

STATE OF WEST VIRGINIA
PERFORMANCE AUDIT
OF THE
SCHOOL BUILDING AUTHORITY

State Retains Interest Accrued on Bonds

Violation of Open Meetings Law

Failure to Keep Minutes in Executive
Sessions

OFFICE OF LEGISLATIVE AUDITOR

Performance Evaluation & Research Division

Building 5, Room 751

State Capitol Complex

CHARLESTON, WEST VIRGINIA 25305

(304) 347-4890

PE95-10-31

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Antonio E. Jones, Ph.D.
Director

December 6, 1995

The Honorable A. Keith Wagner
State Senate
Box 446
Iaeger, West Virginia 24844

The Honorable Joe Martin
House of Delegates
Building 1, Room 213E
1900 Kanawha Blvd. East
Charleston, West Virginia 25305

Gentlemen:

Pursuant to the West Virginia Sunset Law, we are transmitting this Performance Audit of the West Virginia School Building Authority, which will be reported to the Joint Committee on Government Operations on Sunday, December 10, 1995. The issues covered herein are "State Retains Interest Accrued on Bonds, Violation of Open Meetings Law, and Failure to Keep Minutes in Executive Sessions."

Sincerely

A handwritten signature in cursive script, appearing to read "Antonio E. Jones".

Antonio E. Jones

AEJ/wsc

Enclosure

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West Virginia School Building Authority

Executive Summary

The West Virginia School Building Authority (SBA) was created by the West Virginia Legislature in 1989 (WV Code, §18-9D-1) because a number of statewide improvement referenda had been defeated. The SBA was created to help county school systems consolidate schools and make other improvements to buildings. The state gave the SBA power to finance multimillion-dollar projects by incurring debt through the sale of bonds. In 1993, the courts ruled that issuing bonds against the state's general revenue funds, without voter approval, is unconstitutional. Since that time, bonds have been issued against lottery revenues and the Legislature has provided funding on a "pay-as-you-go" basis. The SBA is comprised of ten board members and a staff of nine. The board members include the state superintendent of schools, ex officio; three members of the state board of education; and six citizens of the state, appointed by the governor.

This is the first report on the Performance Evaluation and Research Division's ongoing full performance audit of the School Building Authority. This report addresses three areas of evaluation, which are briefly described below.

Issue 1: School Building Authority is retaining interest earnings on county grant monies and appears to be managing bond proceeds responsibly.

Early concerns for the Authority's management of its bond proceeds prompted the PERD to analyze the SBA's method of making payments to counties and investing bond proceeds. Of particular interest was the question of how the SBA guards against awarding monies to counties too early, thereby losing interest earnings on the monies. Ultimately, the PERD found that the SBA has an exemplary mechanism for retaining all interest earnings, and providing safe investments with respectable returns. By assigning guaranteed investment contracts to counties through a trustee bank that also serves as a depository, the SBA maintains a high degree of efficiency over depository functions as well. The SBA's process allows the State to retain all interest earnings to fund other needed projects.

Issue 2: The School Building Authority Board of Directors has violated the West Virginia Open Meetings Law.

Analysis of the minutes of the 1994 and 1995 School Building Authority Board of Directors meetings, demonstrated routine use of the provisions of the Open Meetings Law which allow the holding of executive sessions. The Board held 9 executive sessions during the 11 meetings, two of which took place during the same two day meeting, on separate days, under different orders of business. Executive sessions were held at 73% of the Board's meetings during this period.

The Board minutes show that each executive session was held under two of the authorities provided under the Open Meetings Law, either the provision allowing for the holding of executive sessions to discuss certain personnel matters, or the one allowing for the discussion of special matters involving a competitive market in which the State's (or one or more of its political subdivisions') interests may be adversely affected by an open discussion of these matters, or both authorities. Interviews of SBA staff and a survey of the SBA Board members demonstrate that executive sessions have been held for purposes that are not consistent with the Open Meetings Law. SBA members informed PERD that:

- We have discussed which proposals to fund in executive session in some cases, that is, we do discuss projects as to their merits...
- There is always consensus building in meetings.
- In an executive session, board members may discuss the notes that they took regarding the different projects. However, no decisions with regards to funding of projects are made in executive sessions.
- [Executive sessions are] not to make concrete decisions about which projects to fund, but we have discussed the merits of projects...we have never ranked or awarded anything in executive session, but have discussed merit and greatest need. The decisions were not made in executive session, but some discussions have taken place.
- [In executive session, we] have general discussions of what is proposed; discuss what the superintendents have proposed in the regular meeting; discuss the merits of proposals; and discuss the condition of the whole school system. We invite the superintendent in, or the board president, if there is some interpretation issue.
- It is a tradition to go into executive session. We discuss the projects, review the proposals, and some superintendents have slipped in some very bad proposals. We also look at the bonding capacity of each county. We develop a consensus on the projects.
- We do [deliberate over which proposals to fund in executive session]. We do not make the decisions, but we put do put forth a lot of time and effort...If we were forced to have these meetings in an open forum it would be destructive to the SBA. The press would play off one superintendent on another and the SBA would eventually be destroyed.

Issue 3: The School Building Authority Board of Directors has violated the Open Meetings Law with respect to the keeping of minutes.

The analysis of the minutes of the 1994 and 1995 School Building Authority Board of Directors meetings, with respect to the Open Meetings Law, also demonstrated noncompliance with section five of the law, which requires minutes to include, at the very least, all motions; proposals; resolutions; orders; ordinances and measures proposed, and the name of the person proposing the same and their disposition, that are inconsistent with the authorities allowing the holding of the executive sessions. The Board minutes examined by the PERD contain no such entries, despite the survey and interview findings that executive sessions have been used for purposes other than those provided by the law. The Board keeps no minutes of its executive sessions.

Issue 1: School Building Authority is retaining interest earnings on county grant monies and appears to be managing bond proceeds responsibly.¹

Early concerns for the Authority's management of bond proceeds prompted the PERD to analyze certain aspects of how the SBA delivers grant monies to counties.² Of particular interest was the question of how the SBA guards against awarding monies to counties too early, thereby losing interest earnings on the monies. Ultimately, the PERD found that the SBA has an exemplary mechanism for retaining all interest earnings.

When SBA issues a series of bonds, the proceeds are used to enter a guaranteed investment contract, or GIC. These contracts are a form of tri-party term repurchase agreement which pay a fixed (guaranteed) rate of interest, are collateralized at a level of at least 103%, have a perfected interest in all securities held as collateral, allow for deposits and withdrawals, and allow for the assignment of ownership. Once the Authority's Board allocates the proceeds to counties for projects, respective portions of the GIC are assigned to their county boards of education through a trustee bank. County boards of education submit invoices to both the SBA and the trustee bank as payments are needed. SBA monitors and confirms all invoices with the trustee bank, and provides authorization to the trustee to have the necessary funds wired from the investment bank. The trustee then fulfills its role as a depository by making payment to the respective county boards of education, which in turn pay the vendors.

Conclusion

In general, GICs provide respectable rates of return, which are guaranteed by a AAA rated bank, and are well collateralized. By assigning GICs to counties, the SBA maintains an efficient and effective means by which to pay its vendors. Most importantly, the SBA's process allows the State to retain all interest earnings to fund other needed projects.

¹ *The PERD has only analyzed the strategy by which the SBA manages bond proceeds. This is not a financial audit report.*

² *The SBA Board has not yet presented a money management strategy for "pay-as-you-go" funds.*

Issue 2: The School Building Authority Board of Directors has violated the West Virginia Open Meetings Law.

In 1975, the West Virginia Legislature passed a law that requires the governing bodies of all public agencies, boards, commissions, and all other public bodies to conduct their business in an open and public manner (see Appendix A for the complete text of West Virginia's "Open Meetings Law," contained in West Virginia Code §6-9A-1 et seq.). This Open Meetings Law contains a broad statement of legislative policy that applies to "all proceedings of all public bodies." Specifically, section one of the Open Meetings Law states:

The Legislature hereby finds and declares that public agencies, boards, commissions, governing bodies, councils and all other public bodies 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 all proceedings of all public bodies to be conducted in an open and public manner. The Legislature hereby further finds and declares that the citizens of this state do not yield their sovereignty to the governmental agencies which serve them. 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.

In section four of the act, the Legislature recognized nine specific instances in which the broad requirement of the Open Meetings Law would not apply. In the order provided, those exceptions to the law are:

- (1) Matters of war, threatened attack from a foreign power, civil insurrection or riot; or
- (2) The appointment, employment, retirement, promotion, demotion, disciplining, resignation, discharge, dismissal or compensation of any public officer or employee, or other personnel matters, or for the purpose of conducting a hearing on a complaint against a public officer or employee, unless such public officer or employee requests an open meeting; or
- (3) The disciplining, suspension or expulsion of any student in any public school or public college or university, unless such student requests an open meeting; or
- (4) The issuance, effecting, denial, suspension or revocation of a license, certificate or registration under the laws of this state or any political subdivision, unless the person seeking such license, certificate or registration or whose license, certificate or registration was denied, suspended or revoked requests an open meeting; or
- (5) The physical or mental health of any person, unless such person requests an open meeting; or
- (6) Matters which, if discussed in public, would be likely to affect adversely the reputation of any person; or
- (7) Any official investigation or matters relating to crime prevention or law enforcement; or
- (8) The development of security personnel or devices; or
- (9) 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.

While section four explicitly authorizes public bodies to meet in executive session if the requirements of at least one of the nine exceptions are met, it also imposes prerequisites to the invocation of any of those nine exceptions. Specifically, the conditions that must be met before a public body may close its doors to the public and conduct any public business are (i) the presiding officer must identify to the governing body and to the general public the specific authorization under the act which justifies the holding of an executive session and (ii) approval of the governing board, as demonstrated by a majority affirmative vote of the members present, must be obtained before the meeting is closed to the public. Finally, the law requires that no decision may be made in executive session and defines the term "decision" as 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.

Although sections one, three and four of West Virginia's Open Meetings Law clearly demonstrate the Legislature's intent that all proceedings of all public bodies are to be conducted in an open and public manner except in nine specifically enumerated instances, PERD's analysis of the School Building Authority's Board of Directors' meeting minutes from March 28, 1994 through August 2, 1995 shows that the Board routinely invokes the exceptions to the Open Meetings Law during its regular meetings and conducts its business behind closed doors in executive session.

The Board held nine executive sessions during the 11 meetings, two of which took place during the same two-day meeting, on separate days, under different orders of business. Executive sessions were held at 73% of the Board's meetings during this period. Clearly, the Board has demonstrated a propensity to hold executive sessions.

The legal justification given by the Board for each executive session alternated between item 2 and item 9 (see TABLE 1). Item 2 provides for the holding of executive sessions for personnel matters. This authority was most frequently cited by the SBA Board for its executive sessions. Item 9 provides for the holding of executive sessions over special matters involving a competitive market in which the State's (or one or more of its political subdivisions') interests may be adversely affected by open discussions of these matters. Item 9 was used once as the exclusive grounds for an executive session, but was applied in combination with item 2 on three other occasions.

TABLE 1			
School Building Authority Board of Directors Meetings 1994 & 1995			
Meeting Date	Executive Sessions	Statutory Authority Cited	Basis for Executive Session According to Statutory Authority Cited
03/28/94	1st	#2	Personnel
06/27/94	2nd	#2	Personnel
07/27/94	*****Entire Meeting Open*****		
08/29-30/94	3rd 4th	#2 and #9 #2 and #9	Personnel and Competition Personnel and Competition
10/05/94	*****Entire Meeting Open*****		
11/09/94	5th	#2	Personnel
11/14-15/94	6th	#2	Personnel
12/12/94	7th	#2 and #9	Personnel and Competition
03/27/95	8th	#2	Personnel
05/15/95	9th	#9	Competition
06/07/95	*****Entire Meeting Open*****		
<i>Source: PERD analysis of SBA Board minutes from 1994, 1995 meetings.</i>			

Interviews of Board Members, Executive Director

Interviews of the Board members and the SBA Executive Director provided insight as to what does occur in executive sessions. All members cited personnel matters as one of the reasons executive sessions have been held in the past, and a few mentioned matters related to land acquisition. Almost any matter relating to specific personnel would likely be covered by item 2, section four, and some discussions having to do with land acquisition could be included under item 9.

Some members were defensive when asked about executive sessions. Perhaps this was an understandable response given the nature of the questions PERD had to ask. Certain questions yielded unmistakable inconsistencies from one member to the next. However, the

President, Executive Director, and some Board members did concede openly that executive sessions are used to discuss the **merits of proposed projects**, as well as for "**consensus building**."³ One member spoke of the Board employing this practice for each major award the Board has made. Another alluded to county superintendents entering and exiting executive sessions. Members of the SBA informed PERD that:

- We have discussed which proposals to fund in executive session in some cases, that is, we do discuss projects as to their merits...
- There is always consensus building in meetings.
- In an executive session, board members may discuss the notes that they took regarding the different projects. However, no decisions with regards to funding of projects are made in executive sessions.
- [Executive sessions are] not to make concrete decisions about which projects to fund, but we have discussed the merits of projects...we have never ranked or awarded anything in executive session, but have discussed merit and greatest need. The decisions were not made in executive session, but some discussions have taken place.
- [In executive session, we] have general discussions of what is proposed; discuss what the superintendents have proposed in the regular meeting; discuss the merits of proposals; and discuss the condition of the whole school system. We invite the superintendent in, or the board president, if there is some interpretation issue.
- It is a tradition to go into executive session. We discuss the projects, review the proposals, and some superintendents have slipped in some very bad proposals. We also look at the bonding capacity of each county. We develop a consensus on the projects.
- We do [deliberate over which proposals to fund in executive session]. We do not make the decisions, but we put do put forth a lot of time and effort...If we were forced to have these meetings in an open forum it would be destructive to the SBA. The press would play off one superintendent on another and the SBA would eventually be destroyed.

One member, however, did contradict the above statements. He stated that no consensus building occurs during executive sessions and that the merits of projects are not discussed.

³ *These individuals were careful to note that the Board does not rank projects, or make decisions while in executive session.*

Other members also noted that executive sessions were often used for the purpose of receiving legal counsel to assist the Board with its lawsuits and other sensitive issues. However, there is no authority for holding executive sessions for this purpose.⁴

Conclusion

Upon consideration of the frequency and reasons given by the School Building Authority's Board of Directors for holding executive sessions, the PERD concludes that the Board has violated the spirit of the Open Meetings Law on multiple occasions. Moreover, going into executive session to discuss the "merits of proposed projects" as well as for "consensus building" is a violation of the Open Meetings Law.

The School Building Authority Board needs to have the attitude of one member who informed PERD, "It doesn't matter to me whether we go into executive session or not. I do not care if there are 500 people in attendance. I will state my views the same in either executive session or public session."

Recommendation 1

The School Building Authority Board of Directors should henceforth comply with the requirements of the Open Meetings Law in the following particulars:

a. Go into executive session only after (i) the presiding officer has identified the specific statutory authorization for doing so for both the governing board and the general public and (ii) the governing board has given its approval for a closed door session through a majority affirmative vote of the members present.

b. Invoke exceptions to the Open Meetings Law only in those cases which clearly warrant such action under the exceptions enumerated in section four of the act. Reserve the use of executive sessions for discussion of matters that necessarily must involve sensitive information, as in (i) personnel matters where disclosure could result in undue embarrassment for an individual public officer or employee or (ii) discussions affecting the purchase, sale or lease of property, the award of competitively bid contracts, construction plans and other matters involving competing commercial interests that, if made public, could adversely affect the financial or other interests of the state or any of its political subdivisions.

⁴ It should be noted that violation of the Open Meetings Law is a misdemeanor and is punishable by fines of \$100 to \$500 and/or imprisonment of 10 days or less.

Issue 3: The School Building Authority Board of Directors has violated the Open Meetings Law with respect to the keeping of minutes.

Section five of the Open Meetings law provides that "[e]ach governing body shall provide for the preparation of written minutes of **all** of its meetings and that such minutes "shall be available to the public within a reasonable time after the meeting..." Significantly, executive sessions of public bodies are not exempted from this requirement to prepare and make available to the public minutes of all its meetings. Minutes of such executive sessions, however, may be limited to "material the disclosure of which is not inconsistent with the provisions of section four" of the act.

Specifically, section five provides:

Each governing body shall provide for the preparation of written minutes of all of its meetings. All such minutes shall be available to the public within a reasonable time after the meeting and shall include, at least, the following information:

- (1) The date, time and place of the meeting;
- (2) The name of each member of the governing body present and absent;
- (3) All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and
- (4) The results of all votes and, upon the request of a member, the vote of each member, by name.

Minutes of executive sessions may be limited to material the disclosure of which is not inconsistent with the provision of section four [§ 6-9A-4] of this article.

The SBA Board minutes pertaining to executive sessions are all documented in the following format:

XIII. EXECUTIVE SESSION

Upon motion by Ms. XX, with a second by Mr. XY, the Authority moved into executive session at 10:30 a.m., based upon WV Code §6-9A-4(2) relating to the appointment, employment, retirement, promotion, demotion, disciplining, resignation, discharge, dismissal or compensation of any public officer or employee. No decisions were made and no action was taken.

Because the Board's minutes merely recite the statutory language that provides exceptions to the open-meeting requirement, they provide no information about the topic of discussion for which the executive session was called. Unquestionably, any motions, proposals, resolutions, orders, ordinances, measures proposed, etc., not directly exempted by §6-9A-4 must be written into the Board's minutes. However, the Authority has never maintained minutes of its executive sessions. As discussed under Issue 2 of this report, staff and board members have conveyed that executive sessions have been used for discussions of the merits of proposed projects and "consensus building," as well as for receiving legal counsel. These are examples of items inconsistent with the exceptions listed in section four

of the Open Meetings Law. Therefore, elements of these deliberations should have been recorded in the minutes of these meetings.

Finally, section six of the Open Meetings Law provides for enforcement of the act's substantive requirements by injunction and empowers state courts to annul a decision made by a public body's governing board in violation of the act's requirements. In addition, upon the entry of an order which compels compliance or enjoins noncompliance with the Open Meetings Law or which annuls a decision made in violation of the law, the court may award costs and attorney fees to the complaining party if it finds that the governing body intentionally violated the provisions of the Open Meetings Law.

Conclusion

Upon consideration of the frequency of and purposes for which the School Building Authority Board of Directors has called executive sessions, and the absence of minutes thereof, the PERD believes the Board has acted in violation of section five of the Open Meetings Law.

Recommendation 2

The School Building Authority Board of Directors should use greater diligence in the keeping of minutes. All motions, proposals, resolutions, orders, ordinances and measures proposed, and the name of the person proposing the same and its disposition, that do not satisfy the conditions listed in section four, must be recorded in the minutes of that meeting. The specific reason for holding the executive session should be stated along with the statutory authority. The Board should be as descriptive as possible without compromising the sensitivity of the matter.

Recommendation 3

Because decisions made in executive sessions can be annulled by a court where the law has not been followed, the Legislature should consider amending the Open Meetings Law to require a governing body to produce and maintain an audio recording or verbatim transcription of each executive session held. Without a record of the executive session, there is no way for the Courts or the Legislature to review a record of what transpired to determine if an executive session was illegal. Therefore, the Legislature should consider specifying in the law that such records are exempt from public disclosure, unless a court determines that the executive session violated the State's Open Meetings Law.

Recommendation 4

Because of the importance of the Legislative policy outlined in section one of the Open Meetings Law, the Legislature should consider amending the Open Meetings Law to require governing bodies to make minutes or transcriptions of executive sessions available to the public at such time as the authority under section four no longer applies.

APPENDIX A

OPEN GOVERNMENTAL PROCEEDINGS

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.

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

The Legislature hereby finds and declares that public agencies, boards, commissions, governing bodies, councils and all other public bodies 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 all proceedings of all public bodies to be conducted in an open and public manner. The Legislature hereby further finds and declares that the citizens of this state do not yield their sovereignty to the governmental agencies which serve them. 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.

§6-9A-2. Definitions.

As used in this article:

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

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

(3) "Governing body" means the members of any public body having the authority to make decisions for or recommendations to a

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

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

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

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

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

§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 and regulations for attendance and presentation at any meeting where there is not room enough for all members of the public who wish to attend, and this article shall not be construed to 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 shall not be required to register to address said body more than fifteen minutes prior to time the scheduled meeting is to commence.

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

No provision of this article shall be construed to prevent the governing body of a public body 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 decision shall be made in such executive session.

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

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

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

(3) The disciplining, suspension or expulsion of any student in any public school or public college or university, unless such student requests an open meeting; or

(4) The issuance, effecting, denial, suspension or revocation of a license, certificate or registration under the laws of this state or any political subdivision, unless the person seeking such license, certificate or registration or whose license, certificate or registration was denied, suspended or revoked requests an open meeting; or

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

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

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

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

(9) 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.

§6-9A-5. Minutes.

Each governing body shall provide for the preparation of written minutes of all of its meetings. All such minutes shall be available to the public within a reasonable time after the meeting and shall include, at least, the following information:

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

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

(3) All motions, proposals, resolutions, orders, ordinances

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.

Any order which compels compliance or enjoins non-compliance 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 any such order, the court may, where the court finds that the governing body intentionally violated the provisions of this article, order such 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 harrassing 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 shall be liable in such action for compensatory and punitive damages not to exceed a total of five hundred dollars.

§6-9A-7. Violation of article; penalties.

Any person who is a member of a public or governmental body required to conduct open meetings in compliance with the provisions of this article and who willfully and knowingly

and measures proposed, the name of the person proposing the same and their disposition; and

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

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

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

The circuit court in the county where the public body regularly meets shall have 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 such action seeks injunctive relief, no bond shall 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 non-compliance with the provisions of this article and to annul a decision made in violation thereof. 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 such bond issue was finally considered was given at least ten days prior to such meeting by a Class I legal advertisement

misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail not more than ten days, or both fined and imprisoned.