



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

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Agenda item # 10

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

March 29, 2023

MOTION

Made By: Ms. Hynes, **Seconded By:** Mr. Yates

Action: Motion Carried, Unanimously

Title: Adoption of Policy for All-Virtual (Electronic) Committee Meetings

WHEREAS, § 2.2-3708.3 of the *Code of Virginia* authorizes public bodies to conduct all-virtual (electronic) meetings if, in advance of the public meeting, the public body has adopted a policy for all-virtual meetings; and

WHEREAS, § 2.2-3708.3 of the *Code of Virginia* additionally authorizes public bodies to adopt such a policy applicable to the committees of the public body; and

WHEREAS, the Commonwealth Transportation Board (CTB) has considered a policy for all-virtual meetings for the various committees of the CTB, which is attached hereto as Attachment A.

NOW THEREFORE BE IT RESOLVED, Pursuant to section 2.2-3708.3 of the Code of Virginia, the CTB hereby adopts the Policy for All-Virtual (Electronic) Committee Meetings as set forth in Attachment A as revised 3/29/2023.

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CTB Decision Brief

Adoption of Policy for All-Virtual (Electronic) Committee Meetings

Issue: In order to allow for all-virtual (electronic) meetings of the various committees of the Commonwealth Transportation Board (CTB), § 2.2-3708.3 of the *Code of Virginia* requires that the CTB first adopt a policy on the use of such all-virtual (electronic) meetings.

Facts: Section 2.2-3708.3(C) of the *Code of Virginia* authorizes public bodies to conduct all-virtual meetings if, in advance of the public meeting, the public body has adopted a policy for all-virtual meetings.

Section 2.2-3708.3(D) of the *Code of Virginia* requires that prior to any electronic participation in meetings, public bodies adopt a policy specifying the circumstances under which an all-virtual public meeting will be allowed and the process the public body will use for making requests to use remote participation, approving or denying such requests, creating a record of such requests, and fixing the number of times all-virtual public meetings can be used per calendar year.

Further, § 2.2-3708.3(D) of the *Code of Virginia* additionally specifies that public bodies may adopt such a policy on behalf of any committee of the public body created to perform delegated functions of the public body or to advise the public body.

The Virginia Department of Transportation (VDOT) has developed a Policy for All-Virtual (Electronic) Committee Meetings (Attachment A) for the CTB's consideration and that if adopted, would authorize the use of such electronic meetings for the various committees of the CTB in the future.

Recommendations: If it is the will of the CTB to authorize all-virtual (electronic) committee meetings, a policy such as the attached must be adopted.

Action Required by CTB: The *Code of Virginia* requires a majority of the CTB members to approve a resolution adopting a policy for all-virtual (electronic) meetings before any all-virtual committee meetings are conducted. A resolution will be provided for the CTB's consideration.

Result if Approved: The CTB may allow committees to conduct all-virtual committee meetings as specified in the policy.

Options: Approve, Deny, or Defer.

Public Comments/Reactions: VDOT has not received public comment on the draft policy.

Commonwealth Transportation Board Policy for All-Virtual (Electronic) Committee Meetings Held under § 2.2-3708.3 of the *Code of Virginia*

It is the policy of the Commonwealth Transportation Board (“Board”) that the committees of the Board may meet by all-virtual public meetings as permitted by § 2.2-3708.3(C) of the *Code of Virginia*. This policy shall apply to the entire membership of any committee of the Board and without regard to the matters that will be considered or voted on at the meeting.

A. All-Virtual Meetings of Committees—General Authority

It is the policy of the Board that the various committees of the Board may hold all-virtual public meetings pursuant to subsection C of § 2.2-3708.3 and this Policy.

- i. Such all-virtual public meetings are limited by statute, per committee, 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.
- ii. Additionally, an all-virtual public meeting of a committee may not be held consecutively with another all-virtual public meeting of the same committee.
- iii. No committee shall exceed the statutory limits.

An all-virtual public meeting means a public meeting conducted using electronic communication means during which all members of the committee who participate do so remotely rather than being assembled in one physical location and to which public access is provided through electronic communication means.

B. Process for Requesting and Receiving Authorization

One or more members of any Board committee must request that the committee conduct an all-virtual public meeting.

- i. The request must be conveyed to the Board’s Assistant Secretary at least 10 working days prior to the meeting date. The Board’s Assistant Secretary shall then relay such request to the Chair of the Board.
- ii. The Chair of the Board will approve or deny the request and notify the members of the committee as well as the Assistant Secretary of the Chair’s decision whether to hold an all-virtual public meeting at least 7 working days prior to the meeting.
- iii. The request that the committee conduct an all-virtual public meeting shall be recorded in the committee’s meeting minutes no later than the next meeting of the committee, along with the determination by the Chair of the Board to approve or deny the request, as appropriate.

C. Statutory Requirements

Compliance with all statutory requirements relating to meeting notice, materials, minutes, voting and public comment for an all-virtual public meeting is required, including but not limited to those set forth in §§ 2.2-3707 and 2.2- 3708.3 of the *Code of Virginia*.

- i. A list of key statutory requirements (Rules) relating to all-virtual meetings is set forth as Appendix A to this Policy and is incorporated herein by reference. Appendix A may be modified

upon notice and approval by the Chair of the Board, in the event of changes in the law that would require modifications to the Rules set forth therein.

- ii. It is noted that all provisions of the Virginia Freedom of Information Act (§§ 2.2-3700 *et seq.*) relating to meetings of public bodies shall apply and any questions which may arise regarding this Policy and applicable laws shall be referred to the Chair of the Board.
- iii. The requirements set forth in this policy do not apply to any meetings held under a declared state of emergency for which different statutory authority may apply.

Committees of the Board

For purposes of this Policy, “committee” shall include any committee, subcommittee or other entity of the Board, however designated or created, to perform delegated functions of the Board or to advise the Board.

The rules and procedures stated in this Policy shall apply to meetings of any committee of the Board. For the purposes of determining the maximum number of committee meetings that may be held in an all-virtual format, the committees are deemed distinct and separate public bodies from each other and from the Board itself.

Closed or Executive Meetings:

It is the policy of the Board that no committee shall conduct a closed meeting or executive session of the committee. Nothing in this Policy relating to all-virtual committee meetings is intended to modify the policy prohibiting closed meetings or executive sessions by committees.

APPENDIX A:
Commonwealth Transportation Board Policy for All-Virtual (Electronic) Committee Meetings
Held under § 2.2-3708.3 of the *Code of Virginia*
RULES FOR ALL-VIRTUAL MEETINGS

The following are the minimum rules applicable to all-virtual committee meetings of the Board. It is noted that the requirements below are reflective of statutory law and may be amended by notice to the Chair and without approval by the Board in the event of amendment to applicable law.

Pursuant to § 2.2-3807.3(C) of the *Code of Virginia*:

A committee of the Board may hold an all-virtual meeting, WITHOUT a quorum of the members physically assembled in a central meeting location, provided that:

1. Notice of the meeting shall be posted in accord with § 2.2-3707;
2. The meeting notice posted on Townhall and on the CTB Website states in advance that the meeting will be all-virtual along with a statement notifying the public that the method by which the committee will meet shall not be changed unless the committee provides a new meeting notice in accordance with the provisions of § 2.2-3707;
3. The electronic communication means used allows the public to hear all members of the public body who are participating, and if audio-visual technology is available, to see the members of the public body as well;
4. Contact information is provided to allow the public to alert the committee if the audio or video transmission of the meeting fails, the committee monitors such designated means of communication during the meeting, and in the event public transmission fails, the committee recesses until the public access through the designated audio and/or video communication means is restored;
5. The agenda and all related materials, unless exempt, are made available to the public via electronic format at the same time that such materials are made available to committee members;
6. The public is afforded the opportunity to comment through electronic means, including by way of written comments, at committee meetings where public comment is customarily received;
7. No more than two members of the committee are together in any one remote location unless that remote location is physically open to the public for access;
8. Minutes of the meetings are taken with draft minutes and final minutes posted in accord with § 2.2-3707, and include the fact that the meeting was held by electronic communication means, including the type of electronic communication means by which the meeting was held; and
9. The committee (a) does not convene all-virtual meetings more than two times per calendar year or 25% of the meetings held per calendar year, whichever is greater; and (b) does not hold two consecutive all-virtual meetings.