

H. B. 2992

(By Delegate Hamrick)

[Introduced February 24, 2015; referred to the
Committee on Government Organization.]

**FISCAL
NOTE**

A BILL to amend and reenact §6-9A-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §29B-2-1, §29B-2-2, §29B-2-3, §29B-2-4, §29B-2-5, §29B-2-6, §29B-2-7, §29B-2-8, §29B-2-9, §29B-2-10 and §29B-2-11, all relating to publishing detailed information about the operations of state, county and municipal agencies; requiring the publication of notice and agenda of meetings; declaring public policy regarding activities of public agencies; requiring the establishment and maintenance of websites for publishing information to the public; declaring minimum standards for public agency websites; specifying the information required to be published; providing for legislative review of compliance of state agencies; and providing for interpretation consistent with other law.

Be it enacted by the Legislature of West Virginia:

That §6-9A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §29B-2-1, §29B-2-2,

1 §29B-2-3, §29B-2-4, §29B-2-5, §29B-2-6, §29B-2-7, §29B-2-8, §29B-2-9, §29B-2-10 and §29B-2-
2 11, all to read as follows:

3 **CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.**

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

5 **§6-9A-3. Proceedings to be open; public notice of meetings.**

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

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

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

16 (d) Each governing body shall promulgate rules by which the date, time, place and agenda
17 of all regularly scheduled meetings and ~~the date, time, place and purpose of all~~ special meetings are
18 made available, in advance, to the public and news media. In addition to any other means of
19 dissemination or publication, these rules shall require, at a minimum, publication of the date, time,
20 place and agenda of each regularly scheduled meeting and each special meeting on the governing
21 body's website seventy-two hours prior to the scheduled time of the meeting.

22 (e) Each governing body of the executive branch of the state shall electronically file a notice

1 of each meeting with the Secretary of State for publication on the Secretary of State's website.

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

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

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

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

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

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

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

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

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

1 **CHAPTER 29B. FREEDOM OF INFORMATION.**

2 **ARTICLE 2. GOVERNMENT ACCOUNTABILITY AND TRANSPARENCY ACT.**

3 **§29B-2-1. Declaration of policy.**

4 It is the public policy of the State of West Virginia that all persons are, unless otherwise
5 expressly provided by law, entitled to full and complete information regarding the affairs of
6 government and the official acts of those who represent them as public officials and employees. The
7 people are entitled to observe and review the operations of their government and of the officials who
8 serve them and it is a necessary component of the functions of every government office to facilitate
9 this observation and review on an ongoing basis. To that end, the provisions of this article shall be
10 liberally construed with the view of carrying out the above declaration of public policy.

11 **§29B-2-2. Definitions.**

12 As used in this article:

13 (1) "Appointed official" means any person, other than an elected official, who serves in a
14 public office named, established or described in this code or in the legislative enactments of a
15 political subdivision;

16 (2) "Public agency" means any administrative or legislative unit of state, county or municipal
17 government, without regard to its formal name as an agency or other unit of government, that is
18 created, described, established or that has functions specified by this code, but the term does not
19 include courts created by article eight of the West Virginia Constitution or the system of family law
20 masters created by article four, chapter forty-eight-a of this code;

21 (3) "Public official" means any person who is elected or appointed to any state, county or
22 municipal office or position and who is responsible, individually or as a member of a collective

1 body, for the making of policy or takes official action which is either ministerial or nonministerial,
2 or both, with respect to the functions of the office or agency;

3 (4) "Political subdivision" means a county government and the administrative and legislative
4 units thereof or a municipal government and the administrative and legislative units thereof;

5 (5) "Public website" means a website maintained by a public agency that is intended to be
6 readily accessed and viewed by members of the public over open public networks; and

7 (6) "User" means any person who visits or views a public website to obtain information
8 therefrom.

9 **§29B-2-3. Application of article; aggregation of duties.**

10 Unless otherwise specified herein, the provisions of this article apply to all public agencies.
11 Any duty or obligation imposed upon an agency may be satisfied by an another agency that exists
12 or ranks higher in a plan of organization and functions as long as all information relating to each
13 discrete agency clearly identifies the agency or subunit to which it relates.

14 **§29B-2-4. Standards for public websites.**

15 (a) Every public agency shall provide and maintain a public website that provides basic
16 information to the public, without cost, about the public agency. Every website must use clear and
17 simple terms for users to navigate through informational displays and pages of the website. When
18 information on the website is organized in a hierarchical format, each page or screen displayed shall
19 clearly indicate through "bread crumb navigation" the hierarchical path necessary to proceed back
20 to another level or to relocate the information that is currently displayed. Every website shall
21 provide a function or tool to search for keywords or strings of text used in the information available
22 on the site or, where information is maintained in a database, to search selected fields within the

1 database.

2 (b) The services provided by a public website shall be provided without cost to users of the
3 website and without a requirement to disclose or submit personally identifiable information for use
4 of the website, subject to the following exceptions:

5 (1) The website may require a sign-in or login procedure based upon a username selected by
6 the user to distinguish individual users and to provide customized information, or the customized
7 display of information, according to the preference or request of the user;

8 (2) The website may require submission of an email address in order to deliver customized
9 information, such as a password reminder, secured document, or customized report, by email in
10 response to specific request by the user; and

11 (3) The website may require submission of personally identifiable information in order to
12 access and present records relating specifically to or containing personal information of the user, but
13 this requirement shall be limited only to that function.

14 **§29B-2-5. Assistance by the Office of Technology.**

15 To promote consistency in the design, navigation, and functions of public websites for the
16 public agencies of the state, the Office of Technology shall prepare written standards for website
17 navigation and user-interface functions as a guide for state-level public agencies in the
18 implementation of the provisions of this article.

19 **§29B-2-6. Basic disclosures for all agencies and political subdivisions.**

20 (a) Every public agency shall include on the main or home page of its public website a
21 telephone number and an email address to be used for any person to request information from or
22 concerning the public agency.

1 (b) Freedom of Information Act -- Every public agency website shall provide the name, title,
2 mailing address and electronic mail address of the person to whom a request for information, made
3 pursuant to section three, article one of this chapter, should be directed. The website should also
4 display a list or schedule of the reasonable fees charged by the agency for producing copies of
5 records requested pursuant to article one of this chapter.

6 (c) Every public agency shall publish on its website a list of the names of all elected and
7 appointed officials within the public agency, together with the title of that person, his or her
8 telephone number and email address, the date that the person took office and the date of expiration
9 of that person's term of office.

10 **§29B-2-7. Required disclosures of public meetings.**

11 (a) In addition to the announcement of public meetings of the public agency and publication
12 of the meeting agenda required under article nine-a, chapter six of this code, every public agency
13 shall publish on its website minutes of all meetings held during the previous twelve months, together
14 with copies of all reports, documents or other written information provided to the members of the
15 body conducting the meeting for purposes of discussion or action at the meeting.

16 (b) To the extent that the public agency has promulgated any rule, adopted any policy or
17 otherwise established any procedure relating to the following subjects, the rule, policy or procedure
18 shall be published and clearly identified on the public agency's website:

19 (1) Conducting a public meeting by the public agency;

20 (2) Requesting a public meeting to be scheduled;

21 (3) Requesting to be heard at a public meeting; or

22 (4) Submitting material to be considered at a public meeting.

1 **§29B-2-8. Required disclosures of finances.**

2 (a) As of July 1, 2015, every public agency shall, except where disclosure is specifically
3 prohibited by law, provide access to the following financial information, covering the latest five
4 years, through a public website:

5 (1) The budget of the public agency as proposed at the beginning of the fiscal year for the
6 agency, together with documentation of each adjustment, if any, made during the course of the fiscal
7 year;

8 (2) All sources of revenue for the public agency and the total amount for each source within
9 the relevant fiscal year;

10 (3) All expenditures of the public agency, excluding employee compensation, showing for
11 each expenditure, the amount of payment, date of payment, check or warrant number, name and
12 address of the payee, purpose of the expense, functional category assigned to the expenditure, source
13 or sources of funds used and, when the payment was made pursuant to a contract with the agency,
14 a link to the relevant contract;

15 (4) Each contract, including contracts for personal services and collective bargaining
16 agreements, in effect or entered by the public agency during the fiscal year;

17 (5) All current requests for proposals, quotations or other bidding opportunities for services
18 or commodities anticipated to cost more than \$25,000 in the course of a fiscal year, together with
19 instructions for submitting a bid or proposal and a telephone number and email address to request
20 more information about the request or the bidding process;

21 (6) The total compensation paid to each employee of the public agency, with listings
22 available by name and title of each employee; and

1 (7) Reports of any audits of the public agency.

2 (b) As of July 1, 2015, every public agency shall report on its website all moneys paid to any
3 organization that engages in lobbying of the state government and all moneys paid in compensation
4 to any person or business entity providing lobbying services for the public agency, together with the
5 name of the person or business entity.

6 (c) Every public agency has a duty of due care to review all information provided under this
7 section and, with the exception of identifying officials and employees of the agency, to make those
8 redactions of the information necessary to prevent the disclosure of individually identifiable
9 information and third-party account information. In no event shall the agency publish the Social
10 Security Number of any individual or the bank account number of any person or business entity.

11 **§29B-2-9. Special disclosures required by political subdivisions.**

12 (a) When an audit is made of any political subdivision, the person, agency or business
13 conducting the audit shall provide copies of the report of audit, the management letter, if any, and
14 the audited financial statements to each member of the governing board of the political subdivision,
15 and these records shall also be published on the public website of the political subdivision.

16 (b) Any political subdivision that establishes or maintains a plan of land use zoning shall
17 provide on its public website a description of the process for requesting or opposing changes or
18 variances to zoning plan and copies of all applications or petitions for changes or variances, the
19 status of the each petition and the identities of the applicants or petitioners.

20 (c) Any political subdivision that grants or issues permits for building or construction shall
21 provide on its public website a description of the process for obtaining a permit and copies of all
22 permit applications and all permits granted and denied.

1 **§29B-2-10. Legislative review of compliance.**

2 Assessment of an agency's compliance with the provisions of this article shall be an element
3 an agency review pursuant to section seven of article ten, chapter four of this code or, in the case of
4 a regulatory board as defined in section three, article four, chapter ten of this code, the assessment
5 shall be an element of a regulatory board review pursuant to section nine of article ten, chapter four
6 of this code.

7 **§29B-2-11. Conflict with state and federal law.**

8 Nothing in this article supercedes any state or federal law that is intended to protect the
9 privacy or security of any individual.

NOTE: The purpose of this bill is to provide more transparency in the operations of government agencies by requiring those agencies to provide detailed information about their officers, personnel, meetings, activities, budgets, revenues, expenditures, lobbying, zoning and permitting.

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

Article two of chapter twenty-nine-b is new; therefore, it has been completely underscored.