

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 285 Sick Leave for School District Employees

**SPONSOR(S):** K-20 Competitiveness Subcommittee; Harrell

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 874

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-20 Competitiveness Subcommittee	12 Y, 0 N, As CS	Muller	Ahearn
2) PreK-12 Appropriations Subcommittee	12 Y, 0 N	Seifert	Heflin
3) Education Committee			

### SUMMARY ANALYSIS

The bill authorizes, but does not require, school districts to create policies which extend the opportunity for employees to donate their unused sick leave to a specific, non-relative employee. The bill provides standards for school district sick leave policies; recipients must have exhausted all of their own sick leave before using donated leave and donated sick leave has no terminal value.

Current law provides that school district employees who are unable to perform their duties due to personal sickness, accident disability, or extended personal illness, or because of illness or death of a family member or member of their household, and has to be absent from work must be granted a leave of absence. School districts are authorized to adopt rules permitting the annual payment of accumulated sick leave that is unused at the end of a school year, as well as policies providing terminal pay for accumulated sick leave.

School districts are currently required to provide a policy that allows an employee to donate sick leave to a spouse, child, parent, or sibling who is also employed by the school district. This policy must specify that the employee receiving the donated sick leave has exhausted his or her own sick leave before using donated leave and that the donated sick leave has no terminal value. School districts are also permitted, though not required, to create policies which allow employees to donate their unused sick leave to a sick leave pool, which other school district employees may use after they have exhausted their own sick leave.

The bill has an indeterminate fiscal impact on school districts. See FISCAL ANALYSIS.

The bill provides an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Currently, there is no mechanism for school districts to create policies providing for donation of sick leave to a particular individual who is not a relative. However, sick leave transfers among non-relatives are already an option for state agency employees, as outlined in the Department of Management Services rule.<sup>1</sup> School districts are required to adopt a policy which allows family members employed within the same district to transfer sick leave. Also, school districts are currently authorized to establish sick leave pools which allow for the transfer of sick leave among district employees.

Any member of the instructional staff<sup>2</sup> or any other employee of a school district who is employed on a full-time basis and is unable to perform his or her duties due to personal sickness, accident disability, or extended personal illness, or because of illness or death of their father, mother, brother, sister, husband, wife, child, other close relative, or member of their household and has to be absent from work must be granted a leave of absence.<sup>3</sup> Instructional staff who are employed on a full-time basis are entitled to four days of sick leave as of the first day of employment of each contract year, and one day of sick leave for each month of employment, which is credited to them at the end of the month.<sup>4</sup> All other employees must be credited with four sick days at the end of the first month of employment of each contract year and one day of sick leave for each month of employment thereafter.<sup>5</sup>

Each member of the instructional staff and all other employees are entitled to earn no more than one day of leave times the number of months of employment during the year of employment.<sup>6</sup> Sick leave is cumulative from year to year.<sup>7</sup> There is no limit on the number of sick leave days a member of the instructional staff or an educational support employee may accrue, except that at least one-half of this sick leave must be established within the school district granting the leave.<sup>8</sup> Educational support employees include those whose job functions are neither administrative nor instructional, but whose work supports the educational process, such as technicians, clerical workers, and skilled craft workers.<sup>9</sup> The statute does not specify the limitations on sick leave for other types of employees such as school officers or administrative personnel.

School districts are authorized to adopt rules permitting annual payment for accumulated sick leave that is earned for that year and is unused at the end of the school year. This is based on the daily rate of pay of the employee, multiplied by up to 80 percent. Days for which such payment is received are deducted from an employee's accumulated leave balance.<sup>10</sup> According to the Florida Department of Education, "[t]he extent to which districts have adopted an annual unused sick leave payout policy is not known."<sup>11</sup>

School districts are also authorized to establish policies to provide terminal pay for accumulated sick leave to instructional staff and educational support employees.<sup>12</sup> If termination is by death, any terminal

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<sup>1</sup> Rule 60L-34.0042(5), F.A.C.

<sup>2</sup> "Instructional staff" is not a defined term. Section 1012.01(2), F.S., does, however, define "instructional personnel," which includes employees such as classroom teachers, student personnel services (such as guidance counselors), and librarians and media specialists.

<sup>3</sup> Section 1012.61(1), F.S.

<sup>4</sup> Section 1012.61(2)(a)1., F.S.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Section 1012.40(1)(a), F.S.

<sup>10</sup> Section 1012.61(2)(a)3., F.S.

<sup>11</sup> Florida Department of Education, *2012 Agency Bill Analysis of HB 285* (Oct. 31, 2011).

<sup>12</sup> Section 1012.61(2)(a)4., F.S.

pay the employee is entitled to may be made to the employee's beneficiary.<sup>13</sup> The terminal pay may not exceed the formula outlined in statute, which provides the percentage of daily pay employees are entitled to, based upon their years of service.<sup>14</sup> For years one through three, the rate of daily pay is multiplied by 35 percent; for years four through six pay is multiplied by 40 percent; for years seven through nine pay is multiplied by 45 percent; and for years 10 through 12 pay is multiplied by 50 percent. That number is then multiplied by the number of days accumulated.<sup>15</sup> During and after the 13<sup>th</sup> year of service, the daily rate of pay is multiplied by 100 percent times the number of days of accumulated sick leave.<sup>16</sup> Districts are permitted to establish policies to provide terminal pay to any full-time employees of the district school board other than instructional staff or educational support employees.<sup>17</sup>

School districts are currently required to provide a policy that allows employees to donate sick leave to a spouse, child, parent, or sibling who is also employed by the school district.<sup>18</sup> This policy must specify that the recipient may not use the donated sick leave until all of his or her sick leave has been depleted, excluding sick leave from a sick leave pool. Donated sick leave has no terminal value.<sup>19</sup> School districts may also allow employees to donate unused sick leave to a sick leave pool which other employees may use after they have exhausted their own sick leave.<sup>20</sup> How many school districts have adopted sick leave pool policies is unknown, although anecdotal evidence indicates that most districts have implemented some type of sick leave pool.<sup>21</sup>

Section 110.1055, F.S., requires the Department of Management Services to adopt rules governing the management of state employees.<sup>22</sup> In this context, state employees include persons employed by state agencies such as the public defender and the Florida Public Service Commission.<sup>23</sup> Rule 60L-34.0042, F.A.C., adopted by the Department of Management Services, provides for the establishment of a formal sick leave transfer program amongst employees of state agencies.<sup>24</sup> While school districts are not considered a state agency, the rule provides useful guidance for district policies.<sup>25</sup> The rule specifies that an employee must maintain an 80 hour balance in his or her own sick leave account before donating any sick leave. Additionally, the rule outlines the conditions required for the donation of sick leave, including that the employee receiving the leave has used all accrued sick and annual leave, suffered a documented illness which requires absence from the workplace for a minimum of five days, is not eligible for disability leave, and has not used more than 1040 hours of transferred sick leave credits in the preceding twelve month period.<sup>26</sup> Upon documented termination of the qualifying illness, unused transferred sick leave credit is returned to those employees whose donated sick leave credits have not yet been drawn upon.<sup>27</sup> Transferred sick leave has no terminal value.<sup>28</sup>

### **Effect of Proposed Changes**

The bill authorizes, but does not require, districts to provide a policy which permits employees to donate their unused sick leave to a specific, non-relative recipient. Recipients must have exhausted all of their own sick leave before using donated leave. The donated sick leave has no terminal value.

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Section 1012.61(2)(a)4.a.-d., F.S.

<sup>16</sup> Section 1012.61(2)(a)4.e., F.S.

<sup>17</sup> Section 1012.61(2)(a)5., F.S.

<sup>18</sup> Section 1012.61(2)(e), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> Section 1012.61(3), F.S.

<sup>21</sup> Telephone interview with General Counsel, Florida Association of District School Superintendents (Nov. 22, 2011).

<sup>22</sup> Section 110.1055, F.S.

<sup>23</sup> Section 216.011(1)(qq), F.S.

<sup>24</sup> Rule 60L-34.0042(5), F.A.C.

<sup>25</sup> Section 216.011(1)(qq), F.S.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

The bill specifies that the school district policy must require documentation by the treating physician of the illness, accident, or injury for which leave is authorized; establish a minimum number of sick leave days needed before an employee may participate in the sick leave program; require that any unused transferred sick leave be returned to the authorizing employee whose donated sick leave has not yet been used; and establish the minimum number of sick leave days an authorizing employee must retain. These additional specifications provide guidance for the school districts if they chose to provide a sick leave transfer policy. The bill echoes the agency rule, allowing school districts to adopt a policy authorizing an employee of a school district to donate sick leave to a specific non-relative employee.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 1012.61, F.S., relating to sick leave, to authorize school districts to provide a policy which permits employees to donate their unused sick leave to a specific, non-relative recipient.

**Section 2.** Provides an effective date of July 1, 2012.

**II. 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:

None.

2. Expenditures:

Currently, school districts are permitted to adopt policies which allow for up to 80 percent payout of unused sick leave at the end of each school year, as well as policies that allow for a terminal payout plan for accumulated sick leave.<sup>29</sup> An employee who transfers sick leave may forego an end-of-year payout for those donated hours, which is paid at a maximum of 80 percent of the accumulated sick leave balance earned in the current year. Any leave that was not used by the recipient will be returned to the authorizing employee whose donated sick leave has not yet been used and may be included in their calculated end-of-year payout. Therefore any leave that is used by the recipient will produce a maximum savings of up to 80 percent of the employee who transferred the sick leave. The same savings would be realized if a district has adopted policies regarding a terminal payout plan for accumulated sick leave. Because school districts are permitted to create their own policies, the specific fiscal effects are indeterminate.<sup>30</sup>

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

<sup>29</sup> Section 1012.61(2)(a)3. and 4., F.S.

<sup>30</sup> Florida Department of Education, *2012 Agency Bill Analysis of HB 285* (Oct. 31, 2011).

None.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. This bill does not appear to affect county or municipal governments.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On December 7, 2011, the K-20 Competitiveness Subcommittee adopted one amendment and the bill was reported favorably as a committee substitute. The amendment provided additional standards for the school district sick leave transfer policy, specifying that the school district policy must require documentation, by the treating physician, of the illness, accident, or injury for which leave is authorized; establish a minimum number of sick leave days needed by a recipient to participate in the sick leave program; require that any unused sick leave be returned to the authorizing employee whose donated sick leave has not yet been used; and establish the minimum number of sick leave days an authorizing employee must retain.