

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Education Pre-K - 12 Committee

**BILL:** CS/SB 874

**INTRODUCER:** Education Pre-K - 12 Committee and Senator Benacquisto

**SUBJECT:** Sick Leave for School District Employees

**DATE:** February 7, 2012      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Abrams	deMarsh-Mathues	ED	<b>Fav/CS</b>
2.			GO	
3.				
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary**

The bill grants school districts the option of creating policies which permit district employees to donate their unused sick leave to a non-relative district employee. Recipients must have exhausted all of their own sick leave before using donated leave. Also, districts that implement these policies must require documentation from the physician of the person receiving the sick leave, establish a minimum number of sick leave days needed by the recipient before participating in the program, require unused transferred sick leave to be returned to the donating employee, and establish a minimum number of sick leave days a donating employee must retain after transferring sick leave days. Donated sick leave has no terminal value.

**II. Present Situation:**

Currently, a leave of absence is available to any member of the instructional staff<sup>1</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

<sup>1</sup> "Instructional staff" is not a defined term in s. 1012.61, F.S. Section 1012.01(2), F.S., does, however, define "instructional personnel," which includes employees such as classroom teachers, guidance counselors, librarians, and media specialists.

close relative, or member of their household and needs to be absent from work.<sup>2</sup> Instructional staff members, 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>3</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>4</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>5</sup> Sick leave is cumulative from year to year.<sup>6</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>7</sup>

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.<sup>8</sup> Days for which such payment is received are deducted from an employee's accumulated leave balance.<sup>9</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>10</sup>

School districts are currently required to provide a policy that allows employees to donate sick leave to a spouse, child, parent, or sibling whom is also employed by the school district.<sup>11</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>12</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>13</sup>

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 transfer among non-relatives is already an option for state agency employees.<sup>14</sup> The law requires the Department of Management Services to adopt rules governing the management of state employees.<sup>15</sup> In this

---

<sup>2</sup> s. 1012.61(1), F.S.

<sup>3</sup> s. 1012.61(2)(a)1., F.S.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* The statute provides additional rules for terminal leave.

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

<sup>7</sup> *Id.* 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. See 1012.01(6), F.S. The statute does not specify the limitations on sick leave for other types of employees such as school officers or administrative personnel.

<sup>8</sup> s. 1012.61(2)(a)3., F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Florida Department of Education, 2012 Agency Bill Analysis of HB 285 (October 31, 2011). On file with the Senate Committee on Education Pre-K – 12.

<sup>11</sup> s. 1012.61(2)(e), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> s. 1012.61(3), F.S.

<sup>14</sup> Rule 60L-34.0042(5), F.A.C.

<sup>15</sup> s. 110.1055, F.S.

context, state employees include persons employed by state agencies such as the Public Defender and the Florida Public Service Commission.<sup>16</sup> The Department of Management Services provides for the establishment of a formal sick leave transfer program amongst employees of state agencies.<sup>17</sup>

While school districts are not considered a state agency,<sup>18</sup> the rule provides useful guidance for district policies. 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.<sup>19</sup> 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>20</sup> Upon documented termination of the qualifying illness, unused transferred sick leave credit is returned to those employees whose donated credits have not been used.<sup>21</sup> Transferred sick leave has no terminal value.<sup>22</sup>

### III. 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 non-relative recipient. Recipients must have exhausted all of their own sick leave before using donated leave. Donated sick leave has no terminal value.

District school systems that choose to adopt these policies must:

- Require the recipient of sick leave days to provide documentation of the illness, accident, or injury from the treating physician;
- Establish a minimum number of sick leave days needed by the recipient to 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 been used; and
- Establish a minimum number of sick leave days that an authorizing employee must retain.

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

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

---

<sup>16</sup> s. 216.011(1)(qq), F.S.

<sup>17</sup> Rule 60L-34.0042(5), F.A.C.

<sup>18</sup> s. 216.011(1)(qq), F.S.

<sup>19</sup> Rule 60L-34.0042(5), F.A.C.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill grants district employees options to donate their sick leave to other district employees. This may prevent a loss of income for district employees who have used up all their sick leave.

**C. Government Sector Impact:**

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>23</sup> Irrespective of a district's policy, depending on the pay rate of employees who participate in the transfer of leave, school districts may incur extra costs or save money. For example, assuming the district adopted the maximum 80 percent payout for unused sick leave at the end of each year, if the daily wage rate of the recipient is higher than 80 percent of the rate of pay of the employee who transferred the sick leave, the school district will incur additional costs. Similarly, if the recipient's daily rate of pay is less than 80 percent of the daily rate of pay of the employee who transferred the sick leave, the school district will save money. Variations in fiscal impact could also occur 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>24</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

---

<sup>23</sup> s. 1012.61(2)(a)3 and 4., F.S.

<sup>24</sup> Florida Department of Education, 2012 Agency Bill Analysis of HB 285 (October 31, 2011). On file with the Senate Committee on Education Pre-K – 12.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Education Pre-K - 12 Committee on February 6, 2012:**

The committee substitute provides that district school board policies which permit district employees to donate their unused sick leave to a non-relative district employee must:

- Require documentation from the treating physician;
- Establish a minimum number of sick leave days needed to participate in the program;
- Require that unused transferred sick leave be returned to the donor employee; and
- Establish a minimum number of sick leave days that an authorizing employee must retain.

- B. **Amendments:**

None.