

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 647 Criminal Justice Standards and Training Commission  
**SPONSOR(S):** Legg and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 738

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<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1) Criminal Justice Committee	_____	Kramer	Kramer
2) Governmental Operations Committee	_____	_____	_____
3) Justice Council	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

House Bill 647 provides that in appointing the five law enforcement officers who sit on the Criminal Justice Standards and Training Commission (CJSTC), the Governor shall choose from a list of six nominees submitted by the law enforcement organization, inclusive of charters and chapters, which the Public Employees Relations Commission (PERC) certifies as the collective bargaining agent for the largest number of certified bargaining units on the date the list is submitted.

The bill would limit the discretion the Governor currently has under s. 943.11, F.S., in appointing law enforcement members to the CJSTC, since the Governor would be required to choose those members from the list provided by the law enforcement organization certified by the PERC.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill would limit the discretion the Governor currently has under s. 943.11, F.S., in appointing law enforcement members to the Criminal Justice Standards and Training Commission.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Criminal Justice Standards and Training Commission:**

The Criminal Justice Standards and Training Commission is established pursuant to s. 943.11, F.S., and has a number of responsibilities relating to the training, certification, and discipline of full-time, part-time, and auxiliary law enforcement officers, correctional officers, and correctional probation officers.

Section 943.11(1)(a), F.S., specifies that the commission is to have a membership of 19 composed of the following persons:

- the Secretary of the Department of Corrections or designated assistant,
- the Attorney General or designated assistant,,
- the Director of the Florida Highway Patrol,
- 3 county sheriffs,
- 3 chiefs of police,
- 5 law enforcement officers who are of the rank of sergeant or below,
- 2 correctional officers, including one administrator of a state correctional institution and 1 officer holding the rank of sergeant or below,
- 1 training center director,
- 1 person in charge of a county jail, and
- 1 resident of Florida who does not fall into any of the other categories.

The sixteen positions filled by the sheriffs, chiefs of police, law enforcement officers, correctional officers, training center director, county jail administrator, and citizen member are appointed by the governor.

Section 943.11, F.S., requires a sheriff, chief of police, law enforcement officer, and correctional officer to have at least four years of experience as a law enforcement or correctional officer to be considered for appointment as a member of the CJSTC.

In making appointments to the commission, the Governor must take into consideration representation by geography, population, and other relevant factors in order that the representation on the commission be apportioned to give representation to the state at large rather than to a particular area.

##### **Public Employees Relations Commission**

The Public Employees Relations Commission is established pursuant to ss. 447.201 and 447.205, F.S. The PERC is administratively housed within the Department of Management Services (DMS). The Office of Program Policy Analysis and Government Accountability describes PERC as "a neutral adjudicative body that promotes the state's public policy of harmonious management/employee relations through resolution of public sector labor disputes, career service appeals, veterans' preference appeals, drug testing cases, certain age discrimination cases, and whistleblower appeals."<sup>1</sup>

<sup>1</sup> <http://www.oppaga.state.fl.us/profiles/4136/>

The PERC's website<sup>2</sup> provides the following information regarding its duties as they relate to collective bargaining:

Public employees in the State of Florida have the constitutional right to collectively bargain. "Public employees" means employees of the state, counties, school boards, municipalities, and special taxing districts. This includes all fire, police, corrections, school teachers and support personnel, medical personnel, state troopers, toll collectors, sanitation employees, and clerical, etc. There are approximately 400,000 public employees of bargaining units throughout the State of Florida. The Commission holds hearings and resolves disputes about the composition of bargaining units and alleged unfair labor practices.

The Commission has an elections division that conducts elections when public employees express the desire to be represented by a union.

The Commission registers unions to qualify them to pursue representing employees.

The Commission has an impasse and mediation coordinator who oversees and orchestrates federally provided mediators and private employed arbitrators to resolve impasses in labor negotiations.

### **Collective Bargaining Agents for Law Enforcement Bargaining Units in Florida**

The PERC staff was able to verify four collective bargaining agents for certified law enforcement bargaining units<sup>3</sup> in Florida: the Florida Police Benevolent Association (PBA); the Fraternal Order of Police (FOP)<sup>4</sup>; the Teamsters; and the International Union of Police Associations (IUPA).

The PERC provided staff with certification reports (current as of February 24, 2005) regarding the certified law enforcement bargaining units represented by the four collective bargaining agents. Based on staff's hand-count of the certification number entries,<sup>5</sup> it appears that the four collective bargaining agents represent the following number of law enforcement bargaining units:

- PBA: 213
- FOP: 104
- Teamsters: 13
- IUPA: 11

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<sup>2</sup> [http://dms.myflorida.com/programscommissions/public\\_employees\\_relations\\_comm](http://dms.myflorida.com/programscommissions/public_employees_relations_comm)

<sup>3</sup> According to the PERC staff, the term "law enforcement bargaining unit" is a commonly understood term of art in labor law. The PERC staff states that law enforcement bargaining units and correctional bargaining units are separately certified. Correctional bargaining units are not law enforcement bargaining units, though correctional bargaining units are commonly represented by collective bargaining agents that also represent law enforcement bargaining units, and correctional officers are commonly employed by sheriffs.

<sup>4</sup> The FOP differs somewhat from the PBA, the IUPA, and the Teamsters. According to the FOP website, the FOP consists of "lodges," which "are united by the parent organization known as the Grand Lodge." There is a national lodge and there are state lodges and local lodges. "[E]ach local lodge decides for itself whether to engage in collective bargaining, legal defense or function solely as a social, professional organization. Many lodges do both. However, this choice is left strictly to the members of each lodge with no interference or decision-making by the State Lodge, National Lodge, or members of other agencies." <http://fop31.org/whatis.htm>

<sup>5</sup> The PERC staff informed committee staff that this is the correct method of obtaining the number of certified law enforcement bargaining units. Collective bargaining agents' published membership numbers may be different than the number in the certification reports. A collective bargaining agent may not count "inactive" certified law enforcement bargaining units it represents. An "inactive" unit would be one in which the unit is certified but the collective bargaining agent is not negotiating with the employer. The unit remains certified, unless the members of the unit seek decertification. An employer cannot seek the decertification of a unit.

Based on the certification reports, it appears that the PBA and the IUPA are the only collective bargaining agents that represent both state and local law enforcement collective bargaining units.<sup>6</sup> The number of members in a collective bargaining unit can vary from a handful of persons to several thousand persons. The agent's representation of a large number of collective bargaining units may or may not mean the agent represents a large number of members, and an agent could represent a small number of units with a large number of members.<sup>7</sup>

HB 647 amends s. 943.11, F.S., to provide that, in appointing the five law enforcement officers who sit on the Criminal Justice Standards and Training Commission, the Governor must choose from a list of six nominees submitted by the law enforcement organization, inclusive of charters and chapters, which the Public Employees Relations Commission certifies as the collective bargaining agent for the largest number of certified bargaining units on the date the list is submitted. The law enforcement organization must submit its list of six nominees at least three months before the expiration of the term of any law enforcement member.

The bill would limit the discretion the Governor currently has under s. 943.11, F.S., in appointing law enforcement members to the CJSTC, since the Governor would be required to choose those members from the list of six nominees presented to Governor by the law enforcement organization certified by the PERC as the collective bargaining agent for the largest number of certified bargaining units on the date the list is submitted.

This bill takes effect upon becoming a law.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 943.11, F.S. to provide that

Section 2. Provides that bill becomes effective upon becoming law.

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<sup>6</sup> A list of the local units represented by the four collective bargaining agents is too large to report in this analysis. However, regarding the state law enforcement bargaining units, there are currently three state contracts. The PBA represents a certified law enforcement bargaining unit consisting of all certified officers employed by the Florida Department of Lottery, including the classifications of Lottery Investigator, Lottery Special Agent, and Senior Lottery Special Agent, but excluding the Director of the Division of Security, Chief to the Bureau of Investigation, Chief of the Bureau of Security, and all other Lottery employees. The PBA also represents a certified law enforcement bargaining unit consisting of all professional sworn law enforcement officers classified as special agent or special agent trainee at FDLE, but excluding all other employee classifications of the state and specifically excluding the classification of special agent supervisor and all classifications included in the state law enforcement unit. (The PBA also represents university and college certified law enforcement bargaining units but the PERC staff states that these units are separate from the state units. The employer of these units is the Board of Trustees.)

The IUPA represents a certified law enforcement bargaining unit consisting of all sworn law enforcement officers, including all supervisors, in the following classifications: Law Enforcement Officer, Law Enforcement Officer Corporal, Law Enforcement Officer Sergeant, Law Enforcement Wildlife Inspector, Law Enforcement Airline Pilot I, Law Enforcement Airline Pilot II, Law Enforcement Investigator I, and Law Enforcement Investigator II. The IUPA indicates that it represents employees (in the classifications noted) who work for the Florida Fish and Wildlife Commission, the Florida Highway Patrol, the State Fire Marshal, the Department of Environmental Protection and Park Police, the Department of Financial Services' Fraud Division, the Department of Juvenile Justice (Youth Custody Police Officers), the Department of Agriculture Law Enforcement, the Florida Department of Transportation (Motor Carrier Compliance Officers), the Office of the Attorney General's Medicaid Fraud Control Unit, the Department of Business and Professional Regulation (Alcohol, Beverages, and Tobacco), the School for the Deaf and Blind, and the Capitol Police (FDLE). Excluded from IUPA representation are managerial and confidential employees defined by the PERC, temporary employees, emergency employees, substitute employees, and all persons paid from OPS funds, as defined in s. 216.011(1)(x), F.S.

<sup>7</sup> Membership data is not included in this analysis. The PERC does not have data on the number of employees in any unit, after the date of an election (if one was held) and the DMS only collects data on state units. The number of members a collective bargaining agent represents is not relevant to the bill's provisions, which speak only to certified law enforcement bargaining units.

## 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:

None.

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

None.

### D. FISCAL COMMENTS:

This bill does not appear to have a fiscal impact on state or local government or the private sector.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

#### 2. Other:

Under the bill, the law enforcement organization responsible for submitting the nominees list to the Governor has discretion in choosing the nominees. If the bill became law, the law enforcement organization could choose only nominees represented by the law enforcement organization or only union members. However, the law enforcement organization could also make other choices. Therefore, it seems that constitutional issues, if any, would arise out of the choices made by the law enforcement organization, not out of the law itself, which does not mandate any particular choice by the law enforcement organization.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES