

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

House Bill 4629

BY DELEGATES STEELE, HANSHAW (MR. SPEAKER),
SUMMERS, ESPINOSA, ELLINGTON, HOUSEHOLDER,
FOSTER, D. JEFFRIES, BARRETT, MAYNOR, AND CRISS

[Introduced February 10, 2022; 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 actions against the State of West Virginia; authorizing the Attorney General or the chief
3 officer of the subject government agency to issue a response to the potential claimant
4 within 60 days of receipt of the notice to file suit; tolling the statute of limitations during
5 pre-suit negotiations for actions against the state; providing that if pre-suit negotiations
6 have not been concluded within six (6) months from the date of receipt of the notice of
7 intent to file suit, then such pre-suit negotiations are deemed to be concluded; affording a
8 90 day time to file suit absent pretrial negotiations; providing an exemption from the 90
9 day time to file suit if the potential claimant is a minor; and dismissing claims absent suit
10 filed within this 90 days.

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 against a government agency, the complaining party or parties must
3 provide the chief officer of the government agency and the Attorney General written notice, by
4 certified mail, return receipt requested, of the alleged claim and the relief desired. Upon receipt,
5 the chief officer of the government agency shall forthwith forward a copy of the notice to the
6 President of the Senate and the Speaker of the House of Delegates. The provisions of this
7 subdivision do not apply in actions seeking injunctive relief where the court finds that irreparable
8 harm would have occurred if the institution of the action was delayed by the provisions of this
9 subsection.

10 (2) The written notice to the chief officer of the government agency and the Attorney
11 General required by subdivision (1) of this subsection is considered to be provided on the date of
12 mailing of the notice by certified mail, return receipt requested. If the written notice is provided to
13 the chief officer of the government agency as required by subdivision (1) of this subsection, any

14 applicable statute of limitations is tolled for 30 days from the date the notice is provided and, if
15 received by the government agency as evidenced by the return receipt of the certified mail, for 30
16 days from the date of the returned receipt.

17 (3) A copy of any complaint filed in an action as defined in §55-17-2 of this code ~~section~~
18 ~~two of this article~~ shall be served on the Attorney General.

19 (b) (1) Notwithstanding any procedural rule or any provision of this code to the contrary,
20 in an action instituted against a government agency that seeks a judgment, as defined in ~~section~~
21 ~~two of this article~~ §55-17-2 of this code, the chief officer of the government agency which is named
22 a party to the action shall, upon receipt of service, forthwith give written notice thereof, together
23 with a copy of the complaint filed, to the President of the Senate and the Speaker of the House of
24 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.

38 (e)(1) Upon receipt of a notice of intent to file suit by the State of West Virginia, or any
39 government agency of the State of West Virginia, the Attorney General or the chief officer of the

40 subject government agency may issue a response to the potential claimant within 60 days of
41 receipt of the notice notifying the potential claimant of the State's election to enter into pre-suit
42 negotiations to enter a full and final settlement of the claim.

43 (2) Should the Attorney General or the chief officer of the subject government agency
44 inform the potential claimant of its election to enter into pre-suit negotiations, the applicable statute
45 of limitations shall be tolled during the period of pre-suit negotiations, until such time as the
46 Attorney General or the chief officer of the subject government agency provides written notice to
47 the claimant that it no longer will engage in pre-suit negotiations: *Provided*, That if pre-suit
48 negotiations have not been concluded within six (6) months from the date of receipt of the notice
49 of intent to file suit, then such pre-suit negotiations are deemed to be concluded. Should the
50 Attorney General or the chief officer of the subject government agency provide such written notice
51 to the claimant after engaging in pre-suit negotiations, the claimant shall then have no more than
52 90 days in which to file suit in the matter, regardless of the applicable statute of limitations, unless
53 the potential claimant is a minor, in which case all statutes of limitation otherwise applicable to
54 minors shall continue to apply.

55 (3) Should the Attorney General or the chief officer of the subject government agency not
56 issue a response to the potential claimant that it desires to enter into pre-suit negotiations as set
57 forth in subsection (1) of this section, the potential claimant shall be afforded no more than 90
58 days from the expiration of the 60 day election period in which to file suit, regardless of the pre-
59 suit negotiations, and regardless of the applicable statute of limitations.

60 (4) Any claim on which the potential claimant does not file suit within 90 days, as provided
61 in subsections (2) and (3) of this section, shall be dismissed with prejudice by the trial court should
62 a claim be filed after the expiration of the applicable 90 day period.

NOTE: The purpose of this bill is to authorize the Attorney General or the chief officer of the subject government agency to issue a response to the potential claimant within 60 days of receipt of the notice to file suit; toll the statute of limitations during pre-suit negotiations for actions against the state; provide that if pre-suit negotiations have not been concluded within six (6) months from the date of receipt of the notice of intent to file suit, then such

pre-suit negotiations are deemed to be concluded; afford a 90 day time to file suit absent pretrial negotiations; provide an exemption from the 90 day time to file suit if the potential claimant is a minor; and dismiss claims absent suit filed within this 90 days.

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