

HB 2005
VETO

RECEIVED
99 MAR 20 11 14 33
LEGISLATIVE SERVICES
STATE HOUSE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1999

ENROLLED

House Bill No. 2005

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

Passed March 13, 1999

In effect Ninety Days from Passage

1 **ENROLLED**

2 **H. B. 2005**

RECEIVED

99 MAR 20 PM 4:30

LEGISLATIVE

3
4 (By Delegates Amores, Mahan, Linch, Faircloth and Trump)

5
6 [Passed March 13, 1999; in effect ninety days from passage.]

7
8
9 AN ACT to amend and reenact sections one, two, three, four, five, six and seven, article nine-
10 a, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as
11 amended; to further amend said article by adding thereto five new sections, designated
12 sections eight, nine, ten, eleven and twelve; to amend and reenact section two, article
13 five-g, chapter sixteen of said code; and to further amend said article by adding thereto
14 five new sections, designated sections three, four, five, six and seven, all relating
15 generally to open governmental and nonprofit hospital meetings; declaring legislative
16 policy; providing definitions; providing that proceedings be open; requiring public
17 notice of meetings; providing for exceptions; establishing requirements for minutes and
18 providing for exceptions; providing for enforcement by injunction; providing that
19 actions taken in violation of this article are voidable; providing for voidability of bond
20 issues; establishing criminal penalties; providing for payment of attorney fees and
21 expenses; prohibiting action by reference, secret or written ballot; providing for
22 broadcasting or recording of meetings; creating an open governmental meetings
23 committee within the West Virginia ethics commission; providing for advisory
24 opinions; establishing for immunity; establishing duty of attorney general, secretary of

1 state, clerks of county commissions, city clerks and recorders to provide information;
2 providing definitions for open hospital proceedings; requiring proceedings to be open;
3 requiring public notice of meetings; providing exceptions; establishing requirements for
4 minutes; providing for enforcement by injunctions; providing that actions in violation
5 are voidable; providing for violations; and penalties.

6 *Be it enacted by the Legislature of West Virginia:*

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

13 **CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.**

14 **ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.**

15 **§6-9A-1. Declaration of legislative policy.**

16 The Legislature hereby finds and declares that public agencies in this state exist for the
17 singular purpose of representing citizens of this state in governmental affairs, and it is,
18 therefore, in the best interests of the people of this state that the proceedings of public agencies
19 be conducted openly, with only a few clearly defined exceptions. The Legislature hereby
20 further finds and declares that the citizens of this state do not yield their sovereignty to the
21 governmental agencies that serve them. The people in delegating authority do not give their
22 public servants the right to decide what is good for them to know and what is not good for
23 them to know. The people insist on remaining informed so that they may retain control over

1 the instruments of government created by them.

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

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

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

21 **§6-9A-2. Definitions.**

22 As used in this article:

23 (1) "Decision" means any determination, action, vote or final disposition of a motion,

1 proposal, resolution, order, ordinance or measure on which a vote of the governing body is
2 required at any meeting at which a quorum is present.

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

5 (3) "Governing body" means the members of any public agency having the authority
6 to make decisions for or recommendations to a public agency on policy or administration, the
7 membership of which governing body consists of two or more members; for the purposes of
8 this article, a governing body of the Legislature is any standing, select or special committee,
9 except the commission on special investigations, as determined by the rules of the respective
10 houses of the Legislature.

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

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

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

18 (C) Any political party caucus;

19 (D) General discussions among members of a governing body on issues of interest to
20 the public when held in a planned or unplanned social, educational, training, informal,
21 ceremonial or similar setting, without intent to conduct public business and not intended to lead
22 to an official action; or

23 (E) Discussions by members of a governing body on logistical and procedural methods

1 to schedule and regulate meeting.

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

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

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

13 **§6-9A-3. Proceedings to be open; public notice of meetings.**

14 Except as expressly and specifically otherwise provided by law, whether heretofore or
15 hereinafter enacted, and except as provided in section four of this article, all meetings of any
16 governing body shall be open to the public. Any governing body may make and enforce
17 reasonable rules for attendance and presentation at any meeting where there is not room enough
18 for all members of the public who wish to attend. This article does not prohibit the removal
19 from a meeting of any member of the public who is disrupting the meeting to the extent that
20 orderly conduct of the meeting is compromised: *Provided*, That persons who desire to address
21 the governing body may not be required to register to address the body more than fifteen
22 minutes prior to time the scheduled meeting is to commence.

23 Each governing body shall promulgate rules by which the time, place and agenda of all

1 regularly scheduled meetings and the time, place and purpose of all special meetings are made
2 available, in advance, to the public and news media, except in the event of an emergency
3 requiring immediate official action.

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

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

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

15 **§6-9A-4. Exceptions.**

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

22 (b) An executive session may be held only upon a majority affirmative vote of the
23 members present of the governing body of a public agency. A public agency may hold an

1 executive session and exclude the public only when a closed session is required for any of the
2 following actions:

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

5 (2) To consider:

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

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

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

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

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

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

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

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

9 (8) To develop security personnel or devices;

10 (9) To consider matters involving or affecting the purchase, sale or lease of property,
11 advance construction planning, the investment of public funds or other matters involving
12 commercial competition, including the expansion or location of businesses, which if made
13 public, might adversely affect the financial or other interest of the state or any political
14 subdivision: *Provided*, That information otherwise subject to release under the provisions of
15 the West Virginia freedom of information act on matters involving commercial competition are
16 exempt from disclosure under the open meetings requirements of this article only until the
17 commercial competition has been finalized and completed;

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

20 (11) Nothing in this article permits a public agency to close a meeting that otherwise
21 would be open, merely because an agency attorney is a participant. If the public agency has
22 approved or considered a settlement in closed session, and the terms of the settlement allow
23 disclosure, the terms of that settlement shall be reported by the public agency and entered into

1 its minutes within a reasonable time after the settlement is concluded;

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

6 **§6-9A-5. Minutes.**

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

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

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

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

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

17
18 **§6-9A-6. Enforcement by injunctions; actions in violation of article voidable; voidability**
19 **of bond issues.**

20 The circuit court in the county where the public agency regularly meets has jurisdiction
21 to enforce this article upon civil action commenced by any citizen of this state within one
22 hundred twenty days after the action complained of was taken or the decision complained of
23 was made. Where the action seeks injunctive relief, no bond may be required unless the

1 petition appears to be without merit or made with the sole intent of harassing or delaying or
2 avoiding return by the governing body.

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

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

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

19 **§6-9A-7. Violation of article; criminal penalties; attorney fees and expenses in civil**
20 **actions.**

21 (a) Any person who is a member of a public or governmental body required to conduct
22 open meetings in compliance with the provisions of this article and who willfully and
23 knowingly violates the provisions of this article is guilty of a misdemeanor and, upon

1 conviction thereof, shall be fined not more than five hundred dollars: *Provided*, That a person
2 who is convicted of a second or subsequent offense under this subsection is guilty of a
3 misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor
4 more than one thousand dollars.

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

11 (c) Where the court, upon denying the relief sought by the complaining person in the
12 action, finds that the action was frivolous or commenced with the primary intent of harassing
13 the governing body or any member thereof or, in the absence of good faith, of delaying any
14 meetings or decisions of the governing body, the court may require the complaining person to
15 pay the governing body's necessary attorney fees and expenses.

16 **§6-9A-8. Acting by reference; written ballots.**

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

1 upon, are available for public inspection at the meeting.

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

3 **§6-9A-9. Broadcasting or recording meetings.**

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

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

18 **§6-9A-10. Open governmental meetings committee.**

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

1 commission shall be designated to serve as alternate members of the committee.

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

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

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

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

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

21 **§6-9A-12. Duty of attorney general, secretary of state, clerks of the county**
22 **commissions and city clerks or recorders.**

23 It is the duty of the attorney general to compile the statutory and case law pertaining to

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

10 **CHAPTER 16. PUBLIC HEALTH.**

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

12 **§16-5G-2. Definitions.**

13 As used in this article:

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

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

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

1 (4) "Hospital" means any hospital owned or operated by a nonprofit corporation,
2 nonprofit association or local governmental unit;

3 (5) "Meeting" means the convening of a governing body of a hospital for which a
4 quorum is required in order to make a decision or to deliberate toward a decision on any
5 matter: *Provided*, That a medical staff conference is not a meeting; and

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

8 **§16-5G-3. Proceedings to be open; public notice of meetings.**

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

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

22 Each governing body shall file a notice of any meeting by causing a notice of the
23 meeting to be printed in a local newspaper: *Provided*, That the governing body may otherwise

1 provide by rule or regulation an alternative procedure that will reasonably provide the public
2 with notice. Each notice shall state the time, place and purpose of the meeting.

3 In the event of an emergency requiring immediate official action, any governing body
4 may provide an emergency meeting notice at any time prior to the meeting. The emergency
5 meeting notice shall state the time, place and purpose of the meeting and the facts and
6 circumstances of the emergency.

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

10 **§16-5G-4. Exceptions.**

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

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

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

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

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

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

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

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

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

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

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

18 (10) Matters involving or affecting the purchase, sale or lease of property, advance
19 construction planning, the investment of public funds or other matters involving competition
20 which, if made public, might adversely affect the financial or other interest of the state or any
21 political subdivision or the hospital.

22 **§16-5G-5. Minutes.**

23 Each governing body shall provide for the preparation of written minutes of all of its

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

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

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

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

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

10 **§16-5G-6. Enforcement by injunctions; actions in violation of article voidable.**

11 The circuit court in the county where a hospital is located has jurisdiction to enforce this
12 article upon civil action commenced by any citizen of this state within one hundred twenty days
13 after the action complained of was taken or the decision complained of was made. Where the
14 action seeks injunctive relief, no bond may be required unless the petition appears to be without
15 merit or made with the sole intent of harassing or delaying or avoiding return by the governing
16 body.

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

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

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

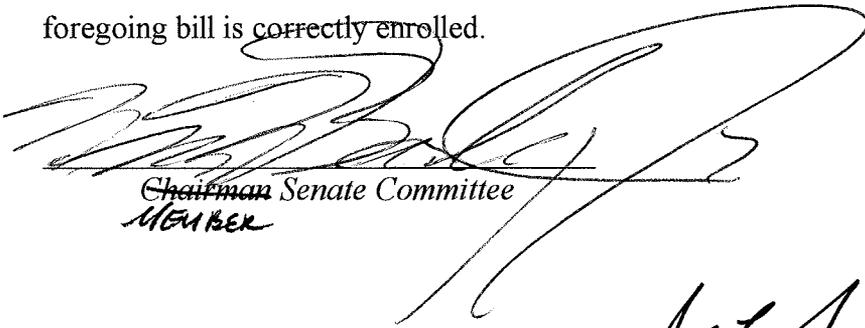
9 Any person who intentionally violates the provisions of this article is liable in an action
10 for compensatory and punitive damages not to exceed a total of five hundred dollars.

11 **§16-5G-7. Violation of article; penalties.**

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

16 (b) Any person who is a member of a governing body of a hospital required to conduct
17 open meetings in compliance with the provisions of this article and who willfully and
18 knowingly violates the provisions of this article is guilty of a misdemeanor and, upon
19 conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred
20 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.

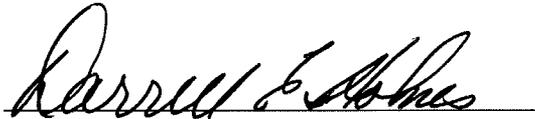
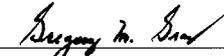
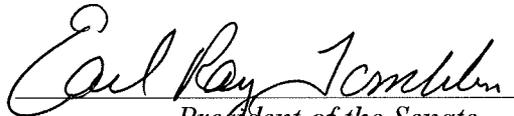


~~Chairman~~ Senate Committee
MEMBER

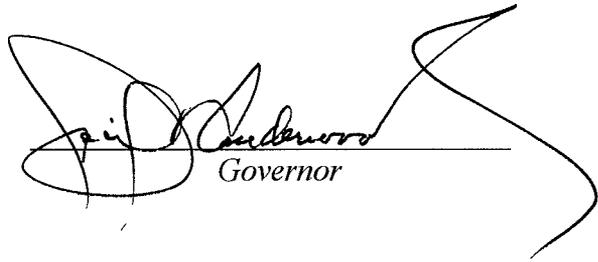

Chairman House Committee

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 20th
day of March, 1999.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/19/99

Time 3:00 pm