WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

ENROLLED

House Bill No. 4473
(By Mr. Speaker, Mr. Kiss, and Delegates
H. White, Fasomyer and Sidion)

Passed March 14, 1998

In Effect 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.

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; for the purposes of this article, a governing body of the Legislature shall be any standing, select or special committee as determined 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 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.
"Teleconference" means the contemporaneous participation of any member of a governing body in a meeting or any portion of a meeting, including any executive session of a meeting, by means of telephone conferencing, video conferencing or any other substantially equivalent electronic means of communication, in which each of the following qualifications is met:

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

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


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 reasonable 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, including those members attending all or a portion of the meeting by teleconference;

(3) All motions, proposals, resolutions, orders, ordinances 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 provisions of section four of this article.
§6-9A-8. Participation in meetings by teleconference.

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

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

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

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

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

(d) Any member attending a meeting by teleconference shall file an affidavit stating that the member attended the meeting by teleconference with the person appointed or elected to take minutes of the meeting. The person appointed or elected to take minutes of the meeting shall attach the affidavit to the minutes of the meeting at which the member attended by teleconference. Nothing in this subsection shall be construed to delay or impair the effectiveness of any decision made at the meeting until the member attending 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 bill is approved this the 15th day of April, 1998.

Governor