Occasions may arise when a Member of the Virginia Railway Express (VRE) Operations Board is unable to be physically present at a meeting. Under certain circumstances, the Virginia Freedom of Information Act, VA. Code Ann. §§ 2.2-3700 et seq., permits members of a public body, such as the VRE Operations Board, to participate in meetings through electronic means such as telephone and video conferencing. The law limits the instances in which this may occur, prescribes procedures that must be followed when a member participates in a meeting through electronic means, and requires that a written policy governing such participation be adopted. The VRE Operations Board Electronic Participation Policy (“Policy”), as hereafter set forth, identifies the instances when a Member may participate in a VRE Operations Board meeting, including VRE Operations Board appointed committee meetings, electronically and the procedures that apply.

Nothing in this Policy should be construed as to prohibit the use of audio or audio/visual means to increase public participation at meetings even if no Operations Board members are participating electronically. The VRE Operations Board welcomes the use of electronic means to increase public access to its meetings. The specific requirements and limitations on electronic participation described herein apply only to the members of the VRE Operations Board participating in a public meeting.

This Policy shall be applied strictly and uniformly, without exception, to all VRE Operations Board members and without regard to the identity of the Member requesting to participate remotely or the matters that will be considered or voted on at all meetings.

Circumstances When Electronic Participation Is Permitted

A Member may participate in a VRE Operations Board meeting through electronic communication means from a remote location not open to the public under the following circumstances:

A. A Member who is unable to attend the meeting due to (i) a temporary or permanent disability or other medical condition that prevents the member's physical attendance or (ii) a family member's medical condition that requires the member to provide care for such family member, thereby preventing the member's physical attendance; or

B. A Member who is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter. When such individual participation is for a personal matter, such participation is limited by law to three (3) meetings of the public body per member each calendar year.

C. To address a state of emergency declared by the Governor or a locality. Due to the limited nature of this provision and specific strict procedures that apply, the VRE Operations Board’s electronic participation requirements during an emergency will be addressed separately at the end of this Policy.
**Procedural Requirements**

Electronic participation by a VRE Operations Board Members as authorized above (by A or B) shall occur only under the following conditions:

1. A quorum of VRE Operations Board Members is physically assembled at the primary or central meeting location.

2. The VRE Operations Board can make arrangements for the voice of the Member who is participating remotely to be heard by all persons at the primary or central meeting location.

3. A Member must notify the applicable chair (Operations Board chair or committee chair), with notification copied to the VRE Chief Executive Officer and Operations Board Secretary, on or before the day of the meeting, not later than two (2) hours prior to the start of the meeting, that such Member is unable to attend and identify the reason in A or B above that prevents physical attendance. (The request may be made verbally but must be followed up in writing as soon as possible.)

4. The existence of a disability or medical condition, or the specific nature of the personal matter, shall be identified and be recorded in the minutes.

5. 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 (Code Chapter 37 of Title 2.2).

6. After calling the meeting to order and establishing a quorum is physically present, the Chair will inform the Operations Board of a Member’s request to participate through electronic means and identify the reason in A or B above that prevents physical attendance, requesting a motion to approve the request and a second. The Operations Board will vote on the matter. If the Member’s participation from a remote location is disapproved because such participation would violate the provisions of this Policy, such disapproval shall be recorded in the minutes with specificity.

NOTE: As stated above, if a Member cannot meet the procedural requirements to participate in a meeting by electronic communications means, the Member may still monitor the meeting by listening or watching by electronic communication means. However, the Member can neither be counted as present nor participate. In such a situation, as a matter of best practices, the chair should make a statement to inform the public and the other Members, such as: “Please observe that [Member name] could not attend today’s meeting but is [listening/watching] the meeting by [speakerphone, videoconferencing, or whatever electronic communications means is being utilized]. However, [Member name] is only monitoring the meeting. [He/she] is not counted as present, and cannot make motions, vote or otherwise participate.
Guidelines for the VRE Operations Board Electronic Participation Policy

The determination of whether requests by Members to participate in VRE Operations Board meetings, as well as committee meetings, from remote locations comply with the Policy shall be made by the Chair subject to final approval by the Operations Board. The following guidelines shall be used by the Chair and VRE Operations Board in considering and acting upon requests:

1. This Policy applies to VRE Operations Board meetings, including committee meetings and working groups, when the technology is available to accommodate remote participation.

2. This Policy shall be applied strictly and uniformly, without exception, to all Members and without regard to the identity of the Members requesting to participate remotely or the matters that will be considered or voted on at all the meetings.

3. Notification of the request to participate electronically shall be provided by the Member seeking to participate remotely to the applicable chair (Operations Board Chair or Committee Chair), with notification copied to the VRE Chief Executive Officer and Secretary, at the earliest practicable time, but not later than two (2) hours before the meeting start time. The request can be made verbally but should be followed up in writing as soon as possible.

4. 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 (Code Chapter 37 of Title 2.2). The VRE Operations Board shall vote whether to allow such participation. If the VRE Operations Board 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.

5. The Member requesting to participate electronically shall provide sufficient specificity as to the nature of the matter as is necessary for the Chair, and the Operations Board, to determine whether the circumstances warrant remote participation.

6. For purposes of this Policy, a personal matter includes circumstances that prevent a member from physically attending a meeting including personal and business travel.

7. For purposes of this Policy, a temporary or permanent disability or a medical condition that prevents physical attendance at the meeting should be evident based on the nature of the disability or the condition. Examples include temporary hospitalization or home confinement; contagious illness; or any permanent physical disability that prevents travel to the meeting location.

8. Medical verification of a medical condition or physical disability shall not be required.
9. More than one Member may participate electronically at the same meeting, provided a physical quorum is present at the primary meeting location.

10. Members participating remotely may fully participate in VRE Operations Board meetings, which includes but is not limited to making motions and voting.

11. Members may participate in a VRE Operations Board public meeting using all available electronic means, including telephone and video conferencing. For the purposes of this Policy, “electronic communication” is defined as “the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transit or receive information.” The definition is applicable to all types of electronic participation described in this Policy.

12. Remote participation shall be permitted only under circumstances where all attendees at the regular meeting location, including the public, can, at a minimum, hear the remote Member. If the means used for participation in the meeting, or other circumstances at the remote location, are disruptive to the meeting, the Chair, subject to the Operations Board’s approval, may deny or withdraw approval to participate remotely, including during the meeting. While not required, the Member participating remotely is encouraged to view the meeting via livestream if it is available.

13. Remote locations are not required to be open to the public unless three or more Members of the public body are gathered at the same remote location. If three or more Members are gathered at the same remote location, then such remote location shall be open to the public. If such a remote location is required to be open to the public, then all persons attending the meeting at any remote location shall be afforded the same opportunity to address the public body as persons attending at the primary or central location. All public meeting requirements shall apply to that remote location.

14. The VRE Operations Board’s Secretary shall be responsible for documenting the request to participate electronically, the reasons why it was necessary, the remote location from which the Members participated electronically, and the Operations Board’s approval or disapproval.

15. The VRE Operations Board’s Secretary shall be responsible for ensuring a Member does not participate electronically for personal reasons more than three (3) times per calendar year.
VRE Operations Board Electronic Participation During a State of Emergency Declared by the Governor or a Locality.

The Virginia Freedom of Information Act allows public bodies to meet by electronic communication means without a quorum present under certain provisions. As part of the Electronic Participation Policy, the Operations Board will adhere to Section §2.2-3708.2.A.3 which reads:

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 Section 44-146.21 of the Code of Virginia, 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 public body or the discharge of its lawful purposes, duties, and responsibilities.

The public body convening a meeting in accordance with this subsection shall:

a. Give public notice using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided members of the public body conducting the meeting;

b. Make arrangements for public access to such meeting; and

c. Otherwise comply with the provisions of this section.

d. 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 shall be stated in the minutes.