

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 pasasge.]
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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 Open Governmental
12 Proceedings; defining terms; clarifying existing notice
13 requirements; requiring agencies to electronically file public
14 meeting notices with the Secretary of State for publication on
15 Secretary of State's website; eliminating the requirement that
16 state agency meeting notices be filed in the State Register;
17 specifying that agency rules on filing notices comply with the
18 Open Governmental Proceedings Act and Ethics Commission
19 Committee on Open Governmental Meetings opinions; and
20 providing procedural rule-making authority.

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

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

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

1 **§6-9A-2. Definitions.**

2 As used in this article:

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

7 (2) "Emergency meeting" means any meeting called for the
8 purpose of addressing an unexpected event which requires immediate
9 attention because it poses:

10 (A) A threat to public health or safety;

11 (B) A threat of damage to public or personal property; or

12 (C) A potential material financial loss or other potential
13 substantial harm to a public agency.

14 ~~(2)~~ (3) "Executive session" means any meeting or part of a
15 meeting of a governing body which is closed to the public.

16 ~~(3)~~ (4) "Governing body" means the members of any public
17 agency having the authority to make decisions for or
18 recommendations to a public agency on policy or administration, the
19 membership of a governing body consists of two or more members; for
20 the purposes of this article, a governing body of the Legislature
21 is any standing, select or special committee, except the commission
22 on special investigations, as determined by the rules of the
23 respective houses of the Legislature.

24 ~~(4)~~ (5) "Meeting" means the convening of a governing body of

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

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

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

10 (C) Any political party caucus;

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

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

19 ~~(5)~~ (6) "Official action" means action which is taken by
20 virtue of power granted by law, ordinance, policy, rule, or by
21 virtue of the office held.

22 ~~(6)~~ (7) "Public agency" means any administrative or
23 legislative unit of state, county or municipal government,
24 including any department, division, bureau, office, commission,

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

8 ~~(7)~~ (8) "Quorum" means the gathering of a simple majority of
9 the constituent membership of a governing body, unless applicable
10 law provides for varying the required ratio.

11 (9) "Regular meeting" means a meeting at which the regular
12 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 **§6-9A-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. ~~except in~~
9 ~~the event of an emergency requiring immediate official action.~~

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

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

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

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

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

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

5 (h) In the event of an emergency ~~requiring immediate official~~
6 action, any governing body of the executive branch of the state may
7 file an emergency meeting notice at any time prior to the meeting.
8 a governing body may call an emergency meeting.

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

17 (2) The emergency meeting notice shall state the date, time,
18 place and purpose of the meeting and the facts and circumstances of
19 the emergency.

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

NOTE: The purpose of this bill is to define the terms "special", "regular" and "emergency meetings". The bill requires state agencies to file meeting notices electronically with the Secretary of State instead of requiring publication in the State Register. The bill's filing change does not materially alter the amount of advance notice given to the public as the meeting notices will be, as they now are, available for review on the Secretary of State's website. The bill allows agencies more flexibility in scheduling meetings as they will not be required to meet the Secretary of State's internal filing deadlines. The bill also provides rule-making authority.

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

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) "Emergency meeting" means any meeting called by a governing body for the purpose of addressing an unexpected event which requires immediate attention because it poses:

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

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

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

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

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

(5) "Meeting" means the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action. Meetings may be held by telephone conference or other electronic means. The term meeting 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;

(C) Any political party caucus;

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

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

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

(7) "Public agency" means any administrative or legislative

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

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

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

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

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

(a) 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.

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

(c) This article does not 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 may not be required to register to address the body more than fifteen minutes prior to time the scheduled meeting is to commence.

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

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

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

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

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

filing will be considered the next business day.

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

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

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

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

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

(i) 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.

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