

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/CS/SB 802

SPONSOR: Governmental Oversight and Productivity and Education Committees and Senator McKay

SUBJECT: Education Employees/Leave

DATE: March 17, 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>Lombardi</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The committee substitute allows district school boards and community college boards of trustees to offer "administrators" and full-time employees, other than instructional staff or educational employees, respectively, the option of an approved pretax retirement account for accumulated sick leave.

For certain employees of school districts and community colleges, this bill will limit the amount of accumulated sick leave available for terminal pay compensation upon leaving their positions. The limits would affect only full-time non-instructional staff, not instructional staff or support staff. The committee substitute 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. The committee substitute also provides other technical changes.

This bill takes effect July 1, 1999.

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

II. Present Situation:

Terminal Pay for Accrued Sick Leave

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.

District School Boards

Pursuant to s. 231.40(3)(a)4., F.S., district school boards are authorized to establish policies for the payment of accumulated sick leave as terminal pay to instructional staff and educational support employees. According to the rules, if the board authorizes terminal pay, it is paid according to a statutory formula that progressively increases from 35 percent of accumulated sick leave during the first 3 years of employment to 100 percent payout during and after 13 years of service. Section 231.40(3)(a)5., F.S., limits sick leave payments for full-time school district employees other than instructional staff or educational support employees hired after July 1, 1995. For these employees, terminal payments are restricted to one-fourth of all unused sick leave accrued on or after July 1, 1995, up to a maximum of 60 days of pay. For accumulated sick leave before July 1, 1995, payments are subject to the board policy in effect on July 1, 1995.

Community College District Board of Trustees

Pursuant to s. 240.343(2)(d), F.S., a board of trustees is authorized to establish policies for the payment of accumulated sick leave as terminal pay to instructional staff and educational support employees. According to the rules, if the board authorizes terminal pay, it is paid according to a statutory formula that progressively increases from 35 percent of accumulated sick leave during the first 3 years of employment to a 50 percent payout after 10 years, increasing 2.5 percent annually thereafter. Section 240.343(2)(e), F.S., limits sick leave payments for full-time community college employees other than instructional staff or educational support employees hired after July 1, 1995. For these employees, terminal payments are restricted to one-fourth of all unused sick leave accrued on or after July 1, 1995, up to a maximum of 60 days of pay. For accumulated sick leave before July 1, 1995, payments are subject to the board policy in effect on July 1, 1995.

Terminal Pay for Accrued Vacation Leave

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.

District School Boards

Section 231.481, F.S., governs terminal pay for accrued vacation leave by school district employees. Chapter 95-381, L.O.F., limits terminal pay for accrued vacation leave for employees hired on or after July 1, 1995, to a maximum of 60 days pay, and does not apply to employees hired before the specified date.

III. Effect of Proposed Changes:

Section 1. Section 231.40(3)(a)3., F.S., is amended to offer district school board “administrators” an annual contribution to an approved pretax retirement account in lieu of an authorized cash payment for the accumulated 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. Like authorized annual payments for accumulated sick leave, contributions to a pretax retirement account are equal to 80% of the accumulated annual sick leave available.

Section 231.40(3)(a)5., F.S., is amended, regarding full-time employees other than instructional staff or educational support employees of district school boards. For these individuals any contract renewed on or after July 1, 1999, will be considered a new contract and subject to limits set by the bill. The limits are instituted upon renewal and do not affect accumulated sick leave earned under contracts established before July 1, 1999. Employees are eligible for 25 percent of accumulated sick leave, to a maximum of 60 days pay, beginning 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., assuming accumulated sick leave is still available. Payment for unused sick leave accumulated before July 1, 1999, will be paid according to policies, contracts, or rules in effect on June 30, 1999.

Section 2. Section 231.481, F.S., is amended, regarding terminal pay for accrued vacation leave to district school board employees, and setting limits of compensation 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.

Section 3. The bill amends s. 240.343(2), F.S., authorizing a board of trustees for a community college to adopt rules for a contribution to an approved pretax retirement account for the annual accumulated sick leave. 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. Eligible employees may participate, provided the amount of sick leave is deducted from the employee's accumulated unused sick leave balance.

The bill also 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 before 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.

Section 4. This act shall take effect July 1, 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 (Art. 1, s. 10 of the U.S. Constitution and Art. 1, s. 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 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:

Additional marketing opportunities will be made available to insurance companies and other entities in the marketing of retirement account contracts. Customarily these contracts are accompanied by a variety of commission and fee structures payable by the participant.

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.

Tax-sheltered accounts will defer the payment of employee taxes otherwise payable to the federal treasury.

VI. Technical Deficiencies:

The bill amends s. 231.40(3)(a) 3., F.S., to allow annual contributions to an approved pretax retirement account 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 variances 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 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 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 non-instructional employees. To accomplish this end, the report suggested the elimination of terminal sick leave payment for administrative and other non-instructional 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.
