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.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 830
INTRODUCER:	Senator Thrasher
SUBJECT:	Labor and Employment
DATE:	February 24, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Pre-meeting**
2.			GO	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill prohibits employee organizations from deducting dues, uniform assessments, fines, penalties, or special assessments from public employee wages. The bill allows for a pro rata refund for moneys paid by a public or private employee to a union for political contributions and expenditures. It also prohibits labor organizations from requiring an authorization to spend funds for political contributions and expenditures as a condition to membership.

This bill substantially amends the following sections of the Florida Statutes: 110.114, 112.171, 447.303, and 447.507.

The bill creates section 447.18 of the Florida Statutes.

II. Present Situation:

State and Federal Constitutional Issues

Florida is a "right to work" state. Article I, section 6 of the Florida Constitution reads:

> 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. 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.

Employees have a fundamental right to organize for the purposes of collective bargaining, but have no federal constitutional right to mandatory collective bargaining.[1] Under the Florida Constitution, however, courts have held that the right to collectively bargain is a fundamental right which may be abridged only for a compelling state interest, and therefore a statute under review must serve that compelling state interest in the least intrusive means possible.[2]

Certain restrictions may be placed on a union's ability to collect dues or fees. In Florida, nonunion employees cannot be forced to pay union fees and dues as a condition of employment.[3] In states where employees can be required to pay dues, the exaction of fees beyond those necessary to finance collective bargaining activities has been found to violate the unions' judicially created duty of fair representation and nonunion members' First Amendment rights.[4] The Supreme Court has held that a local government's restrictions on union wage deductions would be upheld against an equal protection challenge if it was reasonably related to a legitimate government purpose.[5] In a more recent case, the Supreme Court has upheld a state statute banning public-employee payroll deductions for political activities against a First Amendment challenge.[6] The Court held that the state was under no obligation to aid unions in their political activities, and the state's decision not to do so was not abridgement of unions' free speech rights, since unions remained free to engage in such speech as they saw fit, but without enlisting the state's support.[7]

Federal Labor Law

The Federal National Labor Relations Act (NLRA) of 1935[8] and the Federal Labor Management Relations Act of 1947[9] constitute a comprehensive scheme of regulations guaranteeing to employees the right to organize, to bargain collectively through chosen representatives, and to engage in concerted activities to secure their rights in industries involved in or affected by interstate commerce. When conduct falls within the scope of the NLRA, the preemption doctrine applies and the state statutes are usually inoperative, unless the National Labor Relations Board has declined jurisdiction or has ceded jurisdiction to a state labor-relations board, or unless the conduct involves an area that the states are permitted to regulate despite the existence of the NLRA.[10] However, when the subject matter of a labor relations dispute or regulatory issue

[1] *See Sikes v. Boone*, 562 F. Supp. 74 (N.D. Fla. 1983) *aff'd* 723 F.2d 918 (11th Cir. 1983).
[2] *Chiles v. State Employees Attorneys Guild*, 734 So. 2d 1030 (Fla. 1999); *Dade County School Admins Assn, Local 77, AFSA, AFL-CIO v. School Bd*., 840 So. 2d 1103 (Fla. 1st DCA 2003).
[3] *Schermerhorn v. Local 1625 of Retail Clerks Intern. Ass'n, AFL-CIO*, 141 So. 2d 269 (Fla. 1962), *judgment aff'd on other grounds*, 375 U.S. 96 (1963); AFSCME Local 3032 v. Delaney, 458 So. 2d 372 (Fla. 1st DCA 1984).
[4] *Commc'ns Workers of Am. v. Beck*, 487 U.S. 735 (1988).
[5] *Charlotte v. Local 660, Int'l Assoc. of Firefighters*, 426 U.S. 283 (1976).
[6] *Ysursa v. Pocatello Education Assoc*, 129 S.Ct. 1093 (2009).
[7] *Id.*
[8] 29 U.S.C. §§ 151 to 169 (encouraging the practice and procedure of collective bargaining and protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection).
[9] 29 U.S.C. §§ 141 to 187 (prescribing the rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce).
[10] Am. Jur. 2d, Labor and Labor Relations § 516.

touches overriding state or local interests, and in the absence of compelling congressional direction, state laws are not preempted by the National Labor Relations Act.[11] Other federal labor-relations statutes that can preempt state action include the Labor-Management Reporting and Disclosure Act[12] and the Railway Labor Act.

Florida Statutes

Under the Florida Statutes, employees have the right to form, join, or assist labor unions or labor organizations, or to refrain from such activity.[13] The rights given by these provisions belong to the individual employee and not to the union.[14] The regulation of labor unions is the responsibility of the Department of Business and Professional Regulation.[15]

Part II of chapter 447, F.S., governs labor organizations for public employees, and the Public Employees Relations Commission regulates collective bargaining in Florida. Part II of chapter 447, F.S., has two basic purposes:

- to encourage cooperation between government and its employees and
- to protect the public from the interruption of government services resulting from strikes by government employees.

Under current law, any employee organization which has been certified as a bargaining agent[16] has the right to have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues and uniform assessments.[17] However, such authorization is revocable at the employee's request upon 30 days' written notice to the employer and employee organization. The deductions shall commence upon the bargaining agent's written request to the employer. Reasonable costs to the employer of said deductions shall be a proper subject of collective bargaining. Such right to deduction, unless revoked by a court due to a violation on the prohibition on strikes, shall be in force for so long as the employee organization remains the certified bargaining agent for the employees in the unit. The public employer is expressly prohibited from any involvement in the collection of fines, penalties, or special assessments.[18]

"Employee organization" or "organization" means any labor organization, union, association, fraternal order, occupational or professional society, or group, however organized or constituted, which represents, or seeks to represent, any public employee or group of public employees

[11] 34 Fla. Jur 2d Labor and Labor Relations § 8.
[12] 29 U.S.C. §§ 401 to 531.
[13] Section 447.03, F.S.
[14] *Miami Laundry Co. v. Laundry, Linen, Dry Cleaning Drivers, Salesmen & Helpers, Local Union No*. 935, 41 So. 2d 305 (Fla. 1949).
[15] Section 447.02(3), F.S.
[16] Section 447.203, F.S. ("Bargaining agent" means the employee organization which has been certified by the Public Employees Relations Commission as representing the employees in the bargaining unit or its representative.) For more information about this process and Florida Labor Law in general, *see* PUBLIC EMPLOYEES RELATIONS COMMISSION, A PRACTICAL HANDBOOK ON FLORIDA'S PUBLIC EMPLOYMENT COLLECTIVE BARGAINING LAW (2004) *available at* http://perc.myflorida.com/pubs/pubs.aspx (last visited March 03, 2011).
[17] Section 447.303, F.S.
[18] Section 447.303, F.S.

concerning any matters relating to their employment relationship with a public employer.[19] An employee organization is a type of labor organization.[20]

Counties, municipalities, and special districts as well as state departments, agencies, bureaus, commissions, and officers are authorized and permitted in their sole discretion to make deductions from the salary or wage of any employee or employees in such amount as is authorized and requested by such employee or employees and for such purpose as is authorized and requested by such persons and pay such sums so deducted as directed by such persons.[21]

Political Contributions

For purposes of campaign financing:
A "contribution" is defined as:

- A gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the results of an election or making an electioneering communication.
- A transfer of funds between political committees, between committees of continuous existence, between electioneering communications organizations, or between any combination of these groups.
- The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee without charge to the candidate or committee for such services.
- The transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, and the term includes any interest earned on such account or certificate.[22]

An "expenditure" means a purchase, payment, distribution, loan, advance, transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, or gift of money or anything of value made for the purpose of influencing the results of an election or making an electioneering communication. There is an exception for internal newsletters.[23]

III. Effect of Proposed Changes:

Section 1 amends s. 110.114, F.S., to prohibit state employee wage deductions for the dues, uniform assessments, penalties, or special assessments of an employee organization. It further prohibits deductions for purposes of political activity, including contributions to a candidate, political party, political committee, committee of continuous existence,[24] electioneering

[19] Section 447.203(11), F.S.
[20] Section 447.02, F.S.
[21] Section 110.114 and 112.171, F.S.
[22] Section 106.011, F.S.
[23] Section 106.011, F.S.
[24] Section 106.011, F.S. defines "committee of continuous existence" to mean any group, organization, association, or other such entity which is certified pursuant to the provisions of s. 106.04, F.S.

communications organization, or organization exempt from taxation under 501(c)(4)[25] or s. 527[26] of the Internal Revenue Code. The bill deletes the explicit authorization allowing "employee organizations" that are the exclusive bargaining agent for a unit of state employees to deduct membership dues.

Section 2 amends s. 112.171, F.S., to provide the same prohibitions in section 1 but for county, municipal, and special district employees.

Section 3 creates s. 447.18, F.S., to state that unless an employee has executed a written authorization, the employee is entitled to a pro rata refund of any money the employee paid to the union that was spent on political contributions or expenditures (see present situation section for the definitions of "contributions" or "expenditures").[27] The written authorization for political expenditures must be executed by the employee separately for each fiscal year and must be accompanied with a detailed account, provided by the labor organization, of all political contributions and expenditures made by the labor organization in the preceding 24 months. The employee may revoke the authorization at any time. If an employee revokes the authorization, the pro rata refund of the employee for such fiscal year shall be in the same proportion as the proportion of the fiscal year for which the authorization was not in effect. A labor organization may not require an employee to provide the authorization for political contributions and expenditures as a condition of membership in the labor organization.

Section 4 amends s. 447.303, F.S., to prohibit public employers from deducting or collecting money from their employees for an employee organization.

The bill deletes language that:

- Authorizes a bargaining agent to have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues and uniform assessments.
- Allows the employee to revoke authorization for employer deduction with 30 days' written notice.
- Specifies that reasonable costs to the employer of deductions are a proper subject of collective bargaining.
- Specifies procedures regarding the deduction and revocation process.
- Prohibits the public employer from any involvement in the collection of fines, penalties, or special assessments.

Section 5 amends s. 447.507, F.S., deleting references to deductions or check-offs by employee organizations with respect to penalties for violation of the strike prohibition.

Section 6 states that if any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.

[25] 26 U.S.C. § 501(c)(4) (Relating to Civic Leagues, Social Welfare Organizations, and Local Associations of Employees).
[26] 26 U.S.C. § 527 (Relating to tax exempt political organizations).
[27] Section 106.011, F.S.

Section 7 provides an effective date.

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:

Impairment of Contracts: This bill provides for a refund for certain employee dues, assessments, fines, or penalties unless the employee has executed a written authorization. The written authorization must be executed by the employee separately for each fiscal year. The bill also allows employees to revoke their authorization at any time. As a result, impairment of contract claims may arise.

The United States Constitution and the Florida Constitution prohibit the state from passing any law impairing the obligation of contracts.[28] "[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear."[29] If a law does impair contracts, the courts will assess whether the law is deemed reasonable and necessary to serve an important public purpose.[30] The factors that a court will consider when balancing the impairment of contracts with the public purpose include:

- whether the law was enacted to deal with a broad, generalized economic or social problem;
- whether the law operates in an area that was already subject to state regulation at the time the parties undertook their contractual obligations, or whether it invades an area never before subject to regulation; and
- whether the law effects a temporary alteration of the contractual relationships of those within its scope, or whether it works a severe, permanent, and immediate change in those relationships, irrevocably and retroactively.[31]

[28] U.S. Const. Art. I, § 10; Art. I, s. 10, Fla. Const.
[29] *Pomponio v Claridge of Pompano Condominium, Inc.*, 378 So 2d 774 (Fla. 1979). *See also General Motors Corp. v. Romein*, 503 U.S. 181 (1992).
[30] *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So 2d 681 (Fla. 1980); *Yellow Cab C. v. Dade County, 412 So 2d 395* (Fla. 3rd DCA 1982). *See also Exxon Corp. v Eagerton*, 462 U.S. 176 (1983) (construing the federal constitutional provision). An important public purpose would be a purpose protecting the public's health, safety, or welfare. *See Khoury v. Carvel Homes South, Inc*., 403 So2d 1043 (Fla. 1st DCA 1981).
[31] *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So 2d 774 (Fla. 1979).

To the extent that there are existing contracts that:

- do not include a written authorization as required by the bill;
- extend beyond a given fiscal year; or
- are not revocable by the employee at any time

The bill may raise impairment of contracts issues. A law that is deemed to be an impairment of contract will be deemed to be invalid as it applies to any contracts entered into prior to the effective date of the act.

For other constitutional issues, see the present situation section.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Employee organizations are likely to have more difficulty collecting dues, fees, assessments and penalties from public employees. Labor organizations are likely to have more difficulty collecting funds from employees for political purposes.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

If an employee can get a pro rata refund with a written authorization (because it is freely revocable) or without one, the written authorization itself appears to have little effect, other than assisting the employee to make an informed decision regarding whether they want their moneys used for political purposes.

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.