

# **EMPLOYMENT SERVICE ORGANIZATION STEERING COMMITTEE ELECTRONIC PARTICIPATION AND MEETING POLICY**

## **BACKGROUND**

The Virginia Freedom of Information Act (FOIA) requires all boards to adopt an electronic participation policy annually. It shall be the policy of Employment Service Organization Steering Committee (ESOSC) to allow for electronic meeting participation as permitted in FOIA (§ 2.2-3700 et seq. of the Code of Virginia) and in accordance with this policy.

This policy shall 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.

Employment Service Organization Steering Committee members shall notify staff of the need to participate electronically as soon as possible. The timing of the notice provided to ESOSC staff may impact the ability to use the permission options outlined below.

## **MEMBER ELECTRONIC PARTICIPATION**

Pursuant to § 2.2-3701, "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."

When audio-visual technology is available, a member of the ESOSC 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.

**Electronic Member Participation Permission #1: Disability or Medical Condition** – If notified on or before the day of the meeting, it shall be the policy of the ESOSC to allow a member to participate electronically under § 2.2-3708.3(B)(1) ("[t]he 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 the ESOSC who is a person with a disability as defined in § 51.5-40.1 and uses this remote participation permission counts toward the quorum as if the individual was physically present. At the beginning of the meeting, the Chair shall state the member's electronic participation and the general reason (specifics are not required). A quorum of the ESOSC must be physically assembled at the primary or central meeting location, and there must be arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location. The ESOSC shall record in its minutes the remote location from which the member participated and the fact that the member participated through electronic means due to a disability or medical condition.

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**Electronic Member Participation Permission #2: Caregiving**– If notified on or before the day of the meeting, it shall be the policy of the ESOSC to allow a member to participate electronically under 2.2-3708.3(B)(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 that prevents the member’s physical attendance”). For purposes of determining whether a quorum is physically assembled, an individual member of the ESOSC who is a caregiver for a person with a disability and uses this remote participation permission counts toward the quorum as if the individual was physically present. At the beginning to the meeting, the Chair shall state the member’s electronic participation and the general reason (specifics are not required). A quorum of the ESOSC must be physically assembled at the primary or central meeting location, and there must be arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location. The ESOSC shall record in its minutes the remote location from which the member participated and the fact that the member participated through electronic means due to caregiving.

**Electronic Member Participation Permission #3: Principal Residence is More Than 60 Miles Distance from the Meeting Location** – If notified on or before the day of the meeting, it shall be the policy of the ESOSC to allow a member to participate electronically under § 2.2-3708.3(B)(3) (“[t]he member’s principal residence is more than 60 miles from the meeting location identified in the meeting notice for such meeting”). At the beginning to the meeting, the Chair shall state the member’s electronic participation and the reason. A quorum of the ESOSC must be physically assembled at the primary or central meeting location, and there must be arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location. The ESOSC shall record in its minutes the remote location from which the member participated and the fact that the member participated through electronic means due to the distance between the member’s principal residence and the meeting location.

**Electronic Member Participation Permission #4: Personal Matters** – If notified on or before the day of the meeting, it shall be the policy of the ESOSC to allow a member to participate electronically under § 2.2-3708.3(B)(4) (“[t]he member is unable to attend the meeting due to a personal matter”). At the beginning to the meeting, the Chair shall state the member’s electronic participation and the specific nature of the personal matter. Each ESOSC member may not use this permission 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. A quorum of the ESOSC must be physically assembled at the primary or central meeting location, and there must be arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location. The ESOSC shall record in its minutes the remote location from which the member participated and the specific nature of the personal matter cited by the member.

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**Dealing with Objections to Electronic Member Participation** – It shall be assumed that a member can participate under Permissions #1-4 unless another member objects once it is stated by the Chair at the beginning of the meeting. At such time, if any other member objects, the Chair shall call for a vote on the matter. If a member's disapproval for electronic participation for Permissions #1-4 is due to a violation of the ESOSC's electronic participation and meeting policy, then it will be recorded with specificity. If the vote is such that the member will not be permitted to participate electronically, the member should be advised that they may only monitor/witness the meeting and the member not permitted to participate (e.g., vote, discuss). The outcome of any vote on the member's electronic participation under Permissions #1-4 shall be documented in the minutes accordingly.

### **ELECTRONIC MEETINGS DURING A STATE OF EMERGENCY**

As permitted by §§ 2.2-3701, 2.2-3707(I), and 2.2-3708.2, it shall be the policy of the ESOSC to allow a meeting without a quorum of the ESOSC physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17 provided that (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to provide for the continuity of operations of the ESOSC or the discharge of its lawful purposes, duties, and responsibilities. This allowance is applicable only for the duration of the emergency declared pursuant to §§ 44-146.17 or 44-146.21.

When convening a meeting in accordance with this permission, the ESOSC shall:

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

In addition, the minutes shall state the

1. Nature of the emergency.
2. Fact that the meeting was held by electronic communication means; and
3. Type of electronic communication means by which the meeting was held.

In addition, for electronic meetings conducted during a state of emergency, the minutes shall include (1) the identity of the members of the ESOSC who participated in the meeting through electronic communication means, (2) the identity of the members of the ESOSC who were physically assembled at one physical location, and (3) the identity of the members of the ESOSC who were not present at the location identified in clause (2) but who monitored such meeting through electronic communication means.

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## ALL-VIRTUAL MEETINGS

Pursuant to §§ 2.2-3701, 2.2-307(l), and 2.2-3708.3, an “all-virtual 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.”

It shall be the policy of the ESOSC to allow for all-virtual meetings under § 2.2-3708.3(C) provided that the ESOSC 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 meeting. For an all-virtual meeting, the ESOSC shall:

1. Indicate that the meeting will be an all-virtual meeting in the required meeting notice along with a statement notifying the public that the method by which the ESOSC will meet shall not be changed unless the ESOSC provides a new meeting notice in accordance with the provisions of § 2.2-3707.
2. Provide public access to the all-virtual meeting via electronic communication means, and the electronic communication means used allows the public to hear all members participating in the all-virtual meeting and, when audio-visual technology is available, to see the members.
  - NOTE: When audio-visual technology is available, a member of the ESOSC 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.
3. Provide a phone number or other live contact information to alert the ESOSC if the audio or video transmission of the all-virtual meeting fails. The ESOSC monitors such designated means of communication during the meeting, and the ESOSC takes a recess until public access is restored if the transmission fails for the public.
4. Make available a copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished to members of the ESOSC for the all-virtual meeting to the public in electronic format at the same time that such materials are provided to members.
5. Afford the public the opportunity to comment through electronic means, including by way of written comments, at all-virtual meetings when public comment is customarily received.
6. Ensure that no more than two members of the ESOSC are together in any one remote location unless that remote location is open to the public to physically access it.

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7. Ensure that minutes of all-virtual public meetings 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 this subsection is disapproved because such participation would violate the policy adopted pursuant to subsection D, such disapproval shall be recorded in the minutes with specificity.

In addition, for all-virtual meetings, the minutes shall include (1) the identity of the members of the ESOSC who participated in the meeting through electronic communication means, (2) the identity of the members of the ESOSC who were physically assembled at one physical location, and (3) the identity of the members of the ESOSC who were not present at the location identified in clause (2) but who monitored such meeting through electronic communication means.

### **FUTURE REVISIONS AND POLICY ADOPTION**

All annual adoptions and future revisions to this policy, including those that are required because of changes to FOIA, shall be submitted for consideration to the ESOSC at least one week prior to the ESOSC meeting at which the policy revisions shall be considered. Annual adoptions and revisions shall be approved with a majority vote of the ESOSC members present at the meeting and become effective immediately upon adoption.

Policy Adoption Date: 10/08/2024  
Policy Effective Date: 10/08/2024