

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 446

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO (BY REQUEST OF THE EXECUTIVE)

[Originating in the Committee on the Judiciary;

reported on March 27, 2017]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §4-1-24; to amend said code by adding thereto a new section, designated §4-
3 2-13; to amend said code by adding thereto a new section, designated §4-3-6; to amend
4 said code by adding thereto a new article, designated §5-30-1, §5-30-2, §5-30-3, §5-30-
5 4, §5-30-5 and §5-30-6; and to amend said code by adding thereto a new section,
6 designated §51-3-19, all relating generally to the furlough of public employees during
7 declared fiscal emergency; defining terms; permitting declaration of fiscal emergency by
8 Governor under certain defined circumstances; permitting Governor to issue executive
9 orders instituting furloughs of certain state employees; setting forth conditions of furlough;
10 providing for termination of declared fiscal emergency; authorizing furlough of employees
11 by constitutional officers; setting forth conditions of furlough of those employees;
12 authorizing President of the Senate to furlough employees of State Senate; authorizing
13 Speaker of the House of Delegates to furlough employees of the House of Delegates;
14 authorizing President of the Senate and Speaker of the House of Delegates jointly to direct
15 furlough of employees of Legislative Auditor and Joint Committee on Government and
16 Finance; setting forth conditions of furlough of legislative employees; authorizing Supreme
17 Court of Appeals to furlough employees and personnel of Supreme Court of Appeals;
18 authorizing Supreme Court of Appeals to issue orders directing or authorizing furlough of
19 other employees and personnel of circuit courts, family courts and magistrate courts; and
20 setting forth terms of furlough of judicial employees.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 section, designated §4-1-24; that said code be amended by adding thereto a new section,
3 designated §4-2-13; that said code be amended by adding thereto a new section, designated §4-
4 3-6; that said code be amended by adding thereto a new article, designated §5-30-1, §5-30-2, §5-

5 30-3, §5-30-4, §5-30-5 and §5-30-6; and that said code be amended by adding thereto a new
6 section, designated §51-3-19, all to read as follows:

CHAPTER 4. THE LEGISLATURE.

ARTICLE I. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING; PREFILING OF BILLS AND RESOLUTIONS; STANDING COMMITTEES; INTERIM MEETINGS; NEXT MEETING OF THE SENATE.

§4-1-24. Furlough of employees of the State Senate and House of Delegates during declared fiscal emergency.

1 (a) When the Governor declares a fiscal emergency pursuant to section two, article thirty,
2 chapter five of this code, the President of the Senate may furlough employees of the State Senate.

3 (b) When the Governor declares a fiscal emergency pursuant to section two, article thirty,
4 chapter five of this code, the Speaker of the House of Delegates may furlough employees of the
5 House of Delegates.

6 (c) During the period of any furlough, the following shall apply with respect to the benefits
7 of furloughed legislative employees:

8 (1) Furloughed employees will remain eligible for public employee health insurance as
9 before the furlough. The furlough may not prohibit the Senate or the House of Delegates from
10 paying the employer portion of the insurance premium for any employee to the Public Employees
11 Insurance Agency. If, because of the furlough, an employee's pay is insufficient to deduct from
12 and remit to the Public Employees Insurance Agency the employee's share of his or her health
13 insurance premium, then the employer shall remit to the Public Employee Insurance Agency such
14 portion of the employee's share of the premium as is unpaid: *Provided*, That when the furlough
15 ends, the employer shall deduct such aggregate payments from the employee's future pay at the
16 maximum rate permissible under state law.

17 (2) Days, parts of days or weeks for which legislative employees are furloughed will count
18 as days employed or days worked for purposes of calculating retirement eligibility and state
19 service time.

20 (d) For any furlough implemented pursuant to this section, the presiding officer directing
21 the furlough may elect to permit a legislative employee's reduction in compensation to be
22 allocated over the balance of the fiscal year rather than solely in the pay period or pay periods in
23 which the furlough occurs.

24 (e) Placement of a legislative employee on furlough under this section shall not give rise
25 to a claim or right of a public employee to receive unemployment compensation.

26 (f) Nothing contained in this section shall prohibit or prevent the President of the Senate
27 or the Speaker of the House of Delegates from instituting a reduction in force, nor shall anything
28 contained herein be construed to prohibit a reduction in force from being applied to an individual
29 who is currently or has previously been furloughed.

**ARTICLE 2. LEGISLATIVE AUDITOR; POWERS; FUNCTIONS; DUTIES;
 COMPENSATION.**

**§4-2-13. Furlough of employees of the Legislative Auditor during declared fiscal
 emergency.**

1 (a) When the Governor declares a fiscal emergency pursuant to section two, article thirty,
2 chapter five of this code, the President of the Senate and the Speaker of the House of Delegates
3 may jointly direct the Legislative Auditor to furlough one or more employees of the Legislative
4 Auditor.

5 (b) During the period of any furlough, the following shall apply with respect to the benefits
6 of furloughed judicial employees:

7 (1) Furloughed employees will remain eligible for public employee health insurance as
8 before the furlough. The furlough may not prohibit the Legislative Auditor from paying the

9 employer portion of the insurance premium for any employee to the Public Employees Insurance
10 Agency. If, because of the furlough, an employee's pay is insufficient to deduct from and remit to
11 the Public Employee Insurance Agency the employee's share of his or her health insurance
12 premium, then the employer shall remit to the Public Employees Insurance Agency such portion
13 of the employee's share of the premium as is unpaid: *Provided, That* when the furlough ends, the
14 employer shall deduct such aggregate payments from the employee's future pay at the maximum
15 rate permissible under state law.

16 (2) Days, parts of days or weeks for which public employees are furloughed shall be
17 considered days employed or days worked for purposes of calculating retirement eligibility and
18 state service time.

19 (d) For any furlough implemented pursuant to this section, the Senate President and
20 Speaker of the House of Delegates may jointly elect to permit a legislative employee's reduction
21 in compensation to be allocated over the balance of the fiscal year rather than solely in the pay
22 period or pay periods in which the furlough occurs.

23 (e) Placement of a legislative employee on furlough under this section shall not give rise
24 to a claim or right of a public employee to receive unemployment compensation.

25 (f) Nothing contained in this section shall prohibit or prevent the President of the Senate
26 and the Speaker of the House of Delegates from jointly instituting a reduction in force, nor shall
27 anything contained herein be construed to prohibit a reduction in force from being applied to an
28 individual who is currently or has previously been furloughed.

ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FINANCE.

**§4-3-6. Furlough of employees of the Joint Committee on Government and Finance during
declared fiscal emergency.**

1 (a) When the Governor declares a fiscal emergency pursuant to section two, article thirty,
2 chapter five of this code, the President of the Senate and the Speaker of the House of Delegates
3 may jointly direct the Legislative Manager to furlough one or more employees of the Joint

4 Committee on Government and Finance.

5 (b) During the period of any furlough, the following shall apply with respect to the benefits
6 of furloughed legislative employees:

7 (1) Furloughed employees will remain eligible for public employee health insurance as
8 before the furlough. The furlough may not prohibit the Senate or the House of Delegates from
9 paying the employer portion of the insurance premium for any employee to the Public Employees
10 Insurance Agency. If, because of the furlough, an employee's pay is insufficient to deduct from
11 and remit to the Public Employee Insurance Agency the employee's share of his or her health
12 insurance premium, then the employer shall remit to the Public Employees Insurance Agency
13 such portion of the employee's share of the premium as is unpaid: *Provided*, That when the
14 furlough ends, the employer shall deduct such aggregate payments from the employee's future
15 pay at the maximum rate permissible under state law.

16 (2) Days, parts of days or weeks for which public employees are furloughed will count as
17 days employed or days worked for purposes of calculating retirement eligibility and state service
18 time.

19 (c) For any furlough implemented pursuant to this section, the President of the Senate and
20 Speaker of the House of Delegates may jointly elect to permit a legislative employee's reduction
21 in compensation to be allocated over the balance of the fiscal year rather than solely in the pay
22 period or pay periods in which the furlough occurs.

23 (d) Placement of a legislative employee on furlough under this section shall not give rise
24 to a claim or right of a public employee to receive unemployment compensation.

25 (e) Nothing contained in this section shall prohibit or prevent the Senate President and the
26 Speaker of the House of Delegates from jointly instituting a reduction in force, nor shall anything
27 contained herein be construed to prohibit a reduction in force from being applied to an individual
28 who is currently or has previously been furloughed.

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE
GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL;
BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,
COMMISSIONS, OFFICES, PROGRAMS, ETC.**

ARTICLE 30. FISCAL EMERGENCY.

§5-30-1. Definitions.

1 (a) "Declared fiscal emergency" means a period of time commencing upon the Governor's
2 issuance of a gubernatorial proclamation upon determination that a fiscal emergency, as defined
3 in subsection (b) of this section, exists.

4 (b) "Fiscal emergency" means that one or more of the following exist:

5 (1) There is an overdraft or deficit in the state fund, general revenue, and that revenues
6 are inadequate for the state to make timely payments of its debt service payment obligations on
7 outstanding bonds;

8 (2) There is an anticipated deficit in the state fund, general revenue, and that revenues
9 are inadequate for the state to make timely payments of its debt service payment obligations on
10 outstanding bonds; or

11 (3) No budget has been enacted for the current fiscal year.

12 (c) "Furlough" means a mandatory, temporary, unpaid leave of absence required pursuant
13 to an executive order issued by the Governor and subject to the conditions set forth in this section.

§5-30-2. Declaration of fiscal emergency.

1 Upon determination that one or more of the circumstances set forth in subsection (b),
2 section one of this article, the Governor may declare a fiscal emergency. The declaration shall
3 be made by formal gubernatorial proclamation and shall set forth the specific circumstances

4 supporting the declaration of a fiscal emergency.

§5-30-3. Furlough of state executive branch employees.

1 (a) When the Governor declares a fiscal emergency pursuant to section two of this article,
2 the Governor may, by executive order, institute furloughs of state employees employed in the
3 executive branch of limited or indefinite duration as an alternative to a reduction in force.

4 (b) Any furlough ordered pursuant to this section shall comply with the following:

5 (1) The furlough must be inclusive of all employees within a designated department,
6 agency, division, office or program, regardless of the source of funds or place of work, subject to
7 the following exceptions:

8 (A) Individuals identified by the Governor or the secretary of the particular department
9 identified for furlough as essential personnel may be exempted from furlough or may be
10 furloughed on a different schedule than others within the designated department, agency, division,
11 office or program.

12 (B) If an organizational unit or classification of workers within a designated department,
13 agency, division, office or program can be identified, then that particular organizational unit or
14 classification of workers may be furloughed on a different schedule than others within the
15 designated department, agency, division, office or program.

16 (C) Individuals who voluntarily accept furlough for a full week or weeks may be furloughed
17 on a different schedule than others within the designated department, agency, division, office or
18 program.

19 (D) Individuals who are designated as will and pleasure employees, or who are not
20 classified civil service employees, may be furloughed on a different schedule than others within
21 the designated department, agency, division, office or program.

22 (2) Where a furlough has been ordered, the Governor shall instruct the chief administrator
23 of an affected department, agency, division, office or program to create a schedule for furlough
24 weeks, furlough days or portions of furlough days.

25 (3) Under no circumstances may a department, agency or division close completely.

26 (4) The Governor may not furlough constitutional officers, employees of constitutional
27 officers or members or employees of the legislative or judicial branches.

28 (5) During the period of any furlough, the following shall apply with respect to the benefits
29 of state employees:

30 (A) Furloughed employees will remain eligible for public employee health insurance as
31 before the furlough. The furlough may not prohibit the Senate or the House of Delegates from
32 paying the employer portion of the insurance premium for any employee to the Public Employees
33 Insurance Agency. If, because of the furlough, an employee's pay is insufficient to deduct from
34 and remit to the Public Employee Insurance Agency the employee's share of his or her health
35 insurance premium, then the employer shall remit to the Public Employees Insurance Agency
36 such portion of the employee's share of the premium as is unpaid: *Provided*, That when the
37 furlough ends, the employer shall deduct such aggregate payments from the employee's future
38 pay at the maximum rate permissible under state law.

39 (B) Days, parts of days or weeks for which public employees are furloughed shall be
40 considered days employed or days worked for purposes of calculating retirement eligibility and
41 state service time.

42 (C) Days, parts of days or weeks for which public employees are furloughed shall be
43 considered days employed or days worked for purposes of accruing sick leave or annual leave.

44 (D) No public employee who has been furloughed may use accrued annual leave or
45 accrued sick leave for days on which he or she is scheduled to be furloughed pursuant to this
46 section.

47 (6) Placement of a state employee on furlough under this section shall not give rise to the
48 right of a grievance or appeal to the West Virginia Public Employees Grievance Board.

49 (7) Placement of a state employee on furlough under this section shall not give rise to a
50 claim or right of a public employee to receive unemployment compensation.

51 (8) Nothing contained in this section shall prohibit or prevent the Governor from instituting
52 a reduction in force, nor shall anything contained herein be construed to prohibit a reduction in
53 force from being applied to an individual who is currently or has previously been furloughed.

§5-30-4. Furlough of employees by constitutional officers.

1 (a) When the Governor declares a fiscal emergency pursuant to section two of this article,
2 the Secretary of State, State Auditor, State Treasurer, Attorney General and Commissioner of
3 Agriculture shall have full authority to furlough one or more of the employees within their offices
4 and under their supervision and control.

5 (b) During the period of any furlough, the following shall apply with respect to the benefits
6 of any employee furloughed pursuant to this section:

7 (1) Furloughed employees of constitutional officers will remain eligible for public employee
8 health insurance as before the furlough. The furlough may not prohibit the Senate or the House
9 of Delegates from paying the employer portion of the insurance premium for any employee to the
10 Public Employees Insurance Agency. If, because of the furlough, an employee's pay is
11 insufficient to deduct from and remit to the Public Employees Insurance Agency the employee's
12 share of his or her health insurance premium, then the employer shall remit to the Public
13 Employee Insurance Agency such portion of the employee's share of the premium as is unpaid:
14 Provided, That when the furlough ends, the employer shall deduct such aggregate payments
15 from the employee's future pay at the maximum rate permissible under state law.

16 (2) Days, parts of days or weeks for which constitutional office employees are furloughed
17 will be considered as days employed or days worked for purposes of calculating retirement
18 eligibility and state service time.

19 (c) Placement of a constitutional office employee on furlough under this section shall not
20 give rise to a claim or right of a public employee to receive unemployment compensation.

21 (d) For any furlough implemented pursuant to this section, the constitutional officer may
22 elect to permit a constitutional office employee's reduction in compensation to be allocated over

23 the balance of the fiscal year rather than solely in the pay period or pay periods in which the
24 furlough occurs.

25 (f) Nothing contained in this section shall prohibit or prevent a constitutional officer from
26 jointly instituting a reduction in force, nor shall anything contained herein be construed to prohibit
27 a reduction in force from being applied to an individual who is currently or has previously been
28 furloughed.

§5-30-5. Applicability of other state laws.

1 (a) For purposes of any hours worked during any declared fiscal emergency, no claim
2 shall accrue to any state employee under article five, chapter twenty-one of this code.

3 (b) During any declared fiscal emergency, the provisions of article six, chapter twenty-nine
4 of this code shall not apply to furloughed state employees.

§5-30-6. Termination of fiscal emergency.

1 A declared fiscal emergency shall continue until the Governor issues a proclamation
2 declaring that fiscal emergency is over.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 3. COURTS IN GENERAL.

§51-3-19. Furlough of judicial branch employees during declared fiscal emergency.

1 (a) When the Governor declares a fiscal emergency pursuant to section two, article thirty,
2 chapter five of this code, the Supreme Court of Appeals shall have authority to furlough employees
3 and personnel of the judiciary under the Supreme Court of Appeals, including employees and
4 personnel of the circuit courts, family courts and magistrate courts.

5 (b) Furloughs shall not be employed so as to completely close a court or court office.

6 (c) During the period of any furlough, the following shall apply with respect to the benefits
7 of furloughed judicial employees:

8 (1) Furloughed employees will remain eligible for public employee health insurance as

9 before the furlough. The furlough may not prohibit the Senate or the House of Delegates from
10 paying the employer portion of the insurance premium for any employee to the Public Employee
11 Insurance Agency. If, because of the furlough, an employee's pay is insufficient to deduct from
12 and remit to the Public Employee Insurance Agency the employee's share of his or her health
13 insurance premium, then the employer shall remit to the Public Employee Insurance Agency such
14 portion of the employee's share of the Public Employee Insurance Agency premium as is unpaid:
15 Provided, That when the furlough ends, the employer shall deduct such aggregate payments
16 from the employee's future pay at the maximum rate permissible under state law.

17 (2) Days, parts of days or weeks for which public employees are furloughed will count as
18 days employed or days worked for purposes of calculating retirement eligibility and state service
19 time.

20 (d) For any furlough implemented pursuant to this section, the Supreme Court of Appeals
21 may elect to permit a legislative employee's reduction in compensation to be allocated over the
22 balance of the fiscal year rather than solely in the pay period or pay periods in which the furlough
23 occurs.

24 (e) Placement of a judicial employee on furlough under this section shall not give rise to a
25 claim or right to receive unemployment compensation.

26 (f) Nothing contained in this section shall prohibit or prevent the Supreme Court of Appeals
27 from instituting a reduction in force, nor shall anything contained herein be construed to prohibit
28 a reduction in force from being applied to an individual who is currently or has previously been
29 furloughed.

30 (g) Nothing in this section shall be construed as granting authority for the furlough of
31 elected judicial officers, nor shall it be construed as restricting or otherwise limiting the plenary
32 authority of the Supreme Court of Appeals or the lower courts.

Strike-throughs indicate language that would be stricken from a heading or the present law

and underscoring indicates new language that would be added.