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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

House Bill No. 4473

(By Mr. Speaker, Mr. Kiss, and Delegates
H. White, Fawcett and Stalton)



Passed March 14, 1998

In Effect from Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4473

(BY MR. SPEAKER, MR. KISS, AND DELEGATES
H. WHITE, FACEMYER AND STATON)

[Passed March 14, 1998; in effectt ninety days from passage.]

AN ACT to amend and reenact sections two and five, 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 eight, all relating to permitting participation in public meetings by teleconference in certain instances; setting forth definitions; requiring that governing bodies take minutes of meetings, and that such minutes include information concerning the participation of members by teleconference; and permitting members of governing bodies to attend meetings by teleconference.

Be it enacted by the Legislature of West Virginia:

That sections two and five, 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 eight, all to read as follows:

ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.

§6-9A-2. Definitions.

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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 of a
8 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 or
12 recommendations to a public body on policy or
13 administration, the membership of which governing body
14 consists of two or more members; for the purposes of this
15 article, a governing body of the Legislature shall be any
16 standing, select or special committee as determined by the
17 rules of the respective houses thereof;

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

26 (5) "Political subdivision" means any county, county
27 board of education or municipality in or any other
28 political subdivision of this state;

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

36 (7) "Quorum" means, unless otherwise defined by
37 applicable law, a simple majority of the constituent
38 membership of a governing body.

39 (8) "Teleconference" means the contemporaneous
40 participation of any member of a governing body in a
41 meeting or any portion of a meeting, including any
42 executive session of a meeting, by means of telephone
43 conferencing, video conferencing or any other
44 substantially equivalent electronic means of
45 communication, in which each of the following
46 qualifications is met:

47 (A) The member so participating is able to hear all the
48 proceedings of the meeting, including (i) the remarks of
49 all of the other members of the governing body and (ii)
50 substantially all those remarks of members of the public
51 attending the meeting which the member would be
52 capable of hearing if the member were attending the
53 meeting in person; and

54 (B) The members of the governing body attending the
55 meeting in person and the person appointed or elected to
56 take minutes of the meeting are able to hear and record
57 the remarks of the member so participating.

§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 shall be available to the public within a reasonable time
4 after the meeting and shall include, at least, the following
5 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, including those members attending all
9 or a portion of the meeting by teleconference;

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

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

15 Minutes of executive sessions may be limited to
16 material the disclosure of which is not inconsistent with the
17 provisions of section four of this article.

§6-9A-8. Participation in meetings by teleconference.

1 (a) Notwithstanding any other provision of law, a
2 member of a governing body may attend all or any
3 portion of any meeting of the governing body, including
4 executive sessions, by teleconference if the following
5 requirements are met:

6 (1) The governing body has promulgated rules which
7 permit members of the governing body to attend meetings
8 of the governing body by teleconference in accordance
9 with this article; and

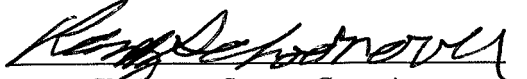
10 (2) The governing body (A) initiates the
11 teleconference or (B) takes such other measures as the
12 governing body has specified by rule which are designed
13 to ensure that the person attending by teleconference is
14 actually the member seeking to attend the meeting by
15 teleconference.

16 (b) A member of a governing body attending a
17 meeting by teleconference may participate in the meeting
18 to the same extent as if he or she were attending the
19 meeting in person, including but not limited to
20 participating in the making of decisions.

21 (c) A member attending a meeting by teleconference
22 shall be counted in the determination of whether a
23 quorum is present at the meeting. Notwithstanding the
24 preceding sentence, at any meeting at which one or more
25 members are attending by teleconference, a majority of
26 those members constituting a quorum must be attending
27 the meeting in person.

28 (d) Any member attending a meeting by
29 teleconference shall file an affidavit stating that the
30 member attended the meeting by teleconference with the
31 person appointed or elected to take minutes of the
32 meeting. The person appointed or elected to take minutes
33 of the meeting shall attach the affidavit to the minutes of
34 the meeting at which the member attended by
35 teleconference. Nothing in this subsection shall be
36 construed to delay or impair the effectiveness of any
37 decision made at the meeting until the member attending
38 the meeting by teleconference has filed such an affidavit.

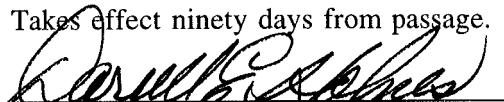
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee

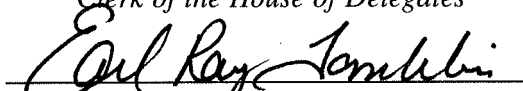

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

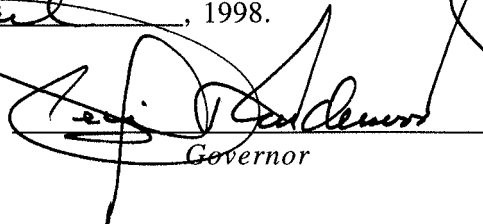

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within disapproved this the 15
day of April, 1998.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/98

Time 2:44 pm