WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1993

ENROLLED

Com. Sub. For
HOUSE BILL No. 2126...

(By Delegate Ms. Speaker, Mr. Chambers, and
Delagates Phillips, Williams, Richards,
Douglas and Nest)

Passed ___________________________. 1993

In Effect Ninety Days from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2126
(By Mr. Speaker, Mr. Chambers, and
Delegates Phillips, Williams, Richards, Douglas and Vest)

[Passed April 10, 1993: in effect ninety days from passage.]

AN ACT to amend and reenact sections two and six, article nine-a, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to open governmental proceedings; defining governing bodies of the Legislature; clarifying the powers to circuit courts to enforce the provisions of the article or to annul decisions of a governing body; expanding the time in which a civil action may be commenced, respecting actions taken or decisions made by governing bodies; authorizing awards for attorney fees and expenses; and providing limited civil liability for compensatory and punitive damages.

Be it enacted by the Legislature of West Virginia:

That sections two 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 to read as follows:

ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.


1 As used in this article:

2 (1) “Decision” means any determination, action, vote

3 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; for the purposes
of this article, a governing body of the Legislature shall
be any standing, select or special committee as deter-
mined by the rules of the respective houses thereof;

(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 adjudi-
catory 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-6. Enforcement by injunctions; actions in violation
of article voidable; voidability of bond issues.

The circuit court in the county where the public body
regularly meets shall have jurisdiction to enforce this article upon civil action commenced by any citizen of this state within one hundred twenty days after the action complained of was taken or the decision complained of was made. Where such action seeks injunctive relief, no bond shall be required unless the petition appears to be without merit or made with the sole intent of harassing or delaying or avoiding return by the governing body.

The court is empowered to compel compliance or enjoin noncompliance with the provisions of this article and to annul a decision made in violation thereof. An injunction may also order that subsequent actions be taken or decisions be made in conformity with the provisions of this article: Provided, That no bond issue that has been passed or approved by any governing body in this state may be annulled under this section if notice of the meeting at which such bond issue was finally considered was given at least ten days prior to such meeting by a Class I legal advertisement published in accordance with the provisions of article three, chapter fifty-nine of this code in a qualified newspaper having a general circulation in the geographic area represented by that governing body.

Any order which compels compliance or enjoins noncompliance with the provisions of this article, or which annuls a decision made in violation of this article shall include findings of fact and conclusions of law and shall be recorded in the minutes of the governing body.

Upon entry of any such order, the court may, where the court finds that the governing body intentionally violated the provisions of this article, order such governing body to pay the complaining person's necessary attorney fees and expenses. Where the court, upon denying the relief sought by the complaining person in the action, finds that the action was frivolous or commenced with the primary intent of harassing the governing body or any member thereof or, in the absence of good faith, of delaying any meetings or decisions of the governing body, the court may require the complaining person to pay the governing body's
necessary attorney fees and expenses.

Any person who intentionally violates the provisions of this article shall be liable in such action for compensatory and punitive damages not to exceed a total of five hundred dollars.
The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 11th
day of May, 1993.

Governor
PRESENTED TO THE
GOVERNOR
Date 4/23/43
Time 11:30 AM