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## HOUSE BILL NO. 1105

Offered January 11, 2012

Prefiled January 11, 2012

A BILL to amend and reenact § 2.2-3708 of the Code of Virginia, relating to the Virginia Freedom of Information Act; electronic communication meetings.

Patron—Greason

Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:**

**1. That § 2.2-3708 of the Code of Virginia is amended and reenacted as follows:**

§ 2.2-3708. Electronic communication meetings; applicability; physical quorum required; notice; report.

A. Except as expressly provided in subsection G of this section or § 2.2-3708.1, no local governing body, school board, or any authority, board, bureau, commission, district or agency of local government, any committee thereof, or any entity created by a local governing body, school board, or any local authority, board, or commission shall conduct a meeting wherein the public business is discussed or transacted through telephonic, video, electronic or other communication means where the members are not physically assembled. Nothing in this section shall be construed to prohibit the use of interactive audio or video means to expand public participation. *If such expanded public participation is provided, a member of the public shall pay the documented marginal cost that a public body may incur in expanding public participation.*

B. Except as provided in subsection D of § 2.2-3707.01, state public bodies may conduct any meeting wherein the public business is discussed or transacted through electronic communication means, provided (i) *at least one member of the public body is physically present at the primary location identified in the notice;* (ii) a quorum of the public body is ~~physically assembled present and participating in the meeting, either electronically or in person, at one primary or central any of the meeting location;~~ (ii) *locations;* (iii) notice of the meeting has been given in accordance with subsection C, ~~and~~ (iii) D; (iv) *each member participating in the meeting is identified at the beginning of the meeting;* (v) *all members of the public body participating in the meeting are able to hear or see, as applicable, each other and to be seen or heard, as applicable, by all persons attending the meeting at any of the meeting locations; and* (vi) the remote locations, from which any additional members of the public body participate through electronic communication means, are open to the public. All persons attending the meeting at any of the meeting locations shall be afforded the same opportunity to address the public body as persons attending the primary ~~or central~~ location. ~~State public bodies, however, may meet by electronic communication means without a quorum of the public body physically assembled at one location when (a) the Governor has declared a state of emergency in accordance with § 44-146.17, (b) the meeting is necessary to take action to address the emergency, and (c) the public body otherwise complies with the provisions of this section.~~

~~If an~~ C. No more than 50 percent of the regular meetings held by a public body in any calendar year shall be held by electronic communication means. Any authorized public body that holds an electronic meeting pursuant to this section, it shall also hold at least one meeting annually where members in attendance at the meeting are physically assembled at one location and where no members participate by electronic communication means, *except pursuant to the provisions of § 2.2-3708.1.*

~~C.~~D. Notice of any meetings held pursuant to this section shall be provided at least three working days in advance of the date scheduled for the meeting. The notice shall (i) include the date, time, place, medium by which the meeting will be conducted, and purpose ~~for~~ of the meeting; ~~shall~~ (ii) identify the primary location of the meeting and any remote locations ~~for the meeting that may be established that are open to the public; and shall~~ (iii) include a telephone number that may be used at remote locations to notify the primary ~~or central~~ meeting location of any interruption in the telephonic or video broadcast of the meeting to the remote locations. Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access restored.

~~D.~~E. Agenda packets and, unless exempt, all materials that will be distributed to members of the public body and that have been made available to the staff of the public body in sufficient time for duplication and forwarding to all locations where public access will be provided shall be made available to the public at the time of the meeting. *Agenda packets and other nonexempt materials distributed to or utilized by the members of the public body shall be posted on the website of the public body.* Minutes of

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59 all meetings held by electronic communication means shall be recorded as required by § 2.2-3707. Votes  
60 taken during any meeting conducted through electronic communication means shall be recorded by name  
61 in roll-call fashion and included in the minutes.

62 ~~E.F.~~ Three working days' notice shall not be required for meetings authorized under this section held  
63 in accordance with subsection ~~G~~ H or that are continued to address an emergency or to conclude the  
64 agenda of the meeting for which proper notice has been given, when the date, time, place, and purpose  
65 of the continued meeting are set during the meeting prior to adjournment. Public bodies conducting  
66 emergency meetings through electronic communication means shall comply with the provisions of  
67 subsection ~~D~~ E requiring minutes of the meeting. The nature of the emergency shall be stated in the  
68 minutes.

69 ~~F.G.~~ Any authorized public body that meets by electronic communication means shall make a written  
70 report of the following to the Virginia Freedom of Information Advisory Council and the Joint  
71 Commission on Technology and Science by December 15 of each year:

- 72 1. The total number of electronic communication meetings held that year;
- 73 2. The dates and purposes of the meetings;
- 74 3. The number of sites for each meeting;
- 75 4. The types of electronic communication means by which the meetings were held;
- 76 5. The number of participants, including members of the public, at each meeting location;
- 77 6. The identity of the members of the public body recorded as absent and those recorded as present  
78 at each meeting location;
- 79 7. A summary of any public comment received about the electronic communication meetings; and
- 80 8. A written summary of the public body's experience using electronic communication meetings,  
81 including its logistical and technical experience.

82 ~~G.H.~~ Any local governing body, school board, or any authority, board, bureau, commission, district,  
83 or agency of local government may meet by electronic communication means without a quorum of the  
84 public body physically assembled at one location when the Governor has declared a state of emergency  
85 in accordance with § 44-146.17, provided (i) the catastrophic nature of the declared emergency makes it  
86 impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is  
87 to address the emergency. The local public body convening a meeting in accordance with this subsection  
88 shall (a) give public notice using the best available method given the nature of the emergency, which  
89 notice shall be given contemporaneously with the notice provided members of the local public body  
90 conducting the meeting; (b) make arrangements for public access to such meeting; and (c) otherwise  
91 comply with the provisions of this section. The nature of the emergency and the fact that the meeting  
92 was held by electronic communication means shall be stated in the minutes.