

SB 695 (veto)

FILED

2009 MAY 12 PM 12:32

**WEST VIRGINIA LEGISLATURE**  
SEVENTY-NINTH LEGISLATURE  
REGULAR SESSION, 2009.

SECRETARY OF STATE

—●—  
**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 695**

(BY SENATORS TOMBLIN (MR. PRESIDENT),  
HELMICK, FOSTER, McCABE AND KESSLER)

[Passed April 9, 2009; in effect from passage.]

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AN ACT to amend and reenact §5-5-6 of the Code of West Virginia, 1931, as amended, relating to payment for unused sick leave; limiting employees to a lifetime payment of \$25,000; providing caps on the amount the daily rate of pay is calculated by; providing that payment may be made upon application and verification that the employee is eligible for payment; and provisions to be applied retroactively.

*Be it enacted by the Legislature of West Virginia:*

That §5-5-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.**

**§5-5-6. Payment for unused sick leave.**

1 (a) The Legislature declares that it is the purpose of this  
2 section to create a fund to reduce the unfunded liability  
3 that arises from the extended insurance coverage for  
4 eligible employees under section thirteen, article sixteen  
5 of this chapter, part of the West Virginia Public Employees  
6 Insurance Act.

7 (b) Every eligible employee, as defined in section one of  
8 this article, who is entitled upon retirement to credit his or  
9 her accrued annual and sick leave for extended insurance  
10 coverage as provided in section thirteen, article sixteen of  
11 this chapter and who has accumulated at least sixty-five  
12 days of unused sick leave may be paid, at his or her option,  
13 for unused sick leave in an amount of days as designated  
14 by the employee not to exceed the number of sick leave  
15 days that would reduce an employee's sick leave balance  
16 to less than fifty days: *Provided*, That any employee who  
17 applies for payment under this section may not be paid  
18 more than a total of \$25,000, either at one time or over the  
19 course of multiple payments for unused sick leave.

20 (c) An employee who applies for payment under this  
21 section shall be paid at a rate equal to one quarter of his  
22 or her usual rate of daily pay during that calendar year.

23 (1) The "daily rate of pay" of an employee paid a  
24 monthly salary is calculated by multiplying the monthly  
25 salary by twelve and dividing that number by the number  
26 of workdays for that calendar year: *Provided*, That for any  
27 employee that falls under the provisions of subsection (d),  
28 section thirteen, article sixteen of this chapter, the highest  
29 monthly salary that the daily rate of pay shall be calcu-  
30 lated by is \$6,700. Any employee who falls under the  
31 provisions of said subsection and is paid more than \$6,700  
32 per month shall receive payment for unused sick leave at  
33 a rate equal to one quarter of the daily rate of pay of an  
34 employee paid a monthly salary of \$6,700: *Provided*,  
35 *however*, That for any employee that falls under the

36 provisions of subsection (e), section thirteen, article  
37 sixteen of this chapter, the highest monthly salary that the  
38 daily rate of pay shall be calculated by is \$4,200. Any  
39 employee who falls under the provisions of said subsection  
40 and is paid more than \$4,200 per month shall receive  
41 payment for unused sick leave at a rate equal to one  
42 quarter of the daily rate of pay of an employee paid a  
43 monthly salary of \$4,200: *Provided further*, That any  
44 employee who falls under the provisions of subsection (g),  
45 section thirteen, article sixteen of this chapter is not  
46 eligible for payment under this section.

47 (2) As used in this section, "workday" does not include  
48 weekends.

49 (3) Any payment for unused sick leave may not be a part  
50 of final average salary computation.

51 (d) Payment for unused sick leave may be made upon  
52 application and after the Secretary of the Department of  
53 Administration verifies that the employee is eligible for  
54 payment under this section. Payments shall be made out  
55 of the fund established in subsection (g) of this section.

56 (e) Any eligible employee opting to receive payment in  
57 exchange for unused sick leave must contract, in a form to  
58 be prescribed by the Department of Administration,  
59 agreeing to reimburse the fund for the amount exchanged  
60 plus twelve percent per annum if the employee elects to  
61 separate from employment within sixty months of the date  
62 of the exchange pursuant to subsection(b) of this section.  
63 The Department of Administration shall pursue collection  
64 of the obligation, either by itself, or by contracting with a  
65 collection agency. For purposes of this section, "separa-  
66 tion" does not include separation from employment by  
67 death or retirement, but does refer to any other manner in  
68 which employment may be terminated.

69 (f) Payments shall be made in the order that eligible  
70 employees apply for the payments so long as funds are  
71 available. In the event the fund is insufficient to pay all  
72 employees who have applied for payment in a fiscal year,  
73 employees who do not receive payment are eligible for  
74 payment in the next fiscal year, are not required to  
75 reapply and shall receive payment in the order in which  
76 they first applied, unless the employee chooses to with-  
77 draw the application prior to the next fiscal year.

78 (g) The special revenue account within the State Trea-  
79 sury known as the State Employee Sick Leave Fund is  
80 continued. The fund shall consist of moneys appropriated  
81 by the Legislature, moneys deposited into the fund in  
82 accordance with administrative rules of the Department of  
83 Administration and any interest or other return to moneys  
84 in the fund. The fund shall be administrated by the  
85 Secretary of the Department of Administration.

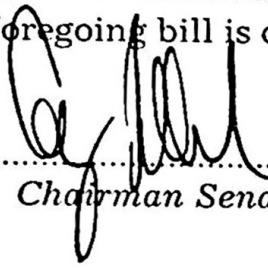
86 (h) The secretary shall promulgate rules pursuant to  
87 article three, chapter twenty-nine-a of this code to imple-  
88 ment the provisions of this section. The rules shall in-  
89 clude, but not be limited to, provisions for the application  
90 process and a rule authorizing the secretary to obtain  
91 reimbursement, where available and appropriate, to the  
92 State Employee Sick Leave Fund from any spending unit  
93 for a pro rata share of payments made under the provi-  
94 sions of this section to any employee whose salary is paid,  
95 in whole or in part, from a funding source other than the  
96 General Revenue Fund. The rules may also include  
97 provisions to adjust, when necessary, the highest monthly  
98 salary by which the daily rate of pay is calculated.

99 (i) Each spending unit, as defined in section one of this  
100 article, shall verify to the secretary whether an employee  
101 is eligible for payment under this section, shall verify the  
102 funding source or sources of the employee's salary and  
103 shall verify the total number of unused sick leave days for

104 all employees at least once per year. The secretary shall  
105 maintain sick leave records for all spending units. All sick  
106 leave days for which an employee is paid as provided in  
107 this section shall be deducted from the employee's sick  
108 leave balance by the secretary and the secretary shall  
109 verify to each spending unit the amount of days that have  
110 been deducted from an employee's sick leave balance. An  
111 employee shall not be permitted to reacquire any sick  
112 leave days for which he or she received payment under the  
113 provisions of this section.

114 (j) The provisions of this section are retroactive to  
115 December 1, 2008, to the extent that the provisions apply  
116 to those employees who have previously applied for  
117 payment for unused sick leave and have not been paid.

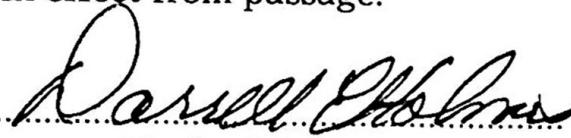
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
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Chairman Senate Committee

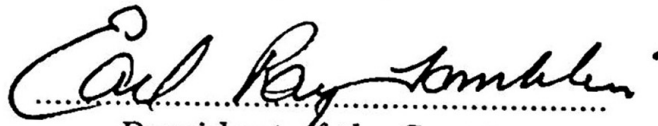
  
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Chairman House Committee

Originated in the Senate.

In effect from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
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President of the Senate

  
.....  
Speaker House of Delegates

The within is *disapproved* this the *12<sup>th</sup>*  
Day of *May*, 2009.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAY 6 2009

Time 11:00 am