

1 **ENROLLED**

2 **H. B. 2747**

3  
4 (By Delegates Morgan, Stephens, Caputo and Craig)

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

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

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

21 That §6-9A-2 and §6-9A-3 of the Code of the West Virginia,  
22 1931, as amended, be amended and reenacted, all to read as follows:

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

24 **§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 any  
5 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 event  
8 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 members  
14 of the public which it serves.

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

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

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

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

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

11           (C) Any political party caucus;

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

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

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

23           (7) "Public agency" means any administrative or legislative  
24 unit of state, county or municipal government, including any

1 department, division, bureau, office, commission, authority, board,  
2 public corporation, section, committee, subcommittee or any other  
3 agency or subunit of the foregoing, authorized by law to exercise  
4 some portion of executive or legislative power. The term "public  
5 agency" does not include courts created by article eight of the  
6 West Virginia Constitution or the system of family law masters  
7 created by article four, chapter forty-eight-a of this code.

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

11 (9) "Regular meeting" means a meeting of a governing body at  
12 which the regular business of the public is conducted.

13 (10) "Special meeting" means a meeting of a governing body  
14 other than a regular meeting or an emergency meeting.

15 **\S6-9A-3. Proceedings to be open; public notice of meetings.**

16 (a) Except as expressly and specifically otherwise provided by  
17 law, whether heretofore or hereinafter enacted, and except as  
18 provided in section four of this article, all meetings of any  
19 governing body shall be open to the public.

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

23 (c) This article does not prohibit the removal from a meeting  
24 of any member of the public who is disrupting the meeting to the

1 extent that orderly conduct of the meeting is compromised:  
2 *Provided*, That persons who desire to address the governing body may  
3 not be required to register to address the body more than fifteen  
4 minutes prior to time the scheduled meeting is to commence.

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

9 (e) Each governing body of the executive branch of the state  
10 shall electronically file a notice of each meeting with the  
11 Secretary of State for publication on the Secretary of State's  
12 website.

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

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

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

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

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

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

5           (1) The governing body of a state executive branch agency  
6 shall electronically file a notice for an emergency meeting with  
7 the Secretary of State, as soon as practicable prior to the  
8 meeting. Any other governing body shall notice an emergency meeting  
9 in a manner which is consistent with this article and the Ethics  
10 Commission Committee on Open Governmental Meeting's opinions issued  
11 pursuant to the authority of section ten of this article, as soon  
12 as practicable prior to the meeting.

13           (2) The emergency meeting notice shall state the date, time,  
14 place and purpose of the meeting and the facts and circumstances of  
15 the emergency.

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