

SB 476

FILED

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**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-EIGHTH LEGISLATURE**  
**REGULAR SESSION, 2008**

SECRETARY OF STATE

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COMMITTEE SUBSTITUTE  
FOR

**ENROLLED**

**Senate Bill No. 476**

(SENATORS TOMBLIN, MR. PRESIDENT, FOSTER,  
KESSLER AND LOVE, *original sponsors*)

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[Passed March 8, 2008; in effect from passage.]

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[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 For the purposes of this article:

2 (a) "Eligible employee" means:

3 (1) Any regular full-time employee of the state or any  
4 spending unit of the state who is eligible for  
5 membership in any state retirement system of the State  
6 of West Virginia or other retirement plan authorized by  
7 the state: *Provided*, That the mandatory salary increase  
8 required by this article does not apply to any employee  
9 of the state whose compensation is fixed by statute or  
10 by statutory schedule other than employees described  
11 in this section. Clerks, deputy clerks and magistrate  
12 assistants of magistrate courts are eligible for the  
13 incremental salary increases provided in this article  
14 with the increases to be allowable in addition to the  
15 maximum salaries and compensation for the employee  
16 offices under the magistrate court system statutes of  
17 article one, chapter fifty of this code. Members of the  
18 Board of Parole are eligible for the incremental salary

19 increases provided in this article with the increases to  
20 be allowable in addition to the salaries and  
21 compensation provided in section two-a, article seven,  
22 chapter six of this code. This article may not be  
23 construed to mandate an increase in the salary of any  
24 elected or appointed officer of the state;

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

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

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

41 (c) "Spending unit" means any state office,  
42 department, agency, board, commission, institution,  
43 bureau or other designated body authorized to hire  
44 employees.

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

1 (a) Every eligible employee, as defined in section one  
2 of this article, who was hired prior to the first day of

3 July, two thousand one, and who has accumulated at  
4 least sixty-five days of unused sick leave may be paid,  
5 at his or her option, for unused sick leave in an amount  
6 of days as designated by the employee not to exceed the  
7 number of sick leave days that would reduce an  
8 employee's sick leave balance to less than fifty days.  
9 The employee shall be paid at a rate equal to one  
10 quarter of their usual rate of daily pay during that  
11 calendar year. The "daily rate of pay" of an employee  
12 paid a monthly salary is calculated by multiplying the  
13 monthly salary by twelve and dividing that number into  
14 the number of workdays for that calendar year. As  
15 used in this section, "workday" does not include  
16 weekends. Any payment for unused sick leave may not  
17 be a part of final average salary computation.

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

23 (c) Any eligible employee opting to receive payment in  
24 exchange for unused sick leave must contract, in a form  
25 to be prescribed by the Department of Administration,  
26 agreeing to reimburse the fund for the amount  
27 exchanged plus twelve percent annum if the employee  
28 elects to separate from employment within sixty months  
29 of the date of the exchange pursuant to subsection (a) of  
30 this section. The Department of Administration shall  
31 pursue collection of the obligation, either by itself, or  
32 by contracting with a collection agency. For purposes  
33 of this section, "separation" does not include separation  
34 from employment by death or retirement, but does refer  
35 to any other manner in which employment may be

36 terminated.

37 (d) Payments shall be made in the order that eligible  
38 employees apply for the payments so long as funds are  
39 available. In the event the fund is insufficient to pay all  
40 employees who have applied for payment in a fiscal  
41 year, employees who do not receive payment are eligible  
42 for payment in the next fiscal year are not required to  
43 reapply and shall receive payment in the order in which  
44 they first applied, unless the employee chooses to  
45 withdraw the application prior to the next fiscal year.

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

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

57 (g) Each spending unit, as defined in section one of  
58 this article, shall verify to the secretary an employee is  
59 eligible for payment under this section and shall verify  
60 the number of unused sick leave days for all employees  
61 at least once per year. The secretary shall maintain sick  
62 leave records for all spending units. All sick leave days  
63 that an employee is paid for as provided in this section  
64 shall be deducted from the employee's sick leave  
65 balance by the secretary and the secretary shall verify  
66 to each spending unit the amount of days that have

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67    been deducted from an employee's sick leave balance.  
68    An employee shall not be permitted to reacquire any  
69    sick leave days that he or she received payment for  
70    under the provisions of this section.

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

*Chandy White*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Darrell E. Holm*  
.....  
Clerk of the Senate

*Gregory D. Bell*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

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

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 1 8 2008

Time 3:05 pm