**STORAGE NAME**: h0831a.go
**DATE**: April 13, 2000

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

**BILL #**: HB 831

**RELATING TO**: State Employees

**SPONSOR(S)**: Representative Boyd and others

**TIED BILL(S)**:

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE**:
(1) GOVERNMENTAL OPERATIONS YEAS 6 NAYS 0
(2) GENERAL APPROPRIATIONS
(3)
(4)
(5)

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I. SUMMARY:


This bill directs the Department of Management Services (DMS) to contract with a private vendor for the development of a federally tax-sheltered plan for the deposit of accumulated annual and sick leave payments from terminating employees.

This bill creates an undesignated section of the Florida Statutes.

Under current law, individuals electing a final cash payment at termination or participation in DROP are paid for their annual leave at their last hourly rate times the number of eligible hours accumulated, less Social Security and withholding taxes. Currently, employees may also roll-over their balances to one of the several deferred compensation accounts under provisions of ss. 403(b), or 457, of the United States Internal Revenue Code up to maximum allowable amounts. These transfers shield the terminating payments, within allowable amounts, from withholding taxes but not Social Security deductions.

Participation in this program will be mandatory for all terminating employees whether or not they wish to participate. An employee must wait 30 days after termination from employment, to withdraw the moneys without penalty by the plan administrator and shall be held harmless by the State of Florida with regard to any early withdrawal penalties imposed by the Internal Revenue Service.

This bill shall become effective on July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

| | | | | |
|---|---|---|---|---|
| 1. | Less Government | Yes [] | No [x] | N/A [] |
| 2. | Lower Taxes | Yes [x] | No [] | N/A [] |
| 3. | Individual Freedom | Yes [] | No [x] | N/A [] |
| 4. | Personal Responsibility | Yes [] | No [x] | N/A [] |
| 5. | Family Empowerment | Yes [] | No [] | N/A [x] |

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

Government will be mandating participation in the plan for all terminating employees. The individual freedom of the employee will be impacted should he or she not wish to wait 30 days to receive payment for his or her accumulated balances. The personal responsibility of the individual to manage his or her payout amounts will be lessened to a degree by this mandatory program.

B. PRESENT SITUATION:

State of Florida employees earn annual and sick leave on the basis of the personnel system in which they are employed. For most employees the earning occurs on a progressive scale which affords higher leave credits with longer periods of continuous service. Management employees in the Senior Management Service Class are pre-credited with leave upon admission to that class which is prorated over the ensuing twelve months. Elected officers do not earn leave as their compensation accompanies the office held and not upon the performance of service during an established time period.

Under current law employees are immediately vested with all of the annual leave they accumulate and may cash out at employment termination up to a statutory maximum. For employees in the Career Service System and university support personnel this maximum is 240 hours; in the State University System it is 352 hours; in court management it is 360 hours; and in the Selected Exempt Service and other exempt classes it is 480 hours. Sick leave accumulates on an unlimited basis but terminating payment is permitted only upon the completion of ten or more years of employment with a State of Florida agency, with a maximum cash payment for 480 hours, pursuant to s. 110.122, F.S.

Individuals electing a final cash payment are paid at their last hourly rate times the number of eligible hours, less Social Security and withholding taxes. Employees may also roll-over their balances to one of several deferred compensation accounts under provisions of ss. 403(b), or 457, of the United States Internal Revenue Code. These transfers shield the terminating payments from withholding taxes but not Social Security deductions up to maximum allowable amounts.

C. EFFECT OF PROPOSED CHANGES:

This bill directs DMS to contract for the procurement of a tax-sheltered plan for the payment of accumulated employee annual and sick leave upon employment termination which minimizes employee tax liability. The procurement must proceed through a Request for Proposals and requires responding parties to provide market-risk or volatility ratings from recognized rating agencies for each of its investment products. All responding party submissions will be examined by the State Board of Administration which shall advise the DMS with respect to its findings. Quality assurance oversight will be provided on a continuous basis by the DMS.

Participation in the program will be mandatory for employees. Employees will be permitted to withdraw their funds within 30 days without penalty by the plan administrator and shall be held harmless by the State of Florida with regard to any early withdrawal penalties imposed by the Internal Revenue Service.

Notwithstanding the terminal pay provisions of s. 110.122, F.S., this bill directs that the DMS shall develop and contract for a similar tax-sheltered plan for sick leave payments due participants in the Deferred Retirement Option Program (DROP). These payments shall be paid into a tax-sheltered plan during the time the employee participates in the DROP and shall be distributed to the employee when her or she terminates from DROP.

The effective date of this bill is July 1, 2000.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. <u>FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT</u>:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. <u>Revenues</u>:

This bill acts as a tax-expenditure to the federal treasury, as the amounts shielded are not subject to taxation and will not be remitted as income taxes from the state.

2. <u>Expenditures</u>:

State agencies are not funded in their operating budgets with additional amounts for the payment of accumulated leave by departing employees. To the extent that employer-paid Social Security taxes are not imposed this may ease some of the operating burden in the funding of these required amounts. Additionally, should the program be developed to provide a structured payment over a fixed number of years for sick leave, this would establish a state agency’s monetary liability at a known amount and permit more precise future budgeting.

This program is structured in the legislation to require mandatory participation on the part of employees. Allowing the employee to choose whether or not to participate would lessen the viability and efficiency of such a program.

Employer contributions to the Florida Retirement System (FRS) are already shielded from federal taxation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None. This bill affects State of Florida employees only.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will provide additional income to the successful vendor company, most probably in the form of fees imposed for services. An employee participant will be subject to the provisions of the provider contract document. Participants will be offered a selection of investment options for the allocation of their payments. Amounts withdrawn will be subject to taxation and the imposition of surrender charges, if any, by the provider company.

The procurement will determine the extent and scale of imposed fees by the successful vendor company. These fees take various forms, such as fixed and variable fund charges, administrative fees, annual plan charges, or front and back loaded fees. For annuity accounts a vendor may impose a mortality expense subject to the contract document.

The employee defers federal income taxes payable in the individual's bracket amount and saves the 7.65 percent imposed by the Federal Insurance Contributions Act on all contributions to the qualified plan.

D. FISCAL COMMENTS:

N/A

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 take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the amount of revenue counties or municipalities may raise in the aggregate.

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

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

## V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Because the issue relates to wages, hours, and terms and conditions of employment, the Department of Management Services, and the Board of Regents, on behalf of the State University System, would be obliged, under ch. 447, F.S., to inform the affected employee collective bargaining representatives about these provisions.

There are income limits established under federal law for the maximum shielding of income. Individuals may participate under multiple tax-shelter programs simultaneously, provided they do not exceed maximum allowable compensation limits of s. 415 of the Internal Revenue Code.

B. RULE-MAKING AUTHORITY:

This bill provides that the Department of Management Services shall determine by rule the methods of calculation and frequency of payments into the tax-sheltered plans.

C. OTHER COMMENTS:

Retiring employee-members of the FRS would not be adversely affected by this roll-over as the value of their accumulated leave balances is determined prior to transfer. Up to 500 hours may be added to the employee’s highest five year’s of income to enhance the final benefit amount. University faculty and management personnel who participate in the optional annuity program in lieu of FRS membership are not affected by this enhancement as they have individual contracts with their provider companies.

Employee insurance premiums are already federally tax shielded and they may individually participate in pre-tax reimbursements for out-of-pocket medical and child care expenses.

## VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its meeting on April 12, 2000, the Committee on Governmental Operations adopted a strike-all amendment which is traveling with the bill, which was reported favorably.

The amendment:
- Authorizes the Department of Management Services (DMS) and the Board of Regents (BOR) to design and develop tax sheltered plans for all kinds of terminal leave payments.
- Separates the BOR from the DMS in order to accommodate “403(b)” plans.
- Provides conditions of implementation.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

| Prepared by: | Staff Director: |
| --- | --- |
| Jimmy O. Helms | Russell J. Cyphers, Jr. |