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H. B. 4367

(By Delegates Morgan, Stephens and Hatfield)
[Introduced February 1, 2012; referred to the
Committee on Government Organization then the Judiciary.]

A BILL to amend and reenact §6-9A-2 and §6-9A-3 of the Code of West Virginia, 1931, as amended, all relating to Open Governmental Proceedings; 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 agency meeting notices be filed in the State Register; and providing rule-making authority.

Be it enacted by the Legislature of West Virginia:

That §6-9A-2 and §6-9A-3 of the Code of 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 any
5 meeting at which a quorum is present.

6 (2) "Emergency meeting" means any meeting called for the
7 purpose of dealing with an unexpected event requiring immediate
8 attention due to a threat to public health or safety, damage to
9 public or personal property, or posing a potential material
10 financial loss or other potential substantial harm to an agency.

11 ~~(2)~~ (3) "Executive session" means any meeting or part of a
12 meeting of a governing body which is closed to the public.

13 ~~(3)~~ (4) "Governing body" means the members of any public
14 agency having the authority to make decisions for or
15 recommendations to a public agency on policy or administration, the
16 membership of a governing body consists of two or more members; for
17 the purposes of this article, a governing body of the Legislature
18 is any standing, select or special committee, except the commission
19 on special investigations, as determined by the rules of the
20 respective houses of the Legislature.

21 ~~(4)~~ (5) "Meeting" means the convening of a governing body of
22 a public agency for which a quorum is required in order to make a
23 decision or to deliberate toward a decision on any matter which
24 results in an official action. Meetings may be held by telephone

1 conference or other electronic means. The term meeting does not
2 include:

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

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

7 (C) Any political party caucus;

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

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

16 ~~(5)~~ (6) "Official action" means action which is taken by
17 virtue of power granted by law, ordinance, policy, rule, or by
18 virtue of the office held.

19 ~~(6)~~ (7) "Public agency" means any administrative or
20 legislative unit of state, county or municipal government,
21 including any department, division, bureau, office, commission,
22 authority, board, public corporation, section, committee,
23 subcommittee or any other agency or subunit of the foregoing,
24 authorized by law to exercise some portion of executive or

1 legislative power. The term "public agency" does not include
2 courts created by article eight of the West Virginia Constitution
3 or the system of family law masters created by article four,
4 chapter forty-eight-a of this code.

5 ~~(7)~~ (8) "Quorum" means the gathering of a simple majority of
6 the constituent membership of a governing body, unless applicable
7 law provides for varying the required ratio.

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

10 (10) "Special meeting" means a meeting of a public body other
11 than a regularly scheduled meeting or emergency meeting.

12 **§6-9A-3. Proceedings to be open; public notice of meetings.**

13 Except as expressly and specifically otherwise provided by
14 law, whether heretofore or hereinafter enacted, and except as
15 provided in section four of this article, all meetings of any
16 governing body shall be open to the public. Any governing body may
17 make and enforce reasonable rules for attendance and presentation
18 at any meeting where there is not room enough for all members of
19 the public who wish to attend. This article does not prohibit the
20 removal from a meeting of any member of the public who is
21 disrupting the meeting to the extent that orderly conduct of the
22 meeting is compromised: *Provided*, That persons who desire to
23 address the governing body may not be required to register to
24 address the body more than fifteen minutes prior to time the

1 scheduled meeting is to commence.

2 Each governing body shall promulgate rules by which the date,
3 time, place and agenda of all regularly scheduled meetings and the
4 date, time, place and purpose of all special meetings are made
5 available, in advance, to the public and news media. ~~except in the~~
6 ~~event of an emergency requiring immediate official action.~~ The
7 rules shall contain provisions which are consistent with the
8 requirements of the Ethics Commission's Committee on open
9 governmental meetings in accordance with its authority pursuant to
10 section ten of this article to interpret the Open Meetings Act.

11 Each governing body of the executive branch of the state shall
12 electronically file a notice of ~~any each~~ meeting with the Secretary
13 of State for publication ~~in the state register~~ on the Secretary of
14 State's website. Each notice shall state the date, time, place and
15 purpose of the meeting. Each notice of a special or regular
16 meeting shall be filed in a manner to allow each notice to appear
17 ~~in the state register~~ on the Secretary of State's website at least
18 five calendar days prior to the date of the meeting. When
19 calculating the days, the day of the meeting is not to be counted.
20 If a meeting notice is filed outside of the Secretary of State's
21 regular business hours, on a state holiday or weekend day, the date
22 of filing will be considered the next business day. The Secretary
23 of State shall retain copies of all notices filed for ten years.
24 The Secretary of State may promulgate procedural rules concerning

1 the electronic filing of meeting notices.

2 In the event of an emergency, ~~requiring immediate official~~
3 ~~action, any governing body of the executive branch of the state may~~
4 ~~file an emergency meeting notice at any time prior to the meeting.~~
5 a governing body may call an emergency meeting. The notice for the
6 emergency meeting shall be posted as soon as practicable prior to
7 the meeting and, for executive branch agencies, electronically
8 filed with the Secretary of State. The emergency meeting notice
9 shall state the date, time, place and purpose of the meeting and
10 the facts and circumstances of the emergency.

11 Upon petition by any adversely affected party any court of
12 competent jurisdiction may invalidate any action taken at any
13 meeting for which notice did not comply with the requirements of
14 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 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.