WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1978

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ENROLLED
Committee Substitute for
SENATE BILL NO. 56

(By Mr. Caperton & Mr. Nelson)

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PASSED March 11, 1978

In Effect thirty 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.


As used in this article:

(1) "Decision" means any determination, action, vote or final disposition of a motion, proposal, resolution, order, ordinance or measure on which a vote of the
governing body is required, at any meeting at which a quorum is present;
(2) "Executive session" means any meeting or part of a meeting of a governing body which is closed to the public;
(3) "Governing body" means the members of any public body having the authority to make decisions for or recommendations to a public body on policy or administration, the membership of which governing body consists of two or more members;
(4) "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter, but such term does not include (a) any meeting for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or court of claims proceeding, (b) any on-site inspection of any project or program, or (c) any political party caucus;
(5) "Political subdivision" means any county, county board of education or municipality in or any other political subdivision of this state;
(6) "Public body" means any executive, legislative or administrative body or agency of this state or any political subdivision, or any commission, board, council, bureau, committee or subcommittee or any other agency of any of the foregoing, and such term shall not be construed to include the judicial branch of government, state or local; and
(7) "Quorum" means, unless otherwise defined by applicable law, a simple majority of the constituent membership of a governing body.
§6-9A-3. Proceedings to be open; public notice of meetings.
Except as expressly and specifically otherwise provided by law, whether heretofore or hereinafter enacted, and except as provided in section four of this article, all meetings of any governing body shall be open to the public. Any governing body may make and enforce reasonable rules and regulations for attendance at any meeting where there is not room enough for all mem-
bers of the public who wish to attend, and this article shall not be construed to prohibit the removal from a meeting of any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised.

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

§6-9A-4. Exceptions.

1 No provision of this article shall be construed to prevent the governing body of a public body from holding an executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under this article for the holding of such executive session and has presented it to the governing body and to the general public, but no decision shall be made in such executive session.

An executive session may be held only upon a majority affirmative vote of the members present of the governing body of a public body as defined in this article for the following:

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

(2) The appointment, employment, retirement, promotion, demotion, disciplining, resignation, discharge, dismissal or compensation of any public officer or employee, or other personnel matters, or for the purpose of conducting a hearing on a complaint against a public officer or employee, unless such public officer or employee requests an open meeting; or

(3) The disciplining, suspension or expulsion of any student in any public school or public college or university, unless such student requests an open meeting; or

(4) The issuance, effecting, denial, suspension or revocation of a license, certificate or registration under the laws of this state or any political subdivision, unless
the person seeking such license, certificate or registration
or whose license, certificate or registration was denied,
suspended or revoked requests an open meeting; or
(5) The physical or mental health of any person, un-
less such person requests an open meeting; or
(6) Matters which if discussed in public would be
likely to affect adversely the reputation of any person;
or
(7) Any official investigation or matters relating to
crime prevention or law enforcement; or
(8) The development of security personnel or devices;
or
(9) Matters involving or affecting the purchase, sale
or lease of property, advance construction planning, the
investment of public funds or other matters involving
competition which, if made public, might adversely affect
the financial or other interest of the state or any political
subdivision.

Each governing body shall provide for the preparation
of written minutes of all of its meetings. All such
minutes shall be available to the public within a reason-
able time after the meeting and shall include, at least,
the following information:
(1) The date, time and place of the meeting;
(2) The name of each member of the governing body
present and absent;
(3) All motions, proposals, resolutions, orders, ordi-
nances and measures proposed, the name of the person
proposing the same and their disposition; and
(4) The results of all votes and, upon the request of a
member, the vote of each member, by name.
Minutes of executive sessions may be limited to material
the disclosure of which is not inconsistent with the pro-
visions of section four of this article.

§6-9A-6. Enforcement by injunction; actions in violation of
article voidable.
The circuit court in the county where the public body
regularly meets or the judge thereof in vacation shall have
jurisdiction to issue an injunction to enforce the purposes
of this section upon petition by any citizen of this state
who can show a good faith and valid reason for making
such application. No bond shall be required unless such
petition appears to be without merit or made with the
sole intent of harassing or delaying or avoiding return
by the governing body.

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

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

Any person who is a member of a public or govern-
mental body required to conduct open meetings in com-
pliance with the provisions of this article and who will-
fully and knowingly violates the provisions of this article
shall be guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not less than one hundred dollars
or more than five hundred dollars, or imprisoned in
the county jail not more than ten days, or both fined and
imprisoned.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Clarence S. Christia
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J.C. Wesson, Jr.
Clerk of the Senate

C.A. Blankenship
Clerk of the House of Delegates

W.T. Rathbun, Jr.
President of the Senate

Donald L. Zopp
Speaker House of Delegates

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

John J. Roggensack
Governor