

NORTHERN VIRGINIA TRANSPORTATION AUTHORITY

MEMORANDUM

FOR: Chair Phyllis J. Randall and Members
Northern Virginia Transportation Authority

FROM: Michael Longhi, Chief Financial Officer

DATE: September 1, 2022

SUBJECT: Approval of Electronic Participation in Meetings Policy Changes

1. **Purpose:** To seek the Northern Virginia Transportation Authority (NVTA) approval of Policy 26-Electronic Participation in Meetings revisions as attached.
2. **Suggested Motion:** *I move the Northern Virginia Transportation Authority approval of the revised Policy 26-Electronic Participation in Meetings as noted in the attached draft.*
3. **Background:** The passing of [HB 444](#) and [SB 214](#) Freedom of Information Act, Meetings Conducted Through Electronic Meetings, States of Emergency during the 2022 General Assembly amended the Virginia Freedom of Information Act Code of Virginia 2.2-3708 Meetings Held Through Electronic Communication. Due to the revisions included in these Bills, Policy 26 - Electronic Participation in Meetings (“Policy”) must be updated for the Authority and its Committees to convene all-virtual meetings and for Authority and Committee Members to participate in meetings virtually.
4. **Summary of Policy Changes:**
 - a. Clarity regarding the permitted reasons and requirements for an Authority and Committee Member to participate virtually in meetings.
 - b. The ability for the Authority and Committees to convene all-virtual meetings outside of a declared state of emergency per calendar year.

Attachment: Draft Policy 26 - Electronic Participation in Meetings

Coordination: Council of Counsels

NORTHERN VIRGINIA TRANSPORTATION AUTHORITY

Policy Number 26 – Electronic Participation in Meetings

- I. Purpose.** The purpose of this policy is to provide governance for Authority and Committee Member remote participation in Northern Virginia Transportation Authority (NVTA) meetings as well as conducting all-virtual public meetings.
- II. General.** Occasions may arise when an Authority or Committee Member (“Member”) is unable to be physically present at a meeting. Under certain circumstances, Virginia Freedom of Information Act, Virginia Code Ann. §§ 2.2-3700 et seq., (the “Act”) permits members of a public body, such as NVTA, to participate in meetings through electronic communication means. The Act limits the instances in which this may occur and prescribes procedures that must be followed, including adoption of a written policy governing all-virtual public meetings and remote participation. The NVTA Electronic Participation in Meetings Policy (“Policy”), as hereafter provided, sets forth: 1) the instances in which NVTA may conduct all-virtual public meetings; 2) when a member may remotely participate in an in-person meeting; and 3) procedural requirements for such occasions.
- III. All-Virtual Meetings During a State of Emergency.** In compliance with Virginia Code § 2.2-3708.2, NVTA and its Committees may convene an all-virtual public meeting during a declared state of emergency when:
 - A.** The Governor of Virginia has declared a state of emergency in accordance with 44-146.17, or Fairfax County has declared a state of emergency in accordance with 44-146.21, and
 - B.** The catastrophic nature of the declared emergency makes it impossible or unsafe to assemble a quorum in a single location and the purpose of the meeting is to provide for the continuance of operations of NVTA or its Committees or both, or the implementation of their lawful purpose, duties, and responsibilities.
- IV. Procedural Requirements for All-Virtual Meetings During a State of Emergency.** An all-virtual meeting held by NVTA or its Committees as authorized in Section III may only be convened under the following conditions:
 - A.** All applicable notices, advertisements, material posting, quorum and other prerequisites required by the Code of Virginia, NVTA Bylaws, and NVTA policies must be met.
 - B.** Public notice and meeting information of a change to an all-virtual format will be given contemporaneously with members of the Authority or Committees conducting the meeting. The public notice must indicate if the meeting will be an all-virtual meeting due to a declared state of emergency and that if the electronic medium by which the meeting is to be conducted changes, notification of the new medium will be provided.

- C. Arrangements will be made for public access to all-virtual meetings through electronic communication means, and opportunities for public comment through electronic communication means and written comment will be provided for meetings when public comment is customarily or scheduled to be received.
- D. The Authority and its committees will record in its minutes the nature and duration of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication means used during the all-virtual meeting.
- E. All meeting video recordings will be publicly available as soon as practical after the meeting.

V. All-Virtual Public Meetings Outside of a State of Emergency. In compliance with Virginia Code § 2.2-3708.3, NVTVA and its Committees may convene an all-virtual meeting outside of a declared state of emergency when:

- A. The Authority or Committee has not exceeded two all-virtual meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater,
- B. The Authority or Committee does not convene two all-virtual meetings consecutively, and,
- C. No more than two Members are together in any one remote location unless the remote location is physically open to the public.

VI. Procedural Requirements for All-Virtual Public Meetings Outside of a State of Emergency. A meeting held by NVTVA or its Committees as authorized in Section V may only be convened under the following conditions:

- A. All applicable notices, advertisements, material posting, quorum and other prerequisites required by the Code of Virginia, NVTVA Bylaws, and NVTVA policies must be met
- B. Public notice and meeting information, including all agendas, agenda packets, and all non-exempt materials furnished to members, is given contemporaneously with meeting notice and information provided to members of the Authority or its Committees conducting the meeting. The public notice must indicate if the meeting will be an all-virtual meeting and that if the medium by which the meeting is to be conducted changes, notification of the new medium will be provided.
- C. Arrangements will be made for public access to all-virtual meetings through electronic communication means, as well as opportunities for public comment through electronic communication means and written comment will be provided for meetings when public comment is customarily or scheduled to be received. The electronic communication means used must allow the public to hear all members of the Authority or Committee participating in the all-virtual meeting and, when audio-visual technology is available, to see the members of the Authority or Committee as well.
- D. A phone number or other live contact information will be provided to alert the Authority or its Committee if the audio or video transmission of the meeting provided

by the Authority or its Committee fails, the Authority or its Committee will monitor such means of communication during the meeting, and the Authority or its Committee will recess until public access is restored if the transmission fails for the public.

- E. If the Authority or its Committee holds a closed session during an all-virtual public meeting, transmission of the meeting to the public will resume before the Authority or its Committee votes to certify the closed meeting as required by Virginia Code § 2.2-3712(D).
- F. The Authority and its Committees must record in its minutes 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 is disapproved because such participation violates this policy, the disapproval and reason must be recorded in the minutes.
- G. All meeting video recordings will be publicly available as soon as practical after the meeting.

VII. Remote Participation by Individual Members During In-Person Meetings. In compliance with Virginia Code § 2.2-3708.3, a Member may participate in an in-person Authority or Committee meeting through electronic communication means from a remote location under the following circumstances:

- A. Residence: The Member's principal residence is more than 60 miles from the primary or central meeting location.
- B. Medical Reason:
 - 1. The Member's temporary or permanent disability or other medical condition prevents physical attendance; or
 - 2. A medical condition of the Member's family requires the Member to provide care and prevents physical attendance.
- C. Personal Matter: The Member's personal matter prevents his or her physical attendance.

VIII. Procedural Requirements for Remote Participation by Individual Members During In-Person Meeting. Participation by a Member of the Authority or its Committees as authorized in Section VII must meet the following conditions:

- A. A quorum of the Authority or Committee is physically assembled at the primary or central meeting location.
- B. If the Member is requesting remote participation due to a personal matter, the Member has not used remote participation due to a personal matter more than two meetings within the calendar year or 25 percent of the meetings held within the calendar year rounded up to the next whole number, whichever is greater. A Member's remote participation at Authority meetings and meetings of each committee (since a member may serve on more than one committee) during the calendar year will be counted separately.
- C. The Member has notified the applicable Chair, on or before the day of the meeting, that he or she is unable to physically attend and is requesting remote participation.

The member must provide the reason, pursuant to Section VII A, B(1), B(2), or C, that prevents physical attendance.

- D. If the Member's request for remote participation is approved by the applicable Chair, arrangements must be made for the voice of the Member participating remotely to be heard by all persons attending the meeting.
- E. The Authority and Committee shall record in its minutes a general description of the remote location where the Member is participating and whether the Member's remote participation is due to Section VII A, B(1), B(2) or C. If the Member's request for remote participation is disapproved because such participation violates this policy, the disapproval and reason must be recorded in the minutes.

Approved by Northern Virginia Transportation Authority: June 9, 2016

Amended: January 12, 2017

Amended: June 10, 2021; Effective July 1, 2021

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