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2002 APR -3 P 7:01

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2002*

**ENROLLED**

*Committee Substitute for*  
**SENATE BILL NO. 1667**

(By Senator Lambdin, Mr. President, et al )

**PASSED March 9, 2002**

**In Effect July 1, 2002 ~~Passage~~**

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## ENROLLED

COMMITTEE SUBSTITUTE

FOR

### Senate Bill No. 667

(SENATORS TOMBLIN, MR. PRESIDENT, WOOTON,  
CRAIGO, JACKSON, BOWMAN, PLYMALE, UNGER,  
EDGELL, MINARD, PREZIOSO, FANNING, HELMICK,  
SHARPE, ANDERSON, ROSS, MITCHELL, ROWE,  
REDD AND MINEAR, *original sponsors*)

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[Passed March 9, 2002; to take effect July 1, 2002.]

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AN ACT to amend chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seventeen, relating to civil actions filed against state agencies; setting forth legislative findings and purpose; defining terms; establishing preliminary procedures prior to institution of an action; requiring service on the attorney general; providing notice of claim and relief requested to agency and attorney general and exceptions; tolling of statute of limitations; providing notice to the Legislature; providing for acts of

misfeasance; extending time period to answer complaints; limiting available relief; and providing for liberal construction of provisions.

*Be enacted by the Legislature of West Virginia:*

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

**ARTICLE 17. PROCEDURES FOR CERTAIN ACTIONS AGAINST THE STATE.**

**§55-17-1. Findings; purpose.**

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

20 (b) It is the purpose of this article to establish procedures  
21 to be followed in certain civil actions filed against state  
22 government agencies and their officials.

**§55-17-2. Definitions.**

1 For the purposes of this section:

2 (1) "Action" means a proceeding instituted against a  
3 governmental agency in a circuit court or in the supreme  
4 court of appeals, except actions instituted pursuant to  
5 statutory provisions that authorize a specific procedure for  
6 appeal or similar method of obtaining relief from the  
7 ruling of an administrative agency and actions instituted  
8 to appeal or otherwise seek relief from a criminal conviction,  
9 including, but not limited to, actions to obtain habeas  
10 corpus relief.

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

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

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

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

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

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

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

**§55-17-3. Preliminary procedures; service on attorney general; notice to the Legislature.**

1 (a)(1) Notwithstanding any provision of law to the  
2 contrary, at least thirty days prior to the institution of an  
3 action against a government agency, the complaining  
4 party or parties must provide the chief officer of the  
5 government agency and the attorney general written  
6 notice, by certified mail, return receipt requested, of the  
7 alleged claim and the relief desired. Upon receipt, the  
8 chief officer of the government agency shall forthwith  
9 forward a copy of the notice to the president of the Senate  
10 and the speaker of the House of Delegates. The provisions  
11 of this subdivision do not apply in actions seeking injunc-  
12 tive relief where the court finds that irreparable harm  
13 would have occurred if the institution of the action was  
14 delayed by the provisions of this subsection.

15 (2) The written notice to the chief officer of the govern-  
16 ment agency and the attorney general required by subdivi-  
17 sion (1) of this subsection is considered to be provided on  
18 the date of mailing of the notice by certified mail, return  
19 receipt requested. If the written notice is provided to the  
20 chief officer of the government agency as required by  
21 subdivision (1) of this subsection, any applicable statute of  
22 limitations is tolled for thirty days from the date the notice  
23 is provided and, if received by the government agency as  
24 evidenced by the return receipt of the certified mail, for  
25 thirty days from the date of the returned receipt.

26 (b) A copy of any complaint filed in an action as defined  
27 in section two of this article shall be served on the attorney  
28 general. Notwithstanding any procedural rule or any  
29 provision of this code to the contrary, in an action insti-  
30 tuted against a government agency that seeks a judgment,  
31 as defined in section two of this article, the chief officer of  
32 the government agency which is named a party to the  
33 action shall, upon receipt of service, forthwith give written  
34 notice thereof, together with a copy of the complaint filed,

35 to the president of the Senate and the speaker of the House  
36 of Delegates.

37 (c) At least every sixty days during the pendency of the  
38 proceeding, the chief officer of the government agency  
39 shall deliver a written status report on the action to the  
40 president and the speaker. Upon request, the chief officer  
41 of the government agency shall furnish the president and  
42 speaker with copies of pleadings filed and discovery  
43 produced in the proceeding.

44 (d) The chief officer of a government agency who fails  
45 without good cause to comply with the provisions of  
46 subsection (b) or (c) of this section is guilty of misfeasance.

47 (e) The requirements for notice and delivery of pleadings  
48 and other documents to the president of the Senate or  
49 speaker of the House of Delegates pursuant to the provi-  
50 sions of this section do not constitute a waiver of any  
51 constitutional immunity or protection that proscribes or  
52 limits actions, suits or proceedings against the Legislature  
53 or the state of West Virginia.

54 (f) The exercise of authority granted by the provisions of  
55 this section may not be interpreted as subjecting the  
56 Legislature or any member thereof to any terms of a  
57 judgment.

**§55-17-4. Procedures pending action.**

1 Notwithstanding any other provisions of law to the  
2 contrary:

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

7 (2) Judgment by default may not be entered against a  
8 government agency in an action as defined in section two  
9 of this article unless the court, after a hearing on a motion  
10 for default judgment, finds that the government agency

11 clearly intends to fail to appear, plead or otherwise defend  
12 in the action; and

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

**§55-17-5. Construction of article.**

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

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

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

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2002.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* this the *3rd*  
Day of *April*, 2002.  
*[Signature]*  
.....  
Governor



PRESENTED TO THE

CLASS OF

Date 3/25/02

Time 11:30am