

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 73 Labor Organizations
SPONSOR(S): Allen and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 128

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on State Affairs	6 Y, 0 N	Camara	Williamson
2) Government Efficiency & Accountability Council			
3) Policy & Budget Council			
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Public employees in the State of Florida have the constitutional right to collectively bargain. This includes all fire, police, corrections, school teachers and support personnel, medical personnel, state troopers, toll collectors, sanitation employees, and clerical. There are approximately 400,000 public employees of bargaining units throughout the state. Currently, there are two state law enforcement bargaining units under the Governor and Cabinet. Both are represented by the Police Benevolent Association (PBA).

This bill provides that any state law enforcement agency with 1200 or more officers must be in a bargaining unit that is separate from officers in other state law enforcement agencies. Accordingly, the bill would separate the Florida Highway Patrol officers from the general state law enforcement unit currently represented by the PBA.

If the creation of a new bargaining unit is required pursuant to this bill, a question concerning representation is not deemed to have arisen regarding the new or existing unit. The bill, however, further provides that the new bargaining unit must determine its own representative (or bargaining agent) by open election, whereby any certified agent may compete for the bargaining rights. As such, this bill could raise constitutional concerns regarding the creation of laws that impair the obligation of contracts.

The bill could have an insignificant negative trust fund fiscal impact on the Department of Management Services by increasing administrative costs associated with collective bargaining requirements. It does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates an additional employee bargaining unit.

Safeguard individual liberty – The bill increases the collective bargaining options for officers employed by a state law enforcement agency.

B. EFFECT OF PROPOSED CHANGES:

Background: Collective bargaining for public employees

Public employees¹ in the State of Florida have the constitutional right to collectively bargain.² This includes all fire, police, corrections, school teachers and support personnel, medical personnel, state troopers, toll collectors, sanitation employees, and clerical. There are approximately 400,000 public employees of bargaining units throughout the state.³

Current law provides that any employee organization 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.⁴ Upon such recognition, this organization must immediately petition the Public Employees Relations Commission (PERC)⁵ for certification. PERC only reviews the appropriateness of the unit proposed by the employee organization. If 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 that unit.⁶

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,⁷ 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.⁸

An employee organization must follow certain procedures when filing a petition with PERC for certification as bargaining agent for a proposed bargaining unit when the public employer refuses to recognize the employee organization.⁹ Once a certification petition has been filed by an employee organization, any registered employee organization desiring placement on the ballot in the election may

¹ “Public employee” means any person employed by a public employer (state or any county, municipality, or special district) with certain exceptions. Section 447.203(3), F.S.

² Section 6, Art. I of the State Constitution.

³ Department of Management Services, Public Employees Relations Commission website: http://dms.myflorida.com/other_programs/perc (last visited March 11, 2007).

⁴ Section 447.307(2), F.S.

⁵ Part II of chapter 447, F.S., provides for the creation, powers, and duties of PERC.

⁶ Section 447.307(1)(a), F.S.

⁷ “Appropriateness” is in accordance with section 447.307(4)(f)5., F.S.: “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.”

⁸ Section 447.307(1)(b), F.S.

⁹ Section 447.307(2), F.S., requires the petition to 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.

be permitted by 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.¹⁰

PERC must investigate the petition to determine its sufficiency. If PERC has reasonable cause to believe that the petition is sufficient, it must provide for an appropriate hearing upon due notice. If 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 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, PERC must certify this organization as the exclusive collective bargaining representative of all employees in the unit. Certification is effective upon the issuance of the final order by PERC or, if the final order is appealed, at the time the appeal is exhausted or any stay is vacated by 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 PERC.¹¹

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 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 date¹² of any new agreement.¹³

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.¹⁴
- 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.¹⁵

No unit, however, 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.

¹⁰ Section 447.307(2), F.S.

¹¹ Section 447.307(3), F.S.

¹² *Id.* 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.

¹³ Section 447.307(3), F.S.

¹⁴ PERC must consider the: manner in which wages and other terms of employment are determined; method by which jobs and salary classifications are determined; interdependence of jobs and interchange of employees; desires of the employees; and 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. Section 447.307(4), F.S.

¹⁵ Section 447.307(4), F.S.

Present Situation: State law enforcement bargaining units

Currently, there are two state law enforcement bargaining units under the Governor and Cabinet:

- State law enforcement officer bargaining unit.¹⁶
- Special agent bargaining unit within FDLE.

Both are represented by the Police Benevolent Association (PBA). An election was held in June 2006, whereby the International Union of Police Association 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.¹⁷

Proposed Changes

This bill provides that any state law enforcement agency with 1200 or more officers must be in a bargaining unit that is separate from officers in other state law enforcement agencies. According to the Department of Management Services, the bill would separate the Florida Highway Patrol officers from the general state law enforcement unit currently represented by the PBA.¹⁸

If the creation of a new bargaining unit is required pursuant to this bill, a question concerning representation is not deemed to have arisen regarding the new or existing unit. The bill, however, further provides that the new bargaining unit must determine its own representative (or bargaining agent) by open election, whereby any certified agent may compete for the bargaining rights. These two provisions appear to conflict with each other.

C. SECTION DIRECTORY:

Section 1 creates s. 447.3075, F.S., providing for the creation of a new law enforcement bargaining unit.

Section 2 provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill could increase costs for collective bargaining if an additional collective bargaining unit is created. The cost, however, is unknown.¹⁹

¹⁶ The Police Benevolent Association 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: 11 different law enforcement agencies (Florida Highway Patrol, Fish and Wildlife Commission, Capitol Police, Department of Transportation, Department of Agriculture and Consumer Services). 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. They have separate contracts for officers in eight 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 a separate employee organization. *See* Senate Staff Analysis and Economic Impact Statement for SB 128 (February 5, 2007) at 1. (on file with the Senate Criminal Justice Committee).

¹⁷ Dept. of Mgmt. Svcs., HB 73 (2007) Substantive Bill Analysis (Jan. 24, 2007) (on file with dep't and Committee on State Affairs) [hereafter referred to as DMS Analysis].

¹⁸ *Id.*

¹⁹ *Id.* at 2.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

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:

Laws impairing the obligation of contracts

The bill requires an election regardless of any existing contract prohibition to such an election. This provision appears to violate the provisions of section 10, Art. I of the United States Constitution, and section 10, Art. I of the State Constitution, which prohibits laws impairing the obligation of contracts.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Conflicting provisions in the bill

The bill provides conflicting provisions:

- Subsection (1) provides that no question about representation is deemed to arise regarding the new bargaining unit created by this bill or the existing bargaining unit. Since the Florida Highway Patrol currently is the only state law enforcement agency affected by this bill and the PBA is its collective bargaining representative, subsection (1) would allow the PBA to continue its role as the collective bargaining representative for the Florida Highway Patrol.
- Subsection (2) requires an election upon appropriate petition to determine representation for the new unit notwithstanding any contract that prohibits such an election. This appears to conflict with the provisions in subsection (1) allowing the current collective bargaining representative to continue its role under the new bargaining unit.

An amendment is needed to resolve the conflict between the competing provisions.

Other Comments: Department of Management Services

The Department of Management Services (DMS) states the bill conflicts with the standards by which PERC certifies bargaining units. When defining a proposed bargaining unit, current law requires PERC to consider the:

- Principles of efficient administration of government when defining a proposed bargaining unit.²⁰
 - According to DMS, “government efficiency will be reduced by increasing costs due to multiple units.”
- Number of employee organizations with which the employer might have to negotiate.²¹
 - The number of bargaining units could be increased by the bill.
- Statutory authority of the public employer to administer a classification and pay plan.²²
 - Only “DMS has such authority, not the affected agency (DHSMV).”²³

D. STATEMENT OF THE SPONSOR

This legislation will simplify the structure of assisting law enforcement agencies with their compensation negotiations. Specifically, the bill allows for customized assistance and goal achievement for law enforcement organizations. This bill also provides exceptionally large law enforcement organizations with the independent means to seek their own needed benefits and compensation.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 14, 2007, the Committee on State Affairs adopted a strike-all amendment renaming the bill as the "Florida Highway Patrol Sergeant Nicholas Sottile Act," and removing the provision that a representation election must be held upon appropriate petition to determine the bargaining representative for a new unit created by this bill. The removal of the election provision resolves the conflict between provisions found in the bill, as well as the constitutional concern raised by the requirement to hold an election notwithstanding any contract prohibiting such an election.

The committee reported the bill favorably with amendment.

²⁰ Section 447.307(4)(a), F.S.

²¹ Section 447.307(4)(b), F.S.

²² Section 447.307(4)(g), F.S.

²³ DMS Analysis at 5.