WEST VIRGINIA CODE: §5-3-2a

§5-3-2a. Consent judgments in actions against an agency of government; notice of proposed consent judgment.

(a) It is hereby established as the policy of this state to consent to a proposed judgment in an action against an agency of government or its officers or employees only after or on condition that an opportunity is afforded persons (natural or corporate) who are not named as parties to the action to comment on the proposed judgment prior to its entry by the court.

(1) For the purposes of this section, "agency of government" means:

(A) A department, division, bureau, board, commission or other agency or instrumentality within the executive branch of state government which may sue or be sued; or

(B) A political subdivision of this state or any board, department, commission, district or special district, council or other agency or instrumentality thereof whose liability or potential liability arises from a claim which is covered by property or liability insurance provided by the state Board of Risk and Insurance Management of West Virginia pursuant to the provisions of article twelve, chapter twenty-nine of this code.

(2) For the purposes of this section, "action" means a civil proceeding initiated in a court of general jurisdiction and shall not mean a proceeding initiated in or before, or an appeal taken to, an administrative agency, board or commission and shall not mean an appeal taken to a court from such an administrative proceeding or appeal.

(3) For the purposes of this section, "judgment" means a judgment, order or decree of a court the entry of which would require or otherwise mandate:

(A) An expansion of, increase in, or addition to the services, duties or responsibilities of an agency of government;

(B) An increase in the expenditures of an agency of government above the level of expenditures approved or authorized before the entry of the proposed judgment;

(C) The employment or other hiring of, or the contracting with, personnel or other entities by an agency of government in addition to the personnel or other entities employed or otherwise hired by, or contracted with or by the agency of government; or

(D) Payment of a claim based upon tort or contract by an agency of government as defined in paragraph (B), subdivision (1) of this subsection.

(b) To effectuate this policy, each proposed judgment which is within the scope of paragraph (a) of this section shall be lodged with the court as early as feasible but at least sixty days before the judgment is entered by the court, and true copies of the proposed order shall be

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served upon the Attorney General of the state, the president of the West Virginia Senate and the speaker of the West Virginia House of Delegates. When an agency of government proposes to consent to a judgment, it shall file with the Secretary of State, for publication in the state register, a notice of the proposed order and include therein a request for comment on the proposed order. The notice shall fix a date, time and place for the receipt of written statements and documents bearing on the appropriateness, propriety or adequacy of the proposed consent order. At the time of filing the notice of its action, the agency of government shall also file with the Secretary of State a true copy of the proposed order. If alternative draft proposals are being considered, the full text of the additional draft proposals shall also be filed with the Secretary of State. The agency of government proposing to consent to the entry of judgment shall also file with the Secretary of State an estimate of the cost of implementing the proposed judgment as the cost relates to this state and to persons affected by the proposed judgment.

(c) Prior to entry of the judgment, or some earlier specified date, the Attorney General will receive and consider and file with the court any written comments, views or allegations relating to the proposed judgment.

(d) The Attorney General shall reserve the right (1) to withdraw or withhold his or her consent to the proposed judgment if the comments, views and allegations received concerning the proposed judgment disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper or inadequate or (2) to support or oppose an attempt by any person to intervene in the action. If action which could be taken by the Attorney General pursuant to the provisions of this subsection may be materially adverse to the interests of an agency of government or an officer or employee thereof whom the Attorney General has previously represented in the same or a substantially related matter, the Attorney General shall not proceed to act without the written consent of the agency of government or the affected officer or employee. In the absence of such consent, the Attorney General shall provide for an independent special assistant Attorney General to be retained to consider the comments, views and allegations received concerning the proposed judgment, and to pursue such action as may be deemed appropriate, in accordance with the provisions of this subsection.

(e) The Attorney General may establish procedures for implementing the policy established by this section. Where it is clear that the public interest in the policy hereby established is not compromised, the Attorney General may permit an exception to this policy in a specific case where extraordinary circumstances require a period shorter than sixty days or a procedure other than stated herein.

(f) Any agency of government which agrees to a consent judgment after June 30, 1995, shall thereafter file an annual report, on or before November 1, setting forth the status of the action, the fiscal impact of the consent judgment upon the resources of the state, and the manner in which any cost to the state is met or will be met by appropriations authorized in the state budget. Such report shall be filed with the president of the West Virginia Senate and the speaker of the West Virginia House of Delegates.

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