

West Virginia PARSA Bill

April, 2008

ENROLLED**H. B. 104**

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)

[By Request of the Executive]

[Passed March 16, 2008; in effect ninety days from passage.]

AN ACT to amend and reenact §55-17-1 and §55-17-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §55-17-6, all relating to requiring notice to certain public officials upon commencement of actions on behalf of the state or a government agency thereof; requiring notice prior to settlement of such actions; requiring notice of potential recovery through seizure or forfeiture of assets in certain criminal cases; and providing for statutory construction of the article.

Be it enacted by the Legislature of West Virginia:

That §55-17-1 and §55-17-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §55-17-6, all to read as follows:

ARTICLE 17. PROCEDURES FOR CERTAIN ACTIONS ON BEHALF OF OR AGAINST

THE STATE.

§55-17-1. Findings; purpose.

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

(b) The Legislature further finds that there are numerous actions, suits and proceedings filed on behalf of the State of West Virginia or a government agency thereof, that may affect the public interest. Depending upon the outcome, this type of litigation may have significant consequences that can only be addressed by subsequent legislative action. In such litigation, the Governor, Department of Administration and the Legislature may not be directly involved as parties. Additionally, the Governor, Department of Administration and the Legislature need advance notice of potential moneys that may become available as a result of seizure or forfeiture of assets under state or federal criminal law. The Governor, Department of Administration and the Legislature require more timely information regarding these actions in order to protect the public interest. The Legislature further finds that protection of the public interest is best served by requiring notice to the Governor, the Secretary of the Department of Administration, the President of the Senate and the Speaker of the House of Delegates of any action brought on behalf of the state or a government agency thereof, which may result in a judgment, award or settlement and when the state or a government agency thereof, becomes eligible for moneys from state or federal seizure or forfeiture of

assets in criminal cases.

(c) It is the purpose of this article to establish procedures to be followed in certain civil actions filed on behalf of or against state government agencies and their officials.

§55-17-5. Notice of settlement, seizure or forfeiture.

(a) So that the Governor, the Department of Administration and the Legislature may be aware of potential awards, the person or entity bringing any action on behalf of the State of West Virginia, or a government agency thereof, which could result in settlement or judgment shall upon commencement of the action and prior to entering into any settlement agreement which directs how the money should be expended, notify and provide copies of pleadings and related documents to the Governor, the Secretary of the Department of Administration, the President of the Senate and the Speaker of the House of Delegates.

(b) When a government agency becomes aware that moneys may be available to them from a state or federal seizure or forfeiture in a criminal case they shall notify the Governor, the Secretary of the Department of Administration, the President of the Senate and the Speaker of the House of Delegates: *Provided*, That the total value of the assets to be seized or forfeited exceeds two hundred and fifty thousand dollars.

§55-17-6. Construction of article.

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

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