

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 802

SPONSOR: Education and Senator McKay

SUBJECT: Education Employees/Leave

DATE: March 4, 1999

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>deMarsh-Mathues</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill allows school boards to offer non-instruction administrators the option of an approved pretax annuity for accumulated but unused sick leave. Similarly, community college boards of trustees could offer this option to full-time employees other than instructional staff or educational employees for the same type of leave.

For certain employees of school districts and community colleges, this bill would limit the amount of sick leave they could accumulate and be paid for when they left their positions. The limits would affect only full-time noninstructional staff, not instructional staff or support staff. The bill limits terminal pay for accrued vacation leave for school board employees.

The limits would affect only leave accumulated after a specified date. Leave accumulated before that date would be compensated for in a different manner.

This bill substantially amends sections 231.40, 231.481, and 240.343, Florida Statutes.

II. Present Situation:

Chapter 228, F.S., contains general provisions related to public education. The law (s. 228.041(9) and (10), F.S.) defines the terms "instructional personnel" and "administrative personnel." The law (s. 240.339, F.S.) entitles each person employed in an administrative or instructional capacity in a community college to a contract, as provided by rules of the State Board of Community Colleges. Another provision of law (s. 230.23(5), F.S.) prescribes the school board's powers and duties for personnel, including contracts with instructional personnel.

Sections 231.40 and 240.343, F.S., govern the payment of sick leave for employees of district school boards and community college boards of trustees, respectively. Both provisions define the terms "educational support employee" and "instructional staff." Current law (s. 231.40(3)(a)3., F.S.)

authorizes school boards to adopt rules for the annual payment for accumulated but unused sick leave to instructional staff and educational support employees. For instructional or support staff, the school district may (s. 231.40(3)(a)4., F.S.) compensate an employee at termination for accumulated sick leave based on a formula of “daily rate of pay” multiplied by a percentage (based on the years of service) times the number of days of accumulated sick leave. The basis for payment of terminal pay for accumulated sick leave to full-time employees other than instructional staff or educational employees is provided in law (s. 231.40(3)(a)5., F.S.). Section 231.481, F.S., governs terminal pay for accrued vacation leave for school board employees.

The law (s. 240.343(2)(e), F.S.) allows community college boards of trustees to establish rules and policies governing termination pay for accumulated sick leave to full-time community college employees other than instructional staff or education support employees as defined in s. 240.343, F.S. For instructional or support staff, the community college board of trustees may compensate an employee for accumulated sick leave based on a formula of “daily rate of pay” multiplied by a percentage (based on the years of service) times the number of days of accumulated sick leave.

The 1995 Legislature, in chapter 95-381, L.O.F., limited the ability of school districts and community colleges to provide terminal pay to certain staff hired on or after July 1, 1995. The limitations included the following:

- For full-time staff who are classified as neither instructional nor support staff, a school district may compensate an employee for no more than 60 days of actual payment for accumulated sick leave.
- For school district employees, the compensation for accrued vacation leave is limited to no more than 60 days of actual payment.
- For full-time employees who are neither instructional nor support staff, a board of trustees for a community college may compensate an employee for no more than 60 days of actual payment for accumulated sick leave.

For sick leave accumulated before July 1, 1995, payment must be made as authorized in the contracts and policies in place on July 1, 1995.

III. Effect of Proposed Changes:

- **Pre tax annuity**

The bill allows school boards (s. 231.40(3)(a)3., F.S.) to offer employees classified as “administrators” an annual contribution to an approved pretax annuity. The contribution is in lieu of an authorized cash payment for the accumulated but unused sick leave for the school year. The annual contribution may be made in the employee’s name, upon the employee’s request, pursuant to school board rules and must comply with federal tax law and regulation. Also, the annual contribution is based on a formula of the “daily rate of pay” of the employee multiplied by a percentage (up to 80%).

The bill authorizes a board of trustees for a community college (s. 240.343(2), F.S.) to adopt rules for a contribution to an approved pretax annuity for the accumulated but unused sick leave for the

year. This provision is only applicable to full-time employees other than instructional staff or educational support employees. The annual payment must be made pursuant to rules of the board of trustees and must comply with federal tax law. The annual amount of the contribution may not exceed an amount equal to 80% of the accumulated sick leave multiplied by the employee's "daily rate of pay" for the time the sick leave was accumulated. Eligible employees may participate, provided that the amount of sick leave is deducted from the employee's accumulated unused sick leave balance.

- **Terminal pay for accumulated sick leave**

The bill amends current law (ss. 231.40(3)(a)5. and 240.343(2), F.S.) governing termination pay for accumulated sick leave to full-time employees other than instructional staff or educational support employees of district school boards and community college boards of trustees.

For full-time employees other than instructional staff or educational support employees of district school boards, any contract renewed on or after July 1, 1999, would be considered a new contract and would be subject to limits set by the bill. The limits would begin when the contracts were renewed and would not be imposed upon leave earned under contracts established before July 1, 1999. These full-time employees could be paid for a maximum of 60 days of sick leave when they left their positions. The employees could be paid for 25 percent of their accumulated sick leave, up to the 60 day limit for leave accumulated on or after July 1, 1999. The payment is in addition to the total amount paid at the end of the year under s. 231.40 (3)(a) 3., F.S. Payment for unused sick leave accumulated prior to July 1, 1999, would be paid according to policies, contracts, or rules in effect on June 30, 1999.

The bill provides for sick leave accrued by full-time employees of community colleges other than instructional staff or educational support employees. Terminal payment for unused sick leave accumulated prior to July 1, 1999, would be paid according to rules or policy in effect on June 30, 1999. Payment for unused sick leave accumulated on or after July 1, 1999, may not exceed an amount equal to one-fourth of the employees's unused sick leave or 60 days of the employee's pay, whichever is less.

- **Terminal pay for accrued vacation leave**

Vacation pay to school board employees would be compensated up to a 60-day limit. The bill does not apply to contracts established before July 1, 1999. Terminal payment of unused vacation leave accumulated before July 1, 1999, would be made according to policies, contracts, or rules in effect on June 30, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

State and federal constitutional impairment of contract clauses (Article 1, section 10 of the U.S. Constitution and Article 1, section 10 of the Florida Constitution) prohibit the passage of laws that impair contractual obligations. Both law and rule require district school boards and community college boards of trustees to employ certain staff by written contract.

The bill states that its limits would not impair contracts established before July 1, 1999. Previously established contracts for certain full-time employees of district school boards would be considered new contracts when renewed on or after that date. Some contracts contain an automatic renewal clause that provides for the continuation of the original contract terms unless action is taken to change or terminate the terms. It is unclear as to whether the bill's provision for renewed contracts would be considered an impairment of these established contracts.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Affected employees of district school boards and community colleges might be paid for less accumulated sick leave and vacation leave when they terminated their employment.

The prospective limits on terminal leave payments could reduce the amount some boards would be liable to pay.

VI. Technical Deficiencies:

The bill amends s. 231.40(3)(a) 3., F.S., to allow annual contributions to an approved pretax annuity for district school board employees classified as administrators, *in lieu of an authorized cash payment* for earned but unused sick leave. However, the bill does not provide district school boards with the specific authority to adopt rules allowing cash payment to these employees for earned but unused sick leave.

The bill does not specify those employees who will be classified as administrators. Section 228.041(10), F.S., defines the term "administrative personnel" and provides broad classifications for

these personnel (e.g., district-based instructional and non-instructional administrators and school administrators). Section 231.40, F.S., defines the terms “educational support employee” and “instructional staff,” but does not define the term “administrator.”

VII. Related Issues:

The 1995 changes followed publication of an interim report by the 1994 Senate Appropriations Committee staff on school district terminal leave payments during fiscal year 1992-93. The report noted wide variance in school district policies on paying for accumulated leave. At that time, 30 districts made “other” terminal payments as incentives to retirement, including lump sum cash payments and the purchase of annuities for retiring employees.

The report noted the following about terminal pay for:

- Administrative employees

The total amount of terminal pay provided to administrative employees was approximately \$18.4 million (29.3 percent of all terminal pay). On average, administrative employees received terminal pay in amounts equal to 67 percent of their annual salary. Payments in districts with more than one terminating administrative employee ranged from a high of 139.8 percent of annual salary to a low of 4.9 percent of annual salary. Terminal sick pay accounted for approximately 75 percent of all terminal pay; annual leave terminal pay accounted for approximately 19 percent; and terminal pay for retirement incentive plans accounted for approximately 6 percent of all terminal pay.

- Instructional employees

The total amount of terminal pay was approximately \$31.3 million (50.0 percent of all terminal pay). On average, instructional employees received terminal pay in amounts equal to 34 percent of their annual salary. Payments in districts with more than one terminating instructional employee ranged from a high of 77.8 percent of annual salary to a low of 5.8 percent of annual salary. Terminal sick pay accounted for approximately 90 percent of all terminal pay; annual leave terminal pay accounted for approximately 2 percent; and terminal pay for retirement incentive plans accounted for approximately 8 percent of all terminal pay.

- Support staff

The total amount of terminal pay was approximately \$13.0 million (20.7 percent of all terminal pay). On average, support staff received terminal pay in amounts equal to 24 percent of their annual salary. Payments in districts with more than one terminating support employee ranged from a high of 204.1 percent of annual salary to a low of 5.0 percent of annual salary. Terminal sick pay accounted for approximately 66.6 percent of all terminal pay; annual leave terminal pay accounted for approximately 26.5 percent; and terminal pay for retirement incentive plans accounted for approximately 6.9 percent of all terminal pay.

A 1993 report by three Senate committees -- Personnel, Retirement and Collective Bargaining, Appropriations, and Education -- noted that the school district and community college terminal sick leave payment schedules were more generous than the terminal leave payment schedule for state employees. The report recommended that the terminal sick leave payments remain more generous for instructional staff than for administrative and other noninstructional employees. To accomplish this end, the report suggested the elimination of terminal sick leave payment for administrative and other noninstructional personnel until these personnel had served 10 years.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
