

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

2009 JUL 30 PM 4:06

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Department of Administration, Cabinet Secretary's Office TITLE NUMBER: 148

RULE TYPE: Procedural CITE AUTHORITY: WV Code §5-5-6

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 21

TITLE OF RULE BEING PROPOSED: Procedure for Payment of Unused Sick Leave to Employees

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON 4/29/08 AT 9:30am ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Donna M. Lipscomb, Executive Coordinator
West Virginia Department of Administration
1900 Kanawha Boulevard, East
Building 1, Room E-119
Charleston, WV 25305
304-558-3392

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Robert W. Ferguson by [Signature]
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Agency: Department of Administration	Title Number: 148
Rule Type: Procedural	Cite Authority: 5-5-6

STATEMENT OF CIRCUMSTANCE AND BRIEF SUMMARY

The proposed procedural rules are being promulgated as a result of Senate Bill 476 that passed the Legislature during the 2008 regular session. The proposed rules outline the procedure to be used when employees seek payment for their unused sick leave. The rules are new, therefore, strike throughs and inserts are not included.

148CSR21

2005 MAY 30 PM 4:06

TITLE 148
PROCEDURAL RULE
DEPARTMENT OF ADMINISTRATION
OFFICE OF THE SECRETARY

CONFIDENTIAL

SERIES 21
PROCEDURE FOR PAYMENT OF UNUSED SICK LEAVE TO EMPLOYEES

§148-21-1. General.

1.1. Scope. - These procedural rules shall set forth the procedures for payment to eligible employees for accrued and unused sick leave.

1.2. Authority. - W.Va. Code §5-5-6

1.3. Filing Date -

1.4. Effective Date -

§148-21-2. Definitions

2.1. "Application Date" - means the date the employee's application is certified by the Head of the Spending Unit for which he/she is employed.

2.2. "Certified Application" - means an Application for Payment of Unused Sick Leave that has been certified by the Head of the Spending Unit for which the employee works certifying: that the employee is an eligible employee; the number of unused sick leave days available for which the employee may be paid; the employee's current annual salary; and the number of sick days the employee would have remaining after compensation for available unused sick days.

2.3. "Eligible Employee" - means 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 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. Shall also mean any full-time faculty member as defined in section one, article eight, chapter eighteen-b of the 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. An employee originally hired before July 1, 2001, who separates from employment and is reinstated after July 1,

2001, shall be treated as a new hire and shall not be an eligible employee, unless they are reinstated within twelve calendar months and qualify for restoration of all leave pursuant to Title 143, Series 1, Section 14.4(e) 2. of the Rules of the West Virginia Division of Personnel (143 CSR 1-14.4(e) 2.)

2.4. "Finance Director"- means the Director of the Division of Finance for the Department of Administration.

2.5. "Secretary" - means the Cabinet Secretary for the Department of Administration.

2.6. "State Spending Unit" - means any state office, department, agency, board, commission, institution, bureau or other designated body authorized to hire employees.

§148-21-3. Employee Application Procedure

3.1 Any Eligible Employee wishing to be paid for their unused sick leave shall complete the application form established by the Department of Administration and submit it to the head of their spending unit or his/her designee.

3.1.a. Said application shall include the following information:

- 1) The date on which the employee began employment with the State of West Virginia, the employee's years of service and the spending unit with which the employee is currently employed.
- 2) The number of unused sick days for which the employee is requesting payment.
- 3) The number of unused sick days the employee has accumulated.
- 4) The current annual salary of the employee seeking payment for unused sick leave.
- 5) The number of sick days the employee would have remaining after compensation for available unused sick days.

§148-21-4. Spending Unit Certification

4.1. The authorized representative of the spending unit for which the employee works shall review the employee's application for payment of unused sick leave. The authorized representative shall verify the eligibility of the employee and the number of unused sick days available for the employee requesting payment to the head of the spending unit.

4.2. The head of the spending unit shall then certify to the Secretary that the employee requesting payment for their unused sick leave meets or does not meet all eligibility requirements. The head of the spending unit must also certify to the Secretary the number of unused sick leave days the employee has available for which he/she may be paid, the employee's annual salary, and the number of sick days the employee would have remaining after compensation for available unused sick days.

4.3. The Secretary shall receive all applications for payment of unused sick leave accompanied by certification by the head of the spending unit for which the employee works certifying that the employee is eligible, the number of unused sick days the employee has available, the employee's current annual salary, and the number of sick days the employee would have remaining after compensation for available unused sick days.

§148-21-5 Cabinet Secretary Authorization

5.1. Upon receipt of the certified application, the Secretary shall make a determination as to whether to approve or disapprove the Application for Payment of Sick Leave based upon the facts and evidence provided to him/her.

5.2. In the event that the Application for Payment of Sick Leave is disapproved by the Secretary, the Secretary shall advise the employee in writing that their Application was denied and setting forth the reasons for said decision.

5.3. In the event that the Secretary determines that the certified Application for Payment of Sick Leave should be approved, the Secretary, or his/her designee, shall meet with the employee seeking compensation and enter into the established contractual agreement to repay the funds received if the employee leaves employment prior to sixty months from the date of receipt of the funds. Once the contractual agreement has been entered into by the employee, the Secretary shall approve the Application.

5.4. The Secretary shall process all certified applications for payment of unused sick leave which have been approved according to the application date.

5.5. Following approval, the Secretary shall provide the original Application for Payment of Unused Sick Leave to the Head of the Spending Unit for which the employee works with a copy to the Finance Director. The Head of the Spending Unit shall direct his/her payroll clerk to confirm with the Finance Director that funds are available in the State Employee Sick Leave Fund within ten (10) days. If funds are available, the payroll clerk for the spending unit shall provide the funds to the employee and request the Finance Director to reimburse the spending unit for the funds from the State Employee Sick Leave Fund.

§ 148-21-6 Payment Procedure

6.1. Payments shall be made to employees who have met all certification requirements only once per year on either the pay day immediately following the first full pay period in July or the first full pay period in December as long as funds are available in the State Employee Sick Leave Fund. The employee shall be paid at a rate equal to one quarter of their usual rate of daily pay as set forth in W.Va. Code §5-5-6.

6.2. The West Virginia State Auditor shall include the funds received from the employee as wages on the employee's tax form but shall establish a separate code to reflect that the income is non-pensionable. Any payment for unused sick leave may not be a part of the employee's final average salary computation.

6.3. In the event that the State Employee Sick Leave Fund has insufficient funds to pay the employees who have applied for payment in a fiscal year, then the employees who do not receive payment are eligible for payment in the next fiscal year without being required to reapply. Funds shall be paid in order according to the "application date", unless the employee chooses to withdraw the application prior to the next fiscal year. The Finance Director shall maintain the approved applications until such funds are available for payment.

6.4. The employee who has been paid for their unused sick leave shall not be permitted to reacquire any sick leave days for which he/she received payment.

6.5. The Secretary, or his/her designee, shall direct the Head of the Spending Unit to deduct from the employee's sick leave balance the number of sick leave days for which the employee was paid. The Head of the Spending Unit shall verify to the Secretary or his/her designee the number of days that were deducted from the employee's sick leave balance.

§148-21-7. Repayment of funds

7.1. Prior to an employee receiving payment for unused sick leave, they must first contract with the Department of Administration and agree to reimburse the fund for the amount exchanged plus twelve percent per annum if the employee elects to separate from employment within sixty months of the date of the exchange. Said contract shall be established by the Department of Administration and available for review by the employee prior to being required to endorse said contract. Separation from employment does not include death or retirement.

7.2. The Secretary shall pursue collection of the obligation either by itself or by contracting with a collection agency. The contract entered into by the employee requesting payment for sick days shall set forth the methods of collection that the Department of Administration may pursue, including but not limited to, withholding funds from the employee's salary.

7.3. The State Auditor shall be responsible for monitoring the employees who get paid for leave and then separate employment with the State of West Virginia. The Auditor shall notify the Secretary when an employee who received payment for unused sick leave separates from employment so that the Secretary may pursue collection of the obligation.

§148-21-8. Record maintaining and reporting

8.1. Each spending unit shall maintain an accurate record of sick leave for every individual employed in that spending unit. Said record should be kept up to date and available to the Secretary upon request.

8.2. Each spending unit shall provide the Secretary, or his/her designee, a report of all sick days taken and all sick days accumulated for every employee in their unit by the last day of June of each fiscal year. Said annual report shall also identify the total sick leave days available to each employee.

8.3. The Secretary, or his/her designee, shall maintain sick leave records for all spending units.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Procedure for Payment of Unused Sick Leave to Employees

Type of Rule: Legislative Interpretive Procedural

Agency: Department of Administration

Address: 1900 Kanawha Boulevard, East
Building 1, Room E-119
Charleston, WV 25305

Phone Number: 304-558-3392 Email: donna.m.lipscomb@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The adoption of the proposed procedural rules will have no fiscal impact on the State of West Virginia. The procedural rules simply outline the procedures to be followed when employees wish to be compensated for their unused sick leave as authorized by the WV Code. To determine the fiscal impact of the Statutory provisions, please see the attached fiscal note filed during the legislative session.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: _____

Rule Title: Procedure for Payment of Unused Sick Leave to Employees

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

See attached fiscal note filed during the legislative session.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: 5/30/08

Signature of Agency Head or Authorized Representative
Robert W. Ferguson

Agency: **Public Employees Insurance Agency (PEIA)**
 Date Requested:01/31/2008 CBD Number: Version: Bill Number: Resolution Number:
 Time Requested:06:31 PM **2008R1728 Introduced SB476**
 CBD Subject: **SICK LEAVE CASH IN PROGRAM**

FUND(S)
2180

Sources of Revenue

Special Fund

Legislation creates:

Neither Program nor Fund

Fiscal Note Summary

Effect this measure will have on costs and revenues of state government.

The purpose of this bill is to allow for the purchase of unused sick leave of State employees once per year.

While the note attached to the bill states that the purchase of unused sick leave will be restricted to employees hired prior to July 1, 2001, there are no restrictions stated within the bill that would preclude any State employee from applying for and receiving payment for unused sick leave. If it is the intent of the bill sponsor to restrict this buy-out then a specific amendment to the existing language would need to be included.

The following costs and potential return on the reduction of the unfunded Other Post Employment Benefits (OPEB) liability are based solely on the bill as it presently exists. The presumption is that all those employees hired prior to July 1, 2001 that have a sick and annual leave conversion benefit and wish to sell the unused sick leave will do so immediately. The reduction to the OPEB unfunded liability is only applied to FY-09 because all those having a retirement leave conversion benefit will have sold theirs the first year it is offered. The cost exposure for FY-09 also includes those employees hired after July 1, 2001, that will have accumulated enough sick leave to sell it and will wish to sell down to the 50 day limit. The following years show the cost of buying sick leave from employees hired after July 1, 2001, that will sell the unused sick leave as soon as they are eligible to do so (five years of service and at least 60 days of accumulated sick leave);

Fiscal Year Cost Exposure Reduction of OPEB Unfunded Liability

FY-09	\$15,579,517.00	\$30,443,000.00
FY-10	\$ 3,917,614.00	
FY-11	\$ 6,001,939.00	
FY-12	\$ 8,879,140.00	

Totals \$34,378,210.00 \$30,443,000.00

Based upon this calculation the State would see a net loss for providing this benefit of \$3,935,210.00 in the first four years. Continuing the buy-out program after that date would result in increasing pay outs to post July 1, 2001 employees without a reduction in the unfunded OPEB liability.

Should the bill be amended to match the intention stated in the Note of the bill then the expected cost exposure would be reduced to \$13,154,852.00 with a reduction of the OPEB unfunded liability remaining at the quoted \$30,443,000.00.

Fiscal Note Detail

Over-all effect

Effect of Proposal	Fiscal Year		
	2008 Increase/Decrease (use "-")	2009 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

3. Explanation of above estimates (including long-range effect):

Memorandum

Person submitting Fiscal Note:
 Chip Myers
 Email Address:
 CLIFFORD.M.MYERS@WV.GOV

Technical concerns:

The bill does not match the intention of the bill as stated in the accompanying note because there is no language that will limit the sell out provision to just those persons employed prior to July 1, 2001.

Special Issues:

1. Administrative cost associated in the verification of accumulated sick leave, eligibility of the employee for the buy out and the subsequent processing of payment within the individual agencies and the Auditor's Office would be substantial.
2. There is a concern that by placing a computable value on sick leave that it could now be viewed as a property right and therefore a vested benefit. An example would be that if an employee having 150 sick days were terminated on May 1, that terminated employee could well convince the courts that it was his/her intention to cash in that sick leave that year and should therefore be paid its full value. If the courts should grant this it would be just a matter of time before any employee leaving employment from the State of West Virginia would be provided payment for the remaining sick leave balance upon separation just as annual leave now is.
3. As was noted by the Division of Personnel in their Fiscal Note response, it is our assumption that many of those that would take the buy out at .25 on the dollar would either be those that knew they were leaving employment with the State; would not have converted the benefit at retirement because of other benefit opportunities; or were in dire financial straits and would be the least likely to properly prepare for a retirement that was years down the road.