

**SUBJECT:** Reducing the number of personal-leave days for school employees

**COMMITTEE:** Public Education — committee substitute recommended

**VOTE:** 5 ayes — Grusendorf, Branch, Eissler, Griggs, Madden

1 nay — Dawson

3 absent — Oliveira, Dutton, Hochberg

**WITNESSES:** For — Amy Beneski, Texas Association of School Administrators; Gene Buinger, Hurst-Euleless-Bedford ISD; Cathy Douglass, Texas Association of School Boards

Against — Lonnie Hollingsworth, Texas Classroom Teachers Association; Ted Melina Raab, Texas Federation of Teachers; Marjorie Wall, Texas State Teachers Association; JoHannah Whitsett, Association of Texas Professional Educators

**BACKGROUND:** Education Code, sec. 22.003(a) sets forth a minimum personal-leave program for school employees. It allows five days of personal leave per year with no limit on accumulation. Leave is transferrable among school districts, and districts may grant additional personal leave beyond the minimum. A school board may adopt a policy governing an employee's use of personal leave, but it may not restrict the purposes for which the leave is used.

In 2001, the education commissioner reviewed an appeal of a grievance filed by a teacher who claimed that Castleberry ISD had restricted her use of personal leave. The commissioner held that a personal leave policy must meet two standards: it must be neutral on its face, and it cannot distinguish between worthy and unworthy uses for leave. A policy "that makes it difficult or impossible for teachers to use their yearly allotment of leave would not be a legitimate use of the policy making authority granted in Texas Education Code, sec. 22.003" (*Donna Amaral-Whittenberg v. Castleberry ISD*, Docket No. 003-R10-901).

**DIGEST:** CSHB 1626 would allow a school district to restrict an employee's use of personal leave. Public school employees still would earn five days of personal leave per school year, but only two of those days could be used for personal business. The school board could restrict the timing of the leave and could deny a teacher personal leave if a substitute teacher were not available.

A school board could adopt a policy for use of the other three days of personal leave, except that it could not prohibit the use of personal leave for illness of the employee or a member of the employee's immediate family, for a family emergency (as defined by board policy), or for a death in the employee's immediate family.

The bill would take effect September 1, 2003, and would apply beginning with the 2003-04 school year. The use of personal leave accumulated before September 1, 2003, would be unrestricted as under current law.

**SUPPORTERS SAY:** CSHB 1626 would save school districts money while preserving teachers' rights to handle their personal business. The bill essentially would convert three days of unrestricted personal leave to sick leave and would allow districts to restrict the timing of the remaining two personal leave days. Districts report that many teachers schedule the use of personal leave at inconvenient times, such as the day before or after spring break or the Christmas holiday in order to extend their vacations. Excessive absenteeism creates a negative impact on the quality of instruction and on local school districts that must budget millions of dollars a year for substitute teachers. Districts could spend that money better on retaining teachers, raising teachers' pay, or improving benefits.

Granting teachers five days of unrestricted leave works at cross-purposes to the accountability system. When teachers choose to use their personal leave on the day of the Texas Assessment of Knowledge and Skills (TAKS) test or in the weeks leading up to the test, it is students who suffer. Since 1995, when the Legislature converted five days of teacher sick leave into five days of unrestricted personal leave, absenteeism among teachers has increased substantially, increasing the need for substitute teachers by up to 60 percent in some districts. Children learn from consistency, and substitute teachers, regardless of their qualifications, cannot take over adequately for full-time faculty members.

CSHB 1626 would not restrict the purpose of the remaining personal leave, only the timing of it, thus upholding the spirit of the *Castleberry* decision. The most important standard for establishing a district leave policy is that it be reasonable. This bill would strike a balance between protecting a teacher's right to use personal leave and protecting a district's right to count on its employees not to be absent when substitute teachers were not available or during crucial times of the year, such as during the TAKS test. Teachers still could use any personal leave accumulated before the 2003-04 school year in an unrestricted manner. Teachers would have ample time off to take care of important business, such as closing on the sale of a house or taking an elderly parent to a doctor's appointment.

OPPONENTS  
SAY:

CSHB 1626 would take away three days of personal leave and convert them into sick leave. By definition, personal leave should be available for personal purposes. The education commissioner ruled in the *Castleberry* case that a district's personal-leave policy that restricts a teacher's use of the time or that makes it difficult or impossible to take the leave is not a legitimate use of policy-making authority. Clearly, this bill would restrict how a teacher could use three out of five days of personal leave, making it impossible to use those days for personal business.

This bill is unnecessary. Current law already provides for school districts to establish leave policies, and the commissioner has upheld a district's right to set reasonable parameters for a teacher's use of personal leave time. The bill would punish the majority of good teachers by changing a statewide policy because one or two districts are having trouble with a few teachers. School administrators can use their current authority to intervene in those few cases. In light of the current raid on teachers' rights, this bill would add insult to injury. The teacher shortage will grow worse if the Legislature continues to cut teachers' pay, benefits, and contract rights until experienced, certified teachers have no reason or motivation left to work in public schools.

NOTES:

As introduced, HB 1626 would have authorized a school district to restrict all five days of personal leave based on timing and availability of a substitute teacher and would have prohibited the board from refusing an employee leave on any of the five personal-leave days for illness of self or immediate family,

family emergency, or death in the immediate family. It also would not have made the definition of a family emergency subject to board policy.