

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2747**

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

5  
6 (Originating in the House Committee on the Judiciary)

7 [March 8, 2013]

8  
9 A BILL to amend and reenact §6-9A-2 and §6-9A-3 of the Code of West  
10 Virginia, 1931, as amended, all relating to public notice of  
11 meetings of governing bodies of public agencies; defining  
12 terms; clarifying existing notice requirements; requiring  
13 state executive branch 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 executive branch agency meeting notices be filed in the  
17 State Register; and providing procedural rule-making  
18 authority.

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

20 That §11A-3-18, §11A-3-27, and §11A-3-28 of the Code of the  
21 West Virginia, 1931, as amended, be amended and reenacted, all to  
22 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) A threat to public health or safety;

10 (B) A threat of damage to public or private property; or

11 (C) A potential material financial loss or other potential  
12 substantial harm to a public agency or to the members of the public  
13 which it serves.

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 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 **§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.

24 (f) The Secretary of State shall retain copies of all notices

1 filed for ten years.

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

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

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

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

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