WEST VIRGINIA CODE CHAPTER 55 ARTICLE 17

WV Legislature

§55-17-1. Findings; purpose.

(a) The Legislature finds that there are numerous actions, suits and proceedings filed against state government agencies and officials that may affect the public interest. Depending upon the outcome, this type of litigation may have significant consequences that can only be addressed by subsequent legislative action. In these actions, the Legislature is not directly involved as a party. The Legislature is not a proper party to these actions because of an extensive structure of Constitutional protections established to safeguard the prerogatives of the legislative branch under our governmental system of checks and balances. Government agencies and their officials require more notice of these actions and time to respond to them and the Legislature requires more timely information regarding these actions, all in order to protect the public interest. The Legislature further finds that protection of the public interest is best served by clarifying that no government agency may be subject to awards of punitive damages in any judicial proceeding.

(b) The Legislature further finds that there are numerous actions, suits and proceedings filed on behalf of the State of West Virginia or a government agency thereof, that may affect the public interest. Depending upon the outcome, this type of litigation may have significant consequences that can only be addressed by subsequent legislative action. In such litigation, the Governor, Department of Administration and the Legislature may not be directly involved as parties. Additionally, the Governor, Department of Administration and the Legislature need advance notice of potential moneys that may become available as a result of seizure or forfeiture of assets under state or federal criminal law. The Governor, Department of Administration and the Legislature require more timely information regarding these actions in order to protect the public interest. The Legislature further finds that protection of the public interest is best served by requiring notice to the Governor, the Secretary of the Department of Administration, the President of the Senate and the Speaker of the House of Delegates of any action brought on behalf of the state or a government agency thereof, which may result in a judgment, award or settlement and when the state or a government agency thereof, becomes eligible for moneys from state or federal seizure or forfeiture of assets in criminal cases.

(c) It is the purpose of this article to establish procedures to be followed in certain civil actions filed on behalf of or against state government agencies and their officials.

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§55-17-2. Definitions.

For the purposes of this section:

(1) "Action" means a proceeding instituted against a governmental agency in a circuit court or in the Supreme Court of Appeals, except actions instituted pursuant to statutory provisions that authorize a specific procedure for appeal or similar method of obtaining relief from the ruling of an administrative agency and actions instituted to appeal or otherwise seek relief from a criminal conviction, including, but not limited to, actions to obtain habeas corpus relief.

(2) "Government agency" means a Constitutional officer or other public official named as a defendant or respondent in his or her official capacity, or a department, division, bureau, board, commission or other agency or instrumentality within the executive branch of state government that has the capacity to sue or be sued;

(3) "Judgment" means a judgment, order or decree of a court which would:

(A) Require or otherwise mandate an expansion of, increase in, or addition to the services, duties or responsibilities of a government agency;

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

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

(D) Require or otherwise mandate payment of a claim based upon a breach of contract by a government agency; or

(E) Declare an act of the Legislature unconstitutional and, therefore, unenforceable.

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§55-17-3. Preliminary procedures; service on Attorney General; notice to the Legislature.

(a)(1) Notwithstanding any provision of law to the contrary, at least 30 days prior to the institution of an action against a governmental agency, the complaining party or parties shall provide the chief officer of the governmental agency and the Attorney General written notice, by certified mail, return receipt requested, of the alleged claim and the relief desired. Upon receipt, the chief officer of the governmental agency shall immediately forward a copy of the notice to the President of the Senate and the Speaker of the House of Delegates. The provisions of this subdivision do not apply in actions seeking injunctive relief where the court finds that irreparable harm would have occurred if the institution of the action was delayed by the provisions of this subsection.

(2) The written notice to the chief officer of the governmental agency and the Attorney General required by subdivision (1) of this subsection is considered to be provided on the date of mailing of the notice by certified mail, return receipt requested. If the written notice is provided to the chief officer of the governmental agency as required by subdivision (1) of this subsection, any applicable statute of limitations is tolled for 30 days from the date the notice is provided and, if received by the governmental agency as evidenced by the return receipt of the certified mail, for 30 days from the date of the returned receipt.

(3) A copy of any complaint filed in an action as defined in §55-17-2 of this code shall be served on the Attorney General.

(b) (1) Notwithstanding any procedural rule or any provision of this code to the contrary in an action instituted against a governmental agency that seeks a judgment, as defined in §55-17-2 of this code, the chief officer of the governmental agency which is named a party to the action shall, upon receipt of service, immediately give written notice thereof, together with a copy of the complaint filed, to the President of the Senate and the Speaker of the House of Delegates.

(2) Upon request, the chief officer of the governmental agency shall furnish the President of the Senate and Speaker of the House with copies of pleadings filed and discovery produced in the proceeding and other documents, information, and periodic reports relating to the proceeding as may be requested.

(3) The chief officer of a governmental agency who fails without good cause to comply with the provisions of this subsection is guilty of misfeasance. This subsection does not require a notice or report to the President of the Senate and the Speaker of the House that no action has been instituted or is pending against a governmental agency during a specified period.

(c) The requirements for notice and delivery of pleadings and other documents to the President of the Senate or Speaker of the House of Delegates pursuant to the provisions of this section do not constitute a waiver of any constitutional immunity or protection that proscribes or limits actions, suits, or proceedings against the Legislature or the State of

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West Virginia.

(d) The exercise of authority granted by the provisions of this section does not subject the Legislature or any member of the Legislature to any terms of a judgment.

(e) If 90 days elapse after service of notice required by subsection (a) of this section has been effected and action has not been instituted, then the notice shall be considered to have expired, and before an action may be instituted, the complaining party or parties must provide new notice as required by subsection (a) of this section which shall be accompanied by a second or subsequent notice fee of $250 to the attorney general and by a second or subsequent notice fee of $250 to the chief officer of the governmental agency: *Provided*, That no further tolling of any applicable statute of limitations shall occur during any second or subsequent notice.

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§55-17-3a. Legislature and its presiding officers never to be named as parties to a civil action in court.

(a) Article V of the Constitution of West Virginia provides that the legislative, executive, and judicial departments of the government of West Virginia shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others.

(b) It is an unconstitutional violation of the separation of powers mandated by Article V of the Constitution of West Virginia for:

(1) Any court of this state to issue a writ of mandamus, a writ of prohibition, or an injunction against the Legislature; or

(2) Any person to name the Legislature or the presiding officers thereof, in any action challenging the constitutionality of a statute.

(c) Pursuant to the separation of powers required by Article V of the West Virginia Constitution, if any suit is filed seeking relief under subdivision (1), subsection (a) of this section, or if any suit is filed naming the legislature, or the presiding officers thereof, in violation of the provisions of subdivision (2), subsection (a) of this section, the court must, upon motion, summarily dismiss the action, or dismiss the parties improperly joined.

(c) This section shall be applied retrospectively and retroactively to all actions pending at the time of the enactment of this section.

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§55-17-4. Procedures pending action.

Notwithstanding any other provisions of law to the contrary:

(1) A government agency shall be allowed sixty days to serve an answer to a complaint or petition for which a summons has been issued and served upon a government agency;

(2) Judgment by default may not be entered against a government agency in an action as defined in section two of this article unless the court, after a hearing on a motion for default judgment, finds that the government agency clearly intends to fail to appear, plead or otherwise defend in the action; and

(3) No government agency may be ordered to pay punitive damages in any action.

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§55-17-5. Notice of settlement, seizure or forfeiture.

(a) So that the Governor, the Department of Administration and the Legislature may be aware of potential awards, the person or entity bringing any action on behalf of the State of West Virginia, or a government agency thereof, which could result in settlement or judgment shall upon commencement of the action and prior to entering into any settlement agreement which directs how the money should be expended, notify and provide copies of pleadings and related documents to the Governor, the Secretary of the Department of Administration, the President of the Senate and the Speaker of the House of Delegates.

(b) When a government agency becomes aware that moneys may be available to them from a state or federal seizure or forfeiture in a criminal case they shall notify the Governor, the Secretary of the Department of Administration, the President of the Senate and the Speaker of the House of Delegates: Provided, That the total value of the assets to be seized or forfeited exceeds two hundred and $50,000.

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§55-17-6. Construction of article.

(a) It is the express intent of the Legislature that the provisions of this article be liberally construed to effectuate the public policy set forth in section one of this article.

(b) The provisions of this article may not be construed to impose any liability upon a state agency from which the agency is otherwise immune.

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