

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 417 Collective Bargaining

SPONSOR(S): Hays and others

TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Governmental Affairs Policy Committee, Haug, Williamson. Row 2: Military & Local Affairs Policy Committee. Row 3: Full Appropriations Council on Education & Economic Development. Row 4: Economic Development & Community Affairs Policy Council. Row 5: (Empty)

SUMMARY ANALYSIS

Employees have the right to collectively bargain under Article I, section 6 of the Florida Constitution. Statewide regulations for collective bargaining amongst public employees are addressed in the Florida Statutes. Current law requires any matter addressing a public employee’s wages, hours, and terms and conditions of employment to be collectively bargained in good faith by the chief executive officer and the bargaining agent.

Collective bargaining consists of a series of negotiations between a public employer’s chief executive officer and the selected bargaining agent for an employee organization regarding the terms and conditions of employment. Any collective bargaining agreement that is reached must be placed in writing and signed by both the chief executive officer and the bargaining agent. If the parties cannot reach a collective bargaining agreement after a reasonable period of negotiation, either party can declare a written impasse. The procedural guidelines to resolve a collective bargaining impasse between the parties are outlined in current law. Such guidelines provide a process for either party to direct any disputes to the appropriate legislative body for a final disposition.

Current law provides a definition for “legislative body” that contains two different classes: specifically named entities, and unnamed entities. For an unnamed entity to be classified as a “legislative body,” it must have authority to appropriate funds, have authority to establish policy governing the entity’s terms and conditions of employment, and be the appropriate legislative body for the bargaining unit.

This bill amends the definition of “legislative body” to specify that the following constitutional officers are deemed a “legislative body” for purposes of collective bargaining:

- The sheriff;
• The tax collector;
• The property appraiser;
• The supervisor of elections; and
• The clerk of the circuit court.

The bill allows the constitutional officer to provide the final resolution on collective bargaining impasse amongst his or her respective employees instead of the county commission.

Because this bill allows certain constitutional officers to resolve collective bargaining impasses amongst their employees instead of the county commission, such officer, who does not appropriate funds, could commit a county to the expenditure of funds for issues such officer has resolved as part of a collective bargaining impasse.

The bill has an effective date of July 1, 2010.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Collective Bargaining

Employees have the right to collectively bargain under Article I, section 6 of the Florida Constitution.<sup>1</sup> Statewide regulations for collective bargaining amongst public employees are addressed in part II of chapter 447, F.S.<sup>2</sup> Section 447.309, F.S., requires any matter addressing a public employee's "wages, hours, and terms and conditions of employment" to be collectively bargained in good faith by the chief executive officer and the bargaining agent.

Collective bargaining pursuant to chapter 447, F.S., consists of a series of negotiations between a public employer's chief executive officer<sup>3</sup> and the selected bargaining agent<sup>4</sup> for an employee organization regarding the terms and conditions of employment.<sup>5</sup> The purpose of collective bargaining is to encourage "cooperative relationships between the government and its employees," and provide public employees with a means to participate in the establishment of their employment conditions.<sup>6</sup>

Any collective bargaining agreement that is reached must be placed in writing and signed by both the chief executive officer and the bargaining agent. The agreement is effective for a period of not more than three years, at which point the contract must be renegotiated.<sup>7</sup>

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<sup>1</sup> FLA. CONST. art. I, § 6 (1968) (amendment to the "Right to Work" section: "[t]he right of employees, by and through a labor organization, to bargain collectively [which] shall not be denied or abridged").

<sup>2</sup> See s. 447.201, F.S., The Public Employees Relations Act provided statutory implementation of the 1968 amendment to s. 6, Art. I of the State Constitution.

<sup>3</sup> Section 447.203(9), F.S., defines "chief executive officer" as the Governor for the state and for all other public employees, the person selected or appointed that is "responsible to the legislative body of the public employer for the administration of the governmental affairs of the public employer".

<sup>4</sup> The term "bargaining agent" is defined in s. 447.203(12), F.S., as the employee organization certified by the Public Employees Relations Commission (PERC) to represent the employees in the bargaining unit, as provided in s. 447.307, F.S. or its representative. Section 447.203(8) F.S., defines "bargaining unit" as a unit determined by either the Public Employer Relations Commission, through local regulations promulgated pursuant to s. 447.603, F.S., or by the public employer and the public employee organization; that is approved by the commission to be appropriate for the purposes of collective bargaining.

<sup>5</sup> Section 447.203(14), F.S.

<sup>6</sup> Section 447.201, F.S., *See also*, Public Employees Relations Commission, *A Practical Handbook on Florida's Public Employment Collective Bargaining Law*, at 6 (2d ed. 2004).

<sup>7</sup> Section 447.309(5), F.S. ("Any collective bargaining agreement shall not provide for a term of existence of more than 3 years ...").

If the parties cannot reach a collective bargaining agreement after a reasonable period of negotiation, either party can declare a written impasse to The Public Employees Relations Commission (Commission).<sup>8</sup>

#### Impasse Resolution Process

The procedural guidelines to resolve a collective bargaining impasse between the parties are outlined in s. 447.403, F.S. Once an impasse has been declared, the parties may appoint a mediator to resolve the dispute. If mediation does not resolve the impasse or if the parties choose not to appoint a mediator, the Commission will appoint and submit the unresolved disputes to a Special Magistrate selected by both parties, or by the Commission if the parties cannot agree.<sup>9</sup>

The appointed Special Magistrate conducts a series of hearings and renders a recommended decision within 15 days after the final hearing.<sup>10</sup> Upon receiving the special magistrate's recommended decision, the parties have 20 days to accept or reject each recommended item or it is considered to be approved by both parties. If either party rejects all or part of the recommendations, the employer's chief executive officer is required to direct the dispute to the appropriate "legislative body" for a final disposition.<sup>11</sup>

The "legislative body" holds a public hearing where each party is given an opportunity to present their argument before the legislative body issues a final resolution pursuant to "the public interest [and] the interest of the public employees involved."<sup>12</sup>

#### Legislative Body

Section 447.203(10), F.S., defines "legislative body" as:

... the State Legislature, the board of county commissioners, the district school board, the governing body of a municipality, or the governing body of an instrumentality or unit of government having authority to appropriate funds and establish policy governing the terms and conditions of employment and, which as the case may be, is the appropriate legislative body for the bargaining unit. For purposes of s. 447.403, the Board of Governors of the State University System, or the board's designee, shall be deemed to be the legislative body with respect to all employees of each constituent state university. For purposes of s. 447.403 the board of trustees of a community college shall be deemed to be the legislative body with respect to all employees of a community college.<sup>13</sup>

This statutory definition contains two different classes: specifically named entities, and unnamed entities. For an unnamed entity to be classified as a "legislative body," it must meet all three of the following elements outlined in s. 447.203(10), F.S.:

- It must have authority to appropriate funds;
- It must have authority to establish policy governing the entity's terms and conditions of employment; and
- It must be the appropriate legislative body for the bargaining unit.<sup>14</sup>

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<sup>8</sup> The Public Employees Relations Commission (PERC) is an independent agency that was created pursuant to s. 447.205, F.S., to assist in resolving disputes between public employers and their employees.

<sup>9</sup> This section does not apply if the public employer is the Governor; in that case, the parties may proceed directly to the Legislature for resolution. See s. 447.403(2)(b), F.S.

<sup>10</sup> Under s. 447.403(2)(a), F.S., both parties can waive the appointment of a special magistrate and proceed directly to the legislative body upon written agreement between the parties.

<sup>11</sup> See s. 447.403(3) and (4), F.S. (If a party rejects the recommendation, then the party must file a written notice of rejection with the Commission and to the other party that includes a statement of the cause for each rejection.)

<sup>12</sup> Section 447.403(4)(c)-(e), F.S.

<sup>13</sup> Section 447.203(10), F.S.

<sup>14</sup> *Fla. State Lodge, Fraternal Order of Police, Inc. (FOP) v. Sheriff of Pasco County*, Case No. CA-2008-026 at \*3-4 (Fla. PERC May 22, 2009) (The Commission determined that the statutory use of the word "and" in s. 447.203, F.S., denotes a three prong conjunctive assessment. Prior to this decision, the Commission only considered the first and second prong).

Of these three elements, courts have considered the power to appropriate funds to be an essential requirement for “legislative body” status.<sup>15</sup> The Commission has determined that an entity’s ability to *disperse or transfer* funds already appropriated by the county or municipality does not suffice as having actual appropriation authority.<sup>16</sup>

### Constitutional Officers

Constitutional officers are elected governmental officials whose duties and responsibilities are established by the State Constitution rather than the Legislature.<sup>17</sup> With the exception of certain charter counties,<sup>18</sup> article VII, section 1 of the Florida Constitution directs each county to elect the following constitutional officers: a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court.<sup>19</sup>

Constitutional officers were given the right to collectively bargain with their employees in 2003.<sup>20</sup> Under current law, the “legislative body” responsible for resolving impasses between a constitutional officer and their employees is generally the county commission or municipality - not the constitutional officer.<sup>21</sup>

### **Effect of Proposed Change**

This bill amends the definition of “legislative body” under s. 447.203(10), F.S., to specify that the following constitutional officers are deemed a “legislative body” for purposes of collective bargaining:

- The sheriff;
- The tax collector;
- The property appraiser;
- The supervisor of elections; and
- The clerk of the circuit court.

The bill allows the constitutional officer to provide the final resolution on collective bargaining impasse amongst his or her respective employees instead of the county commission. In essence, it allows the constitutional officer to rule on his or her own impasse for which he or she was a party. If the constitutional officer agrees to impasse resolutions relating to monetary issues then such officer could bind the county to the expenditure of funds for those issues without knowing whether funds are available.

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<sup>15</sup> *Fla. Sch. for the Deaf and the Blind, v. Teachers United, FTP-NEA*, 483 So.2d 58, 60 (Fla. 1st DCA 1986) (citing *United Faculty of Fla., FEA/United, AFT, AFL-CIO v. Bd. of Regents*, 365 So.2d 1073, 1075 (Fla. 1st DCA 1979)).

<sup>16</sup> *Id.* (The Board’s ability to transfer monies between categories of appropriations does not constitute appropriation authority.) See also *Florida State Lodge, Fraternal Order of Police, Inc (FOP)*, Case No. CA-2008-026 at \*4 (Sheriff of Pasco County did not have actual appropriations authority since he only had the power to disperse funds that were already appropriated by the Pasco County Commission).

<sup>17</sup> BLACK’S LAW DICTIONARY 312 (6th ed. 1990).

<sup>18</sup> *Demings v. Orange County Citizens Review Bd.*, 15 So.3d 604,606 (Fla. 5th DCA 2009) (“In charter counties, the electorate has an option of either maintaining these independent constitutional offices or abolishing them [all together] and transferring their responsibilities to the board of the charter county or to local offices created by the charter.”).

<sup>19</sup> FLA. CONST. art. III, § 1(g).

<sup>20</sup> *Coastal Fla. Police Benevolent Assoc., Inc v. Williams*, 838 So.2d 543 (Fla. 2003) (overturning long term precedent that constitutional officers were excluded from collective bargaining rights on the premises that their employees were not considered “public employees” under ch. 447, F.S.). See *Murphy v. Mack*, 358 So.2d 882 (Fla.1978) (deputy sheriffs are not public employees). See also *Fla. Public Employees Council 79, AFSCME v. Martin County Prop. Appraiser*, 521 So.2d 243 (Fla. 1st DCA 1988) (individuals employed by property appraisers are not public employees). See also *Fed’n of Pub. Employees, Dist. No 1, Pacific Coast Dist., M.E.B.A., AFL-CIO v. Pub. Employees Relations Comm’n* (Fla. 4th DCA 1985) (deputy clerks of circuit court are not public employees).

<sup>21</sup> See *Florida State Lodge, Fraternal Order of Police, Inc (FOP)*, No. CA-2008-026 at \*2 (The Commission (PERC) determined that the Pasco County Commission was the appropriate “legislative body” to resolving an impasse between the Sheriff and the FOP because the Sheriff did not satisfy the definition of a “legislative body” under s. 447.203(10), F.S.).

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 447.203(10), F.S., specifying that for resolution of a collective bargaining impasse specified constitutional officers are deemed the "legislative body" with respect to their employees.

**Section 2:** Provides an effective date of July 1, 2010.

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

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

1. Revenues:

None.

2. Expenditures:

None.

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

1. Revenues:

None.

2. Expenditures:

This bill allows certain constitutional officers to resolve collective bargaining impasses amongst their employees instead of the county commission. As such, the constitutional officer, who does not appropriate funds, could commit a county to expend funds for issues such officer has resolved as part of a collective bargaining impasse.

**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 appear to: require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a shared state tax or premium sales tax received by cities or counties.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

Not applicable.