

HB 1059

2006

1 A bill to be entitled

2 An act relating to the deduction and collection of a
3 bargaining agent's dues and uniform assessments; amending
4 s. 447.303, F.S.; eliminating a right of certain
5 bargaining agents to have certain dues and assessments
6 deducted and collected by an employer from certain
7 employees; providing legislative findings and intent;
8 providing that the deduction and collection of certain
9 dues and assessments is a proper subject of collective
10 bargaining; providing requirements and limitations;
11 providing for accounting of funds; providing for
12 enforcement; providing an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Section 447.303, Florida Statutes, is amended
17 to read:

18 447.303 Dues; deduction and collection.--

19 (1) Any employee organization which has been certified as
20 a bargaining agent, other than a certified bargaining agent for
21 instructional personnel as defined in s. 1012.01, shall have the
22 right to have its dues and uniform assessments deducted and
23 collected by the employer from the salaries of those employees
24 who authorize the deduction of said dues and uniform
25 assessments. However, such authorization is revocable at the
26 employee's request upon 30 days' written notice to the employer
27 and employee organization. Said deductions shall commence upon
28 the bargaining agent's written request to the employer.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 Reasonable costs to the employer of said deductions shall be a
30 proper subject of collective bargaining. Such right to
31 deduction, unless revoked pursuant to s. 447.507, shall be in
32 force for so long as the employee organization remains the
33 certified bargaining agent for the employees in the unit. The
34 public employer is expressly prohibited from any involvement in
35 the collection of fines, penalties, or special assessments.

36 (2) (a) The Legislature acknowledges that Florida is a
37 right to work state as guaranteed by s. 6, Art. I of the State
38 Constitution, which provides employees the right to bargain
39 collectively. However, the State Constitution does not require
40 an employer to deduct and collect a bargaining agent's dues and
41 uniform assessments from an employee's salary. Furthermore, the
42 Legislature, in implementing s. 6, Art. I of the State
43 Constitution, has declared that it is the public policy of this
44 state to neither encourage nor discourage participation in a
45 certified employee organization. The current statutory right of
46 a collective bargaining agent to have its dues and uniform
47 assessments deducted from an employee's salary is inconsistent
48 with this policy because it assumes a non-neutral position
49 regarding membership in a certified employee organization. By
50 statutorily requiring an employer to deduct a collective
51 bargaining agent's dues and assessments, the state facilitates
52 the financial support of that organization not only for its
53 collective bargaining functions but for whatever political or
54 social causes that organization chooses to support. The payroll
55 deduction process does not require the identification of how the
56 money deducted will be used. Other voluntary payroll deductions

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57 are clear on their face as to the amount and purpose of the
58 deductions. In addition, other payroll deductions are not
59 encumbered with the legal complexities surrounding collective
60 bargaining rights and this state's policy of neutrality
61 regarding membership in a certified employee organization.
62 Moreover, the First Amendment to the United States Constitution
63 guarantees a person freedom of association, which includes the
64 right of a person to not be compelled to financially support a
65 social cause or a political candidate or cause. To the extent
66 members of a certified employee organization are uninformed
67 regarding the use of their payroll deducted dues and
68 assessments, are unaware of their rights to be refunded any
69 portion of such dues or assessments used for political or social
70 purposes to which they do not agree, or are prevented or
71 inhibited from exercising their associational rights, directly
72 or indirectly, for whatever reason and from whatever source,
73 then the state's participation in their payroll deduction
74 impinges on those employees' First Amendment rights.

75 1. The Legislature finds that instructional personnel
76 represent the largest collective bargaining unit in this state.
77 Furthermore, the Legislature recognizes and finds that teacher
78 shortages in this state have reached critical proportions and
79 anticipates that Florida will need an additional 162,000
80 teachers over the next 10 years to meet the challenges of this
81 state's growing student population. Attracting new teachers as
82 well as retaining existing teachers is a priority for this
83 Legislature. Furthermore, the Legislature finds that this state
84 has a substantial and compelling interest in protecting the

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85 First Amendment rights of instructional personnel and that the
86 state's ability to recruit and retain instructional personnel
87 should be enhanced by empowering instructional personnel to
88 pursue their First Amendment rights and to make informed
89 decisions regarding their political and social participation
90 within the context of exercising their collective bargaining
91 rights. The Legislature also finds that, as a result of the
92 recent merger and industry consolidation of the collective
93 bargaining agents that represented instructional personnel as
94 defined in s. 1012.01, a virtual monopoly in such services has
95 been created in this state, depriving instructional personnel of
96 the benefits of competition. Accordingly, this state must
97 redouble its efforts to remain neutral and thereby not empower
98 or detract from that collective bargaining agent's
99 representational role, or from the employees' ability to be
100 represented in the collective bargaining process by whomever
101 they so choose.

102 2. Because of these facts and trends, the Legislature
103 finds that the current status of instructional personnel
104 constitutes a set of circumstances distinct and unique from any
105 other area of public employment within this state. Therefore,
106 the Legislature finds that with regard to instructional
107 personnel, the deduction and collection of the certified
108 bargaining agent's dues and uniform assessments should not be
109 mandated by the Legislature but should be a permissive subject
110 of collective bargaining, as otherwise restricted by this
111 section. The Legislature further finds that the restrictions
112 imposed by this section do not interfere with the ability of

113 instructional personnel to be a member of a certified labor
114 organization or to contribute directly to that organization in
115 support of its noncollective bargaining activities.

116 (b) With regard to a certified bargaining agent that
117 represents instructional personnel as defined in s. 1012.01, any
118 deduction and collection by an employer of that certified
119 bargaining agent's dues and uniform assessments from an
120 employee's salary may be a proper subject of collective
121 bargaining. If the deduction and collection of an agent's dues
122 and uniform assessments are collectively bargained, the
123 collectively bargained agreement shall provide that payroll
124 deduction for dues or uniform assessments shall not exceed an
125 amount actually used for activities of the certified bargaining
126 agent necessary to perform the agent's duties regarding the
127 resolution of labor-management issues which consist of
128 collective bargaining, contract administration, and grievance
129 adjustment. Such amount shall not include any amounts used for
130 any other purpose, including, but not limited to, electoral
131 activities; independent expenditures or contributions to any
132 candidate, political party, political committee, or committee of
133 continuous existence; voter registration campaigns; or any other
134 political or legislative cause, including, but not limited to,
135 ballot initiatives. Additionally, the collectively bargained
136 agreement must require the written authorization of the
137 employee; commencement of the deductions upon the bargaining
138 agent's written request to the employer; collection of
139 reasonable costs, which must include all of the costs incurred
140 by the employer for making such deduction; revocation

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141 provisions, including revocation pursuant to s. 447.507; and a
142 prohibition against the public employer's collecting fines,
143 penalties, or special assessments or for any purpose other than
144 labor-management issues, as provided for in this subsection.

145 (c) The collectively bargained agreement shall also
146 provide for a reasonable accounting of payroll deductions
147 through either:

148 1. The perpetual segregation of all funds received through
149 payroll deductions from any funds used for purposes not
150 authorized in paragraph (b); or

151 2. An independent audit of the use of funds received
152 through payroll deductions.

153 (d) Any taxpayer or other aggrieved party may seek
154 enforcement of this subsection in a court of competent
155 jurisdiction. In addition to injunctive relief prohibiting
156 violations of a bargaining agreement and this subsection, relief
157 shall include an order for a pro rata refund to bargaining unit
158 members in an amount equal to the amount of any funds received
159 through payroll deduction which were used in violation of this
160 subsection. Such refund shall be enforced by an order reducing
161 payroll deductions up to 50 percent below the agreed amount each
162 pay period until the amount has been fully refunded. A refund
163 under this paragraph shall supplement and not preclude a money
164 judgment against the bargaining unit in favor of one or more
165 individuals who had funds deducted from their pay that were used
166 in violation of this subsection.

167 Section 2. This act shall take effect July 1, 2006.