

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2642

BY DELEGATE SPONAUGLE, MILEY, SHOTT, LOVEJOY,

HORNBUCKLE, CAPUTO AND FLUHARTY

[Introduced January 24, 2019; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §55-17-3 of the Code of West Virginia, 1931, as amended, relating
 2 to clarifying what constitutes an action requiring service to the Attorney General and notice
 3 to the Legislature.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. PROCEDURES FOR CERTAIN ACTIONS AGAINST THE STATE.

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

1 (a)(1) Notwithstanding any provision of law to the contrary, at least 30 days prior to the
 2 institution of an action asking for a judgment, order or decree against a government agency that
 3 if successful, will result in a judgment, as defined in §55-17-2 of this code, against a government
 4 official or agency, the complaining party or parties must provide the chief officer of the government
 5 agency and the Attorney General written notice, by certified mail, return receipt requested, of the
 6 alleged claim and the relief desired. Upon receipt, the chief officer of the government agency shall
 7 forthwith forward a copy of the notice to the President of the Senate and the Speaker of the House
 8 of Delegates. The provisions of this subdivision do not apply in actions seeking injunctive relief
 9 where the court finds that irreparable harm would have occurred if the institution of the action was
 10 delayed by the provisions of this subsection.

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

18 (3) A copy of any complaint filed in an action as defined in section two of this article shall
 19 be served on the Attorney General.

20 (b) (1) Notwithstanding any procedural rule or any provision of this code to the contrary,

21 in an action instituted against a government agency that seeks a judgment, as defined in section
22 two of this article, the chief officer of the government agency which is named a party to the action
23 shall, upon receipt of service, forthwith give written notice thereof, together with a copy of the
24 complaint filed, to the President of the Senate and the Speaker of the House of Delegates.

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

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

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

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

NOTE: The purpose of this bill is to clarify that actions that do not require monetary payments by a government agency, and other similar actions, do not mean "judgment" as defined in this article, and therefore do not require prior notice to the Legislature and Attorney General.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.