

SB 695

FILED

2009 JUN -5 PM 4: 21

WEST VIRGINIA LEGISLATURE

OFFICE OF THE CLERK OF THE WEST VIRGINIA
LEGISLATURE

SEVENTY-NINTH LEGISLATURE

REGULAR SESSION, 2009



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 695

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

[Passed May 28, 2009; in effect from passage.]

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SECRETARY OF STATE

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(BY SENATORS TOMBLIN (MR. PRESIDENT), HELMICK, FOSTER,
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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; removing eligibility of certain higher education employees to receive payment for unused sick leave; providing that payment may be made upon application and verification that the employee is eligible for payment; and specifying 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
50 part 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
79 Treasury known as the State Employee Sick Leave Fund
80 is continued. The fund shall consist of moneys appropri-
81 ated 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.

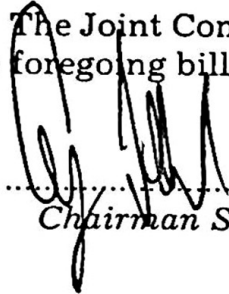
86 (h) The secretary shall promulgate rules pursuant to
87 article three, chapter twenty-nine-a of this code to imple-
88 ment the provisions of this section. The rules shall in-
89 clude, but not be limited to, provisions for the application
90 process and a rule authorizing the secretary to obtain
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.


.....
Chairman Senate Committee


.....
Chairman House Committee

Originated in the Senate.

In effect from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


.....
Speaker House of Delegates

The within is approved this the 5th
Day of June, 2009.


.....
Governor

PRESENTED TO THE
GOVERNOR

JUN - 3 2009

Time 10:20am