

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SJR 2512

SPONSOR: Senator Cowin

SUBJECT: Public School Teacher Salaries/Constitutional Amendment

DATE: April 13, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dormady</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>AED</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	<u>RC</u>	_____
6.	_____	_____	_____	_____

I. Summary:

SJR 2512 submits to the Florida electors a proposal to create a new Section 8 of Article IX of the State Constitution. This new section would permit public school teachers in kindergarten through grade 12 to choose between (1) joining a union for collective bargaining purposes or (2) accepting a salary established annually by the Legislature. The joint resolution includes a ballot title and summary of the proposed amendment.

If the Senate Joint Resolution is approved by the Legislature, the proposed amendment to Article IX would appear on the ballot at the next general election or at an earlier special election specifically authorized by law for that purpose.

If approved by voters, this joint resolution would create a new section of Article IX of the State Constitution.

II. Present Situation:

Salaries Established by District School Boards. Currently, wages for the state's public school teachers are generally established at the district level. The majority of funding for district employee salaries, including instructional personnel, is distributed through the Florida Education Finance Program (FEFP). These funds are distributed on a per student, or FTE, basis in order to maintain an equitable funding level between school districts. FEFP appropriations are made to the district school board, and the board determines teacher salaries, generally pursuant to a collective bargaining agreement with local union representatives.

State Legislation Impacting Teacher Salaries. The Legislature has established some programs, however, that provide certain requirements with respect to instructional personnel pay. Among

these programs is the Dale Hickam Excellent Teaching Program, which was funded at \$48.7 million in fiscal year 2002-2003. The Excellent Teaching Program provides annual bonuses for nationally board certified teachers. These bonuses are generally equal to 10 percent of the prior fiscal year's statewide average salary for classroom teachers. Additional bonuses are also available under certain circumstances.¹

The Legislature also requires that districts implement a performance pay program, pursuant to which districts must base a portion of each teacher's compensation on performance.² The program allows school administrators and instructional personnel who demonstrate outstanding performance to earn a 5 percent supplement in addition to their individual, negotiated salary.

Collective Bargaining. In general, districts establish salary levels and salary increases at the local level through the collective bargaining process. In Florida, all school districts except one have active local affiliates of the Florida Education Association, the statewide union for public instructional personnel. Each of these local affiliates is a certified bargaining agent registered with the Public Employees Relations Commission to negotiate with school districts on behalf of teachers in the district. Local union affiliates and school districts generally negotiate salary schedules, which usually contain salary levels that increase in tandem with educational qualifications and years of experience.

Florida Constitution: Right to Collective Bargaining. Article I, Section 6 of the Florida Constitution provides:

Right to Work. The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.

The Florida Supreme Court has deemed the right to collective bargaining to be fundamental and has applied a strict scrutiny test to any action that tends to undermine this right.³ The Court has also made clear that this constitutional provision is applicable to public, as well as private, employees.⁴

Collective Bargaining Provisions in Statute. Sections 447.201 through 447.609, F.S., govern collective bargaining by Florida public employees at the statutory level. Under s. 447.203, a district school board is deemed to be the public employer of all employees of a school district, and all employees of the school board are "public employees" for purposes of collective bargaining.

¹ S. 1012.72, F.S.

² S. 1012.22, F.S.

³ See, e.g., *State v. Police Benevolent Ass'n*, 613 So.2d 415, 423 (Fla. 1992), stating that the "compelling state interest test applies to collective bargaining agreements" and *Chiles v. State Employees Attorneys Guild*, 734 So.2d 1030, 1033 (Fla. 1999), stating that "The Legislature cannot...abridge public employees' right to bargain collectively, absent a compelling state interest."

⁴ *Coastal Florida Police Benevolent Association, Inc. v. Williams*, 838 So.2d 543 (Fla. 2003).

Section 447.301, F.S., provides that public employees have the right to “form, join, and participate in, or to refrain from forming, joining, or participating in, any employee organization of their own choosing.” The section further provides that “[p]ublic employees shall have the right to be represented by any employee organization of their own choosing and to negotiate collectively, through a certified bargaining agent, with their public employer in the determination of the terms and conditions of their employment.”

Florida Constitution: Amendments by Legislative Joint Resolution. Article XI, Section 1 of the Florida Constitution provides that the Legislature may propose amendments to the Constitution by joint resolution approved by three-fifths of the membership of each house. The proposed amendment must then be placed before the electorate at the next general election held after the proposal has been filed with the office of the Secretary of State. Alternatively, it may be placed before the electorate at a special election held for that purpose.

III. Effect of Proposed Changes:

Section 8, Article IX, of the Florida Constitution as proposed by SJR 2512 would provide that each public school teacher who teaches in kindergarten through grade 12 in the state of Florida may choose to either (1) accept a salary that the Legislature annually establishes statewide or (2) join a union that seeks to establish salaries for its members through collective bargaining. If approved by voters, the constitutional amendment must be submitted to the electors of the state for approval or rejection at the next general election in the state or at an earlier special election specifically authorized by law for that purpose.

As an administrative matter, if the amendment were approved by voters, school districts would be required to give each K-12 teacher in the state the choice of being paid the salary established by the Legislature or a salary negotiated by their local union affiliate. It is not clear from the proposed amendment language, however, how often teachers would be provided this choice. Potentially, teachers could be given this choice just once to comply with the amendment’s requirements. Alternatively, teachers could be given the choice annually, or at any other time interval established by the Legislature; however, any such time interval will have to give effect to the apparent intent of the amendment, under applicable case law regarding the construction of constitutional provisions. In order to determine intent, courts will look at the plain meaning of the words actually used in the Constitution.⁵ Because the apparent intent of the amendment is to provide flexibility to teachers, a liberal construction of how often teachers would be permitted to “choose” between statewide or locally-bargained salaries would be likely. It is not possible to determine how teachers would elect if presented with such a choice (or, for that matter, what the relative salaries established by the Legislature and the collective bargaining process would be), but it is clear that under most circumstances, districts would be required to maintain at least two salary schedules for teachers.

Because the statutory requirement in s. 1012.22, F.S., for performance pay bonuses applies only to school districts, it would appear that these bonuses would not be applicable to salaries established by the state. With respect to the Dale Hickam Excellent Teaching Program, the use of statewide salaries for some teachers should not impact bonuses paid pursuant to this program.

⁵ See *Coastal Florida Police Benevolent Association, Inc. v. Williams*, 838 So.2d 543 (Fla. 3003).

The bonuses paid under this program are established independent of the current collective bargaining process that generally determines teacher salaries.

The proposed amendment provides that teachers “may choose *either to accept a salary* that the legislature annually establishes statewide *or to join a union* that seeks to establish salaries for its members through collective bargaining” (emphasis added). According to the plain language of the amendment, if a Florida teacher chose to accept the statewide salary, she or he would not be able to join a union and participate in collective bargaining with respect to *any* term or condition of employment, not just salary. Collective bargaining typically covers not just salary but benefits and other terms and conditions of employment.

As s. 447.301, F.S. (quoted above), makes clear, public employees may currently refrain from joining or participating in any employee organization. Accordingly, teachers need not be members of local teachers’ unions if they do not wish to be. The proposed amendment would not change this right of non-participation in any way.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

As noted above, the Florida Constitution contains a right for public employees to engage in collective bargaining. According to the language of the amendment, teachers are not required to choose between the statewide salary and union participation; they are merely permitted to do so. Arguably, the proposed amendment does not “deny or abridge” the right of employees to engage in collective bargaining; it merely offers employees the choice of not participating in such bargaining if desired. This choice – to not participate in collective bargaining – is actually already implicit in Article I, Section 6 of the Florida Constitution (and is explicit in statute, in s. 447.301, F.S., as noted above.) According to this argument, the proposed amendment would neither deny nor abridge the constitutional right of collective bargaining; employees could simply choose not to take the salary. By this logic, the proposed amendment may be read to not abridge the collective bargaining right at all.

An argument may also be formed, however, that the proposed amendment would in fact deny or abridge the right of collective bargaining set forth in the Constitution. Teachers are permitted, not required, by the amendment to choose between union membership and

accepting the statewide salary. One of these choice options, however – union membership – is a right that is already theirs under the constitution and by law. Accordingly, the real choice that is being offered teachers by the amendment is that of accepting a statewide salary, with the caveat that they must give up their union membership in order to do so. An offer of a state benefit with the condition that union membership be curtailed to enjoy the benefit arguably would “abridge or deny” the collective bargaining right. Because this is a proposed constitutional provision, however, if approved by voters it would be of equal weight as other constitutional provisions and would be read together with Article I, Section 6. A likely interpretation of these two provisions read together would be that state employees are afforded the constitutional right to collectively bargain, which cannot be abridged or denied, but that this provision is inapplicable to teachers who choose a statewide salary; teachers who choose a statewide salary cannot participate in collective bargaining irrespective of the provisions of Article I, Section 6 of the State Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The impact of this amendment on teachers’ salaries cannot be determined by available data.

C. Government Sector Impact:

Article XI, Section 5 of the Florida Constitution requires that every amendment proposed to the Constitution be published in a newspaper of general circulation in each county two times prior to the election at which it is presented to the voters. The Division of Elections has estimated that the cost to advertise a proposed constitutional amendment twice in a newspaper of general circulation in each county prior to a general election would be approximately \$60,000. If the amendment were presented to voters at a special election, the cost of the amendment referendum would be greater.

It is not possible to determine the effect that this amendment would have on teachers’ salaries in the state, as the proposed statewide salary schedule could provide for salaries that are higher, lower, or virtually the same as those established through collective bargaining. As a result, costs or savings to the state resulting from the amendment are not possible to calculate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
