

State Board of Elections Policy 2022-001

A meeting of the Virginia State Board of Elections (the Board) was held on September 27 during which the following policy was proposed by the Department of Elections and approved by the Board:

Policy for Electronic Participation in Meetings

PURPOSE: To establish a policy that provides for the Board to properly conduct meetings with the electronic participation of its members in compliance with the Virginia Freedom of Information Act (§ 2.2-3700 *et seq.*).

REFERENCES: Va. Code §§ 2.2-3707, 2.2-3708.2, 2.2-3708.3

SEC. 1: GENERAL REQUIREMENTS AND POLICY ESTABLISHMENT

It is the policy of the State Board of Elections (the Board) that individual Board members may participate in meetings of the Board by electronic means as permitted by Virginia Code § 2.2-3708.3. This policy shall apply to the entire membership and without regard to the identity of the member utilizing remote participation or the matters that will be considered or voted on at the meeting. Further, it is the policy of the Board that the Board may hold all-virtual public meetings pursuant to subsection C of § 2.2-3708.3.

A member participating through electronic means may make motions, vote, join in closed meetings, and otherwise participate fully as if such member was physically present, so long as all of the requirements of Virginia Code § 2.2-3708.3 are met.

Subsequent to its adoption by the majority of the Board, this policy shall be posted on the Department of Elections website and the Virginia Regulatory Town Hall website, or any other website normally used by the Board for notice of public meetings.

SEC. 2: MEETING REQUESTS

Requests for remote participation or that the Board conduct an all-virtual public meeting shall be conveyed by a member to the Department of Elections. The Department of Elections shall then relay such requests to the chair of the Board.

Individual participation from a remote location shall be approved unless such participation would violate this policy or the provisions of the Virginia Freedom of Information Act (2.2-3700 *et seq.*). If a member's participation from a remote location is challenged, then the Board shall vote whether to allow such participation.

The request for remote participation or that the Board conduct an all-virtual public meeting by a member shall be recorded in the minutes of the meeting. If the Board votes to disapprove of the member's participation because such participation would violate this policy, such disapproval shall be recorded in the minutes with specificity. The minutes shall include other information as required by §§ 2.2-3707 and 2.2-3708.3.

SEC. 3: REMOTE PARTICIPATION MEETING REQUIREMENTS

When an individual member is participating in a meeting of the Board from a remote location, the Board shall adhere to the following requirements:

- **General**
 - Any member who is unable to attend the meeting due to reasons stated in subsections (1), (2), (3), or (4) of Virginia Code § 2.2-3708.3(B) notifies the Chair of the Board of their inability to attend the meeting;
 - A quorum of three (3) members of the Board shall be physically assembled at one (1) primary or central meeting location;
 - Members of the public shall be provided a substantially equivalent electronic communication means through which to observe the meeting;
 - Members of the public shall be provided the opportunity to comment when public comment is customarily received; and
 - If a member's participation from a remote location pursuant to Virginia Code § 2.2-3708(B) is disapproved, such disapproval shall be recorded in the minutes with specificity.
- **Member Requirements**
 - A member of the Board is permitted to attend a meeting of the Board remotely if, on or before the day of a meeting, the member notifies the Chair of the Board that they are unable to attend the meeting due to—
 - a temporary or permanent disability or other medical condition that prevents their physical attendance;
 - a family member's medical condition that requires them to provide care for such family member, thereby preventing their physical attendance; or
 - the member's principal residence being more than 60 miles from the meeting location identified in the required notice for the meeting.
 - A member of the Board is permitted to attend a meeting of the Board remotely if the member notifies the chair of the Board that they are unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter.
 - Remote participation per member on the basis of personal matters is limited each calendar year to 2 meetings or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.
 - If a member of the Board participates in the meeting remotely, the Board shall record in its minutes the remote location from which the member participated, including:
 - If participation is approved pursuant to subdivision 1 or 2 of Virginia Code §2.2-3708.3(B) the Board shall 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 Virginia Code § 2.2-3708.3(B)(3) the fact that the member participated through electronic communication means due to the distance between the member's principal residence and the meeting location; or
 - If participation is approved pursuant to Virginia Code § 2.2-

3708.3(B)(4), the specific nature of the personal matter cited by the member.

SEC. 3: ALL-VIRTUAL MEETING REQUIREMENTS

When the Board is conducting an all-virtual meeting the Board shall adhere to the following requirements:

- An indication of whether the meeting will be in-person or all-virtual shall be included in the required meeting notice along with a statement notifying the public that the method by which the Board chooses to meet shall not be changed unless the Board provides a new meeting notice in accordance with the provisions of § 2.2-3707;
- Public access to the all-virtual public meeting shall be provided via electronic communication means;
- The electronic communication means used shall allow the public to hear all members of the Board participating in the all-virtual public meeting and, when audio-visual technology is available, to see the members of the Board as well;
- A phone number or other live contact information shall be provided to alert the Board if the audio or video transmission of the meeting provided by the Board fails, the Board monitors such designated means of communication during the meeting, and the Board takes a recess until public access is restored if the transmission fails for the public;
- A copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished to members of the Board for a meeting shall be made available to the public in electronic format at the same time that such materials are provided to members of the Board;
- Votes taken during the electronic meeting shall be recorded by name in roll-call fashion and included in the minutes of the meeting.
- The public shall be afforded the opportunity to comment through electronic means, including by way of written comments, at those public meetings when public comment is customarily received;
- No more than two members of the Board shall be together in any one remote location unless that remote location is open to the public to physically access it;
- If a closed session is held during an all-virtual public meeting, transmission of the meeting to the public shall resume before the Board votes to certify the closed meeting as required by subsection D of § 2.2-3712;
- The Board shall 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
- Minutes of all-virtual public meetings held by electronic communication means shall be 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.

SEC. 4: DECLARED EMERGENCIES

The Board may meet by electronic communication means without a quorum physically assembled at one location when the Governor has declared a state of emergency pursuant to Virginia Code § 44-146.17 or when the locality in which the Board is located has declared a local state of emergency pursuant to Virginia Code § 44-146.21, provided:

- The catastrophic nature of the declared emergency makes it impracticable or unsafe

- to assemble a quorum in a single location; and
- The purpose of the meeting is to provide for the continuity of operations of the Board or the discharge of its lawful purposes, duties, and responsibilities.

If the Board holds a meeting pursuant to the requirements of this section, the Board shall:

- Abide with the provisions under Virginia Code § 2.2-3708.2;
- 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 Board conducting the meeting;
- Make arrangements for public access to such meeting through electronic communication means, including videoconferencing if already used by the Board;
- Make available a recording of the meeting, in addition to the minutes of the meeting posted pursuant to the requirements under Virginia Code § 2.2-3707.1;
- Provide the public with the opportunity to comment at those meetings of the Board when public comment is customarily received; and
- State in the minutes of the relevant meeting 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.

Effective Date: September 27, 2022