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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993



ENROLLED

Com. Sub. For
HOUSE BILL No. 2126

(By Delegate *Mr. Spraku, Mr. Chambers, and*
Delegates Phillips, Williams, Richards,
Douglas and Vest)



Passed April 10, 1993

In Effect Ninty Days from Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2126
(By MR. SPEAKER, MR. CHAMBERS, AND
DELEGATES PHILLIPS, WILLIAMS, RICHARDS, DOUGLAS AND VEST)

[Passed April 10, 1993; in effect ninety days from passage.]

AN ACT to amend and reenact sections two and six, article nine-a, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to open governmental proceedings; defining governing bodies of the Legislature; clarifying the powers to circuit courts to enforce the provisions of the article or to annul decisions of a governing body; expanding the time in which a civil action may be commenced, respecting actions taken or decisions made by governing bodies; authorizing awards for attorney fees and expenses; and providing limited civil liability for compensatory and punitive damages.

Be it enacted by the Legislature of West Virginia:

That sections two and six, article nine-a, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.

§6-9A-2. Definitions.

- 1 As used in this article:
- 2 (1) "Decision" means any determination, action, vote
- 3 or final disposition of a motion, proposal, resolution,

4 order, ordinance or measure on which a vote of the
5 governing body is required at any meeting at which a
6 quorum is present;

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

10 (3) "Governing body" means the members of any
11 public body having the authority to make decisions for
12 or recommendations to a public body on policy or
13 administration, the membership of which governing
14 body consists of two or more members; for the purposes
15 of this article, a governing body of the Legislature shall
16 be any standing, select or special committee as deter-
17 mined by the rules of the respective houses thereof;

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

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

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

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

**§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 body

2 regularly meets shall have jurisdiction to enforce this
3 article upon civil action commenced by any citizen of
4 this state within one hundred twenty days after the
5 action complained of was taken or the decision com-
6 plained of was made. Where such action seeks injunctive
7 relief, no bond shall be required unless the petition
8 appears to be without merit or made with the sole intent
9 of harassing or delaying or avoiding return by the
10 governing body.

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

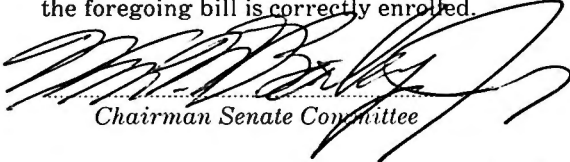
26 Any order which compels compliance or enjoins non-
27 compliance with the provisions of this article, or which
28 annuls a decision made in violation of this article shall
29 include findings of fact and conclusions of law and shall
30 be recorded in the minutes of the governing body.

31 Upon entry of any such order, the court may, where
32 the court finds that the governing body intentionally
33 violated the provisions of this article, order such
34 governing body to pay the complaining person's neces-
35 sary attorney fees and expenses. Where the court, upon
36 denying the relief sought by the complaining person in
37 the action, finds that the action was frivolous or
38 commenced with the primary intent of harrassing the
39 governing body or any member thereof or, in the
40 absence of good faith, of delaying any meetings or
41 decisions of the governing body, the court may require
42 the complaining person to pay the governing body's

43 necessary attorney fees and expenses.

44 Any person who intentionally violates the provisions
45 of this article shall be liable in such action for compen-
46 satory and punitive damages not to exceed a total of five
47 hundred dollars.

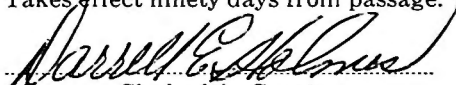
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee


Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

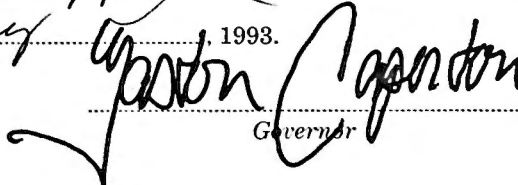

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 11th
day of May 1993.


Governor

PRESENTED TO THE

GOVERNOR

Date 4/22/93

Time 11:32 am