WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

COMMITTEE SUBSTITUTE
FOR
ENROLLED
Senate Bill No. 476
(Senators Tomblin, Mr. President, Foster, Kessler and Love, original sponsors)

[Passed March 8, 2008; in effect from passage.]
AN ACT to amend and reenact §5-5-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5-5-6, all relating to public employee benefits generally; providing that members of the parole board are eligible for incremental salary increases; state eligible employees hired prior to the first day of July, two thousand one, to be paid for unused sick leave days in excess of fifty days once per
year; creating the State Employee Sick Leave Fund; naming the Secretary of the Department of Administration as administrator of the fund; and authorizing rulemaking to implement the provisions of this section.

Be it enacted by the Legislature of West Virginia:

That §5-5-1 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 §5-5-6, all to read as follows:

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-1. Definitions.

(1) Any regular full-time employee of the state or any spending unit of the state who is eligible for membership in any state retirement system of the State of West Virginia or other retirement plan authorized by the state: Provided, That the mandatory salary increase required by this article does not apply to any employee of the state whose compensation is fixed by statute or by statutory schedule other than employees described in this section. Clerks, deputy clerks and magistrate assistants of magistrate courts are eligible for the incremental salary increases provided in this article with the increases to be allowable in addition to the maximum salaries and compensation for the employee offices under the magistrate court system statutes of article one, chapter fifty of this code. Members of the Board of Parole are eligible for the incremental salary
increases provided in this article with the increases to be allowable in addition to the salaries and compensation provided in section two-a, article seven, chapter six of this code. This article may not be construed to mandate an increase in the salary of any elected or appointed officer of the state;

(2) Any classified employee as defined in section two, article nine, chapter eighteen-b of this code who is an employee of a state institution of higher education, the Higher Education Policy Commission or the Council for Community and Technical College Education; or

(3) Any full-time faculty member as defined in section one, article eight, chapter eighteen-b of this code who is an employee of a state institution of higher education, the Higher Education Policy Commission or the West Virginia Council for Community and Technical College Education.

(b) “Years of service” means full years of totaled service as an employee of the State of West Virginia. For full-time faculty as defined in this section, each nine or more months of contracted employment during a fiscal year equals one full year of service; and

(c) “Spending unit” means any state office, department, agency, board, commission, institution, bureau or other designated body authorized to hire employees.

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

(a) Every eligible employee, as defined in section one of this article, who was hired prior to the first day of
July, two thousand one, and who has accumulated at
least sixty-five days of unused sick leave may be paid,
at his or her option, for unused sick leave in an amount
of days as designated by the employee not to exceed the
number of sick leave days that would reduce an
employee's sick leave balance to less than fifty days.
The employee shall be paid at a rate equal to one
quarter of their usual rate of daily pay during that
calendar year. The "daily rate of pay" of an employee
paid a monthly salary is calculated by multiplying the
monthly salary by twelve and dividing that number into
the number of workdays for that calendar year. As
used in this section, "workday" does not include
weekends. Any payment for unused sick leave may not
be a part of final average salary computation.

(b) Payment for unused sick leave may be made only
once per fiscal year on either the pay day immediately
following the first full pay period in July or the first full
pay period in December. Payments shall be made out
of the fund established in subsection (d) of this section.

(c) Any eligible employee opting to receive payment in
exchange for unused sick leave must contract, in a form
to be prescribed by the Department of Administration,
agreeing to reimburse the fund for the amount
exchanged plus twelve percent annum if the employee
elects to separate from employment within sixty months
of the date of the exchange pursuant to subsection (a) of
this section. The Department of Administration shall
pursue collection of the obligation, either by itself, or
by contracting with a collection agency. For purposes
of this section, "separation" does not include separation
from employment by death or retirement, but does refer
to any other manner in which employment may be
(d) Payments shall be made in the order that eligible employees apply for the payments so long as funds are available. In the event the fund is insufficient to pay all employees who have applied for payment in a fiscal year, employees who do not receive payment are eligible for payment in the next fiscal year are not required to reapply and shall receive payment in the order in which they first applied, unless the employee chooses to withdraw the application prior to the next fiscal year.

(e) Effective the first day of July, two thousand nine, there is created a special revenue account within the State Treasury to be known as the State Employee Sick Leave Fund which shall consist of moneys appropriated by the Legislature and shall be administrated by the Secretary of the Department of Administration.

(f) The secretary shall adopt procedural rules pursuant to article three, chapter twenty-nine-a of this code to implement the provisions of this section. The rules shall include, but not be limited to, provisions for the application and the application process.

(g) Each spending unit, as defined in section one of this article, shall verify to the secretary an employee is eligible for payment under this section and shall verify the number of unused sick leave days for all employees at least once per year. The secretary shall maintain sick leave records for all spending units. All sick leave days that an employee is paid for as provided in this section shall be deducted from the employee's sick leave balance by the secretary and the secretary shall verify to each spending unit the amount of days that have
been deducted from an employee's sick leave balance. An employee shall not be permitted to reacquire any sick leave days that he or she received payment for under the provisions of this section.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this 28th Day of March, 2008.

Governor