

State Board of Elections Policy 2021-003

A meeting of the Virginia State Board of Elections (the Board) was held on August 3, 2021, 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, 2.2-3711, 2.2-3712

SEC. 1: GENERAL REQUIREMENTS AND POLICY ESTABLISHMENT

It is the policy of the State Board of Elections that individual Board members may participate in meetings of the Board by electronic means as permitted by Virginia Code § 2.2-3708.2. 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.

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 § 2.2-3708.2 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 REQUIREMENTS

When a meeting of the Board is conducted through electronic means, the Board shall adhere to the following requirements:

- Any member who is unable to attend the meeting due to reasons stated in subsections (a) or (b) of Virginia Code § 2.2-3708.2(A)(1) 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;
- Notice of the meeting shall be given at least three (3) working days in advance of the date scheduled for the electronic meeting, except in the case of an emergency meeting for which public notice shall be given contemporaneously with the notice provided to members of the Board;
- Notice of the meeting shall include the date, time, place, and purpose for the meeting and 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;
- If a member of the Board participates in the meeting via means of electronic communication, the Board shall record in its minutes the remote location from which the member participated, including:
 - If participation is approved pursuant to Virginia Code § 2.2-3708.2(A)(1)(a), 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; or
 - If participation is approved pursuant to Virginia Code § 2.2-3708.2(A)(1)(b), the specific nature of the personal matter cited by the member;
 - A copy of the proposed agenda, agenda packets, and, unless exempt, all materials that will be distributed to members of the Board for the meeting shall be made available for public inspection at the same time such documents are furnished to the members of the Board;
 - If an interruption in either the audio or visual broadcast of the meeting occurs, the meeting shall be suspended until repairs are made and public access is restored; and
 - Votes taken during the electronic meeting shall be recorded by name in roll-call fashion and included in the minutes of the meeting.

SEC. 3: PHYSICAL ATTENDANCE REQUIREMENT

- **General**
 - If the Board holds a meeting through electronic communication means, 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.
- **Member Requirements**
 - A member of the Board is permitted to attend a meeting of the Board electronically 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 her physical attendance; or
 - a family member's medical condition that requires her to provide care for such family member, thereby preventing her physical attendance.
 - A member of the Board is permitted to attend a meeting of the Board electronically if the member notifies the chair of the public body that they are unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter.
 - Electronic 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's participation from a remote location pursuant to Virginia Code § 2.2-3708.2(A)(1)(b) is disapproved, such disapproval shall be recorded in the minutes with specificity.

SEC. 4: ANNUAL REPORTING REQUIREMENT

If the Board meets by electronic means pursuant to the requirements under Virginia Code § 2.2-3708.2, it shall make a written report of the following to the Virginia Freedom of Information Advisory Council on or before December 15 of each year:

- The total number of meetings held that year in which there was participation through electronic communication means;
- The dates and purposes of each such meeting;
- A copy of the agenda for each such meeting;
- The primary or central meeting location of each such meeting;
- The types of electronic communication means by which each meeting was held;
- If possible, the number of members of the public who witnessed each meeting through electronic communication means;
- The identity of the members of the Board 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;
- The identity of any members of the Board 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;
- 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;
- A summary of any public comment received about the process of conducting a meeting through electronic communication means; and
- A written summary of the Board's experience conducting meetings through electronic communication means, including its logistical and technical experience.

SEC. 5: PUBLIC COMMENT FORM

At each meeting held under this policy, the Board shall make available a form prepared by the Virginia Freedom of Information Advisory Council to allow for public comment regarding the process of conducting a meeting through electronic communication means.

SEC. 6: 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(A)(3);
- 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;
- otherwise comply with the provisions of Virginia Code § 2.2-3708.2; 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: August 3, 2021