

**STORAGE NAME:** h2005s1.ccc

**DATE:** April 19, 2000

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
COMMUNITY COLLEGES AND CAREER PREP  
ANALYSIS**

**BILL #:** CS/HB 2005

**RELATING TO:** Education

**SPONSOR(S):** Committee on Community Colleges & Career Prep and Representative Harrington

**TIED BILL(S):**

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

- (1) COMMUNITY COLLEGES AND CAREER PREP YEAS 9 NAYS 3
  - (2) EDUCATION/K-12
  - (3) GOVERNMENTAL OPERATIONS
  - (4) EDUCATION APPROPRIATIONS
  - (5)
- 

**I. SUMMARY:**

According to Senate Interim Project Report 00-34, on June 30, 1999, the combined total liability incurred by local education agencies and the state was over \$2 billion for compensated absences payable in future years to employees of the state, school districts, and community colleges. Additionally the Report raises concerns regarding existing policies related to terminal benefits and recommends action by the Legislature to provide more consistency, to encourage conformity with state-level policy, and to reduce the potential fiscal burden to the educational agencies and the state.

Currently, district school boards and community college boards of trustees are not authorized to offer administrative staff the option of receiving annual payments of unused, accumulated sick leave.

The committee substitute authorizes district school boards and community college boards of trustees to offer full-time administrative staff the option of an annual payment for earned but unused sick leave based on a rate of up to 80 percent of the employee's daily pay. District school board employees may choose to receive an annual cash payment *or* an annual contribution into an approved pretax retirement account, whereas community college administrators only have the pretax retirement account option.

The committee substitute changes the date (from July 1, 1995 to July 1, 2000) after which school boards and community college boards of trustees must limit the amount of accumulated sick leave that full-time administrative staff can apply toward terminal pay. The provisions do not impair contracts established prior to July 1, 2000; however, a previously established contract renewed on or after July 1, 2000, shall be considered a new contract.

The committee substitute changes the date (from July 1, 1995 to July 1, 2000) after which school districts must limit, to a maximum of 60 days of actual payment, terminal pay for accrued vacation leave for *all* full-time school board employees.

The committee substitute tightens terminal payout limits for accrued sick leave for administrators employed by district school boards and community college district boards of trustees.

The committee substitute clarifies current ambiguities concerning the effect of the date of a person's employment on terminal pay benefits. Specifically, the apparent confusion caused by using July 1, 1995, as the effective date for new terminal pay policies, and the provision that terminal pay policies in effect on that date would govern sick leave payout for unused leave accumulated prior to July 1, 1995. The proposed changes would limit the amount of unused sick leave that could be accumulated for terminal pay purposes after July 1, 2000. In addition, the committee substitute removes all references to a hire date as it relates to sick leave payout for school district and community college administrators.

This committee substitute provides for an effective date of July 1, 2000.

There is no fiscal impact to the State. There are future savings and costs to school districts and community colleges as a result of changes.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |                             |   |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

According to Senate Interim Project Report 00-34, on June 30, 1999, the combined total liability incurred by local education agencies and the state was over \$2 billion for compensated absences payable in future years to employees of the state, school districts, and community colleges. The report specifically identifies current liability amounts of \$1.43 billion for the 67 school districts and \$120.38 million for the 28 community colleges. Additionally, the Senate interim study findings show that the school districts and colleges are continuing to extend to all employees the fairly generous sick leave policies that were originally intended to reduce absences of teachers and other instructional personnel.

The Report raises concerns regarding existing policies related to terminal benefits and recommends action by the Legislature to provide more consistency, to encourage conformity with state-level policy, and to reduce the potential fiscal burden to the educational agencies and the state.

**SICK LEAVE - ANNUAL**

**School Districts**

Section 231.40(3)(a)3., F.S., authorizes school districts to offer teachers and support staff<sup>1</sup> an annual cash payment for unused, accumulated sick leave. These annual payments must be based on the number of accumulated sick leave days multiplied by up to 80 percent of the employee's average daily pay rate. Days for which annual payment is made must be deducted from the employee's accumulated sick leave balance.

School districts are not authorized to offer annual cash payments to administrators for their unused, accumulated sick leave.

**Community Colleges**

There is no provision in the law authorizing community college boards of trustees to offer teachers or administrators annual cash payments for their accumulated sick leave.

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<sup>1</sup>As used in this analysis the term "teachers" refers to instructional staff as defined by section 231.40(1)(b), F.S., which includes teachers, librarians, and other comparable members engaged in an instructional capacity. The term "support staff" refers to employees as defined by section 231.40(1)(a), F.S., which includes education paraprofessionals, secretaries and other clerical workers, as well as transportation, food service, operations and maintenance workers. The term "administrators" refers to any other full-time non-instructional, non-educational support employee.

## **SICK LEAVE - TERMINAL**

### **School Districts**

Each school board may provide terminal pay for accumulated sick leave and may pay employees annually for up to 80 percent of unused sick leave. If a board provides terminal pay for sick leave accumulated by *instructional staff and educational support employees*, the payments must follow the statutory formula set forth in s. 231.40(3)(a)4, F.S. The formula progressively increases the percentage paid as the employee's years of service increase, and applies regardless of when the instructional or educational support employee was hired.

Section 231.40(3)(a)5., F.S., authorizes school districts to establish policies which offer terminal pay to *administrators* for their unused, accumulated sick leave. Terminal pay for any sick leave accumulated by school district administrators hired on, or after, July 1, 1995, is capped at one-fourth its actual value, not to exceed a maximum of 60 days of actual pay. For school district administrators hired after July 1, 1995, the maximum amount that can be obtained upon termination of employment or retirement for accumulated sick leave is 60 days (480 hours) worth of regular pay. Since only 25% of sick leave accumulated after July 1, 1995 applies toward terminal pay, administrators must accumulate a total of 240 unused sick leave days (1,920 hours) to receive the maximum terminal pay benefit for accumulated sick leave. Unused sick leave accumulated prior to July 1, 1995, are paid according to the district school board policies governing terminal payments that are were in effect on July 1, 1995.

There is apparent confusion caused by using July 1, 1995, as the effective date for new terminal pay policies, and the provision that terminal pay policies in effect on that date would govern sick leave payout for unused leave accumulated prior to July 1, 1995. (SB 910 - staff analysis by Committee on Education)

### **Community Colleges**

Each college board of trustees decides whether to provide terminal pay for accumulated sick leave when full-time *instructional or educational support employees* retire. If the board approves terminal pay, the payments must follow the statutory schedule that increases as the years of service increase.

Section 240.343(2)(e), F.S., authorizes community college boards of trustees to establish policies which offer terminal pay to *administrators* for their unused, accumulated sick leave. Terminal pay for any sick leave accumulated by community college administrators hired on or after July 1, 1995, is capped at one-fourth of its actual value, not to exceed a maximum of 60 days of actual pay. Essentially, for community college administrators hired after July 1, 1995, the maximum amount that can be obtained upon termination of employment or retirement for accumulated sick leave is 60 days (480 hours) worth of regular pay. Unused sick leave accumulated prior to July 1, 1995, are paid according to the board of trustee's policies governing terminal payments that are were in effect on July 1, 1995.

According to the Division of Community Colleges, the local terminal pay policies vary across colleges, with many colleges restricting terminal sick leave payout to employees who meet certain criteria (retiring or deceased-beneficiary). Also, in many colleges, the statutory provisions (or variations thereof) regarding sick leave payout for instructional staff have been applied to all employees.

There is apparent confusion caused by using July 1, 1995, as the effective date for new terminal pay policies, and the provision that terminal pay policies in effect on that date would govern sick leave payout for unused leave accumulated prior to July 1, 1995. (SB 910 - staff analysis by Committee on Education)

### **VACATION (ANNUAL) LEAVE**

#### **School Districts**

Section 231.481, F.S., authorizes school boards to establish policies that provide lump-sum payment for unused, accrued vacation leave to *any* employee upon termination of employment or retirement. For employees hired on, or after, July 1, 1995, such policies must limit the amount of terminal pay offered for accrued vacation leave to a maximum of 60 days of actual payment.

#### C. EFFECT OF PROPOSED CHANGES:

### **SICK LEAVE - ANNUAL**

#### **School Districts**

The committee substitute expands the current annual accumulated sick leave payout options by authorizing district school boards to include administrators in any end-of-the-school-year payment for accumulated sick leave at 80 percent of the administrator's daily rate of pay.

The committee substitute provides authorization for district school boards to create rules that would allow administrators the option of having up to 80 percent of their annual unused sick leave paid into an approved pretax retirement account in the employee's name or the option of receiving an annual lump sum cash payment in the same amount. All such provisions must comply with federal tax laws and regulations. Should the employee choose to receive payment for sick leave, the amount of sick leave paid would be unavailable deducted from the sick leave balance.

#### **Community Colleges**

The committee substitute provides authorization for district boards of trustees to create rules that would allow administrators the option of having up to 80 percent of their annual unused sick leave paid into an approved pretax retirement account in the employee's name. All such payments must comply with federal tax laws and regulations and the rules of the board of trustees. Should the employee choose to receive payment for sick leave, the amount of sick leave paid would be deducted from the employee's unused sick leave balance.

### **SICK LEAVE - TERMINAL**

#### **School Districts**

The committee substitute provides that terminal pay for sick leave accumulated before July 1, 2000, be made in accordance with policies, contracts or rules in effect on June 30, 2000.

The committee substitute limits the ceiling for terminal payments of sick leave by requiring that terminal pay for sick leave accumulated *on or after* July 1, 2000 be capped at one-fourth of all unused sick leave, not to exceed a maximum of 60 days of actual payment, **in addition to** any annual disbursements.

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The committee substitute provides that no contractual agreements established prior to July 1, 2000 should be limited by these provisions. However, an existing contract that is renewed on or after July 1, 2000, will be considered a NEW contract.

The committee substitute clarifies current ambiguities concerning the effect of the date of a person's employment on terminal pay benefits by removing all references to a hire date as it relates to sick leave payout.

The committee substitute requires that if an employee has an accumulated sick leave balance of 60 days or more prior to July 1, 2000, no more sick leave may be accumulated for terminal sick leave *payout* until such a balance is less than 60 days.

### **Community Colleges**

The committee substitute provides that terminal pay for sick leave accumulated before July 1, 2000, be made in accordance with policies and rules in effect on June 30, 2000.

The committee substitute limits the ceiling for terminal payments of sick leave by requiring that terminal pay for sick leave accumulated *on or after* July 1, 2000 be capped at one-fourth of all unused sick leave or 60 days of actual pay, whichever is less.

The committee substitute clarifies current ambiguities concerning the effect of the date of a person's employment on terminal pay benefits by removing all references to a hire date as it relates to sick leave payout.

The committee substitute requires that if an employee has an accumulated sick leave balance of 60 days or more prior to July 1, 2000, no more sick leave may be accumulated for terminal sick leave *payout* until such a balance is less than 60 days.

### **VACATION (ANNUAL) LEAVE**

The committee substitute changes the date (from July 1, 1995 to July 1, 2000) after which school districts must limit, to a maximum of 60 days of actual pay, any terminal pay offered for accrued vacation leave to *all* full-time school board employees. This terminal pay limit affects only vacation leave accumulated on or after July 1, 2000.

For unused vacation leave accumulated *prior to* July 1, 2000, terminal payment will be made in accordance with the district school board's policies in effect on June 30, 2000. The committee substitute does not limit any contractual agreements established prior to July 1, 2000.

#### **D. SECTION-BY-SECTION ANALYSIS:**

Section 1: Amends paragraph (a) of subsection (3) of section 231.40, F.S.; allowing annual payment of accumulated sick leave to full-time school district administrators, either by cash payment or deposit into an approved pretax retirement account at no more than 80 percent of actual value; changing the date after which school districts must limit the amount of accumulated sick leave that can be applied to terminal pay for full-time administrators.

Section 2: Amends section 231.481, F.S.; changing the date after which school districts must limit the amount of accumulated unused vacation leave that can be applied to terminal pay for all school district employees; providing protection of contract provisions prior to July 1, 2000.

Section 3: Amends section 240.343, F.S.; allowing annual payment of accumulated sick leave to full-time community college administrators by deposit into an approved pretax retirement account at no more than 80 percent of actual value; changing the date after which community college boards of trustees must limit the amount of accumulated sick leave that can be applied to terminal pay for full-time administrators.

Section 4: Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS

2. Expenditures:

See FISCAL COMMENTS

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If school districts and community colleges choose to offer their administrators annual sick leave disbursements into pretax retirement accounts, there could be an increase in business to companies that offer pretax retirement accounts.

D. FISCAL COMMENTS:

**SCHOOL DISTRICTS**

**Sick Leave Pay - Annual**

According to the Department of Education (DOE), *if* all 67 school districts adopt the *maximum* annual payout percentage of 80% and *if* all administrators choose to participate, the annual costs for the first 3 years of the program will as follows:

2000-2001  
\$23,364,422

2001-2002  
\$24,766,287

2002-2003  
\$26,252,264

The DOE further states that in the short-run school districts will incur initial filing fees for the establishing an IRS approved pretax retirement plan. In the long-run there will be a reduction in compensated absence liability for the portion of the liability increased by administrative employees' annual and sick leave accrual. If school districts implement a pretax retirement plan, school districts will incur additional compensation expense for administrative employees on an annual basis (due to contributions into a pretax retirement plan); however, the school districts would have lower FICA expenses on the additional compensation expenses. Additionally, the DOE anticipates ongoing administrative expenses for plan administration that will then be either passed on to the participating employees or paid by the school districts.

There will be a future savings as leave capping procedures are implemented. Specific projections of savings were not provided.

### **COMMUNITY COLLEGES**

*If* community college boards of trustees adopt policies to provide annual disbursements to pretax retirement accounts for administrators for accumulated sick leave, there will be current year costs associated with the disbursements. Specific cost information was not provided.

According to the Division of Community Colleges, there will be a future savings (approximately 20% of future payments) to community colleges as a result of changes in terminal sick leave pay policy. However, any savings will be offset somewhat because the date for the start of the terminal sick leave cap has been extended from July 1, 1995 to July 1, 2000.

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

### **A. APPLICABILITY OF THE MANDATES PROVISION:**

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

### **B. REDUCTION OF REVENUE RAISING AUTHORITY:**

The 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:**

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

The bill contains rule authorization provisions.

C. OTHER COMMENTS:

The Department of Education staff have expressed concerns regarding proposals in the bill. These concerns are as follows:

- ▶ Contacts gave indications that limitations on sick leave accrual (which there currently are none) may result in employees actually using their more. - *However, committee staff believes the bill does not limit the accrual of sick leave, only the payment of sick leave.*
- ▶ The bill singles out, for the most part, administrators and would result in school districts and community colleges having to administer two different sick leave plans.
- ▶ Most employees who would be eligible to take advantage of the pretax benefits have probably already contributed the maximum amount possible to a tax sheltered plan.
- ▶ District school boards expressed a concern for having to pay for all employees, 80% of their unused sick leave. They stated that typically the rate varies from 35% - 100% and is not paid until retirement. - *However, committee staff believes that the bill does not require or authorize school districts or community colleges to pay 80% of unused sick leave; it authorizes policies that would allow for employees to be paid for their sick leave, in keeping with the limitations, at a rate up to 80% of their daily rate of pay. The 'up to 80%' rate is current law and is not changed by the bill.*

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 18, 2000 the Committee on Community Colleges and Career Prep adopted a "strike everything" amendment, and opted for HB 2005 was made into a committee substitute. The strike everything amendment conformed CS/HB 2005 bill identically to the first engrossed version of SB 910 by Senator McKay. The committee substitute differs from the original bill in the following ways:

- The committee substitute does not have language referencing ss. 120.536(1) and 120.54, F.S., in regards to rule authorization provided in s. 231.40, F.S.
- The committee substitute uses a date of July 1, 2000 ONLY after which sick leave and vacation leave are to be capped. The original bill differentiated with regards to the treatment of sick leave and vacation leave accumulated *prior to* versus *on or after* July 1, 1995 and *prior to* and *on or after* July 1, 2000.



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- The committee substitute does not make references to hire dates. The original bill differentiated between hires prior to July 1, 1995 and those hired on or after July 1, 1995.
- The committee substitute does not use annual disbursements for sick leave in the calculation for the capped amount of terminal pay allowed. The original bill **included** annual disbursements in calculating the allowed amount.
- The committee substitute has a provision that disallows the accrual of sick leave for terminal *pay* purposes if the employee's sick leave balance as of June 30, 2000 is 60 days or greater. The original bill contains no such provision.
- The committee substitute provides that sick leave accumulated by community college administrators prior to July 1, 2000 be paid in accordance with policies or rules in effect on June 30, 2000. The original bill did not provide a provision for what policies terminal payout would follow for sick leave accumulated prior to any given date.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY COLLEGES AND CAREER PREP:

Prepared by:

Staff Director:

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Maria L. Eckard

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Ken Winker