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SENATE OF WEST VIRGINIA

# 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

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OFFICE OF LEGISLATION  
SENATE CHAMBERS

## **SECOND ENROLLMENT**

# **H. B. 2005**

(BY DELEGATES AMORES, MAHAN, LINCH, FAIRCLOTH AND TRUMP)

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

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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

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  
2 agencies in this state exist for the singular purpose of represent-  
3 ing citizens of this state in governmental affairs, and it is,  
4 therefore, in the best interests of the people of this state for the  
5 proceedings of public agencies be conducted openly, with only  
6 a few clearly defined exceptions. The Legislature hereby further  
7 finds and declares that the citizens of this state do not yield  
8 their sovereignty to the governmental agencies that serve them.  
9 The people in delegating authority do not give their public  
10 servants the right to decide what is good for them to know and  
11 what is not good for them to know. The people insist on  
12 remaining informed so that they may retain control over the  
13 instruments of government created by them.

14       Open government allows the public to educate itself about  
15 government decision-making through individuals' attendance  
16 and participation at government functions, distribution of

17 government information by the press or interested citizens, and  
18 public debate on issues deliberated within the government.

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

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

#### **§6-9A-2. Definitions.**

1 As used in this article:

2 (1) "Decision" means any determination, action, vote or  
3 final disposition of a motion, proposal, resolution, order,  
4 ordinance or measure on which a vote of the governing body is  
5 required at any meeting at which a quorum is present.

6 (2) "Executive session" means any meeting or part of a  
7 meeting of a governing body which is closed to the public.

8 (3) "Governing body" means the members of any public  
9 agency having the authority to make decisions for or recom-

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

16 (4) "Meeting" means the convening of a governing body of  
17 a public agency for which a quorum is required in order to  
18 make a decision or to deliberate toward a decision on any  
19 matter which results in an official action. Meetings may be held  
20 by telephone conference or other electronic means. The term  
21 meeting does not include:

22 (A) Any meeting for the purpose of making an adjudicatory  
23 decision in any quasi-judicial, administrative or court of claims  
24 proceeding;

25 (B) Any on-site inspection of any project or program;

26 (C) Any political party caucus;

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

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

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

40 (6) "Public agency" means any administrative or legislative  
41 unit of state, county or municipal government, including any  
42 department, division, bureau, office, commission, authority,  
43 board, public corporation, section, committee, subcommittee or  
44 any other agency or subunit of the foregoing, authorized by law

45 to exercise some portion of executive or legislative power. The  
46 term "public agency" does not include courts created by article  
47 eight of the West Virginia constitution or the system of family  
48 law masters created by article four, chapter forty-eight-a of this  
49 code.

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

**§6-9A-3. Proceedings to be open; public notice of meetings.**

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

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

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

26 In the event of an emergency requiring immediate official  
27 action, any governing body of the executive branch of the state

28 may file an emergency meeting notice at any time prior to the  
29 meeting. The emergency meeting notice shall state the date  
30 time, place and purpose of the meeting and the facts and  
31 circumstances of the emergency.

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

#### **§6-9A-4. Exceptions.**

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

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

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

17 (2) To consider:

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

24 (B) For the purpose of conducting a hearing on a complaint,  
25 charge or grievance against a public officer or employee, unless  
26 the public officer or employee requests an open meeting.

27 General personnel policy issues may not be discussed or  
28 considered in a closed meeting. Final action by a public agency  
29 having authority for the appointment, employment, retirement,  
30 promotion, transfer, demotion, disciplining, resignation,  
31 discharge, dismissal or compensation of an individual shall be  
32 taken in an open meeting;

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

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

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

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

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

55 (8) To develop security personnel or devices;

56 (9) To consider matters involving or affecting the purchase,  
57 sale or lease of property, advance construction planning, the  
58 investment of public funds or other matters involving commer-  
59 cial competition, which if made public, might adversely affect  
60 the financial or other interest of the state or any political  
61 subdivision: *Provided*, That information relied on during the

62 course of deliberations on matters involving commercial  
63 competition are exempt from disclosure under the open  
64 meetings requirements of this article only until the commercial  
65 competition has been finalized and completed: *Provided,*  
66 however, That information not subject to release pursuant to the  
67 West Virginia freedom of information act does not become  
68 subject to disclosure as a result of executive session;

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

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

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

#### **§6-9A-5. Minutes.**

1 Each governing body shall provide for the preparation of  
2 written minutes of all of its meetings. Subject to the exceptions  
3 set forth in section four of this article, minutes of all meetings  
4 except minutes of executive sessions, if any are taken, shall be  
5 available to the public within a reasonable time after the  
6 meeting and shall include, at least, the following information:

7 (1) The date, time and place of the meeting;

8 (2) The name of each member of the governing body  
9 present and absent;

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

13       (4) The results of all votes and, upon the request of a  
14 member, pursuant to the rules, policies or procedures of the  
15 governing board for recording roll call votes, the vote of each  
16 member, by name.

**§6-9A-6. Enforcement by injunctions; actions in violation of  
article voidable; voidability of bond issues.**

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

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

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

29       Any order which compels compliance or enjoins noncom-  
30 pliance with the provisions of this article, or which annuls a

31 decision made in violation of this article shall include findings  
32 of fact and conclusions of law and shall be recorded in the  
33 minutes of the governing body.

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

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

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

19 (c) Where the court, upon denying the relief sought by the  
20 complaining person in the action, finds that the action was  
21 frivolous or commenced with the primary intent of harassing  
22 the governing body or any member thereof or, in the absence of  
23 good faith, of delaying any meetings or decisions of the  
24 governing body, the court may require the complaining person  
25 to pay the governing body's necessary attorney fees and  
26 expenses.

**§6-9A-8. Acting by reference; written ballots.**

1 (a) Except as otherwise expressly provided by law, the  
2 members of a public agency may not deliberate, vote, or  
3 otherwise take official action upon any matter by reference to  
4 a letter, number or other designation or other secret device or

5 method, which may render it difficult for persons attending a  
6 meeting of the public agency to understand what is being  
7 deliberated, voted or acted upon. However, this subsection does  
8 not prohibit a public agency from deliberating, voting or  
9 otherwise taking action by reference to an agenda, if copies of  
10 the agenda, sufficiently worded to enable the public to under-  
11 stand what is being deliberated, voted or acted upon, are  
12 available for public inspection at the meeting.

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

**§6-9A-9. Broadcasting or recording meetings.**

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

4 (b) A public agency may regulate the placement and use of  
5 equipment necessary for broadcasting, photographing, filming  
6 or recording a meeting, so as to prevent undue interference with  
7 the meeting. The public agency shall allow the equipment to be  
8 placed within the meeting room in such a way as to permit its  
9 intended use, and the ordinary use of the equipment may not be  
10 declared to constitute undue interference: *Provided*, That if the  
11 public agency, in good faith, determines that the size of the  
12 meeting room is such that all the members of the public present  
13 and the equipment and personnel necessary for broadcasting,  
14 photographing, filming and tape-recording the meeting cannot  
15 be accommodated in the meeting room without unduly interfer-  
16 ing with the meeting and an adequate alternative meeting room  
17 is not readily available, then the public agency, acting in good  
18 faith and consistent with the purposes of this article, may  
19 require the pooling of the equipment and the personnel operat-  
20 ing it.

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

1 The West Virginia ethics commission, pursuant to subsec-  
2 tion (j), section one, article two, chapter six-b of this code, shall  
3 appoint from the membership of the commission a subcommit-  
4 tee of three persons designated as the West Virginia ethics

5 commission committee on open governmental meetings. The  
6 chairman shall designate one of the persons to chair the  
7 committee. In addition to the three members of the committee,  
8 two additional members of the commission shall be designated  
9 to serve as alternate members of the committee.

10 The chairman of the committee or the executive director  
11 shall call meetings of the committee to act on requests for  
12 advisory opinions interpreting the West Virginia open govern-  
13 ment meetings act. Advisory opinions shall be issued in a  
14 timely manner, not to exceed thirty days.

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

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

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

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

**§6-9A-12. Duty of attorney general, secretary of state, clerks of  
the county commissions and city clerks or recorders.**

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

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 5G. OPEN HOSPITAL PROCEEDINGS.**

#### **§16-5G-2. Definitions.**

1       As used in this article:

2       (1) "Decision" means any determination, action, vote or  
3 final disposition of a motion, proposal, resolution, order or  
4 measure on which a vote of the governing body is required at  
5 any meeting at which a quorum is present;

6       (2) "Executive session" means any meeting or part of a  
7 meeting of a governing body of a hospital that is closed to the  
8 public;

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

15       (4) "Hospital" means any hospital owned or operated by a  
16 nonprofit corporation, nonprofit association or local govern-  
17 mental 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  
20 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-  
23 ble law, a simple majority of the constituent membership of a  
24 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.

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

**§16-5G-4. Exceptions.**

1       (a) This article does not prevent the governing body of a  
2 hospital from holding an executive session during a regular,  
3 special or emergency meeting, after the presiding officer has  
4 identified the authorization under this article for the holding of  
5 such executive session and has presented it to the governing  
6 body and to the general public, but no official action shall be  
7 made in such executive session.

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

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

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

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

27       (4) Matters concerning the failure or refusal of a medical  
28 practitioner to comply with reasonable regulations of a hospital  
29 with respect to the conditions under which operations are  
30 performed and other medical services are delivered;

31 (5) To consider the work product of the hospital's attorney  
32 or the hospital administration;

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

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

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

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

40 (10) Matters involving or affecting the purchase, sale or  
41 lease of property, advance construction planning, the invest-  
42 ment of public funds or other matters involving competition  
43 which, if made public, might adversely affect the financial or  
44 other interest of the state or any political subdivision or the  
45 hospital.

**§16-5G-5. Minutes.**

1 Each governing body shall provide for the preparation of  
2 written minutes of all of its meetings. Subject to the exceptions  
3 set forth in section four of this article, minutes of all meetings  
4 except minutes of executive sessions, if any are taken, shall be  
5 available to the public within a reasonable time after the  
6 meeting and shall include, at least, the following information:

7 (1) The date, time and place of the meeting;

8 (2) The name of each member of the governing body  
9 present and absent;

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

13 (4) The results of all votes and, upon the request of a  
14 member, pursuant to the rules, policies or procedures of the  
15 governing board for recording roll call votes, the vote of each  
16 member, by name.

**§16-5G-6. Enforcement by injunctions; actions in violation of article voidable.**

1       The circuit court in the county where a hospital is located  
2 has jurisdiction to enforce this article upon civil action com-  
3 menced by any citizen of this state within one hundred twenty  
4 days after the action complained of was taken or the decision  
5 complained of was made. Where the action seeks injunctive  
6 relief, no bond may be required unless the petition appears to be  
7 without merit or made with the sole intent of harassing or  
8 delaying or avoiding return by the governing body.

9       The court is empowered to compel compliance or enjoin  
10 noncompliance with the provisions of this article and to annul  
11 a decision made in violation of this article. An injunction may  
12 also order that subsequent actions be taken or decisions be  
13 made in conformity with the provisions of this article.

14       Any order which compels compliance or enjoins noncom-  
15 pliance with the provisions of this article, or which annuls a  
16 decision made in violation of this article shall include findings  
17 of fact and conclusions of law and shall be recorded in the  
18 minutes of the governing body.

19       Upon entry of an order, the court may, where the court  
20 finds that the governing body intentionally violated the provi-  
21 sions of this article, order the governing body to pay the  
22 complaining person's necessary attorney fees and expenses.  
23 Where the court, upon denying the relief sought by the com-  
24 plaining person in the action, finds that the action was frivolous  
25 or commenced with the primary intent of harassing the govern-  
26 ing body or any member thereof or, in the absence of good  
27 faith, of delaying any meetings or decisions of the governing  
28 body, the court may require the complaining person to pay the  
29 governing body's necessary attorney fees and expenses.

30       Any person who intentionally violates the provisions of this  
31 article is liable in an action for compensatory and punitive  
32 damages not to exceed a total of five hundred dollars.

**§16-5G-7. Violation of article; penalties.**

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

7           (b) Any person who is a member of a governing body of a  
8 hospital required to conduct open meetings in compliance with  
9 the provisions of this article and who willfully and knowingly  
10 violates the provisions of this article is guilty of a misdemeanor  
11 and, upon conviction thereof, shall be fined not less than one  
12 hundred dollars nor more than five hundred dollars, or confined  
13 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.

*Paul Schoover*  
Chairman Senate Committee

*Joe F. Aquillo*  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Harold E. Edrington*  
Clerk of the Senate

*Bryson W. Boy*  
Clerk of the House of Delegates

*Earl Ray Tomblin*  
President of the Senate

*John C. West*  
Speaker of the House of Delegates

The within *approved* this the *8th*  
day of *April*, 1999.

*Lee R. Raabe*  
Governor

PRESENTED TO THE

GOVERNOR

Date

4/5/99

Time

4:22 pm