

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4441**

BY DELEGATE MCGEEHAN

[Introduced January 21, 2020; Referred to the Committee  
on Government Organization then the Judiciary]

1 A BILL to amend and reenact §6-9A-4 of the Code of West Virginia, 1931, as amended, relating  
2 to provide that political party caucus meetings are not exempt from open proceedings  
3 requirements.

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

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

### **§6-9A-4. Exceptions.**

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

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

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

12 (2) To consider:

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

17 (B) For the purpose of conducting a hearing on a complaint, charge or grievance against  
18 a public officer or employee, unless the public officer or employee requests an open meeting.  
19 General personnel policy issues may not be discussed or considered in a closed meeting. Final  
20 action by a public agency having authority for the appointment, employment, retirement,

21 promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of  
22 an individual shall be taken in an open meeting;

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

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

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

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

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

39 (8) To develop security personnel or devices;

40 (9) To consider matters involving or affecting the purchase, sale or lease of property,  
41 advance construction planning, the investment of public funds or other matters involving  
42 commercial competition, which if made public, might adversely affect the financial or other interest  
43 of the state or any political subdivision: *Provided*, That information relied on during the course of  
44 deliberations on matters involving commercial competition are exempt from disclosure under the  
45 open meetings requirements of this article only until the commercial competition has been  
46 finalized and completed: *Provided, however*, That information not subject to release pursuant to

47 the West Virginia freedom of information act does not become subject to disclosure as a result of  
48 executive session;

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

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

56 (12) To discuss any matter which, by express provision of federal law or state statute or  
57 rule of court is rendered confidential, or which is not considered a public record within the meaning  
58 of the freedom of information act as set forth in §29B-1-1 *et seq.* of this code.

59 (c) Notwithstanding any other provision of this code to the contrary, the exceptions in this  
60 section do not apply to political party caucus meetings.

NOTE: The purpose of this bill is to provide that political party caucus meetings are not exempt from open proceedings requirements.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.