

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain: Not applicable.

B. EFFECT OF PROPOSED CHANGES:

Background

Florida is a right to work state, that is, no employer may compel an employee to join a union, nor can an employer compel an employee not to join a union. Art. I, s. 6, Fla.Const. Florida implements this constitutional provision, as it applies to the state and to local governments, in Part II of ch. 447, F.S. If a union has been certified as representing a particular group of employees, s. 447.303, F.S., requires a state or local government employer to withhold union dues from the paychecks of consenting employees.

Effect of Bill

This bill provides that state or local government employers are not required to provide payroll deduction services for a union representing instructional personnel.¹ This bill further provides a narrative statement that recognizes the constitutional right of an employee to join a union and have that union act as a bargaining agent. The narrative distinguishes this from the provision of a payroll deduction service benefiting the union. The narrative further details the legislative reasons for the restrictions imposed by this bill.

If an employer agrees to provide payroll deduction service for a union representing instructional personnel, this bill limits how such collected dues may be utilized. Union dues collected through payroll deduction may not exceed the cost of collective bargaining, contract administration, and grievance adjustment. Specifically excluded from the permissive deduction are amounts for electoral activities; independent expenditures; contributions to any candidate, political party, political committee, or committee of continuous existence; voter registration campaigns; and ballot initiatives. The employer is prohibited from collecting fines, penalties, or special assessments for any purpose other than the permissive labor and management collective bargaining issues listed.

This bill further creates a cause of action whereby any taxpayer or aggrieved party may seek injunctive relief for violation of the restrictions on the use of payroll deducted dues, and may compel the union to make a pro-rata refund to all of its members of monies used for an improper purpose. An individual union member may also seek a refund in his or her own name.

¹ The bill references the definition of "instructional personnel" at s. 1012.01, F.S., which defines instructional personnel to include classroom teachers, student personnel services (primarily guidance counselors), librarians and media specialists, other instructional staff, and education paraprofessionals.

C. SECTION DIRECTORY:

Section 1 amends s. 447.303, F.S., to remove the requirement that employers provide payroll withholding service for unions representing instructional personnel. If an employer agrees to payroll deduction, this section limits the use of such union dues and provides for refund of wrongfully used monies.

Section 2 provides an effective date of July 1, 2003.

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:

Providing a payroll deduction service for the benefit of a union represents a minimal expense that would be saved should an employer decide to eliminate the service.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

- 1. Applicability of Municipality/County Mandates Provision: Not applicable.
- 2. Other:

A government may refuse to offer payroll deduction for union dues, even though it provides for other voluntary payroll deductions, so long as the government provides some reasonable reason for doing so. *City of Charlotte v. Local 660, International Association of Firefighters*, 426 U.S. 283 (1976)(equal protection analysis). This case was decided in a “closed shop” state, in which employers can compel union membership of all employees. The reasoning utilized in the court’s analysis and opinion appears to be more compelling in a right-to-work state such as Florida.

It has been asserted that this bill might be found unconstitutional by virtue of the ruling in *Dade County Classroom Teachers’ Association, Inc., v. Ryan*, 225 So.2d 903 (Fla. 1969). In that case, the Florida Supreme Court upheld the right of a teachers’ union to collective bargaining. In making that ruling, the court stated:

In the sensitive area of labor relations between public employees and public employer, it is requisite that the Legislature enact appropriate legislation setting out standards and guidelines and otherwise regulate the subject Legislative enactments regulating [Florida's right to work provision in the state constitution] should be accorded considerable deference by the judiciary

Id. at 906. The only reference in the decision to withholding of union dues from a teacher's paycheck was the statement that such could only be done with the consent of the teacher. *Id.* at 907. There does not appear to be any ruling contained in the case that would lead to the conclusion that this bill suffers from any constitutional infirmity.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.