

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Ethics and Elections Committee

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BILL: SJR 1908

INTRODUCER: Senators Richter, Storms, and others

SUBJECT: Right to Vote by Secret Ballot

DATE: March 13, 2009

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Rubinas	EE	<b>Favorable</b>
2.			JU	
3.			TA	
4.			RC	
5.				
6.				

**I. Summary:**

Senate Joint Resolution 1908 establishes a fundamental right to vote by secret ballot, in the Declaration of Rights article of the State Constitution, in all public elections involving candidates or issues and all elections requiring designations or authorizations of employee representation under local, state, or federal law.

The joint resolution must be approved by a three-fifths vote of the membership of each house of the Legislature. If so enacted, the proposal will be presented to the electors of Florida at the 2010 general election. Approval requires a favorable vote from at least 60 percent of the electors voting on the matter. If approved, the amendment would take effect January 4, 2011.

The joint resolution proposes an amendment to the Florida Constitution to create section 28 of Article I.

**II. Present Situation:**

Article VI of the Florida Constitution currently provides that “all elections by the people shall be by direct and secret vote.”<sup>1</sup>

Regarding labor unions, the Declaration of Rights article of the state constitution provides:

**Section 6. Right to work.**—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.

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<sup>1</sup> ART. VI, §1, FLA. CONST.

*The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.*<sup>2</sup> (emphasis added)

Florida law also provides that, “Employees shall have the right to self-organization, to form, join, or assist labor unions or labor organizations or to refrain from such activity, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.”<sup>3</sup>

Beyond assuring the basic right to unionize, however, the state constitution and Florida law are silent with respect to the actual *processes and procedures* of labor union organization.<sup>4</sup> The formation of labor unions or designations of employee representatives appears to be largely a function of federal labor law and the National Labor Relations Act.

The federal National Labor Relations Act currently provides for the formation of a union through:

1. A secret-ballot, National Labor Relations Board (“NLRB”) election, triggered when 30 percent of the workers petition for one; or,
2. An open, public, majority sign-up signature drive, or “card check” process, **provided** the employer agrees to recognize the union representatives. Otherwise, an NLRB secret-ballot election must be held.<sup>5</sup>

Under a majority bill currently pending in Congress, the Employee Free Choice Act (EFCA),<sup>6</sup> employers **must** recognize workers who organize via the majority sign-up process. The EFCA provides that the NLRB would recognize the union as the official bargaining representative if a majority of employees have authorized such representation via the public, majority sign-up (card check) process, without requiring a secret ballot election. The EFCA still allows employees to choose the NLRB secret-ballot election process, if they so desire.

There is a concerted effort underway in a number of states to head-off the potential impact of this anticipated federal legislation, by establishing in state constitutions a fundamental worker’s right to vote a secret-ballot in the formation of any union that would impact him or her.<sup>7</sup> It is unclear whether such efforts, even if they were to succeed in amending a state’s constitution, would nonetheless be trumped, or in legal parlance “preempted.”

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<sup>2</sup> ART. I, §6, FLA. CONST.

<sup>3</sup> Section 447.03, F.S. Florida law also requires labor organizations to register with the Department of Business and Professional Regulation and have their business agents licensed. Sections 447.04, 447.06, F.S.

<sup>4</sup> Chapter 447, F.S. (Part I, General Provisions)

<sup>5</sup> 29 U.S.C. § 159.

<sup>6</sup> H.R. 1409 (2009); S. 560 (2009). The EFCA proposes amendments to the National Labor Relations Act. It has been introduced and failed to pass in previous Congressional sessions, but many who follow Congress tout the chance of passage this year as “good,” given the make-up of the new Congress.

<sup>7</sup> See, e.g., Save Our Secret Ballot, <http://www.sosballot.org/>. Further, a minority counter-proposal to the EFCA, the Secret Ballot Protection Act, has been filed in Congress to guarantee an employee’s right to a secret ballot in union organizing elections and only allows union certification if the union wins majority support in an NLRB secret-ballot election. H.R. 1176 (2009); S. 478 (2009). Prospects for passage do not appear encouraging, given the make-up of the new Congress.

1. By the federal EFCA, if adopted; and/or,
2. By the current National Labor Relations Act, that authorizes organization by majority sign-up if the employer agrees to recognize the union.<sup>8</sup>

### **III. Effect of Proposed Changes:**

In the Declaration of Rights article in the Florida Constitution, Senate Joint Resolution 1908 establishes the fundamental right to vote by secret ballot in all public elections in the State, as well as in all elections requiring designations or authorizations of employee representation under local, state, or federal law.

The resolution seeks to eliminate the right under the current National Labor Relations Act (and future amendments thereto) to form a labor union by an open, public, majority sign-up signature drive (or “card check” process) without a secret-ballot election.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

Employees and employee organizers seeking to unionize using the current majority sign-up process (with employer approval) may incur additional expenses associated with a secret-ballot election. The precise fiscal impact is indeterminate, and will depend largely on the facts and circumstances of individual company situations and organization campaigns.

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<sup>8</sup> Where a state law directly conflicts with a federal law or where Congress intends that the federal law completely “occupy the field,” state law will be preempted to the extent it frustrates the federal scheme. See generally, San Diego Bldg. Trades Council, Millmen’s Union, Local 2020 v. Garmon, 359 U.S. 236 (1959).

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.