

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1059  
Assessments

Deduction and Collection of a Bargaining Agent's Dues and Uniform

**SPONSOR(S):** Rivera

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2706

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<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1) <u>Governmental Operations Committee</u>	<u>5 Y, 2 N</u>	<u>Brown</u>	<u>Williamson</u>
2) <u>State Administration Council</u>	<u>5 Y, 4 N</u>	<u>Brown</u>	<u>Bussey</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

The bill declares that state and local government employers are not required to provide payroll deduction services for a union representing instructional personnel. If an employer agrees, during the collective bargaining process, to provide payroll deduction service for a union representing instructional personnel, the bill limits how such collected dues may be utilized. This bill also creates a cause of action to enforce these limits.

This bill does not appear to have a fiscal impact on state government, and may have a minimal positive fiscal impact to local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – The bill potentially reduces the government’s ability to withdraw certain funds from a public employee’s salary.

**Safeguard individual liberty** – The bill potentially increases a public employee’s control over certain wages that would otherwise be controlled by the collective bargaining unit representing the employee.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Article I, Section 6, of the Constitution of the State of Florida declares that “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.” Florida implements this constitutional provision in chapter 447, F.S. Part II of ch. 447, F.S., applies the provision to state and local governments. 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 “dues and uniform assessments” from the paychecks of consenting employees.

##### Statement of Legislative Intent

The bill provides that state or local government employers are not required to provide payroll deduction services for a union representing instructional personnel.<sup>1</sup> The bill includes a statement of legislative intent that recognizes certain facts about the government’s neutrality in the decision of an employee to join or not join a union.<sup>2</sup>

This first section of the legislative statement of intent declares that a government employer’s provision of a payroll-withholding mechanism to a collective bargaining unit is inconsistent with the state’s larger goal of maintaining neutrality in the employee’s decision to join or not join a union. The first section also notes that, while other payroll deductions specifically identify how the funds will eventually be applied,<sup>3</sup> union dues are not required to identify “how the money deducted will be used.” The section concludes with a suggestion that, to the extent that employees are currently “unaware of their rights to be refunded any portion of such dues... used for political or social purposes with which they do not agree,” the payroll-deduction process may impinge against such employees’ rights under the First Amendment.

The second section of the legislative statement begins by emphasizing the size of the collective bargaining unit representing instructional personnel. The section then states that attracting new teachers and retaining existing teachers is a matter of critical importance. The section concludes that due to consolidation, the collective bargaining unit representing teachers has reached the status of a monopoly, thereby unduly restricting its members and impinging on their First Amendment rights.

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<sup>1</sup> 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.

<sup>2</sup> Section 447.201, F.S., contains a legislative statement of policy regarding Part II of Chapter 447, F.S. It reads in part, “Nothing herein shall be construed either to *encourage or discourage* organization of public employees.” (Emphasis added.)

<sup>3</sup> This is presumably a reference to federal withholding such as federal income tax and Social Security withholding, as well as withholdings related to employee benefits, health plans, retirement plans, or other programs.

The third section of the legislative statement declares that, due to the facts and trends already set forth, the withholding of dues and uniform deductions of instructional personnel should be a matter discussed between the parties as part of the collective bargaining process, rather than an automatic action granted to the collective bargaining unit.

### Effect of Bill

The bill removes the authority of the “certified bargaining agent for instructional personnel” to receive automatic deductions under s. 447.303, F.S., and provides that such deductions are instead “proper subject[s] of collective bargaining.”

The bill further states that in the event deductions are implemented as a result of the bargaining process, the deductions shall not exceed an amount actually used for bargaining activities of the certified bargaining unit.<sup>4</sup> This amount is distinguished from other potential uses of such fees that may not be deducted from an employee’s salary.<sup>5</sup>

The bill requires that, if agreed upon, deductions require the written approval of the employee. The employer may not collect fines, penalties, special assessments, or funds for any purpose other than labor-management issues. The agreement between the employer and the collective bargaining unit also must provide for segregation of labor-management funds or an independent audit of such funds.

Finally, the bill 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 also may seek a refund in his or her own name.

#### C. SECTION DIRECTORY:

Section 1 amends s. 447.303, F.S., removing the payroll-deduction service for certain unions; limiting the use of such union dues when deduction is agreed upon, and providing a private right of action to enforce the provisions.

Section 2 provides an effective date of July 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not create, modify, amend, or eliminate a state revenue source.

##### 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.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill does not create, modify, amend, or eliminate a local revenue source.

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<sup>4</sup> These permitted uses are referred to later in the bill as “labor-management issues.”

<sup>5</sup> Express examples of impermissible activities include electoral activities, contributions to candidates, political parties, political committees, or committees of continual existence.

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:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

The bill arguably raises potential federal constitutional concerns, however, the case of *City of Charlotte v. Local 660, International Association of Firefighters*, 426 U.S. 283 (1976) suggests that 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.<sup>6</sup> North Carolina, the location of the *Local 660* case, is 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.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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

None.

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<sup>6</sup> As opposed to the stronger constitutional standard of a "compelling governmental interest." In making this determination the court stated at page 2038 of the *Local 660* case:

Since it is not here asserted and this Court would reject such a contention if it were made that respondents' status as union members or their interest in obtaining a dues checkoff is such as to entitle them to special treatment under the Equal Protection Clause, the city's practice must meet only a relatively relaxed standard of reasonableness in order to survive constitutional scrutiny. *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974).