WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1999

SECOND ENROLLMENT

House Bill No. 2005
(By Delegates Amores, Mahan, Linch, Faircloth and Trump)

Passed March 21, 1999

In Effect Ninety Days from Passage
SECOND ENROLLMENT

H. B. 2005

(By Delegates Amores, Mahan, Linch, Faircloth and Trump)

[Passed March 21, 1999; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, three, four, five, six and seven, article nine-a, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto five new sections, designated sections eight, nine, ten, eleven and twelve; to amend and reenact section two, article five-g, chapter sixteen of said code; and to further amend said article by adding thereto five new sections, designated sections three, four, five, six and seven, all relating generally to open governmental and nonprofit hospital meetings; declaring legislative policy; providing definitions; providing that proceedings be open; requiring public notice of meetings; providing for exceptions; establishing requirements for minutes and providing for exceptions; providing for enforcement by injunction; providing that actions taken in violation of this article are voidable; providing for voidability of bond issues; establishing criminal penalties; providing for payment of attorney fees and expenses; prohibiting action by reference, secret or written ballot; providing for broadcasting or recording of meetings; creating an open governmental meetings committee within the West Virginia ethics commission; providing for advisory opinions; establishing for immunity; establishing duty of attorney general, secretary of state, clerks of county commissions, city clerks and recorders to
Enr. H. B. 2005] 2 provide information; providing definitions for open hospital proceedings; requiring proceedings to be open; requiring public notice of meetings; providing exceptions; establishing requirements for minutes; providing for enforcement by injunctions; providing that actions in violation are voidable; providing for violations; and penalties.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.

§6-9A-1. Declaration of legislative policy.

1 The Legislature hereby finds and declares that public agencies in this state exist for the singular purpose of representing citizens of this state in governmental affairs, and it is, therefore, in the best interests of the people of this state for the proceedings of public agencies be conducted openly, with only a few clearly defined exceptions. The Legislature hereby further finds and declares that the citizens of this state do not yield their sovereignty to the governmental agencies that serve them.

2 The people in delegating authority do not give their public servants the right to decide what is good for them to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government created by them.

3 Open government allows the public to educate itself about government decision-making through individuals' attendance and participation at government functions, distribution of
government information by the press or interested citizens, and public debate on issues deliberated within the government.

Public access to information promotes attendance at meetings, improves planning of meetings, and encourages more thorough preparation and complete discussion of issues by participating officials. The government also benefits from openness because better preparation and public input allow government agencies to gauge public preferences accurately and thereby tailor their actions and policies more closely to public needs. Public confidence and understanding ease potential resistance to government programs.

Accordingly, the benefits of openness inure to both the public affected by governmental decision making and the decision makers themselves. The Legislature finds, however, that openness, public access to information and a desire to improve the operation of government do not require nor permit every meeting to be a public meeting. The Legislature finds that it would be unrealistic, if not impossible, to carry on the business of government should every meeting, every contact and every discussion seeking advice and counsel in order to acquire the necessary information, data or intelligence needed by a governing body were required to be a public meeting. It is the intent of the Legislature to balance these interests in order to allow government to function and the public to participate in a meaningful manner in public agency decision making.


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 agency having the authority to make decisions for or recom-
Enr. H. B. 2005] 4

mendations to a public agency on policy or administration, the membership of a governing body consists of two or more members; for the purposes of this article, a governing body of the Legislature is any standing, select or special committee, except the commission on special investigations, as determined by the rules of the respective houses of the Legislature.

(4) "Meeting" means the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action. Meetings may be held by telephone conference or other electronic means. The term meeting 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;

(C) Any political party caucus;

(D) General discussions among members of a governing body on issues of interest to the public when held in a planned or unplanned social, educational, training, informal, ceremonial or similar setting, without intent to conduct public business even if a quorum is present and public business is discussed but there is no intention for the discussion to lead to an official action; or

(E) Discussions by members of a governing body on logistical and procedural methods to schedule and regulate a meeting.

(5) "Official action" means action which is taken by virtue of power granted by law, ordinance, policy, rule, or by virtue of the office held.

(6) "Public agency" means any administrative or legislative unit of state, county or municipal government, including any department, division, bureau, office, commission, authority, board, public corporation, section, committee, subcommittee or any other agency or subunit of the foregoing, authorized by law.
to exercise some portion of executive or legislative power. The
term "public agency" does not include courts created by article
eight of the West Virginia constitution or the system of family
law masters created by article four, chapter forty-eight-a of this
code.

(7) "Quorum" means the gathering of a simple majority of
the constituent membership of a governing body, unless
applicable law provides for varying the required ratio.

§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 for attendance and
presentation at any meeting where there is not room enough for
all members of the public who wish to attend. This article does
not 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: Provided, That persons
who desire to address the governing body may not be required
to register to address the body more than fifteen minutes prior
to time the scheduled meeting is to commence.

Each governing body shall promulgate rules by which the
date time, place and agenda of all regularly scheduled meetings
and the date 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.

Each governing body of the executive branch of the state
shall file a notice of any meeting with the secretary of state for
publication in the state register. Each notice shall state the date
time, place and purpose of the meeting. Each notice shall be
filed in a manner to allow each notice to appear in the state
register at least five days prior to the date of the meeting.

In the event of an emergency requiring immediate official
action, any governing body of the executive branch of the state
may file an emergency meeting notice at any time prior to the meeting. The emergency meeting notice shall state the date, time, place and purpose of the meeting and the facts and circumstances of the emergency.

Upon petition by any adversely affected party any court of competent jurisdiction may invalidate any action taken at any meeting for which notice did not comply with the requirements of this section.

§6-9A-4. Exceptions.

(a) The governing body of a public agency may hold an executive session during a regular, special or emergency meeting, in accordance with the provisions of this section. During the open portion of the meeting, prior to convening an executive session, the presiding officer of the governing body shall identify the authorization under this section for holding the executive session and present it to the governing body and to the general public, but no decision may be made in the executive session.

(b) An executive session may be held only upon a majority affirmative vote of the members present of the governing body of a public agency. A public agency may hold an executive session and exclude the public only when a closed session is required for any of the following actions:

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

(2) To consider:

(A) Matters arising from the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of a public officer or employee, or prospective public officer or employee unless the public officer or employee or prospective public officer or employee requests an open meeting; or

(B) For the purpose of conducting a hearing on a complaint, charge or grievance against a public officer or employee, unless the public officer or employee requests an open meeting.
General personnel policy issues may not be discussed or considered in a closed meeting. Final action by a public agency having authority for the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of an individual shall be taken in an open meeting;

(3) To decide upon disciplining, suspension or expulsion of any student in any public school or public college or university, unless the student requests an open meeting;

(4) To issue, effect, deny, suspend or revoke a license, certificate or registration under the laws of this state or any political subdivision, unless the person seeking the license, certificate or registration or whose license, certificate or registration was denied, suspended or revoked requests an open meeting;

(5) To consider the physical or mental health of any person, unless the person requests an open meeting;

(6) To discuss any material the disclosure of which would constitute an unwarranted invasion of an individual's privacy such as any records, data, reports, recommendations or other personal material of any educational, training, social service, rehabilitation, welfare, housing, relocation, insurance and similar program or institution operated by a public agency pertaining to any specific individual admitted to or served by the institution or program, the individual's personal and family circumstances;

(7) To plan or consider an official investigation or matter relating to crime prevention or law enforcement;

(8) To develop security personnel or devices;

(9) To consider matters involving or affecting the purchase, sale or lease of property, advance construction planning, the investment of public funds or other matters involving commercial competition, which if made public, might adversely affect the financial or other interest of the state or any political subdivision: Provided, That information relied on during the
course of deliberations on matters involving commercial
competition are exempt from disclosure under the open
meetings requirements of this article only until the commercial
competition has been finalized and completed: Provided,
however, That information not subject to release pursuant to the
West Virginia freedom of information act does not become
subject to disclosure as a result of executive session;

(10) To avoid the premature disclosure of an honorary
degree, scholarship, prize or similar award;

(11) Nothing in this article permits a public agency to close
a meeting that otherwise would be open, merely because an
agency attorney is a participant. If the public agency has
approved or considered a settlement in closed session, and the
terms of the settlement allow disclosure, the terms of that
settlement shall be reported by the public agency and entered
into its minutes within a reasonable time after the settlement is
concluded;

(12) To discuss any matter which, by express provision of
federal law or state statute or rule of court is rendered confiden-
tial, or which is not considered a public record within the
meaning of the freedom of information act as set forth in article
one, chapter twenty-nine-b of this code;


Each governing body shall provide for the preparation of
written minutes of all of its meetings. Subject to the exceptions
set forth in section four of this article, minutes of all meetings
except minutes of executive sessions, if any are taken, 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;

(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, pursuant to the rules, policies or procedures of the governing board for recording roll call votes, the vote of each member, by name.

§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 agency regularly meets has 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 the action seeks injunctive relief, no bond may 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 this article. 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 the bond issue was finally considered was given at least ten days prior to the 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.

In addition to or in conjunction with any other acts or omissions which may be determined to be in violation of this Act, it is a violation of this Act for a governing body to hold a private meeting with the intention of transacting public business, thwarting public scrutiny and making decisions that eventually become official action.

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.

§6-9A-7. Violation of article; criminal penalties; attorney fees and
expenses in civil actions.

(a) Any person who is a member of a public or governmen-
tal body required to conduct open meetings in compliance with
the provisions of this article and who willfully and knowingly
violates the provisions of this article is guilty of a misdemeanor
and, upon conviction thereof, shall be fined not more than five
hundred dollars: Provided, That a person who is convicted of a
second or subsequent offense under this subsection is guilty of
a misdemeanor and, upon conviction thereof, shall be fined not
less than one hundred dollars nor more than one thousand
dollars.

(b) A public agency whose governing body is adjudged in
a civil action to have conducted a meeting in violation of the
provisions of this article may be liable to a prevailing party for
fees and other expenses incurred by that party in connection
with litigating the issue of whether the governing body acted in
violation of this article, unless the court finds that the position
of the public agency was substantially justified or that special
circumstances make an award of fees and other expenses unjust.

(c) 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.


(a) Except as otherwise expressly provided by law, the
members of a public agency may not deliberate, vote, or
otherwise take official action upon any matter by reference to
a letter, number or other designation or other secret device or
method, which may render it difficult for persons attending a meeting of the public agency to understand what is being deliberated, voted or acted upon. However, this subsection does not prohibit a public agency from deliberating, voting or otherwise taking action by reference to an agenda, if copies of the agenda, sufficiently worded to enable the public to understand what is being deliberated, voted or acted upon, are available for public inspection at the meeting.

(b) A public agency may not vote by secret or written ballot.


(a) Except as otherwise provided in this section, any radio or television station is entitled to broadcast all or any part of a meeting required to be open.

(b) A public agency may regulate the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting, so as to prevent undue interference with the meeting. The public agency shall allow the equipment to be placed within the meeting room in such a way as to permit its intended use, and the ordinary use of the equipment may not be declared to constitute undue interference: Provided, That if the public agency, in good faith, determines that the size of the meeting room is such that all the members of the public present and the equipment and personnel necessary for broadcasting, photographing, filming and tape-recording the meeting cannot be accommodated in the meeting room without unduly interfering with the meeting and an adequate alternative meeting room is not readily available, then the public agency, acting in good faith and consistent with the purposes of this article, may require the pooling of the equipment and the personnel operating it.

§6-9A-10. Open governmental meetings committee.

The West Virginia ethics commission, pursuant to subsection (j), section one, article two, chapter six-b of this code, shall appoint from the membership of the commission a subcommittee of three persons designated as the West Virginia ethics
commission committee on open governmental meetings. The chairman shall designate one of the persons to chair the committee. In addition to the three members of the committee, two additional members of the commission shall be designated to serve as alternate members of the committee.

The chairman of the committee or the executive director shall call meetings of the committee to act on requests for advisory opinions interpreting the West Virginia open government meetings act. Advisory opinions shall be issued in a timely manner, not to exceed thirty days.

§6-9A-11. Request for advisory opinion; maintaining confidentiality.

(a) Any governing body or member thereof subject to the provisions of this article may seek advise and information from the executive director of the West Virginia ethics commission or request in writing an advisory opinion from the West Virginia ethics commission committee on open governmental meetings as to whether an action or proposed action violates the provisions of this article. The executive director may render oral advise and information upon request. The committee shall respond in writing and in an expeditious manner to a request for an advisory opinion. The opinion shall be binding on the parties requesting the opinion.

(b) Any governing body or member thereof that seeks an advisory opinion and acts in good faith reliance on the opinion has an absolute defense to any civil suit or criminal prosecution for any action taken in good faith reliance on the opinion unless the committee was willfully and intentionally misinformed as to the facts by the body or its representative.

(c) The committee and commission may take appropriate action to protect from disclosure information which is properly shielded by an exception provided for in section four of this article.

§6-9A-12. Duty of attorney general, secretary of state, clerks of the county commissions and city clerks or recorders.
It is the duty of the attorney general to compile the statutory and case law pertaining to this article and to prepare appropriate summaries and interpretations for the purpose of informing all public officials subject to this article of the requirements of this article. It is the duty of the secretary of state, the clerks of the county commissions, joint clerks of the county commissions and circuit courts, if any, and the city clerks or recorders of the municipalities of the state to provide a copy of the material compiled by the attorney general to all elected public officials within their respective jurisdictions. The clerks or recorders will make the material available to appointed public officials. Likewise, it is their respective duties to provide a copy or summary to any newly appointed or elected person within thirty days of the elected or appointed official taking the oath of office or an appointed person's start of term.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5G. OPEN HOSPITAL PROCEEDINGS.


As used in this article:

(1) "Decision" means any determination, action, vote or final disposition of a motion, proposal, resolution, order 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 of a hospital that is closed to the public;

(3) "Governing body" means the board of directors or other group of persons having the authority to make decisions for or recommendations on policy or administration to a hospital owned or operated by a nonprofit corporation, nonprofit association or local governmental unit, the membership of which governing body consists of two or more members;

(4) "Hospital" means any hospital owned or operated by a nonprofit corporation, nonprofit association or local governmental unit;
18 (5) "Meeting" means the convening of a governing body of
19 a hospital for which a quorum is required in order to make a
decision or to deliberate toward a decision on any matter:
21 Provided, That a medical staff conference is not a meeting; and
22 (6) "Quorum" means, unless otherwise defined by applica-
table law, a simple majority of the constituent membership of a
governing body.

§16-5G-3. Proceedings to be open; public notice of meetings.
1 Except as expressly and specifically otherwise provided by
2 law, and except as provided in section four of this article, all
3 meetings of a governing body of a hospital shall be open to the
4 public. Any governing body may make and enforce reasonable
5 rules and regulations for attendance and presentation at any
6 meeting where there is not room enough for all members of the
7 public who wish to attend. This article does not prohibit the
8 removal from a meeting of any member of the public who is
9 disrupting the meeting to the extent that orderly conduct of the
10 meeting is compromised: Provided, That persons who desire to
11 address the governing body may not be required to register to
12 address the body more than fifteen minutes prior to time the
13 scheduled meeting is to commence.

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

19 Each governing body shall file a notice of any meeting by
20 causing a notice of the meeting to be printed in a local newspa-
21 per: Provided, That the governing body may otherwise provide
22 by rule or regulation an alternative procedure that will reason-
23 ably provide the public with notice. Each notice shall state the
24 date time, place and purpose of the meeting.

25 In the event of an emergency requiring immediate official
26 action, any governing body may provide an emergency meeting
27 notice at any time prior to the meeting. The emergency meeting
28 notice shall state the date time, place and purpose of the
29 meeting and the facts and circumstances of the emergency.
Upon petition by any adversely affected party, any court of competent jurisdiction may invalidate any action taken at any meeting for which notice did not comply with the requirements of this section.

§16-5G-4. Exceptions.

(a) This article does not prevent the governing body of a hospital 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 official action shall be made in such executive session.

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

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

(2) The disciplining, suspension or expulsion of any student or trainee enrolled in a program conducted by the hospital, unless the student or trainee requests an open meeting;

(3) Investigations and proceeding involving the issuance, denial, suspension or revocation of the authority or privilege of a medical practitioner to use the hospital and to engage in particular kinds of practice or to perform particular kinds of operations, unless the person seeking the authority or privilege or whose authority or privilege was denied, suspended or revoked requests an open meeting;

(4) Matters concerning the failure or refusal of a medical practitioner to comply with reasonable regulations of a hospital with respect to the conditions under which operations are performed and other medical services are delivered;
(5) To consider the work product of the hospital’s attorney or the hospital administration;

(6) The physical or mental health of any person, unless the person requests an open meeting;

(7) Matters which, if discussed in public, would be likely to affect adversely the reputation of any person;

(8) Any official investigation or matters relating to crime prevention or law enforcement;

(9) The development of security personnel or devices; or

(10) 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 or the hospital.

§16-5G-5. Minutes.

Each governing body shall provide for the preparation of written minutes of all of its meetings. Subject to the exceptions set forth in section four of this article, minutes of all meetings except minutes of executive sessions, if any are taken, 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;

(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, pursuant to the rules, policies or procedures of the governing board for recording roll call votes, the vote of each member, by name.
§16-5G-6. Enforcement by injunctions; actions in violation of article voidable.

The circuit court in the county where a hospital is located has 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 the action seeks injunctive relief, no bond may 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 of this article. An injunction may also order that subsequent actions be taken or decisions be made in conformity with the provisions of this article.

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 an order, the court may, where the court finds that the governing body intentionally violated the provisions of this article, order the 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 is liable in an action for compensatory and punitive damages not to exceed a total of five hundred dollars.

§16-5G-7. Violation of article; penalties.
(a) In addition to or in conjunction with any other acts or omissions which may be determined to violate this Act, it is a violation of this Act for a governing body to hold a private meeting with the intention of transacting public business, thwarting public scrutiny and making decisions that eventually become official action.

(b) Any person who is a member of a governing body of a hospital required to conduct open meetings in compliance with the provisions of this article and who willfully and knowingly violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or confined in jail not more than ten days, or both fined and confined.
That 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 approved this the day of , 1999.

Governor