

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 2747

(BY DELEGATE(S) MORGAN, STEPHENS, CAPUTO AND CRAIG)

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §6-9A-2 and §6-9A-3 of the Code of West Virginia, 1931, as amended, all relating to public notice of meetings of governing bodies of public agencies; defining terms; clarifying existing notice requirements; requiring state executive branch agencies to electronically file public meeting notices with the Secretary of State for publication on Secretary of State's website; eliminating the requirement that state executive branch agency meeting notices be filed in the State Register; and providing procedural rule-making authority.

Be it enacted by the Legislature of West Virginia:

That §6-9A-2 and §6-9A-3 of the Code of the West Virginia, 1931, as amended, be amended and reenacted, all 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 or final
3 disposition of a motion, proposal, resolution, order, ordinance 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) “Emergency meeting” means any meeting called by a
7 governing body for the purpose of addressing an unexpected
8 event which requires immediate attention because it poses:

9 (A) An imminent threat to public health or safety;

10 (B) An imminent threat of damage to public or private
11 property; or

12 (C) An imminent material financial loss or other imminent
13 substantial harm to a public agency, its employees or the
14 members of the public which it serves.

15 (3) “Executive session” means any meeting or part of a
16 meeting of a governing body which is closed to the public.

17 (4) “Governing body” means the members of any public
18 agency having the authority to make decisions for or recommen-
19 dations to a public agency on policy or administration, the
20 membership of a governing body consists of two or more
21 members; for the purposes of this article, a governing body of
22 the Legislature is any standing, select or special committee,
23 except the commission on special investigations, as determined
24 by the rules of the respective houses of the Legislature.

25 (5) “Meeting” means the convening of a governing body of
26 a public agency for which a quorum is required in order to make
27 a decision or to deliberate toward a decision on any matter which

28 results in an official action. Meetings may be held by telephone
29 conference or other electronic means. The term meeting does not
30 include:

31 (A) Any meeting for the purpose of making an adjudicatory
32 decision in any quasi-judicial, administrative or Court of Claims
33 proceeding;

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

35 (C) Any political party caucus;

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

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

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

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

58 (8) “Quorum” means the gathering of a simple majority of
59 the constituent membership of a governing body, unless applica-
60 ble law provides for varying the required ratio.

61 (9) “Regular meeting” means a meeting of a governing body
62 at which the regular business of the public is conducted.

63 (10) “Special meeting” means a meeting of a governing body
64 other than a regular meeting or an emergency meeting.

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

1 (a) Except as expressly and specifically otherwise provided
2 by 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.

5 (b) Any governing body may make and enforce reasonable
6 rules for attendance and presentation at any meeting where there
7 is not room enough for all members of the public who wish to
8 attend.

9 (c) This article does not prohibit the removal from a meeting
10 of any member of the public who is disrupting the meeting to the
11 extent that orderly conduct of the meeting is compromised:
12 *Provided*, That persons who desire to address the governing
13 body may not be required to register to address the body more
14 than fifteen minutes prior to time the scheduled meeting is to
15 commence.

16 (d) Each governing body shall promulgate rules by which the
17 date, time, place and agenda of all regularly scheduled meetings
18 and the date, time, place and purpose of all special meetings are
19 made available, in advance, to the public and news media.

20 (e) Each governing body of the executive branch of the state
21 shall electronically file a notice of each meeting with the
22 Secretary of State for publication on the Secretary of State’s
23 website.

24 (1) Each notice shall state the date, time, place and purpose
25 of the meeting.

26 (2) Each notice of a special meeting or a regular meeting
27 shall be filed in a manner to allow each notice to appear on the
28 Secretary of State's website at least five business days prior to
29 the date of the meeting.

30 (3) When calculating the days, the day of the meeting is not
31 to be counted. If a meeting notice is filed anytime other than
32 during the Secretary of State's regular business hours, the date
33 of filing will be considered the next business day.

34 (f) The Secretary of State shall retain copies of all notices
35 filed for ten years.

36 (g) The Secretary of State may promulgate procedural rules
37 governing the electronic filing of meeting notices.

38 (h) In the event of an emergency a governing body may call
39 an emergency meeting.

40 (1) The governing body of a state executive branch agency
41 shall electronically file a notice for an emergency meeting with
42 the Secretary of State, as soon as practicable prior to the
43 meeting. Any other governing body shall notice an emergency
44 meeting in a manner which is consistent with this article and the
45 Ethics Commission Committee on Open Governmental Meet-
46 ing's opinions issued pursuant to the authority of section ten of
47 this article, as soon as practicable prior to the meeting.

48 (2) The emergency meeting notice shall state the date, time,
49 place and purpose of the meeting and the facts and circum-
50 stances of the emergency.

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

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

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2013.

Governor

