

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1978



ENROLLED

Committee Substitute for
SENATE BILL NO. 56

(By Mr. *Galperin & Mr. Nelson*)



PASSED *March 11* 1978

In Effect *sixty days from* Passage



110.50

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 56

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

[Passed March 11, 1978; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, three, four, five and six, article nine-a, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section seven; all relating to open governmental proceedings; providing for open meetings; relating to notice of time and place of such meetings; relating to executive sessions; requiring majority vote of members of board present for executive session; providing exceptions; relating to minutes of meetings and executive sessions; enforcement by injunction; relating to voidable action and violation of article; providing for penalties.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five and six, article nine-a, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section seven, all to read as follows:

ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.

§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,
4 order, ordinance or measure on which a vote of the

5 governing body is required, at any meeting at which a
6 quorum is 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 public
11 body having the authority to make decisions for or recom-
12 mendations to a public body on policy or administration,
13 the membership of which governing body consists of two
14 or more members;

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

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

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

34 (7) "Quorum" means, unless otherwise defined by ap-
35 plicable law, a simple majority of the constituent mem-
36 bership of a governing body.

§6-9A-3. Proceedings to be open; public notice of meetings.

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,
4 all 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 mem-

8 bers of the public who wish to attend, and this article
9 shall not be construed to prohibit the removal from a
10 meeting of any member of the public who is disrupting
11 the meeting to the extent that orderly conduct of the
12 meeting is compromised.

13 Each governing body shall promulgate rules by which
14 the time and place of all regularly scheduled meetings and
15 the time, place and purpose of all special meetings are
16 made available, in advance, to the public and news media,
17 except in the event of an emergency requiring immediate
18 official action.

§6-9A-4. Exceptions.

1 No provision of this article shall be construed to pre-
2 vent the governing body of a public body from holding
3 an executive session during a regular, special or emer-
4 gency meeting, after the presiding officer has identified
5 the authorization under this article for the holding of
6 such executive session and has presented it to the
7 governing body and to the general public, but no deci-
8 sion shall be made in such executive session.

9 An executive session may be held only upon a majority
10 affirmative vote of the members present of the govern-
11 ing body of a public body as defined in this article for the
12 following:

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

15 (2) The appointment, employment, retirement, promo-
16 tion, demotion, disciplining, resignation, discharge, dis-
17 missal or compensation of any public officer or employee,
18 or other personnel matters, or for the purpose of con-
19 ducting a hearing on a complaint against a public officer
20 or employee, unless such public officer or employee re-
21 quests an open meeting; or

22 (3) The disciplining, suspension or expulsion of any
23 student in any public school or public college or uni-
24 versity, unless such student requests an open meeting;
25 or

26 (4) The issuance, effecting, denial, suspension or re-
27 vocation of a license, certificate or registration under
28 the laws of this state or any political subdivision, unless

29 the person seeking such license, certificate or registration
30 or whose license, certificate or registration was denied,
31 suspended or revoked requests an open meeting; or

32 (5) The physical or mental health of any person, un-
33 less such person requests an open meeting; or

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

37 (7) Any official investigation or matters relating to
38 crime prevention or law enforcement; or

39 (8) The development of security personnel or devices;
40 or

41 (9) Matters involving or affecting the purchase, sale
42 or lease of property, advance construction planning, the
43 investment of public funds or other matters involving
44 competition which, if made public, might adversely affect
45 the financial or other interest of the state or any political
46 subdivision.

§6-9A-5. Minutes.

1 Each governing body shall provide for the preparation
2 of written minutes of all of its meetings. All such
3 minutes shall be available to the public within a reason-
4 able time after the meeting and shall include, at least,
5 the following information:

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

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

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

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

14 Minutes of executive sessions may be limited to material
15 the disclosure of which is not inconsistent with the pro-
16 visions of section four of this article.

§6-9A-6. Enforcement by injunction; actions in violation of article voidable.

1 The circuit court in the county where the public body
2 regularly meets or the judge thereof in vacation shall have

3 jurisdiction to issue an injunction to enforce the purposes
4 of this section upon petition by any citizen of this state
5 who can show a good faith and valid reason for making
6 such application. No bond shall be required unless such
7 petition appears to be without merit or made with the
8 sole intent of harassing or delaying or avoiding return
9 by the governing body.

10 Any actions taken or decisions made in violation of
11 this article may be voidable upon petition filed within
12 thirty days after such actions or decisions to the afore-
13 said circuit court or the judge thereof in vacation and
14 such court may order that such actions taken or decision
15 made be performed in compliance with the provisions of
16 this article.

§6-9A-7. Violation of article; penalties.

1 Any person who is a member of a public or govern-
2 mental body required to conduct open meetings in com-
3 pliance with the provisions of this article and who will-
4 fully and knowingly violates the provisions of this article
5 shall be guilty of a misdemeanor, and, upon conviction
6 thereof, shall be fined not less than one hundred dollars
7 nor more than five hundred dollars, or imprisoned in
8 the county jail not more than ten days, or both fined and
9 imprisoned.

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

James L. Davis
Chairman Senate Committee

Lawrence C. Thurston Jr.
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. C. Wilcox Jr.
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

W. T. Bratherton Jr.
President of the Senate

Donald L. Zopp
Speaker House of Delegates

The within is approved this the 30
day of March 1978.

John J. Rye
Governor

RECEIVED

MAR 21 9 32 AM '78

OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date Mar. 30, 1978

Time 2:20 p.m.

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OFFICE
SECY. OF STATE