

# COMMONWEALTH OF VIRGINIA



## COMMISSION ON UPDATING VIRGINIA LAW TO REFLECT FEDERAL RECOGNITION OF VIRGINIA TRIBES

### **Policy for Electronic Meetings Held under § 2.2-3708.3 of the Code of Virginia**

The Code of Virginia § 2.2-3708.2 and § 2.2-3708.3 requires public bodies to adopt a policy regarding remote participation by members and all-virtual meetings. Under these provisions, the Commission on Updating Virginia Law to Reflect Federal Recognition of Virginia Tribes (Commission) is adopting the policies as stated in this document.

#### **I. Remote Participation by Members during In-Person Meetings**

It is the policy of the Commission that individual Commission members may participate in meetings electronically, as permitted by § 2.2-3708.3 of the Code of Virginia, with one exception: the allowance in statute for any member living more than 60 miles away from the meeting site to attend remotely will not be used by the Commission. Members are permitted to participate in meetings electronically under the following three circumstances:

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 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; or
3. 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 for 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).

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

Furthermore, in order for a Commission member to participate remotely during a Commission in person meeting, the member must notify staff to make the request and staff will then notify the chair. The approval is automatic unless a member's participation would violate FOIA, and, if such participation is challenged, then the matter would be put to a vote of the Commission at the

meeting. If a member is participating remotely due to a personal matter, the member must provide the nature of the personal matter as required by the statute, but the level of specificity does not need to include personal details or information the member does not wish to share.

As long as all of the appropriate procedural requirements are met, including having a quorum of the Commission members physically present in one location, a member participating remotely may participate in discussions, join in closed meetings, make motions or vote, and otherwise participate in all business of the Commission. If all procedural requirements are not met, members may monitor the meeting remotely, but will not be counted as attending the meeting and may not otherwise participate fully in the meeting.

## **II. All-Virtual Meetings**

It is the policy of the Commission that the Commission may hold all-virtual public meetings pursuant to subsection C of § 2.2-3708.3 of the Code of Virginia. 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, the Commission may not hold consecutive, all-virtual public meetings.

Whenever the Commission holds an all-virtual public meeting, members and staff must comply with the following statutory requirements:

1. An indication of whether the meeting will be an in-person or all-virtual public meeting must be 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 requires 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.

### **III. Public Participation and Comment**

It is the policy of the Commission to provide opportunities for in-person public participation and comment at its meetings. The Commission shall provide an online platform to receive written public comment related to its work.