

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.)

Prepared By: Criminal Justice Committee

BILL: SB 128

INTRODUCER: Senators Fasano, Posey, and others

SUBJECT: Law Enforcement Bargaining Units

DATE: February 5, 2007 REVISED: 02/20/07 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Fav/2 amendments
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>GA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

The bill provides that any state law enforcement agency that has 1,200 or more officers must be in a bargaining unit that is separate from officers in other state law enforcement agencies. The Department of Management Services (DMS) states that the bill “would separate Florida Highway Patrol (FHP) officers from the general state law enforcement unit currently represented by the Police Benevolent Association.”¹ The bill would have the effect of superseding the decision by the Public Employees Relations Commission (PERC) that these officers should be joined with officers in other agencies in one state law enforcement bargaining unit.

The bill further provides that, if a new unit is created, a question concerning representation is not deemed to have arisen regarding the new unit or the existing unit. Additionally, upon appropriate petition, a representation election must be held to determine the bargaining representative for the unit, notwithstanding any contract that prohibits such election. After the initial election for the new unit, all statutory election and contract provisions shall apply.

This bill creates section 447.3075 of the Florida Statutes.

¹ The Florida Police Benevolent Association, Inc. (PBA). The language in the bill is “neutral” in that it does not specify the FHP; however, the DMS appears to be indicating the language would only apply to the FHP at the present time.

II. Present Situation:

According to the DMS, “[c]urrently, there are 2 law enforcement units under the Governor and Cabinet. Those are the state law enforcement officer bargaining unit² and the special agent bargaining unit within FDLE. Both bargaining units are currently represented by the PBA. An election was held in June, 2006, whereby IUPA³ was replaced by the PBA as bargaining agent for the state law enforcement bargaining unit (PBA was already the agent for the special agent bargaining unit).”

Representatives of the PBA provided to staff a document entitled “Memorandum of Agreement,” which appears to be an agreement between the PBA and the DMS. In that document, it is stated:

WHEREAS, the Florida Police Benevolent Association, Inc., [hereinafter “Association”] became the certified bargaining unit for the State of Florida [hereinafter State] law enforcement bargaining unit on July 31, 2006.

WHEREAS, the Association is now the exclusive representative for the purposes of collective bargaining with respect to wages, hours, and terms and conditions of employment for all employees in the State’s law enforcement bargaining unit.

WHEREAS, the State and the Association are desirous [] developing a harmonious and cooperative collective bargaining relationship.

THEREFORE, in consideration of the mutual agreements contained herein, the undersigned parties to the MEMORANDUM OF AGREEMENT stipulate and agree that the terms and provisions of the collective bargaining agreement between the State of Florida and the International Union of Police Associations (IUPA) which expired on June 30, 2006 except as modified by the 2006 Florida Legislature, specifically Article 25 – Wages, shall remain in full force and effect until a new agreement covering the law enforcement bargaining unit is negotiated and ratified by the parties.

It is further understood that any rights, obligations, or privileges secured to the former bargaining agent in the agreement shall now be those of the Florida Police Benevolent Association, Inc., except as to grievances in which IUPA has undertaken representation of an individual grievant or group of employees. Any references to IUPA or its representatives contained in the agreement shall now be considered as a reference to the Association and its representatives.

² The Executive Director of the PBA provided to staff a summary of who PBA represents (at the state level): “(1) Security Services Unit: correctional and correctional probation officers working for the Department of Corrections and Institutional Security Specialists who work for Children and Family Services (approximately 20,000 total). (2) State Law Enforcement Officers Unit: eleven different law enforcement agencies (i.e., FHP, FWC, Capitol Police, Department of Transportation, Department of Agriculture, etc.). There are approximately 2,900 officers in this unit. (3) FDLE Special Agents Unit (approximately 350 agents). (4) Lottery Officers Unit (approximately 10 officers). (5) University Police Officers. We have separate contracts for officers in 8 state universities (approximately 400 officers). Gulf Coast University officers do not have anyone representing them, and the University of North Florida officers are represented by someone else.”

³ This acronym stands for the International Union of Police Associations.

These stipulations contain the entire agreement between the parties hereto. All parties represent that they have read this MEMORANDUM OF AGREEMENT, understand its contents, and have executed it voluntarily.⁴

Subsection (1) of s. 447.307, F.S., provides that any employee organization which is designated or selected by a majority of public employees in an appropriate unit as their representative for purposes of collective bargaining must request recognition by the public employer who, if satisfied as to the majority status of the employee organization and the appropriateness of the proposed unit, must recognize this organization as the collective bargaining representative of employees in the designated unit. Upon such recognition, this organization must immediately petition the PERC for certification. The PERC only reviews the appropriateness of the unit proposed by the employee organization. If the PERC determines the unit is appropriate (according to statutorily-specified criteria), it must immediately certify the employee organization as the exclusive representative of all employees in the unit.

If the unit is inappropriate, the PERC may dismiss the petition. Whenever a public employer recognizes an employee organization on the basis of majority status and on the basis of appropriateness,⁵ it must, in the absence of inclusion of a prohibited category of employees or violation of s. 447.401, F.S. (unfair labor practices), certify the proposed unit.

Subsection (2) of s. 447.307, F.S., provides procedures for an employee organization to file a petition with the PERC for certification as bargaining agent for a proposed bargaining unit when the public employer refuses to recognize the employee organization. The petition must be accompanied by dated statements signed by at least 30 percent of the employees in the proposed unit, indicating that such employees desire to be represented for purposes of collective bargaining by the petitioning employee organization. Once a certification petition has been filed by an employee organization, any registered employee organization desiring placement on the ballot in any election to be conducted pursuant to this section may be permitted by the PERC to intervene in the proceeding upon motion accompanied by dated statements signed by at least 10 percent of the employees in the proposed unit, indicating that such employees desire to be represented for the purposes of collective bargaining by the moving employee organization.

Subsection (3) of s. 447.307, F.S., requires the PERC or one of its designated agents to investigate the petition to determine its sufficiency. If the PERC has reasonable cause to believe that the petition is sufficient, it must provide for an appropriate hearing upon due notice. If the PERC finds the petition to be insufficient, it may dismiss the petition. If it finds upon the record of the hearing that the petition is sufficient, it must immediately: define the proposed bargaining unit and determine which public employees are qualified and entitled to vote at any election held by the PERC; identify the public employer or employers for purposes of collective bargaining with the bargaining agent; and order an election by secret ballot. When an employee organization is selected by a majority of the employees voting in an election, the PERC must certify this organization as the exclusive collective bargaining representative of all employees in the unit.

⁴ The specific document provided to staff contains the text of the agreement but does not include the date of execution or signatures of the General Counsel and Executive Director of the PBA and the Chief Negotiator for and Secretary of the DMS.

⁵ "Appropriateness" is in accordance with subparagraph (4)(f)5. of the section: "The history of employee relations within the organization of the public employer concerning organization and negotiation and the interest of the employees and the employer in the continuation of a traditional, workable, and accepted negotiation relationship."

Certification is effective upon the issuance of the final order by the PERC or, if the final order is appealed, at the time the appeal is exhausted or any stay is vacated by the PERC or the court. In any election in which none of the choices on the ballot receives the vote of a majority of the employees voting, a runoff election must be held according to rules promulgated by the PERC.

No petition may be filed seeking an election in any proposed or existing appropriate bargaining unit to determine the exclusive bargaining agent within 12 months after the date of a PERC order verifying a representation election or, if an employee organization prevails, within 12 months after the date of an effective certification covering any of the employees in the proposed or existing bargaining unit. Also, if a valid collective bargaining agreement covering any of the employees in a proposed unit is in effect, a petition for certification may be filed with the PERC only during the period extending from 150 days to 90 days immediately preceding the expiration date of that agreement, or at any time subsequent to its expiration date but prior to the effective date of any new agreement. The effective date of a collective bargaining agreement means the date of ratification by both parties, if the agreement becomes effective immediately or retroactively; or its actual effective date, if the agreement becomes effective after its ratification date.

Subsection (4) of s. 447.307, F.S., provides that, in defining a proposed bargaining unit, the PERC must take into consideration:

- ▶ The principles of efficient administration of government.
- ▶ The number of employee organizations with which the employer might have to negotiate.
- ▶ The compatibility of the unit with the joint responsibilities of the public employer and public employees to represent the public.
- ▶ The power of the officials of government at the level of the unit to agree, or make effective recommendations to another administrative authority or to a legislative body, with respect to matters of employment upon which the employee desires to negotiate.
- ▶ The organizational structure of the public employer.
- ▶ Community of interest among the employees to be included in the unit, considering:
 - The manner in which wages and other terms of employment are determined.
 - The method by which jobs and salary classifications are determined.
 - The interdependence of jobs and interchange of employees.
 - The desires of the employees.
 - The history of employee relations within the organization of the public employer concerning organization and negotiation and the interest of the employees and the employer in the continuation of a traditional, workable, and accepted negotiation relationship.
- ▶ The statutory authority of the public employer to administer a classification and pay plan.
- ▶ Such other factors and policies as the PERC may deem appropriate.

However, no unit can be established or approved for purposes of collective bargaining which includes both professional and nonprofessional employees unless a majority of each group votes for inclusion in such unit.

III. Effect of Proposed Changes:

The bill provides that any state law enforcement agency that has 1,200 or more officers must be in a bargaining unit that is separate from officers in other state law enforcement agencies. The Department of Management Services states that the bill “would separate Florida Highway Patrol (FHP) officers from the general state law enforcement unit currently represented by the Police Benevolent Association.” The bill would have the effect of superseding the decision by the PERC that these officers should be joined with officers in other agencies in one state law enforcement bargaining unit.

The DMS states that the legislation “conflicts with the standards by which the PERC certifies bargaining units as set forth in [s. 447.307(d), F.S.]” The DMS also states that the legislation conflicts with s. 447.307(4)(a), (b), and(g), F.S. “Subsection (a) refers to efficient government. By creating another bargaining unit, government efficiency will be reduced by increasing costs due to multiple units. Subsection (b) refers to the number of organizations with which the agency will have to negotiate. This number could be increased by the bill. Subsection (g), refers to the employers ability to administer the classification and pay plan. Currently, only the DMS has such authority, not the affected agency (DHSMV).”

The DMS also states: “The two subsections of the bill appear to be inconsistent with each other. In subsection 1, the bill provides that there is no question concerning representation. However, in subsection 2, the bill calls for an election to determine the question concerning representation.” (See also “Other Constitutional Issues” section of this analysis.)

The DMS also states that “potentially” the bill could generate litigation “from other similar groups that wish to be separated from their bargaining unit.”

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:

The bill states that “notwithstanding any other provision of law, administrative rule, or decision to the contrary, any state law enforcement agency that has 1,200 or more officers shall be in a bargaining unit that is separate from officers in other state law enforcement agencies.” To the extent the word “decision” is construed to indicate the statute

supersedes any provision of the Florida Constitution in conflict with the statute or a court decision determining such conflict, this is not legally permissible.⁶

The DMS states: “The provision in subsection 2 requiring an election regardless of any existing contract prohibition to such an election violates the provisions of Article I, Section 10, U.S. Constitution, and Article I, Section 10, Constitution of Florida (1968 Revision), prohibiting laws impairing the obligation of contracts.”

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DMS states: “The bill could potentially increase the agency budget in collective bargaining matters” and that “[t]he bill would increase costs for collective bargaining, but the amount is unknown.”

VI. Technical Deficiencies:

None.

VII. Related Issues:

Representatives of the PBA indicated to staff that the PBA supports the bill. Counsel for the PBA stated to staff: “At present, the State and Florida PBA are in negotiations for a new agreement that will cover ALL state law enforcement officers. Since there is currently only one bargaining unit, there is only one contract being negotiated. We are optimistic that we will have a contract in place before July 1, 2007.” Counsel further stated: “Whether or not a new contract is in place by July 1st, the following information applies to both units under the terms of SB 128: (a) the State will remain the employer, (b) the PBA will remain the certified bargaining agent, and (c) the contract in place at the time the FHP unit ‘splits off’ into a separate unit will continue unaffected by the separation. Presumably, the PBA and State will enter negotiations for successor agreements covering both units and when those negotiations are completed each agreement will be re-submitted for ratification. Like our current situation, the State and PBA would honor the contract in place at the time of separation until a new agreement is negotiated.”

At the time this analysis was completed, with the exception of the PBA, no association, union, group, or organization communicated to staff an “official” position for or against the bill. Comments were received by staff from some IUPA members. Those comments not directed to

⁶ The PBA indicates that the term “decision” was intended to apply to an administrative decision, such as a decision by the PERC.

alleged actions or representations by the PBA but rather to the substance of the bill appeared to focus on the question of whether the bill prohibits or allows for an election to determine who will be the representative of the law enforcement bargaining unit created by the bill.

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

VIII. Summary of Amendments:

Barcode 343398 by Criminal Justice:

Provides a short title. (WITH TITLE AMENDMENT)

Barcode 702234 by Criminal Justice:

Clarifies provisions apply notwithstanding an administrative agency decision to the contrary.
Removes a provision that authorizes a representation election for the new law enforcement bargaining unit. (WITH TITLE AMENDMENT)

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