronic communication means during which all members of the PAB who participate do so remotely rather than being assembled in one physical location, and to which public access is provided through electronic communication means, as defined by Va. Code § 2.2-3701.
 - d. **“Meeting”** means a meeting as defined by Va. Code § 2.2-3701.
 - e. **“Notify”** or **“notifies,”** for purposes of this policy, means written notice, including,

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but not limited to, email or letter, but does not include text messages or messages exchanged on social media.

3. WHEN AN ALL-VIRTUAL PUBLIC MEETING MAY BE AUTHORIZED

An all-virtual public meeting may be held under the following circumstances:

- a. It is impracticable or unsafe to assemble a quorum of the PAB in a single location, but a state of emergency has not been declared by the Governor or Fairfax County Board of Supervisors; or
- b. Other circumstances warrant the holding of an all-virtual public meeting, including, but not limited to, the convenience of an all-virtual meeting; and
- c. The PAB has not had more than two all-virtual public meetings, or no more than 25 percent of its meetings rounded up to the next whole number, whichever is greater, during the calendar year; and
- d. The PAB's last meeting was not an all-virtual public meeting.

4. PROCESS TO AUTHORIZE AN ALL-VIRTUAL PUBLIC MEETING

- a. The PAB may schedule its all-virtual public meetings at the same time and using the same procedures used by the PAB to set its meetings calendar for the calendar year; or
- b. If the PAB wishes to have an all-virtual public meeting on a date not scheduled in advance on its meetings calendar, and an all-virtual public meeting is authorized under Section 3 above, the PAB Chair may schedule an all-virtual public meeting provided that any such meeting comports with VFOIA notice requirements.

5. ALL-VIRTUAL PUBLIC MEETING REQUIREMENTS

The following applies to any all-virtual public meeting of the PAB that is scheduled in conformance with this policy:

- a. The meeting notice indicates that the public meeting will be all-virtual and the PAB will not change the method by which the PAB chooses to meet without providing a new meeting notice that comports with VFOIA;
- b. Public access is provided by electronic communication means that allows the public to hear all participating members of the PAB;

Policy 112 Fairfax County Park Authority Board Policy for All-Virtual Public Meetings

c. Audio-visual technology, if available, is used to allow the public to see the members of the PAB;

d. A phone number, email address or other live contact information is provided to the public to alert the PAB if electronic transmission of the meeting fails for the public, and if such transmission fails, the PAB takes a recess until public access is restored;

e. A copy of the proposed agenda and all agenda packets (unless exempt) are made available to the public electronically at the same time such materials are provided to the PAB;

f. The public is afforded the opportunity to comment through electronic means, including written comments, at meetings where public comment is customarily received; and

g. There are no more than two members of the PAB together in one physical location.

6. RECORDING IN MINUTES:

Minutes are taken as required by VFOIA and must include the fact that the meeting was held by electronic communication means and the type of electronic communication means used.

7. CLOSED SESSION

If the PAB goes into closed session, transmission of the meeting will be suspended until the public body resumes to certify the closed meeting in open session.

8. STRICT AND UNIFORM APPLICATION OF THIS POLICY

This Policy shall be applied strictly and uniformly, without exception, to the entire membership, and without regard to the matters that will be considered or voted on at the meeting.

References:

1. Virginia Code § 2.2-3708.2. Meetings held through electronic communication means; situations other than declared states of emergency.
[§ 2.2-3708.3. \(Effective September 1, 2022\) Meetings held through electronic communication means; situations other than declared states of emergency \(virginia.gov\)](#)

Policy 112 Fairfax County Park Authority Board Policy for All-Virtual Public Meetings

2. Virginia Code Chapter 37. Virginia Freedom of Information Act
[Code of Virginia Code - Chapter 37. Virginia Freedom of Information Act](#)

CHAPTER 597

An Act 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.

[H 444]

Approved April 11, 2022

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

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

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

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

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

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

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

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

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

§2.2-3701. Definitions.

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

"All-virtual public meeting" means a public meeting (i) conducted by a public body, other than those excepted pursuant to subsection C of §2.2-3708.3, using electronic communication means, (ii) during which all members of the public body who participate do so remotely rather than being assembled in one physical location, and (iii) to which public access is provided through electronic communication means.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. No meeting shall be conducted through telephonic, video, electronic, or other electronic communication means where the members are not physically assembled to discuss or transact public business, except as provided in §§ 2.2-3708.2 ~~or~~ and 2.2-3708.3 or as may be specifically provided in Title 54.1 for the summary suspension of professional licenses.

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

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

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

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

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

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

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

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

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

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

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

§ 2.2-3707.01. Meetings of the General Assembly.

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

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

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

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

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

A. The following provisions apply to all public bodies:

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

~~a. Such member is unable to attend the meeting due to (i) a temporary or permanent disability or other medical condition that prevents the member's physical attendance or (ii) a family member's medical condition that requires the member to provide care for such family member, thereby preventing the member's physical attendance; or~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~1. Except as provided in subsection D of §2-2707.01, state public bodies may also conduct any meeting wherein the public business is discussed or transacted through electronic communication means, provided that (i) a quorum of the public body is physically assembled at one primary or central meeting location, (ii) notice of the meeting has been given in accordance with subdivision 2, and (iii) members of the public are provided a substantially equivalent electronic communication means through which to witness the meeting. For the purposes of this subsection, "witness" means observe or listen.~~

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

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

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

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

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

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

~~6. The public body shall make available to the public at any meeting conducted in accordance with this subsection a public comment form prepared by the Virginia Freedom of Information Advisory Council in accordance with §20-179.~~

~~7. Minutes of all meetings held by electronic communication means shall be recorded as required by §2-2707. Votes taken during any meeting conducted through electronic communication means shall be recorded by name in roll-call fashion and included in the minutes. For emergency meetings held by electronic communication means, the nature of the emergency shall be stated in the minutes.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1. The member has a temporary or permanent disability or other medical condition that prevents the member's physical attendance;*
- 2. A medical condition of a member of the member's family requires the member to provide care that prevents the member's physical attendance;*
- 3. The member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting; or*
- 4. The member is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter. However, the member may not use remote participation due to personal matters more than two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.*

If participation by a member through electronic communication means is approved pursuant to this subsection, the public body holding the meeting shall record in its minutes the remote location from which the member participated; however, the remote location need not be open to the public and may be identified in the minutes by a general description. If participation is approved pursuant to subdivision 1 or 2, the public body shall also include in its minutes the fact that the member participated through electronic communication means due to a (i) temporary or permanent disability or other medical condition that prevented the member's physical attendance or (ii) family member's medical condition that required the member to provide care for such family member, thereby preventing the member's physical attendance. If participation is approved pursuant to subdivision 3, the public body shall also include in its minutes the fact that the member participated through electronic communication means due to the distance between the member's principal residence and the meeting location. If participation is approved pursuant to subdivision 4, the public body shall also include in its minutes the specific nature of the personal matter cited by the member.

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

C. With the exception of local governing bodies, local school boards, planning commissions, architectural review boards, zoning appeals boards, and boards with the authority to deny, revoke, or suspend a professional or occupational license, any public body may hold all-virtual public meetings, provided that the public body follows the other requirements in this chapter for meetings, the public body has adopted a policy as described in subsection D, and:

- 1. An indication of whether the meeting will be an in-person or all-virtual public meeting is included in the required meeting notice along with a statement notifying the public that the method by which a public body chooses to meet shall not be changed unless the public body provides a new meeting notice in accordance with the provisions of §2.2-3707;*
- 2. Public access to the all-virtual public meeting is provided via electronic communication means;*
- 3. The electronic communication means used allows the public to hear all members of the public body participating in the all-virtual public meeting and, when audio-visual technology is available, to see the members of the public body as well;*
- 4. A phone number or other live contact information is provided to alert the public body if the audio or video transmission of the meeting provided by the public body fails, the public body monitors such designated means of communication during the meeting, and the public body takes a recess until public access is restored if the transmission fails for the public;*
- 5. A copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting is made available to the public in electronic format at the same time that such materials are provided to members of the public body;*
- 6. The public is afforded the opportunity to comment through electronic means, including by way of written comments, at those public meetings when public comment is customarily received;*
- 7. No more than two members of the public body are together in any one remote location unless that remote location is open to the public to physically access it;*
- 8. If a closed session is held during an all-virtual public meeting, transmission of the meeting to the public resumes before the public body votes to certify the closed meeting as required by subsection D of § 2.2-3712;*
- 9. The public body does not convene an all-virtual public meeting (i) more than two times per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater, or (ii) consecutively with another all-virtual public meeting; and*

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

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

1. Describe the circumstances under which an all-virtual public meeting and remote participation will be allowed and the process the public body will use for making requests to use remote participation, approving or denying such requests, and creating a record of such requests; and
2. Fix the number of times remote participation for personal matters or all-virtual public meetings can be used per calendar year, not to exceed the limitations set forth in subdivisions B 4 and C 9.

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

§2.2-3714. Violations and penalties.

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

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

C. In addition to any penalties imposed pursuant to subsections A and B, if the court finds that a public body voted to certify a closed meeting in accordance with subsection D of §2.2-3712 and such certification was not in accordance with the requirements of clause (i) or (ii) of subsection D of §2.2-3712, the court may impose on the public body, whether or not a writ of mandamus or injunctive relief is awarded, a civil penalty of up to \$1,000, which amount shall be paid into the Literary Fund. In determining whether a civil penalty is appropriate, the court shall consider mitigating factors, including reliance of members of the public body on (i) opinions of the Attorney General, (ii) court cases substantially supporting the rationale of the public body, and (iii) published opinions of the *Virginia* Freedom of Information Advisory Council.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. The attorney for the Commonwealth in each political subdivision in the Commonwealth shall coordinate the establishment of a multidisciplinary response to criminal sexual assault as set forth in Article 7 (§18.2-61 et seq.) of Chapter 4 of Title 18.2, and hold a meeting, at least annually, to (i) discuss implementation of protocols and policies for sexual assault response teams consistent with those established by the Department of Criminal Justice Services pursuant to subdivision 37 d of §9.1-102 and (ii) establish and review guidelines for the community's response, including the collection, preservation, and secure storage of evidence from Physical Evidence Recovery Kit examinations consistent with §19.2-165.1.

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

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

§23.1-1301. Governing boards; powers.

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

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

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

1. In addition to the powers set forth in Restructured Higher Education Financial and Administrative Operations Act (§23.1-1000 et seq.), lease or sell and convey its interest in any real property that it has acquired by purchase, will, or deed of gift, subject to the prior approval of the Governor and any terms and conditions of the will or deed of gift, if applicable. The proceeds shall be held, used, and administered in the same manner as all other gifts and bequests;
2. Grant easements for roads, streets, sewers, waterlines, electric and other utility lines, or other purposes on any property owned by the institution;
3. Adopt regulations or institution policies for parking and traffic on property owned, leased, maintained, or controlled by the institution;
4. Adopt regulations or institution policies for the employment and dismissal of professors, teachers, instructors, and other employees;
5. Adopt regulations or institution policies for the acceptance and assistance of students in addition to the regulations or institution policies required pursuant to §23.1-1303;
6. Adopt regulations or institution policies for the conduct of students in attendance and for the rescission or restriction of financial aid, suspension, and dismissal of students who fail or refuse to abide by such regulations or policies;
7. Establish programs, in cooperation with the Council and the Office of the Attorney General, to promote (i) student compliance with state laws on the use of alcoholic beverages and (ii) the awareness and prevention of sexual crimes committed upon students;
8. Establish guidelines for the initiation or induction of students into any social fraternity or sorority in accordance with the prohibition against hazing as defined in §18.2-56;
9. Assign any interest it possesses in intellectual property or in materials in which the institution claims an interest, provided such assignment is in accordance with the terms of the institution's intellectual property policies adopted pursuant to §23.1-1303. The Governor's prior written approval is required for transfers of such property (i) developed wholly or predominantly through the use of state general funds, exclusive of capital assets and (ii)(a) developed by an employee of the institution acting within the scope of his assigned duties or (b) for which such transfer is made to an entity other than (1) the Innovation and Entrepreneurship Investment Authority, (2) an entity whose purpose is to manage intellectual properties on behalf of nonprofit organizations, colleges, and universities, or (3) an entity whose purpose is to benefit the respective institutions. The Governor may attach conditions to these transfers as he deems necessary. In the event the Governor does not approve such transfer, the materials shall remain the property of the respective institutions and may be used and developed in any manner permitted by law;
10. Conduct closed meetings pursuant to §§2.2-3711 and 2.2-3712 and conduct business as a "state public body" for purposes of subsection D of *through electronic communication means pursuant to ~~§ 2.2-3708.2~~ 2.2-3708.3*; and
11. Adopt a resolution to require the governing body of a locality that is contiguous to the institution to enforce state statutes and local ordinances with respect to offenses occurring on the property of the institution. Upon receipt of such resolution, the governing body of such locality shall enforce statutes and local ordinances with respect to offenses occurring on the property of the institution.

§23.1-2425. Confidential and public information.

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

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

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

The Council shall:

1. Furnish, upon request, advisory opinions or guidelines, and other appropriate information regarding the *Virginia* Freedom of Information Act (§2.2-3700 et seq.) to any person or public body, in an expeditious manner;
2. Conduct training seminars and educational programs for the members and staff of public bodies and other interested persons on the requirements of the *Virginia* Freedom of Information Act (§2.2-3700 et seq.);
3. Publish such educational materials as it deems appropriate on the provisions of the *Virginia* Freedom of Information Act (§2.2-3700 et seq.);
4. Request from any public body such assistance, services, and information as will enable the Council to effectively carry out its responsibilities. Information provided to the Council by a public body shall not be released to any other party unless authorized by such public body;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Ruling on procedural matters; and

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

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

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

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

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

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

2. That the Virginia Freedom of Information Advisory Council shall convene a work group, no later than May 1, 2022, to develop recommendations for best practices for public bodies holding all-virtual public meetings, including but not limited to how to take public comment virtually and the proper use of video by public body members. Such recommendations must be completed by August 1, 2022. The work group shall include representatives of the Virginia Association of Counties, the Virginia Municipal League, the Virginia Coalition for Open Government, and the Virginia Press Association and such other stakeholders the Council deem appropriate.

3. The law will be effective on September 1, 2022.

FCPA Policies on Electronic Meeting Participation

ADMINISTRATION & BOARD MANAGEMENT COMMITTEE

JULY 27, 2022



HB 444 – Electronic Meeting Participation by Public Bodies

- New legislation in effect on September 1, 2022 to clarify participation by a public board or commission in an in-person meeting with remote participation and also allowing all-virtual meetings without the requirement of an emergency order.
- Revisions are required to the Park Authority Board's existing Policy 111 for Remote Participation in Public Meetings.
- Creation of a new Policy 112 for All-Virtual Public Meetings is necessary to allow the board the flexibility of this option after September 1st.

Policy 111: Meetings Allowing Remote Participation



Clarifying the policy applies to the Board and any committee, subcommittee or entity of the Board



Clarifying this policy applies to in-person public meetings, where a quorum is present, and a few board members participate remotely.



Written request to participate remotely and the response must be maintained by the Chair for one year.

Policy 112: All-Virtual Public Meetings



Standard VFOIA Meeting notice requirements must be met.



The public must be able to hear all participating board members, and see them if possible.



May conduct up to 25% (or rounded up to next whole number) of calendar year meetings in the all-virtual format.



Must provide a live contact for public to notify the board if electronic transmission fails. If so, the board must recess until it can be restored.



The public must have the opportunity to provide comment where it is customarily received.