

STORAGE NAME: h0831.go

DATE: April 10, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 831

RELATING TO: Education Employees/Leave

SPONSOR(S): Representative Harrington

COMPANION BILL(S): CS/CS/SB 802 (similar)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS
 - (2) GENERAL APPROPRIATIONS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

HB 831 allows school boards to offer non-instructional 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* administrators, 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 provides for an effective date of July 1, 1999.

There is no immediate negative fiscal impact on school boards, community colleges, state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. 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." Each person employed in an administrative or instructional capacity in a community college is entitled 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 (from 35% to 100%, 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 (up to 100%, based on the years of service) times the number of days of accumulated sick leave.

The 1995 Legislature, pursuant to ch. 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.

B. EFFECT OF PROPOSED CHANGES:

Section 1 - Amends s. 231.40, F.S., allowing school boards 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%); *deleting references to the previous start date (July 1, 1995)* for purposes of limiting employees hired after that date, to 60 days of terminal sick pay, and *replacing that date with July 1, 1999*; *exempting employees with contracts entered into prior to July 1, 1999* from the 60 day limitation on the sale of terminal sick leave.

Section 2 - Amends s. 231.481, F.S., *deleting references to the previous start date (July 1, 1995) for purposes of limiting employees hired after that date to 60 days of terminal vacation leave pay, and replacing that date with July 1, 1999; exempting employees with contracts entered into prior to July 1, 1999 from the 60 day limitation on the sale of terminal vacation leave.*

Section 3 - Amends s. 240.343, F.S., allowing community college boards of trustees to adopt rules for *authorizing accumulated, unused sick leave that is earned during the year, to be contributed to approved pretax annuities.* 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.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. District school boards and community college boards of trustees would be required to participate in the administration of employees' contributions in pretax annuities.

(3) any entitlement to a government service or benefit?

Yes. Employees may elect to contribute to pretax annuities.

b. If an agency or program is eliminated or reduced:

Not applicable.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

Not directly.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

Yes. Employees of school boards and community colleges could choose to invest in pretax annuities.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. Individuals would be provided with options not currently existing.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

Not applicable.

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

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(4) Are families required to participate in a program?

No.

(5) Are families penalized for not participating in a program?

No.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

Not applicable.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends ss. 231.40, 231.481, and 240.343, F.S.

E. SECTION-BY-SECTION ANALYSIS:

See Section IIB. EFFECT OF PROPOSED CHANGES..

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None, directly.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Unknown.

2. Recurring Effects:

Unknown.

3. Long Run Effects Other Than Normal Growth:

Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds, or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

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

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provides for the continuation of the original contract terms unless action is taken to change or terminate the terms.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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