ELECTRONIC MEETINGS UNDER THE VIRGINIA FREEDOM OF INFORMATION ACT

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ELECTRONIC MEETINGS UNDER THE VIRGINIA FREEDOM OF INFORMATION ACT

I. Introduction

Prior to September 1, 2022, the provisions of the Virginia Freedom of Information Act (FOIA) concerning electronic meetings[1] were found in § 2.2-3708.2 of the Code of Virginia. As of September 1, 2022, the FOIA provisions concerning electronic meetings are found in § 2.2-3708.2 and new § 2.2-3708.3. These two Code sections separate electronic meetings into two general categories:

1. Electronic meetings held other than during a declared state of emergency, which include both remote participation by individual members and all-virtual public meetings (in new § 2.2-3708.3); and
2. Electronic meetings held during a declared state of emergency (in § 2.2-3708.2).

The procedures in FOIA for holding electronic meetings under a declared state of emergency as of September 1, 2022, are substantively identical to the same procedures prior to September 1, 2022. However, the procedures for individual members using remote participation are similar but not identical to the equivalent provisions prior to September 1, 2022. Specifically, the provisions that allow remote participation by individual members of public bodies are largely the same regarding participation due to personal matters, a member's medical condition or disability, or the need to provide medical care for a family member. However, the provision allowing remote participation for a member whose principal residence is 60 miles or more from the meeting location, which was previously available only to regional public bodies, may be used by all public bodies as of September 1, 2022. The procedures for all-virtual public meetings are new. Unless otherwise specified, this guide was originally written to correspond to the law effective as of September 1, 2022 and has been updated to reflect subsequent amendments to the law.

Annual report and public comment form no longer required

Currently, there is no equivalent to the provisions of former subsection D of § 2.2-3708.2 as it existed prior to September 1, 2022, which allowed certain electronic meetings to be conducted by state-level public bodies. That subsection included the requirement for public bodies to report their experiences with electronic meetings to the FOIA Council and to make available to the public a public comment form so that members of the public could comment regarding their experiences with electronic meetings. The annual report and availability of the public comment form are no longer required as of September 1, 2022.

Public participation and public comment

Former subsection E of § 2.2-3708.2 provided that "[n]othing in this section shall be construed to prohibit the use of interactive audio or video means to expand public participation." As subsequently amended, subsection A of § 2.2-3708.3 explicitly encourages public bodies to

[1] The phrase "electronic meeting" is used herein to refer to all types of meetings conducted using electronic communications, but it is not a defined term under FOIA.

1. Provide public access, both in person and through electronic communication means, to public meetings; and
2. 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.

If members of a public body are physically assembled at one location but wish to allow members of the public to listen or provide comment electronically, there are no restrictions on doing so. In other words, the heightened procedural requirements that apply to members of the public body do not apply to the public or other persons such as employees and guest presenters. Public bodies may use electronic means to increase public access even if no members are participating electronically (such as by broadcasting via radio or television or online even when a meeting is held entirely in person). The specific requirements and limitations on electronic participation described in this guide apply only to the members of the public body holding a public meeting.

Additionally, as of July 1, 2023, § 2.2-3707 was amended to add a new subsection B that explicitly allows state public bodies to provide public access and public comment by electronic means as follows:

> B. All state public bodies subject to the provisions of this chapter:
>
> 1. May allow public access to their meetings through electronic communication means, including telephone or videoconferencing, if already used by the state public body;
>
> 2. May provide the public with the opportunity to comment through the use of such electronic communication means at such meetings at the point when public comment is customarily received; and
>
> 3. Shall otherwise comply with the provisions of this chapter.
>
> No cause of action shall arise against a state public body for accidental or involuntary loss of audio or video signal or inability of the public to comment through the electronic communications means described in this subsection.[2]

Note that new subsection B as quoted above applies to all types of public meetings regardless of whether the meeting is conducted in person, by electronic means, or a combination of both.

Member participation and monitoring meetings electronically

So long as all of the appropriate procedural requirements are met, a member participating in a meeting using electronic communication may participate in discussions, make motions, vote, join in closed meetings, and otherwise participate fully as if such member were physically present. If the procedural requirements are not met, however, then the member may only monitor the meeting (i.e., listen or watch, depending on the technology used) and may not otherwise participate.

If a member is monitoring a meeting but not participating, as a matter of best practice, it is suggested that the chair of the public body make a statement to inform the public and the other members, such as:

[2] 2023 Acts of Assembly, c. 536.

> "Please observe that [*member name*] could not attend today's meeting, but is [*listening/watching*] the meeting [*by speakerphone, videoconference, or whatever electronic communication means is being utilized*]. However, [*member name*] is only monitoring the meeting. [*He/she*] is not counted as present and will not make motions, vote, or otherwise participate."

Definitions (§ 2.2-3701)

The definitions included below are specifically relevant to meetings conducted using electronic communications, but keep in mind that the other definitions in § 2.2-3701 also apply to electronic meetings as appropriate.

The definition of "electronic communication" was amended in 2018[3] and now is applicable to all of the types of electronic participation allowed under §§ 2.2-3708.2 and 2.2-3708.3:

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

This definition is meant to be broad enough to include all of the different types of technology that might be used for electronic communication, whether audio-only (such as telephone or radio technology), visual-only (such as text messaging or email), or both (such as television and many online virtual meeting platforms).

The following two definitions are effective as of September 1, 2022.[4] These definitions distinguish between meetings where a public body has assembled a quorum in one physical location but one or more members is participating by electronic communication and meetings where there is no quorum physically assembled in one location and all of the members are participating using electronic communication:

> "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.
>
> "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.

The procedural requirements and limitations applicable to the various types of electronic meetings are described in the rest of this guide.

Please do not hesitate to contact the FOIA Council with any questions you may have concerning the requirements for conducting meetings using electronic communications.

[3] 2018 Acts of Assembly, c. 54

[4] 2022 Acts of Assembly, c. 597.

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II. Remote participation and all-virtual public meetings (§ 2.2-3708.3)

A. Policy requirement

Subsection D of § 2.2-3708.3 requires that public bodies adopt a participation policy at least once annually before using the provisions for remote participation or all-virtual public meetings. Note that no policy is required for meetings conducted under § 2.2-3708.2 during a declared state of emergency. This policy requirement is similar but not identical to the policy requirement in former subsection C of § 2.2-3708.2 prior to September 1, 2022—public bodies that adopted policies prior to that date may need to adopt new versions of their policies to stay in compliance. The public body must adopt the policy by recorded vote at a public meeting and the policy must "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 must also do the following:

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 [of § 2.2-3708.3].

The public body may set forth more restrictive limitations regarding the circumstances under which remote participation is allowed than the statutory limits set forth in FOIA, but it may not expand such participation beyond those statutory limits. As of 2024, the policy shall not prohibit or restrict any individual member of a public body who is participating in an all-virtual meeting or who is using remote participation from voting on matters before the public body. The referenced subdivisions B 4 and C 9 of § 2.2-3708.3 set out the numerical limitation on remote participation due to personal matters and all-virtual public meetings, respectively. Subdivision B 4 limits remote participation due to personal matters to 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. Subdivision C 9 limits all-virtual public meetings to two meetings per calendar year or 50 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater. Additionally, an all-virtual public meeting may not be held consecutively with another all-virtual public meeting.

Participation is counted separately for different types of meetings and for meetings of different public bodies

First, note that the limits on remote participation due to personal matters are separate from the limits on all-virtual public meetings and should be counted separately. For example, if an individual member has already reached his limit on participation due to personal matters, but the public body schedules an all-virtual public meeting, the member can still participate in the all-virtual public meeting because these numerical limits are counted separately for the different types of electronic meetings. Public bodies may set lower numerical limits on such meetings by policy, but they may not exceed the statutory limits of 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. Note

also that these statutory numerical limits apply only to remote participation due to personal matters and to all-virtual public meetings, not to other types of remote participation allowed under FOIA. In other words, members can use the other types of remote participation (due to medical condition or disability, providing medical care for a family member, or the distance of the member's principal residence from the meeting location) an unlimited number of times, unless the public body chooses to adopt a policy that places a numerical limit on those types of remote participation.

Second, a public body may also adopt such a participation policy on behalf of any committee, subcommittee, or other entity that it creates. Keep in mind that committees, subcommittees, and other entities are public bodies in their own right as defined in § 2.2-3701.[5] Because they are separate public bodies, meetings of such committees, subcommittees, and other entities are counted separately from meetings of the public body that created them when determining whether a member has reached the numerical limit for remote participation due to personal matters and whether the limit regarding all-virtual public meetings has been reached (both in terms of number and consecutive meetings). For example, if a member reaches the limit on participation due to personal matters in meetings of the main public body, he can still participate remotely due to personal matters in meetings of any committee, subcommittee, or other entity on which he serves (assuming he has not reached the limit for that committee, subcommittee, or other entity as well). Note again that public bodies may also set lower numerical limits on such meetings of their committees, subcommittees, or other entities, just as they can for the main public body, but they may not exceed the statutory limits.

Public bodies may adopt a policy on electronic participation and members may use it at the same public meeting

If a member wishes to participate remotely but the public body has not yet adopted a policy on doing so prior to the meeting, it is still an option. So long as a quorum of the public body is assembled physically in one location, that quorum may vote to adopt a participation policy as required by law during the public meeting. Then, after the policy has been adopted, the public body may allow the other member(s) to participate remotely for the rest of the meeting.

Sample policy language

In order to facilitate compliance with this requirement, the FOIA Council has prepared sample language that public bodies may use in crafting their own policies. This sample language is based on the language of the statute itself and includes both the basic policy statement and the limitations set forth in the law.

> *Sample language:*
>
> It is the policy of [the public body] that individual [public body] members may participate in meetings of [the public body] by electronic communication as permitted by § 2.2-3708.3 of the Code of Virginia. [If the public body wishes to add any additional limitations on the circumstances under which members may participate by electronic communications, include them here.] This policy shall

[5] The definition of "public body" includes, among other entities, "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."

apply 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.

Whenever an individual member wishes to participate from a remote location, the law requires a quorum of [the public body] to be physically assembled at the primary or central meeting location.

When such individual participation is due to a personal matter, such participation is limited by law to 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 the public body wishes to add any additional limitations on such remote participation, include them here.]

Further, it is the policy of [the public body] that [the public body] may hold all-virtual public meetings pursuant to subsection C of § 2.2-3708.3. Such all-virtual public meetings are also limited by law to two meetings per calendar year or 50 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater. Additionally, an all-virtual public meeting may not be held consecutively with another all-virtual public meeting. [If the public body wishes to add any additional limitations on such all-virtual public meetings, include them here.]

Policy must include processes on making requests, approving or denying requests, and recording requests

As part of the policy requirement, each public body must adopt three processes: one for making requests to use remote participation, one for approving or denying such requests, and one for creating a record of such requests. There are several possible mechanisms a public body might use; so long as the processes adopted do not violate the express provisions of § 2.2-3708.3, each public body may choose whichever processes it prefers. As an example, a public body might adopt a policy as follows:

- That the member notifies staff to make the request and staff then notifies the chair (since the chair must be notified of requests for remote participation, but as a practical matter, most public bodies rely on staff to make the technical arrangements for members to participate remotely);
- That approval is automatic unless a member's participation would violate FOIA, and, if such participation is challenged, then the matter will be put to a vote; and
- That the request is recorded in the minutes of the meeting.

Sample language:

Requests for remote participation or that [the public body] conduct an all-virtual public meeting shall be conveyed to ["staff" or "the clerk or chief administrator for the public body"], who shall then relay such requests to the chair of the public body.

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. of the Code of Virginia). If a member's participation from a remote location is challenged, then [the public body] shall hold a vote on whether to allow such participation.
>
> The request for remote participation or that [the public body] conduct an all-virtual public meeting shall be recorded in the minutes of the meeting. If [the public body] 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 depending on the type of remote participation or all-virtual public meeting.

Additional limitations and other provisions are optional

Additional policy provisions may be included as each public body sees fit, so long as they do not violate the express provisions of FOIA. It is up to each public body to decide for itself whether to adopt any such additional policy provisions.

B. Remote participation by individual members of public bodies

When a meeting is scheduled to be held in person, there are four circumstances set out in subsection B of § 2.2-3708.3 where individual members of a public body may participate from a remote location instead of participating in person. In order to use these provisions, the public body must first adopt a policy on electronic participation as described above and the member must notify the chair of the public body of one of the following four reasons for remote participation:

1. The member has a temporary or permanent disability or other medical condition that prevents the member's physical attendance. For purposes of determining whether a quorum is physically assembled, an individual member of a public body who is a person with a disability as defined in § 51.5-40.1 and uses remote participation counts toward the quorum as if the individual was physically present;
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 or the member is a caregiver who must provide care for a person with a disability at the time the public meeting is being held thereby preventing the member's physical attendance. For purposes of determining whether a quorum is physically assembled, an individual member of a public body who is a caregiver for a person with a disability and uses remote participation counts toward the quorum as if the individual was physically present;
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.

As stated previously, the limitation to two meetings per calendar year or 25 percent of the meetings held per calendar year does not apply to the first three types of remote participation (member's disability or medical condition, need to provide medical care for a family member, or principal residence distance from the meeting location); it only applies when the member participates remotely due to a personal matter.

Members with disabilities and members who are caregivers

As of 2024, members with a disability and members who are caregivers for persons with a disability may be counted as if they are physically present when using remote participation as described under numbers 1 and 2 above. The term "caregiver" is defined in § 2.2-3701 to mean "an adult who provides care for a person with a disability as defined in § 51.5-40.1. A caregiver shall be either related by blood, marriage, or adoption to or the legally appointed guardian of the person with a disability for whom he is caring."

Minutes requirements

- If an individual member remotely participates in a meeting, a general description of the remote location must be included in the minutes (it does not need to be an exact address—for example, the minutes might read that "[Member] participated from his home in [locality]" or that "[Member] participated from her office in [locality]."). The remote location does not have to be open to the public.
- If a member remotely participates due to a (i) temporary or permanent disability or other medical condition that prevents the member's physical attendance or (ii) family member's medical condition that requires the member to provide care for such family member, thereby preventing the member's physical attendance, that fact must be included in the minutes. While the fact that a disability or medical condition prevents the member's physical attendance must be recorded in the minutes, it is not required to identify the specific disability or medical condition.
- If a member remotely participates because the member's principal residence is more than 60 miles from the meeting location, the minutes must include that fact.
- If a member remotely participates due to a personal matter, the minutes must include the specific nature of the personal matter cited by the member.
- As stated above, if remote participation by a member is disapproved because it would violate the participation policy adopted by the public body, such disapproval must be recorded in the minutes with specificity. Note that even if remote participation is disapproved, the member may continue to monitor the meeting from the remote location but may not participate and may not be counted as present at the meeting.

Examples of a disability or medical condition that prevents physical attendance

- Temporary hospitalization or confinement to home;
- Contagious illness; or

- Temporary or permanent physical disability that physically prevents travel to the meeting location.

Examples of personal matters that may prevent physical attendance

- Flat tire or other mechanical failure on the way to the meeting;
- Traffic congestion or stoppage;
- Personal, family, or business emergency;
- Blizzard, flood, or other severe weather conditions that prevent travel to the meeting location;
- Business trip;
- Family trip; or
- Scheduling conflict.

C. All-virtual public meetings

The provisions for all-virtual public meetings under subsection C of § 2.2-3708.3 may be used by all public bodies except "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." In order to do so, a public body must comply with the other meetings requirements of FOIA, must adopt a policy as previously described, and must comply with the following 10 additional statutory requirements:

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. When audio-visual technology is available, a member of a public body shall, for purposes of a quorum, be considered absent from any portion of the meeting during which visual communication with the member is voluntarily disconnected or otherwise fails or during which audio communication involuntarily fails;
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 50 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 these requirements is disapproved because such participation would violate the policy adopted pursuant to subsection D of § 2.2-3708.3, such disapproval shall be recorded in the minutes with specificity.

See the Appendix for Best Practices Recommendations for All-Virtual Public Meetings on public comment and the use of video by members.

III. Electronic meetings conducted under a declared state of emergency (§ 2.2-3708.2)

Prior to the COVID-19 pandemic, the state of emergency provisions in FOIA had only been used to address short-duration emergencies such as acute weather conditions (hurricanes, tornadoes, snowstorms, etc.) that required immediate responses. In 2020, those provisions allowed meetings only to address the declared state of emergency, and not for any other purposes. Because of the duration of the COVID-19 pandemic and the requirements for quarantine and social distancing in effect at that time, the existing provisions were deemed inadequate as they did not allow public bodies to use electronic meetings for any other purposes; i.e., conducting normal business. The State Budget enacted in 2020 included certain electronic meetings provisions to provide a mechanism for public bodies to conduct such other public business during the ongoing state of emergency, but these were removed from the State Budget adopted during the 2026 Special Session I.[6] In 2021, the FOIA provisions addressing electronic meetings during a state of emergency were amended to reflect the experiences of public bodies, citizens, and the media when using electronic meetings during the COVID-19 pandemic and to account for such longer-duration states of emergency in the future.[7]

A. Electronic meetings conducted during a state of emergency declared by the Governor or a locality under § 2.2-3708.2

Pursuant to § 2.2-3708.2, any public body 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 under the following conditions listed in subdivision A 3 of § 2.2-3708.2:

- 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 public body or the discharge of its lawful purposes, duties, and responsibilities.

In addition, the public body must:

- 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;
- Make arrangements for public access to such meeting through electronic communication means, including videoconferencing if already used by the public body;
- Provide the public with the opportunity to comment at those meetings of the public body when public comment is customarily received; and
- Otherwise comply with the provisions of FOIA.

Minutes requirements

[6] State Budget Item 4-0.01 (g) (originally added to address the COVID-19 pandemic); 2020 Session Acts of Assembly, c. 1289. This Item 4-0.01 (g) was included in subsequent budget bills enacted through 2026, but was not included in the Budget Bill as of the 2026 Special Session I Acts of Assembly, c. 1.

[7] 2021 Special Session I, c. 490.

The minutes must include 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.

Limitation on duration

The provisions of subdivision A 3 of § 2.2-3708.2 are applicable only for the duration of the emergency declared pursuant to § 44-146.17 or 44-146.21.

No policy required

The requirements to adopt a policy for remote participation and all-virtual public meetings do not apply to meetings held under a declared state of emergency.

Appendix: Best Practices Recommendations for All-Virtual Public Meetings

The second enactment clause of HB 444 (Bennett-Parker, 2022) directed the FOIA Council to convene a work group to study best practices for all-virtual public meetings as follows:

> 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.

The work group met twice in May 2022 to consider these and other issues. The participants included representatives of the Virginia Association of Counties, the Virginia Municipal League, the Virginia Coalition for Open Government, the Virginia Press Association, the Virginia School Boards Association, the Department of Professional and Occupational Regulation, the Department of Health Professions, the Department of Education, the Department for Aging and Rehabilitative Services, and the Department of Criminal Justice Services. The following are the work group's recommendations as agreed by consensus.

I. Public Comment

A. Statutory Provisions

- For all meetings conducted under FOIA, subsection F of § 2.2-3707 provides as follows: "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."
- For all electronic meetings conducted under § 2.2-3708.3, subsection A provides as follows: "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."

- Among other requirements for conducting all-virtual meetings under subsection C of § 2.2-3708.3, subdivision C 6 provides the following requirement: "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;"
- Other laws may also have requirements for public comment that are specific to the type of public body and the type of meeting. For example, there are requirements to take public comment at certain meetings for local governing bodies in subsection D of § 15.2-1416, for school boards under § 22.1-79, and for governing boards of public institutions of higher education in § 23.1-307, etc.

B. Best Practices Recommendations

Before the meeting:

- Notice: State in the meeting notice whether public comment will be taken during the meeting and/or by other means such as submitting electronic written comments in advance.
- It is recommended that all public bodies accept written comments by email or other means. Public bodies should consider posting the comments to the public body's website, if it has one, and providing the comments to the members in advance of the meeting. You may want to set a deadline for receiving comments in advance in order to ensure there will be time for members to review them and to post them (but still allow comments to be submitted after the deadline; just note that they may not be posted before the meeting if they are received late).
- Public bodies may ask people to register in advance for logistical and planning purposes, but do not require registration in advance as a condition in order to speak because many commenters may not decide whether to comment until the meeting occurs.

During the meeting:

- Have the body's chair, clerk, or chief administrator announce when and how public comment will be taken, including specifying any time limits, noting whether speakers will be heard in any particular order, asking participants to mute their microphones when not speaking, etc.
- Ask anyone making a comment to give their name (including spelling) and whether they represent an organization, so everyone knows who is speaking (however, this is not required by law).
- Time limits: It is recommended that each speaker be allowed an equal amount of time to speak and that the amount of time provided is reasonable under the circumstances and sufficient to allow meaningful comment. However, because the circumstances and logistics of each meeting may vary as to the number of speakers, total time available for public comment, etc., there is no specific length of time that would be appropriate for all situations.

- Written comments: Depending on the number and length of written comments received, you may want to either read the comments (if they are few and/or brief) or summarize them (if they are many and/or lengthy) as appropriate to the circumstances. Written comments may be incorporated by reference, just make sure to keep copies if you do so.

Technical considerations:

- Waiting rooms: Based on prior experience, the work group recommends against using virtual waiting rooms where commenters must be pulled from one virtual "room" into another in order to speak because of the logistical difficulties and interruption to the flow of the meeting.
- Consider having a separate staff person who is not directly participating in the meeting handle technical duties such as recording the meeting, muting participants with open microphones who are not currently presenting or commenting, allowing and disabling screen sharing, etc.
- Screen sharing: Only staff and presenters should be allowed to share their screens in order to avoid the risk of someone else displaying inappropriate content.
- Chat functions: It is recommended not to use public written chat features for all-virtual meetings if the virtual meeting software will not capture it for recording and minutes purposes and also for the same reasons that screen sharing should be limited.

II. The Use of Video by Members

A. Statutory Provision:

- Subdivision C 3 of § 2.2-3708.3 requires that "[t]he 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."

B. Best Practices:

Note that in the course of discussing these recommendations for best practices, the work group concluded that most of them were applicable to all types of electronic participation in public meetings, although the details may vary depending on the type of meeting, the type of electronic participation, and the resources available to the public body. For example, a meeting held under the state of emergency provisions in § 2.2-3708.2 to address an acute weather emergency that requires immediate action may not allow time for many of the suggested actions, especially those that would take place before a meeting. The work group also recognized that staffing and technological resources vary significantly between different public bodies, which can affect each public body's ability to implement these recommendations. For these reasons, keep in mind that except for subdivision C 3 of § 2.2-3708.3 quoted above, these recommendations for best practices are not statutory requirements.

Before the meeting:

- Consider checking with new members to ensure they are familiar with the virtual meeting technology being used by the public body, and if not, help them become familiar with its basic functions (how to log in, turn the microphone and camera on and off, etc.).
- Consider providing members who are not already familiar with participation in virtual meetings with additional tips for being on camera generally (be on time, dress and act appropriately, lighting and glare issues, whether and how to use a virtual background, etc.).
- Consider having members who have not participated electronically in previous meetings log in before the meeting starts to ensure that they do not have any connection problems or other technical issues. Leave enough time so that staff can help if there are any such problems. If there are no such issues, have the members log back out or turn off their cameras and mute their microphones until it is time to start the meeting.
- Before or at the start of a virtual meeting, remind the members that the FOIA provisions that apply to participation in all meetings also still apply to electronic participation in all-virtual meetings. For example, whether a meeting is held in person or all-virtually, members should avoid the use of electronic communications in ways that would create a "meeting within a meeting" that is not visible to the public. This is especially true in all-virtual meetings because the members are already communicating electronically and may have other means to do so that are not apparent to the public, such as text chat functions that may be limited to certain participants and are not visible to those watching the meeting.
- As with accepting public comments as described above, consider posting presentation materials to the public body's website, if any, and distributing them to the members in advance of the meeting (if the materials are available in advance).
- Consider the needs of persons with disabilities and compliance with the federal Americans with Disabilities Act (42 U.S. Code § 12101 et seq.). For more information, see www.ada.gov.

During the meeting:

- Generally, using an audio-visual connection is preferred over an audio-only connection for all types of electronic participation. This is especially true for all-virtual meetings because there is no central meeting location where the public can be in the same place as the members to observe the meeting.
- When using an audio-visual connection, members should stay on video during the meeting unless there is a specific reason to turn the video off, but remember to mute their microphones when they are not speaking. This is especially true for all-virtual meetings in order to try to provide transparency similar to an in-person meeting for those watching while simultaneously avoiding audio problems such as feedback, echoes, and inadvertent noises from open microphones.
- Consider taking steps to ensure that the public and other members are aware of which members are speaking or acting at any given time, especially if a member is using an audio-only connection. For example, any members who are not on video should state their names before speaking so there is no confusion regarding who is talking. For members who are

on video, if the technology allows it, display members' names along with the video. The same suggestions also apply to any other speakers or presenters who are not members.