

WEST VIRGINIA LEGISLATURE
2017 FIRST EXTRAORDINARY SESSION

Committee Substitute

for

House Bill 106

BY MR. SPEAKER (MR. ARMSTEAD) AND DELEGATE MILEY

(BY REQUEST OF THE EXECUTIVE)

[Originating in the Committee on the Judiciary;

May 17, 2017.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new Chapter
2 designated as, §6D-1-1, §6D-1-2, §6D-1-3, §6D-1-4, §6D-2-1, §6D-2-2, §6D-3-1, §6D-3-
3 2, §6D-4-1 and §6D-4-2; all relating generally to conditions triggered by failure of the
4 Governor to approve a budget; an emergency appropriation to pay for essential
5 government functions and expenses which must stay in operation and paid for during a
6 temporary shutdown of government services created by the absence of budget bill for a
7 fiscal year; setting forth legislative intent; defining terms; providing the terms, conditions,
8 and limitations of the emergency appropriation; setting forth conditions of furlough of state
9 employees generally; requiring the Board of Public Works to meet and approve plans for
10 the furloughing of employees of the Executive Branch if a budget has not been approved
11 by a certain date and specifying certain employees exempt from furlough; permitting the
12 furlough of state employees generally; specifically, permitting the President of the Senate
13 and Speaker of the House to institute furloughs of certain legislative employees, including
14 employees of the State Senate, the House of Delegates, and employees of the Legislative
15 Auditor and Joint Committee on Government and Finance; permitting Governor and Board
16 of Public Works to furlough certain state employees in the Executive Branch; and
17 authorizing Supreme Court of Appeals to furlough employees and personnel of Supreme
18 Court of Appeals and personnel of circuit courts, family courts and magistrate courts.

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 chapter, designated, §6D-1-1, §6D-1-2, §6D-1-3, §6D-1-4, §6D-2-1, §6D-2-2, §6D-3-1, §6D-3-2,
3 §6D-4-1 and §6D-4-2; all to read as follows:

CHAPTER 6D. PROVISIONS FOR EMERGENCY APPROPRIATIONS

ARTICLE I. GENERAL PROVISIONS.

§6D-1-1. Legislative Intent.

1 (a) It is the intent of the Legislature to ensure a continuity of essential government
2 operations when the Governor has failed to approve a budget bill that has been acted upon and
3 passed by the Legislature pursuant to section fifty-one, article VI of the Constitution of West
4 Virginia or if the Legislature has failed to pass a budget prior to the start of the succeeding fiscal
5 year.

6 (b) If the Governor vetoes a budget bill for a successive fiscal year, and such veto is not
7 overridden or able to be timely acted upon by the Legislature prior to the beginning of the intended
8 successive fiscal year or if the Legislature has failed to pass a budget prior to the start of the
9 succeeding fiscal year, then the Legislature shall provide for an emergency appropriation to allow
10 temporary continuity of essential government operations for the maintenance of public health,
11 safety and order, and the continued fiscal stability and efficient operation of the government of
12 the state.

§6D-1-2. Definitions.

1 As used in this article,

2 (1) "Approved by the Governor" means the Governor has signed the bill into law or let the
3 bill become law without signature or the bill is adopted by the Legislature notwithstanding the
4 objections of the Governor.

5 (2) "Fiscal Year" means the time period that begins on July 1 and ends on June 30 of the
6 next year.

7 (3) "Furlough" means the placement of an employee deemed non-essential into a
8 temporary non-duty, non-pay status.

§6D-1-3. Emergency appropriation.

1 (a) Notwithstanding any provision of code to the contrary, if a budget bill for a successive
2 fiscal year has not been approved by the Governor by July 1, then expenditures approved
3 pursuant to subsection (b) of this section shall continue to be paid from existing funds and sources
4 of revenue. These expenditures shall be considered an emergency appropriation.

5 (b) For the Legislature, the Supreme Court, all Constitutional offices, including those of
6 the Board of Public Works, and for all other state agencies, warrants shall continue to be
7 presented to the Auditor, and the Auditor shall continue to make such payments and the Treasurer
8 shall fund such warrants as they believe to be necessary for the maintenance of public health,
9 safety and order, and the continued fiscal stability and efficient operation of the government of
10 the state. These monies shall be paid from the emergency appropriation set forth and made
11 available under subsection (a) of this section.

12 (c) The provisions of this section shall immediately cease upon the effective date of a
13 budget bill approved by the Governor.

14 (d) Any state officer or employee acting in accordance with this section shall not be held
15 criminally liable or civilly liable under §12-3-16.

§6D-1-4. Furlough of state employees.

1 (a) Beginning July 1 in any year in which no budget for that fiscal year has been approved
2 by the Governor, the President of the Senate and the Speaker of the House of Delegates have
3 the authority to furlough legislative employees within their offices and under their supervision and
4 control pursuant to the provisions of this chapter.

5 (b) Beginning July 1 in any year in which no budget for that fiscal year has been approved
6 by the Governor, the Governor and other members of the Board of Public Works have the
7 authority to furlough Executive Branch employees pursuant to the provisions of this chapter.

8 (c) Beginning July 1 in any year in which no budget for that fiscal year has been approved
9 by the Governor, the Supreme Court of Appeals shall have the authority to furlough employees
10 and personnel of the judiciary under the Supreme Court of Appeals, including employees and
11 personnel of the circuit courts, family courts and magistrate courts pursuant to the provisions of
12 this chapter.

13 (d) During the period of any furlough, the following shall apply with respect to the benefits
14 of furloughed employees:

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

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

26 (3) Days, parts of days or weeks for which employees are furloughed shall be considered
27 days employed or days worked for purposes of accruing sick leave or annual leave.

28 (4) No employee who has been furloughed may use accrued annual leave or accrued sick
29 leave for days on which he or she is scheduled to be furloughed pursuant to this chapter.

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

32 (f) Notwithstanding any other provision of this Code, when the furlough is declared over,
33 all furloughed employees shall receive the back pay to which he or she would have received
34 except for the furlough as soon as reasonably possible.

35 (g) Placement of an employee on furlough under this section shall not give rise to a claim
36 or right to receive unemployment compensation.

37 (h) Except as otherwise provided, the furlough shall begin the first day of the fiscal year in
38 which there is not an approved budget bill and shall remain in place until such time as a budget
39 bill is approved by the Governor and on the effective date for that fiscal year.

ARTICLE 2. LEGISLATIVE BRANCH.

§6D-2-1. Report of essential government operations and expenses.

1 On or before June 20 of any year in which no budget for the succeeding fiscal year has
2 been approved by the Governor, the President of the Senate and the Speaker of the House of
3 Delegates shall provide a report to the Secretary of State that contains the following information:

4 (a) The positions and services that each deems essential government operations which
5 must remain in operation and paid during a temporary interruption of government services created
6 by the absence of a budget bill for a fiscal year;

7 (b) The financial cost per week of each such level or category of essential positions and
8 services; and

9 (c) The positions and services that each deems non-essential government operations.

§6D-2-2. Providing of report of essential government operations and expenses.

1 Copies of the report shall be provided to the following individuals:

2 (a) The Legislative Auditor;

3 (b) The Chief Justice of the Supreme Court of Appeals and

4 (c) The members of the Board of Public Works.

ARTICLE 3. EXECUTIVE BRANCH.

§6D-3-1. Report of essential government operations and expenses.

1 (a) On or before June 19 of 2017 or on or before April 15 of any following year in which no
2 budget for the succeeding fiscal year has been approved by the Governor, the Governor,
3 constitutional officers and the secretary of each executive department shall provide a report to
4 the Board of Public Works that contains the following information:

5 (1) The positions and services that each deems essential government operations which
6 must remain in operation and paid during a temporary interruption of government services created
7 by the absence of a budget bill for a fiscal year;

8 (2) The financial cost per week of each such level or category of essential positions and
9 services; and

10 (3) The positions and services that each deems non-essential government operations.

11 (b) On or before June 20 of 2017 or on or before May 1 of any following year in which no
12 budget for the succeeding fiscal year has been approved by the Governor, the Board of Public
13 Works shall meet to identify and finalize the following:

14 (1) Those positions and services that the Board deems essential government operations
15 which must remain in operation and paid for during a temporary interruption of government
16 services created by the absence of budget bill for a fiscal year; and

17 (2) Those expenses of the state that the Board deems must be paid to preserve bonds,
18 federal funds, and other necessary services or agreements during a temporary interruption of
19 government services created by the absence of budget bill for a fiscal year.

20 (3) In ascertaining those personnel positions and services that are essential government
21 functions during a temporary interruption of government services, the Board of Public Works shall
22 classify those positions and services deemed “essential” and “non-essential”, and make clear the
23 financial cost per week of each such level or category of essential positions and services.

24 Additionally, the Board of Public Works shall take notice of the following limitations.

25 (A) Employees of departments, agencies, divisions, offices or programs that are
26 completely self-funding shall be exempt from any and all furloughs.

27 (B) The following specific employees shall not be furloughed:

28 (i) Employees of the West Virginia State Police who, in the regular course of their
29 employment, investigate crimes or patrol, and their essential support staff;

30 (ii) West Virginia Natural Resource Police Officer employed by the West Virginia Division
31 of Natural Resources who in the regular course of their employment investigate crimes or patrol,
32 and their essential staff;

33 (iii) Essential employees of the West Virginia Intelligence Fusion Center;

34 (iv) Essential employees of the West Virginia Division of Homeland Security and
35 Emergency Management;

36 (v) Employees of the West Virginia National Guard;

37 (vi) Employees of the West Virginia Capitol Police;

38 (vii) Correctional officers located at either a prison or jail, and their essential support staff;

39 (viii) Employees of state hospitals; and

40 (ix) Employees of the West Virginia Department of Highways who perform necessary
41 emergency services during a non-fiscal emergency.

42 (4) In ascertaining those expenses of the State that must be paid during a temporary
43 interruption of government services, the Board of Public Works shall identify those expenses by
44 necessity, and make clear the financial cost of each such expense, along with the time period in
45 which it must be paid, the consequences of not paying such expense, and whether a grace period
46 or contractual clause allows for late payment of such expense.

47 (5) In making these determinations, the Board of Public Works shall take into account the
48 limited amount of funds that may be available to appropriate for the designated essential
49 functions, services, and expenses.

50 (6) To assist in making these determinations, the Board of Public Works may utilize the
51 services and assistance of any government entity within the Executive Branch, including but not
52 limited to, the Division of Personnel and the Secretary of the Department of Revenue: *Provided,*
53 That any such assistance shall be provided without cost to the Board of Public Works:

54 (7) To assist in making these determinations, the Board of Public Works shall solicit
55 recommendations from respective departments and agencies under the Executive Branch as to
56 what is deemed essential services and personnel.

§6D-3-2. Providing of report of essential government operations and expenses.

1 On or before June 20 of any year in which no budget for the succeeding fiscal year has
2 been approved by the Governor, the Board of Public Works shall file a report of these

3 determinations with the Secretary of State and provide a copy of such report to the following
4 individuals:

- 5 (a) The Speaker of the House of Delegates;
- 6 (b) The President of the Senate;
- 7 (c) The Legislative Auditor; and
- 8 (d) The Chief Justice of the Supreme Court of Appeals

ARTICLE 4. JUDICIAL BRANCH.

§6D-4-1. Report of essential government operations and expenses.

1 On or before June 20 of any year in which no budget for the succeeding fiscal year has
2 been approved by the Governor, the Supreme Court of Appeals shall provide a report to the
3 Secretary of State that contains the following information:

4 (a) The positions and services that each deems essential government operations which
5 must remain in operation and paid during a temporary interruption of government services created
6 by the absence of a budget bill for a fiscal year;

7 (b) The financial cost per week of each such level or category of essential positions and
8 services; and

9 (c) The positions and services that each deems non-essential government operations.

§6D-4-2. Providing of report of essential government operations and expenses.

1 Copies of the report shall be provided to the following individuals:

- 2 (a) The Speaker of the House of Delegates;
- 3 (b) The President of the Senate;
- 4 (c) The Legislative Auditor; and
- 5 (d) The members of the Board of Public Works.

NOTE: The purpose of this bill is to create new sections and a new article of West Virginia Code authorizing the furlough of public employees, WV House and Senate employees, Joint Committee on Government and Finance employees, Legislative Auditor employees, Constitutional office employees and employees of the WV Supreme Court of Appeals. It also establishes the conditions under which furlough is to occur; and defines terms.

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