

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2638

BY DELEGATES HORNBUCKLE AND SKAFF

[Introduced February 23, 2021; Referred to the
Committee on Education then Finance]

1 A BILL to amend and reenact §18A-4-10 of the Code of West Virginia, 1931, as amended, relating
 2 to granting full time employees of county boards of education three months of paid leave
 3 following the birth of a child, or the placement of a child in the home through adoption or
 4 foster care; and providing that the leave is in addition to any other leave available to the
 5 employee.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-10. Personal leave for illness, maternity, and other causes; leave banks; substitutes.

1 (a) Personal Leave.

2 (1) At the beginning of the employment term, any full-time employee of a county board is
 3 entitled annually to at least one and one-half days personal leave for each employment month or
 4 major fraction thereof in the employee’s employment term. Unused leave shall be accumulative
 5 without limitation and is transferable within the state. A change in job assignment during the school
 6 year does not affect the employee’s rights or benefits.

7 (2) A regular full-time employee who is absent from assigned duties due to accident,
 8 sickness, death in the immediate family, or life threatening illness of the employee’s spouse,
 9 parents or child, or other cause authorized or approved by the board, shall be paid the full salary
 10 from his or her regular budgeted salary appropriation during the period which the employee is
 11 absent, but not to exceed the total amount of leave to which the employee is entitled.

12 (3) Each employee is permitted to use three days of leave annually without regard to the
 13 cause for the absence: Provided, That effective July 1, 2019, each employee is permitted to use
 14 four days of leave annually without regard to the cause for the absence. Personal leave without
 15 cause may not be used on consecutive work days unless authorized or approved by the
 16 employee’s principal or immediate supervisor, as appropriate. The employee shall give notice of
 17 leave without cause to the principal or immediate supervisor at least 24 hours in advance, except

18 that in the case of sudden and unexpected circumstances, notice shall be given as soon as
19 reasonably practicable. The principal or immediate supervisor may deny use of the day if, at the
20 time notice is given, either 15 percent of the employees or three employees, whichever is greater,
21 under the supervision of the principal or immediate supervisor, have previously given notice of
22 their intention to use that day for leave. Personal leave may not be used in connection with a
23 concerted work stoppage or strike. Where the cause for leave originated prior to the beginning of
24 the employment term, the employee shall be paid for time lost after the start of the employment
25 term. If an employee uses personal leave which the employee has not yet accumulated on a
26 monthly basis and subsequently leaves the employment, the employee is required to reimburse
27 the board for the salary or wages paid for the unaccumulated leave.

28 (4) Three months of paid leave is to be given to a regular full-time employee, either male
29 or female, following the birth of his or her child, or the placement of a child in his or her home
30 through adoption or foster care. This leave is in addition to any other leave available to the
31 employee.

32 ~~(4)~~ (5) The State Board shall maintain a rule to restrict the payment of personal leave
33 benefits and the charging of personal leave time used to an employee receiving a workers'
34 compensation benefit from a claim filed against and billed to the county board by which the person
35 is employed. If an employee is awarded this benefit, the employee shall receive personal leave
36 compensation only to the extent the compensation is required, when added to the workers'
37 compensation benefit, to equal the amount of compensation regularly paid the employee. If
38 personal leave compensation equal to the employee's regular pay is paid prior to the award of
39 the workers' compensation benefit, the amount which, when added to the benefit, is in excess of
40 the employee's regular pay shall be deducted from the employee's subsequent pay. The
41 employee's accrued personal leave days shall be charged only for such days as equal the amount
42 of personal leave compensation required to compensate the employee at the employee's regular
43 rate of pay.

44 ~~(5)~~ (6) The county board may establish reasonable rules for reporting and verification of
45 absences for cause. If any error in reporting absences occurs, the county board may make
46 necessary salary adjustments:

47 (A) In the next pay after the employee has returned to duty; or

48 (B) In the final pay if the absence occurs during the last month of the employment term.

49 (b) Leave Banks.

50 (1) Each county board shall establish a personal leave bank that is available to all school
51 personnel. The board may establish joint or separate banks for professional personnel and school
52 service personnel. Each employee may contribute up to two days of personal leave per school
53 year. An employee may not be coerced or compelled to contribute to a personal leave bank.

54 (2) The personal leave bank shall be established and operated pursuant to a rule adopted
55 by the county board. The rule:

56 (A) May limit the maximum number of days used by an employee;

57 (B) Shall limit the use of leave bank days to an active employee with fewer than five days
58 accumulated personal leave who is absent from work due to accident or illness of the employee;
59 and

60 (C) Shall prohibit the use of days to:

61 (i) Qualify for or add to service for any retirement system administered by the state; or

62 (ii) Extend insurance coverage pursuant to §5-16-13 of this code.

63 (D) Shall require that each personal leave day contributed:

64 (i) Is deducted from the number of personal leave days to which the donor employee is
65 entitled by this section;

66 (ii) Is not deducted from the personal leave days without cause to which a donor employee
67 is entitled if sufficient general personal leave days are otherwise available to the donor employee;

68 (iii) Is credited to the receiving employee as one full personal leave day;

69 (iv) May not be credited for more or less than a full day by calculating the value of the

70 leave according to the hourly wage of each employee; and

71 (v) May be used only for an absence due to the purpose for which the leave was
72 transferred. Any transferred days remaining when the catastrophic medical emergency ends
73 revert back to the leave bank.

74 (3) The administration, subject to county board approval, may use its discretion as to the
75 need for a substitute where limited absence may prevail, when an allowable absence does not:

76 (i) Directly affect the instruction of the students; or

77 (ii) Require a substitute employee because of the nature of the work and the duration of
78 the cause for the absence.

79 (4) If funds in any fiscal year, including transfers, are insufficient to pay the full cost of
80 substitutes for meeting the provisions of this section, the remainder shall be paid on or before the
81 August 31 from the budget of the next fiscal year.

82 (5) A county board may supplement the leave provisions in any manner it considers
83 advisable in accordance with applicable rules of the state Board and the provisions of this chapter
84 and chapter 18 of this code.

85 (c) Effective July 1, 2019, a classroom teacher who has not utilized more than four days
86 of personal leave during the 200-day employment term shall receive a bonus of \$500 at the end
87 of the school year. If the appropriations to the Department of Education for this purpose are
88 insufficient to compensate all applicable classroom teachers, the Department of Education shall
89 request a supplemental appropriation in an amount sufficient to compensate all eligible classroom
90 teachers. This bonus may not be counted as part of the final average salary for the purpose of
91 calculating retirement.

NOTE: The purpose of this bill is to grant full-time employees of county boards of education three months of paid leave, following the birth of a child, or the placement of a child in the home through adoption or foster care. The bill provides that the leave is in addition to any other leave available to the employee.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.