

HB 2059

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STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995

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ENROLLED

HOUSE BILL No. 2059

(By Delegates Douglas, Beane + Trump)

— ● —

Passed Feb. 17, 1995

In Effect 90 Days From Passage



ENROLLED

H. B. 2059

(BY DELEGATES DOUGLAS, BEANE AND TRUMP)

[Passed February 17, 1995; in effect ninety days from passage.]

AN ACT to amend article three, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a, relating to consent judgments in cases involving an agency of government; stating the policy of the state as regards consent to a proposed judgment; affording an opportunity for persons to comment on proposed consent judgments; defining the terms "agency of government", "action" and "judgment"; service of copies of proposed judgment orders on the Legislature; filing of notice for publication in the state register; filing estimate of costs; receipt of comments by the attorney general; action to be taken by the attorney general upon receipt of comments; procedures to implement policy; providing for exceptions to policy; and requiring annual reports to the Legislature.

Be it enacted by the Legislature of West Virginia:

That article three, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section two-a, to read as follows:

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

- 1 (a) It is hereby established as the policy of this state to
- 2 consent to a proposed judgment in an action against an

3 agency of government or its officers or employees only
4 after or on condition that an opportunity is afforded
5 persons (natural or corporate) who are not named as
6 parties to the action to comment on the proposed
7 judgment prior to its entry by the court.

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

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

13 (B) A political subdivision of this state or any board,
14 department, commission, district or special district, council
15 or other agency or instrumentality thereof whose liability
16 or potential liability arises from a claim which is covered
17 by property or liability insurance provided by the state
18 board of risk and insurance management of West Virginia
19 pursuant to the provisions of article twelve, chapter
20 twenty-nine of this code.

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

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

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

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

36 (C) The employment or other hiring of, or the con-
37 tracting with, personnel or other entities by an agency of
38 government in addition to the personnel or other entities
39 employed or otherwise hired by, or contracted with or by

40 the agency of government; or

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

44 (b) To effectuate this policy, each proposed judgment
45 which is within the scope of paragraph (a) of this section
46 shall be lodged with the court as early as feasible but at
47 least sixty days before the judgment is entered by the
48 court, and true copies of the proposed order shall be
49 served upon the attorney general of the state, the president
50 of the West Virginia Senate and the speaker of the West
51 Virginia House of Delegates. When an agency of gov-
52 ernment proposes to consent to a judgment, it shall file
53 with the secretary of state, for publication in the state
54 register, a notice of the proposed order and include
55 therein a request for comment on the proposed order.
56 The notice shall fix a date, time and place for the receipt
57 of written statements and documents bearing on the
58 appropriateness, propriety or adequacy of the proposed
59 consent order. At the time of filing the notice of its action,
60 the agency of government shall also file with the secretary
61 of state a true copy of the proposed order. If alternative
62 draft proposals are being considered, the full text of the
63 additional draft proposals shall also be filed with the
64 secretary of state. The agency of government proposing to
65 consent to the entry of judgment shall also file with the
66 secretary of state an estimate of the cost of implementing
67 the proposed judgment as the cost relates to this state and
68 to persons affected by the proposed judgment.

69 (c) Prior to entry of the judgment, or some earlier
70 specified date, the attorney general will receive and
71 consider and file with the court any written comments,
72 views or allegations relating to the proposed judgment.

73 (d) The attorney general shall reserve the right (1) to
74 withdraw or withhold his or her consent to the proposed
75 judgment if the comments, views and allegations received
76 concerning the proposed judgment disclose facts or
77 considerations which indicate that the proposed judgment
78 is inappropriate, improper or inadequate or (2) to support
79 or oppose an attempt by any person to intervene in the

80 action. If action which could be taken by the attorney
81 general pursuant to the provisions of this subsection may
82 be materially adverse to the interests of an agency of
83 government or an officer or employee thereof whom the
84 attorney general has previously represented in the same or
85 a substantially related matter, the attorney general shall not
86 proceed to act without the written consent of the agency of
87 government or the affected officer or employee. In the
88 absence of such consent, the attorney general shall provide
89 for an independent special assistant attorney general to be
90 retained to consider the comments, views and allegations
91 received concerning the proposed judgment, and to
92 pursue such action as may be deemed appropriate, in
93 accordance with the provisions of this subsection.

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

102 (f) Any agency of government which agrees to a
103 consent judgment after the thirtieth day of June, one
104 thousand nine hundred ninety-five, shall thereafter file an
105 annual report, on or before the first day of November,
106 setting forth the status of the action, the fiscal impact of
107 the consent judgment upon the resources of the state, and
108 the manner in which any cost to the state is met or will be
109 met by appropriations authorized in the state budget.
110 Such report shall be filed with the president of the West
111 Virginia Senate and the speaker of the West Virginia
112 House of Delegates.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy Schoonover
Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Carroll R. Adams
Clerk of the Senate

Donald L. Kapp
Clerk of the House of Delegates

Carl Ray Tomblin
President of the Senate

Paul E. Cullen
Speaker of the House of Delegates

The within is approved this the 14 day of March, 1991.

Gaston Caputo
Governor

P. D TO THE

ERNOR

Date 2/24/95

Time 3:10 pm