

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1977

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ENROLLED

Committee Substitute for

HOUSE BILL No. 838

(By Mr. Satter.....)

— ● —

PASSED April 1,..... 1977

In Effect ninety days from..... Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 838

(By MR. SATTES)

[Passed April 1, 1977; in effect ninety days from passage.]

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter twenty-nine-b, relating to public access to and inspection of public records; declaration of policy; definitions of terms; inspection and copying of public records and exemptions therefrom; rules and regulations for the protection of the records; enforcement of right of inspection; violations of article and penalties therefor.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 29B. FREEDOM OF INFORMATION.

ARTICLE 1. PUBLIC RECORDS.

§29B-1-1. Declaration of policy.

- 1 Pursuant to the fundamental philosophy of the American
- 2 constitutional form of representative government which holds to
- 3 the principle that government is the servant of the people, and
- 4 not the master of them, it is hereby declared to be the public
- 5 policy of the state of West Virginia that all persons are, unless

6 otherwise expressly provided by law, entitled to full and com-
7 plete information regarding the affairs of government and the
8 official acts of those who represent them as public officials
9 and employees. The people, in delegating authority, do not
10 give their public servants the right to decide what is good for
11 the people to know and what is not good for them to know.
12 The people insist on remaining informed so that they may
13 retain control over the instruments of government they have
14 created. To that end, the provisions of this article shall be
15 liberally construed with the view of carrying out the above
16 declaration of public policy.

§29B-1-2. Definitions.

1 As used in this article:

2 (1) "Custodian" includes the elected or appointed official
3 charged with administering a public body.

4 (2) "Person" includes any natural person, corporation,
5 partnership, firm or association.

6 (3) "Public body" means every state officer, agency, depart-
7 ment, including the executive, legislative and judicial depart-
8 ments, division, bureau, board and commission; every county
9 and city governing body, school district, special district, muni-
10 cipal corporation, and any board, department, commission,
11 council, or agency thereof; and any other body which is created
12 by state or local authority or which is primarily funded by the
13 state or local authority.

14 (4) "Public record" includes any writing containing infor-
15 mation relating to the conduct of the public's business, pre-
16 pared, owned and retained by a public body.

17 (5) "Writing" includes any books, papers, maps, photo-
18 graphs, cards, tapes, recordings or other documentary materials
19 regardless of physical form or characteristics.

§29B-1-3. Inspection and copying.

1 (1) Every person has a right to inspect or copy any public
2 record of a public body in this state, except as otherwise ex-
3 pressly provided by section four of this article.

4 (2) A request to inspect or copy any public record of a

5 public body shall be made directly to the custodian of such
6 public record.

7 (3) The custodian of any public records, unless otherwise
8 expressly provided by statute, shall furnish proper and reason-
9 able opportunities for inspection and examination of the records
10 in his office and reasonable facilities for making memoranda or
11 abstracts therefrom, during the usual business hours, to all
12 persons having occasion to make examination of them. The
13 custodian of the records may make reasonable rules and
14 regulations necessary for the protection of the records and to
15 prevent interference with the regular discharge of his duties.

16 (4) All requests for information must state with reasonable
17 specificity the information sought. The custodian, upon de-
18 mand for records made under this statute, shall as soon as is
19 practicable but within a maximum of five days not including
20 Saturdays, Sundays or legal holidays:

21 (a) Furnish copies of the requested information;

22 (b) Advise the person making the request of the time and
23 place at which he may inspect and copy the materials; or

24 (c) Deny the request stating in writing the reasons for
25 such denial.

26 Such a denial shall indicate that the responsibility of the
27 custodian of any public records or public body to produce
28 the requested records or documents is at an end, and shall
29 afford the person requesting them the opportunity to institute
30 proceedings for injunctive or declaratory relief in the circuit
31 court in the county where the public record is kept.

32 (5) The public body may establish fees reasonably cal-
33 culated to reimburse it for its actual cost in making repro-
34 ductions of such records.

§29B-1-4. Exemptions.

1 The following categories of information are specifically
2 exempt from disclosure under the provisions of this article:

3 (1) Trade secrets, as used in this section, which may in-
4 clude, but are not limited to, any formula, plan pattern,
5 process, tool, mechanism, compound, procedure, production

6 data, or compilation of information which is not patented
7 which is known only to certain individuals within a com-
8 mercial concern who are using it to fabricate, produce, or
9 compound an article or trade or a service or to locate minerals
10 or other substances, having commercial value, and which gives
11 its users an opportunity to obtain business advantage over
12 competitors;

13 (2) Information of a personal nature such as that kept
14 in a personal, medical or similar file, if the public disclosure
15 thereof would constitute an unreasonable invasion of privacy,
16 unless the public interest by clear and convincing evidence
17 requires disclosure in the particular instance: *Provided*, That
18 nothing in this article shall be construed as precluding an in-
19 dividual from inspecting or copying his own personal, medical
20 or similar file;

21 (3) Test questions, scoring keys and other examination
22 data used to administer a licensing examination, examination
23 for employment or academic examination;

24 (4) Records of law-enforcement agencies that deal with
25 the detection and investigation of crime and the internal
26 records and notations of such law-enforcement agencies which
27 are maintained for internal use in matters relating to law
28 enforcement;

29 (5) Information specifically exempted from disclosure by
30 statute;

31 (6) Records, archives, documents or manuscripts describ-
32 ing the location of undeveloped historic, prehistoric, archeolo-
33 gical, paleontological and battlefield sites or constituting gifts
34 to any public body upon which the donor has attached restric-
35 tions on usage or the handling of which could irreparably
36 damage such record, archive, document or manuscript;

37 (7) Information contained in or related to examination,
38 operating or condition reports prepared by, or on behalf of, or
39 for the use of any agency responsible for the regulation or
40 supervision of financial institutions, except those reports
41 which are by law required to be published in newspapers; and

42 (8) Internal memoranda or letters received or prepared by
43 any public body.

§29B-1-5. Enforcement.

1 (1) Any person denied the right to inspect the public
2 record of a public body may institute proceedings for in-
3 junctive or declaratory relief in the circuit court in the county
4 where the public record is kept.

5 (2) In any suit filed under subsection one of this section,
6 the court has jurisdiction to enjoin the custodian or public body
7 from withholding records and to order the production of any
8 records improperly withheld from the person seeking disclosure.
9 The court shall determine the matter de novo and the burden
10 is on the public body to sustain its action. The court, on its
11 own motion, may view the documents in controversy in
12 camera before reaching a decision. Any custodian of any
13 public records of the public body found to be in noncompli-
14 ance with the order of the court to produce the documents
15 or disclose the information sought, may be punished as being
16 in contempt of court.

17 (3) Except as to causes the court considers of greater
18 importance, proceedings arising under subsection one of this
19 section shall be assigned for hearing and trial at the earliest
20 practicable date.

§29B-1-6. Violation of article; penalties.

1 Any custodian of any public records who shall willfully
2 violate the provisions of this article shall be guilty of a mis-
3 demeanor, and, upon conviction thereof, shall be fined not
4 less than one hundred dollars nor more than five hundred
5 dollars, or by imprisonment in the county jail for not more
6 than ten days, or, in the discretion of the court, by both such
7 fine and imprisonment.

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

James L. Davis
Chairman Senate Committee

Dorrence M. Christensen
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

J. Dillinger
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

V. L. Brathwaite
President of the Senate

Donald L. Kopp
Speaker House of Delegates

The within is approved this the 13
day of April, 1977.

John D. Ralston
Governor



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OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date April 13, 1977

Time 4:45 p.m.

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OFFICE
SECY. OF STATE