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OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1975



ENROLLED

Committee Substitute for
SENATE BILL NO. 16

(By Mr. *Calpin*, and Mr. *Nelson*, original sponsors)



PASSED *March 8,* 1975

In Effect *ninty days from* Passage

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COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 16

(By MR. GALPERIN and MR. NELSON, *original sponsors*)

[Passed March 8, 1975; in effect ninety days from passage.]

AN ACT to amend chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine-a, relating to open governmental proceedings; setting forth a declaration of legislative policy; defining terms; providing for open meetings; relating to the holding of such meetings; providing exceptions; relating to minutes of such meetings; and relating to enforcement.

Be it enacted by the Legislature of West Virginia:

That chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article nine-a, to read as follows:

ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.

§6-9A-1. Declaration of legislative policy.

1 The Legislature hereby finds and declares that public
2 agencies, boards, commissions, governing bodies, councils
3 and all other public bodies in this state exist for the
4 singular purpose of representing citizens of this state
5 in governmental affairs, and it is, therefore, in the best
6 interests of the people of this state for all proceedings
7 of all public bodies to be conducted in an open and public
8 manner. The Legislature hereby further finds and de-
9 clares that the citizens of this state do not yield their
10 sovereignty to the governmental agencies which serve

11 them. The people in delegating authority do not give
12 their public servants the right to decide what is good
13 for them to know and what is not good for them to know.
14 The people insist on remaining informed so that they may
15 retain control over the instruments of government created
16 by them.

§6-9A-2. Definitions.

1 As used in this article:

2 (1) "Decision" means any determination, action, vote
3 or final disposition of a motion, proposal, resolution, order,
4 ordinance or measure on which a vote of the governing
5 body is required, at any meeting at which a quorum is
6 present;

7 (2) "Executive session" means any meeting or part
8 of a meeting of a governing body which is closed to the
9 public;

10 (3) "Governing body" means the members of any
11 public body having the authority to make decisions for
12 or recommendations to a public body on policy or adminis-
13 tration, the membership of which governing body con-
14 sists of two or more members;

15 (4) "Meeting" means the convening of a governing
16 body of a public body for which a quorum is required in
17 order to make a decision or to deliberate toward a decision
18 on any matter, but such term does not include (a) any
19 meeting for the purpose of making an adjudicatory deci-
20 sion in any quasi-judicial, administrative or court of
21 claims proceeding, (b) any on-site inspection of any
22 project or program, or (c) any political party caucus;

23 (5) "Political subdivision" means any county, county
24 board of education or municipality in or any other politi-
25 cal subdivision of this state;

26 (6) "Public body" means any executive, legislative or
27 administrative body or agency of this state or any political
28 subdivision, or any commission, board, council, bureau,
29 committee or subcommittee or any other agency of any
30 of the foregoing, and such term shall not be construed
31 to include the judicial branch of government, state or
32 local, or any political party executive committee; and

33 (7) "Quorum" means, unless otherwise defined by

34 applicable law, a simple majority of the constituent mem-
35 bership of a governing body.

§6-9A-3. Proceedings to be open.

1 Except as expressly and specifically otherwise pro-
2 vided by law, whether heretofore or hereinafter enacted,
3 and except as provided in section four of this article, all
4 meetings of any governing body shall be open to the
5 public. Any governing body may make and enforce
6 reasonable rules and regulations for attendance at any
7 meeting where there is not room enough for all members
8 of the public who wish to attend, and this article shall
9 not be construed to prohibit the removal from a meeting
10 of any member of the public who is disrupting the meet-
11 ing to the extent that orderly conduct of the meeting is
12 compromised.

§6-9A-4. Exceptions.

1 (a) Notwithstanding the provisions of section three
2 of this article, a governing body may hold an executive
3 session concerning and may make a decision in such
4 executive session concerning:

5 (1) Matters of war, threatened attack from a foreign
6 power, civil insurrection or riot; or

7 (2) The appointment, employment, retirement, pro-
8 motion, demotion, disciplining, resignation, discharge,
9 dismissal or compensation of any public officer or em-
10 ployee, or other personnel matters, or for the purpose of
11 conducting a hearing on a complaint against a public
12 officer or employee, unless such public officer or employee
13 requests an open meeting; or

14 (3) The disciplining, suspension or expulsion of any
15 student in any public school or public college or univer-
16 sity, unless such student requests an open meeting; or

17 (4) The issuance, effecting, denial, suspension or
18 revocation of a license, certificate or registration under
19 the laws of this state or any political subdivision, unless
20 the person seeking such license, certificate or registration
21 or whose license, certificate or registration was denied,
22 suspended or revoked requests an open meeting: or

23 (5) The physical or mental health of any person,
24 unless such person requests an open meeting; or

25 (6) Matters which if discussed in public would be
26 likely to affect adversely the reputation of any person; or

27 (7) Any official investigation or matters relating to
28 crime prevention or law enforcement; or

29 (8) The ~~development~~ of security personnel or devices;
30 or *deployment*

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31 (9) Matters involving or affecting the purchase, sale
32 or lease of property, advance construction planning, the
33 investment of public funds or other matters involving
34 competition which, if made public, might adversely affect
35 the financial or other interest of the state or any political
36 subdivision.

37 (b) Notwithstanding the provisions of section three
38 of this article, and in addition to the exceptions provided
39 in subsection (a) of this section four, a governing body
40 may, after convening a meeting open to the public, go
41 into executive session upon a vote of a majority of the
42 members of the governing body present, but no decision
43 shall be made in such an executive session but shall be
44 made only in a meeting open to the public. Notwith-
45 standing any other provision of law or of this article to
46 the contrary, all meetings of the West Virginia board of
47 probation and parole held to discuss whether to parole
48 any person shall be open to the public.

§6-9A-5. Minutes.

1 Each governing body shall provide for the preparation
2 of written minutes of all of its meetings. All such minutes,
3 other than the minutes of an executive session, shall be
4 available to the public within a reasonable time after
5 the meeting and shall include, at least, the following in-
6 formation:

7 (1) The date, time and place of the meeting;

8 (2) The name of each member of the governing body
9 present and absent;

10 (3) All motions, proposals, resolutions, orders, ordi-
11 nances and measures proposed, the name of the person
12 proposing the same and their disposition; and

13 (4) The results of all votes and, upon the request of
14 a member, the vote of each member, by name.

§6-9A-6. Enforcement.

1 Any action taken or decision made at a meeting held
2 in violation of the provisions of this article shall not be
3 void or voidable, but the circuit court of the county
4 wherein a governing body regularly meets, or the judge
5 thereof in vacation, shall have jurisdiction to enforce the
6 provisions of this article by mandamus or by injunction
7 on petition by any citizen of this state, and no injunction
8 bond shall be required.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Lawrence C. Christian
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

J. C. Killen
Clerk of the Senate

A. Blankenship
Clerk of the House of Delegates

D. B. Patton
President of the Senate

Lewis F. Thomas
Speaker House of Delegates

The within approved this the 24th
day of March, 1975.

And A. Pearce
Governor



PRESENTED TO THE
GOVERNOR

Date 3/18/75

Time 4:55 p.m.