

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 Committee on Rules

BILL: CS/SB 1014

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Baxley

SUBJECT: Employee Organizations

DATE: April 2, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Candelaria</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Candelaria</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1014 requires employee organizations that have been certified as the bargaining agent for a unit of K-12 instructional personnel¹ to disclose in its application for registration renewal the number of employees who are eligible for representation and the number of employees who are represented by the employee organization as of December 31 of that renewal period. An employee organization whose dues-paying membership, as of December 31 of that renewal period, is less than 50 percent of the employees eligible for representation must petition for recertification with the Public Employees Relations Commission (Commission).

The bill requires K-12 instructional personnel to pay dues and uniform assessments directly to the employee organization and prohibits dues and uniform assessments from being deducted and collected by a district school board.

The bill requires K-12 instructional personnel to sign and submit a form to the employee organization acknowledging Florida is a right-to-work state before the employee organization can collect dues or uniform assessments. The bill specifies the language and font of the acknowledgement.

¹-Section 1012.01(6), F.S., defines "educational support employees" to mean K-12 employees whose job functions are neither administrative nor instructional, yet whose work supports the educational process.

The bill creates a process with which employee organizations representing instructional personnel employed by a Florida College System (FCS) or State University System (SUS) institution must comply with when submitting an application for renewal of registration.

The bill requires an employee organization representing instructional personnel employed by an FCS or an SUS institution to apply for recertification if it does not meet the 50 percent threshold for dues-paying membership within the bargaining unit. An FCS or SUS institution is authorized to challenge an employee organization's application for renewal of registration if it believes that the application is inaccurate.

The bill may increase the workload of, and the associated costs incurred by, the Commission.

The bill takes effect July 1, 2021.

II. Present Situation:

Collective Bargaining

Article 1, Section 6 of the State Constitution guarantees that “the right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.” To implement this constitutional provision, the Legislature enacted ch. 447, F.S., which provides that the purpose of collective bargaining is to promote cooperative relationships between the government and its employees and to protect the public by assuring the orderly and uninterrupted operations and functions of government.² Through collective bargaining, public employees³ collectively negotiate with their public employer⁴ in the determination of the terms and conditions of their employment.⁵ The Public Employees Relations Commission (Commission) is responsible for assisting in resolving disputes between public employees and public employers.⁶

² Section 447.201, F.S.

³ Section 447.203(3), F.S., defines the term “public employee” to mean any person employed by a public employer except:

- (a) Persons appointed by the Governor or elected by the people, agency heads, and members of boards and commissions.
- (b) Persons holding positions by appointment or employment in the organized militia.
- (c) Individuals acting as negotiating representatives for employer authorities.
- (d) Persons who are designated by the commission as managerial or confidential employees pursuant to criteria contained herein.
- (e) Persons holding positions of employment with the Florida Legislature.
- (f) Persons who have been convicted of a crime and are inmates confined to institutions within the state.
- (g) Persons appointed to inspection positions in federal/state fruit and vegetable inspection service whose conditions of appointment are affected by the following:
 - 1. Federal license requirement.
 - 2. Federal autonomy regarding investigation and disciplining of appointees.
 - 3. Frequent transfers due to harvesting conditions.
- (h) Persons employed by the Public Employees Relations Commission.
- (i) Persons enrolled as undergraduate students in a state university who perform part-time work for the state university.

⁴ The term “public employer” means the state or any county, municipality, or special district or any subdivision or agency thereof that the commission determines has sufficient legal distinctiveness properly to carry out the functions of a public employer. Section 447.203(2), F.S.

⁵ Section 447.301(2), F.S.

⁶ Section 447.201(3), F.S.

An “employee organization” is 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 concerning any matters relating to their employment relationship with a public employer.”⁷ When an employee organization is approved by the employees, recognized by the employer, and authorized to conduct collective bargaining, it is referred to as a certified bargaining agent, and becomes the exclusive representative of all employees in that unit.⁸

After an employee organization has been certified as the bargaining agent for a group of public employees, the bargaining agent and the chief executive officer of the appropriate public employer must bargain collectively in the determination of wages, hours, and terms and conditions of employment of the employees.⁹ Any collective bargaining agreement reached between the parties must be put in writing and signed by the chief executive officer and the bargaining agent.¹⁰ Such agreement is not binding on the employer until the agreement has been ratified by the employer and the employees in the bargaining unit.¹¹ Current law prohibits a collective bargaining agreement from providing for a term of existence of more than three years and requires the agreement to contain all of the terms and conditions of employment of the employees during such term.¹²

Registration of Employee Organization

An employee organization seeking to become a certified bargaining agent for public employees has to register with the Commission prior to requesting recognition by a public employer for purposes of collective bargaining and before submitting a petition to the Commission requesting certification as an exclusive bargaining agent.¹³ The application for registration with the commission must include:

- The name and address of the organization and of any parents organization or organization with which it is affiliated;
- The names and addresses of the principal officers and all representatives of the organization;
- The amount of the initiation fee and of the monthly dues which members must pay;
- The current annual financial statement of the organization;
- The name of its business agent, if any; if different from the business agent, the name of its local agent for service of process; and the addresses where such person or persons can be reached;
- A pledge, in a form prescribed by the commission, that the employee organization will conform to the laws of the state and that it will accept members without regard to age, race, sex, religion, or national origin;
- A copy of the current constitution and bylaws of the employee organization; and
- A copy of the current constitution and bylaws of the state and national groups with which the employee organization is affiliated or associated. In lieu of this provision, and upon adoption

⁷ Section 447.203(11), F.S.

⁸ Sections 447.203(12), 447.307(1), F.S.

⁹ Section 447.309(1), F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² Section 447.309(5), F.S.

¹³ Section 447.305(1), F.S.

of a rule by the commission, a state or national affiliate or parent organization of any registering labor organization may annually submit a copy of its current constitution and bylaws.¹⁴

A registration granted to an employee organization is valid for one year from the date of assurance. A registration must be renewed annually by filing an application for renewal under oath with the commission. An application for renewal must reflect any changes in the information provided to the commission in conjunction with the employee organization's preceding application for registration or previous renewal.¹⁵ Each application for renewal of registration is required to include a current annual financial report containing detailed information outlined in s. 447.305(2)(a-e), F.S.

Certification of Employee Organization

Any employee organization which is selected by a majority of public employees in a designated unit as their representative for collective bargaining purposes can request recognition by the public employer. In return the employer, if satisfied as to the majority status of the employee organization, recognizes the employee organization as the collective bargaining representative of employees in the designated unit. Following recognition by the employer, the employee organization must immediately petition the commission for certification.¹⁶ The Commission will review only the appropriateness of the unit proposed by the employee organization. Appropriateness is defined as 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.¹⁷ If the unit is appropriate, the commission will immediately certify the employee organization as the exclusive representative of all employees in the unit. If the unit is inappropriate, the commission may dismiss the petition.

If the public employer refuses to recognize the employee organization, the employee organization may file a petition with the Commission for certification as the bargaining agent. The petition has to be accompanied by dated statements signed by at least 30 percent of the employees in the designated unit. The commission will investigate the petition to determine its sufficiency, and provide for an appropriate hearing upon notice, and may order an election by secret ballot. Any registered employee organization desiring placement on the ballot in any election to be conducted may be permitted by the commission to intervene. If an employee organization is selected by the majority of the employees, the commission will then certify the employee organization as the exclusive collective representative.¹⁸

An employee organization which has been certified as the bargaining agent has the right to have its dues and assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues and assessments.¹⁹

¹⁴ Section 447.305(1)(a-h), F.S.

¹⁵ Section 447.305(2)F.S.

¹⁶ Section 447.307(1)(a), F.S.

¹⁷ Section 447.307(4)(f)(5), F.S.

¹⁸ Section 447.307(3)(a-d), F.S.

¹⁹ Section 447.303, F.S.

Right-to-Work

The State Constitution forbids an employer from denying citizens the right to work based on membership or non-membership in any employee organization.²⁰ As such, public employees have the right to form, join, participate in, and be represented by an employee organization of their own choosing, or to refrain from forming, joining, participating in, or being represented by an employee organization.²¹

Instructional Personnel

Instructional personnel is defined as any K-12 staff member whose functions includes the provision of direct instructional services to students. This includes K-12 personnel whose functions provide direct support in the learning process of students.²² Included in the classification of instructional personnel are:

- Classroom teachers;²³
- Student personnel services;²⁴
- Librarians/media specialist;²⁵
- Other instructional staff such as specialists and trainers;²⁶ and
- Educational paraprofessionals.²⁷

The Florida College System

The Legislature established the Florida College System (FCS).²⁸ The programs and services offered by FCS institutions in providing associate and baccalaureate degrees must be delivered in a cost-effective manner that demonstrates substantial savings to the student and to state over the cost of providing the degree at a state university. Each institution within the FCS must be governed by a local board of trustees that is responsible for implementing state policy, budgeting, and education standards. An FCS institution may not use the designation “university.”²⁹

The FCS is comprised of the following 28 locally-governed institutions:

- Eastern Florida State College;
- Broward College;
- College of Central Florida;
- Chipola College;
- Daytona State College;
- Florida SouthWestern State College;

²⁰ Fla. Const. art. 1, s. 6.

²¹ Section 447.301(1) and (2), F.S.

²² Section 1012.01(2), F.S.

²³ Section 1012.01(2)(a), F.S.

²⁴ Section 1012.01(2)(b), F.S.

²⁵ Section 1012.01(2)(c), F.S.

²⁶ Section 1012.01(2)(d), F.S.

²⁷ Section 1012.01(2)(e), F.S.

²⁸ Section 1001.60, F.S.

²⁹ *Id.*

- Florida State College at Jacksonville;
- The College of the Florida Keys;
- Gulf Coast State College;
- Hillsborough Community College;
- Indian River State College;
- Florida Gateway College;
- Lake-Sumter State College;
- Miami Dade College;
- North Florida College;
- Northwest Florida State College;
- Palm Beach State College;
- Pasco-Hernando State College;
- Pensacola State College;
- Polk State College;
- St. Johns River State College;
- St. Petersburg College;
- Santa Fe College;
- Seminole State College of Florida;
- South Florida State College;
- Tallahassee Community College; and
- Valencia College.³⁰

The State University System

Article IX, section 7, of the Florida Constitution grants the Board of Governors (BOG) the authority to regulate the State University System (SUS). The BOG is responsible for managing the SUS, defining the distinctive mission of each constituent university and its articulation with free public schools and community colleges, ensuring the well-planned coordination and operation of the system, and avoiding wasteful duplication of facilities or programs.³¹ The mission of the SUS is to achieve excellence through teaching students, advancing research and providing public service for the benefit of Florida's citizens, their communities, and economies.³² Each institution is governed by a board of trustees comprised of 13 members.

The SUS is comprised of the following 14 state universities:

- The University of Florida;
- The Florida State University;
- The Florida Agricultural and Mechanical University;
- The University of South Florida;
- The Florida Atlantic University;
- The University of West Florida;
- The University of Central Florida;
- The University of North Florida;

³⁰ Section 1000.21(3)(a-bb), F.S., lists the 28 locally-governed institutions which comprise the FCS.

³¹ Section 1001.705(2), F.S.

³² Article IX, S. 7, FLA. CONST.

- The Florida International University;
- The Florida Gulf Coast University;
- New College of Florida; and
- The Florida Polytechnic University.³³

III. Effect of Proposed Changes:

Section 1 amends s. 1012.2315, F.S., to require an employee organization that is certified to represent K-12 instructional personnel to disclose in its annual application for registration renewal the number of employees who are eligible for representation and the number of employees who are represented by the employee organization to use data as of *December 31 of that renewal period*.

As noted above, current law requires an application for renewal to include the number of employees in the bargaining unit eligible for representation and the number of employees represented by the employee organization, specifying the number of members who pay dues and the number of members who do not pay dues. The bill specifies that these numbers are to be calculated, *as of December 31 of that renewal period*. As noted above, current law requires an employee organization whose dues paying membership is less than 50 percent of the employees eligible for representation in the designated unit to petition the Commission for recertification. The bill clarifies that the dues paying membership is to be calculated *as of December 31 of that renewal period*.

The Commission is authorized to conduct an investigation to confirm the validity of any information provided on the application for renewal of registration.

If the Commission has reason to believe a registered employee organization has reported inaccurate figures in its application, it can require the employee organization to submit its membership roll in order to verify the accuracy of the reported figures. If the employee organization fails to submit its membership roll within 30 days of receiving a written request from the Commission, the employee organization's certification will be revoked. Additionally, the bill provides for revocation of an employee organization's certification if the employee organization does not submit, or intentionally misstates the required information. The bill grants rulemaking authority to the Commission to implement the renewal provisions.

This section prohibits an employee organization that has been certified as the bargaining agent for K-12 instructional personnel from having its dues and uniform assessment deducted and collected by a district school board from the salaries of instructional personnel. Instead, K-12 instructional personnel must pay their dues and uniform assessment directly to the employee organization that been certified as their bargaining agent.

Beginning August 1, 2021, and each August 1 thereafter, before the employee organization can collect dues or uniform assessments from any K-12 instructional personnel for the upcoming year, the employee must sign and submit a form to the employee organization acknowledging

³³ Section 1000.21, F.S.

Florida is a right-to-work state. The form must contain the following acknowledgement in bold letters and in at least 14-point type:

I acknowledge and understand that Florida is a right-to-work state and that union membership is not required as a condition of employment. I understand that union membership and payment of union dues and assessments is voluntary and that I may not be discriminated against in any manner if I refuse to join or financially support a union.

The Commission is granted authority to adopt rules to carry out the provisions of the bill.

Sections 2 and 3 create ss. 1012.8552 and 1012.916, F.S., respectively, to require an employee organization that has been certified as the bargaining agent for a unit of instructional personnel employed by an FCS or SUS institution to include for each such certified bargaining unit the following information and documentation in its application for renewal of registration:

- The number of employees in the bargaining unit who are eligible for representation by the employee organization;
- The number of employees who are represented by the employee organization, specifying the number of members who pay dues and the number of members who do not pay dues;
- Documentation provided by the institution verifying the information provided; and
- Documentation provided by the institution verifying that it was provided a copy of the employee organization's application for renewal of registration.

An application for renewal of registration is incomplete and is ineligible for consideration by the Commission if it does not include all of the information and documentation required for submission. The Commission must notify the employee organization if the application is incomplete. Any incomplete application must be dismissed if the required information and documentation are not provided within 10 days after the employee organization receives such notice.

This section requires employee organizations whose due-paying membership is less than 50 percent of the employees eligible for representation in the bargaining unit to petition for recertification as the exclusive representative of all employees in the bargaining unit within one month after the date on which the employee organization applies for renewal of registration. If an employee organization does not comply, the employee organization's certification is revoked.

The bill authorizes an FCS or SUS institution to challenge an employee organization's application for renewal of registration if the institution believes that the application is inaccurate. The Commission, or one of its designated agents, will review the application to determine its accuracy and compliance. If the Commission finds that the application is inaccurate or does not comply with the requirements, the Commission must revoke the registration and certification of the employee organization.

Section 4 provides the bill take effect July 1, 2021.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Not applicable. This bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

An employee organization representing K-12 instructional personnel, FCS instructional personnel, or SUS instructional personnel may incur additional costs associated with having to petition for recertification if it fails to meet the 50 percent dues-paying threshold provided in the bill.

To the extent to which the new requirements depress union membership or salary deductions for union dues or increase costs associated with the creation and use of membership authorization and dues deduction forms, public sector unions may experience a negative fiscal impact.

C. Government Sector Impact:

The Commission may experience additional workload and costs associated with an increase in the number of recertification petitions filed by employee organizations who do not meet the 50 percent threshold provided in the bill.³⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1012.2315 of the Florida Statutes.

This bill creates sections 1012.8552 and 1012.916 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Governmental Oversight and Accountability on March 17, 2021:

The CS:

- For employee organizations representing K-12 instructional personnel:
 - Imposes a date certain – as of December 31 of that renewal period - for calculating required information relating to the number of employees for an application for renewal of registration;
 - Authorizes the Commission to conduct an investigation to confirm the validity of information submitted on the application for renewal;
 - Authorizes the Commission to revoke the certification of the employee organization if (1) it does not submit or intentionally misstates required information; or (2) does not submit its membership roll within 30 days of receiving a written request from the Commission;
 - Grants rulemaking authority to the Commission;
 - Prohibits the employee organization from having its dues and uniform assessments deducted and collected by a district school board from the salaries and requires such instructional personnel to pay their dues and uniforms assessments directly to the employee organization; and
 - Requires K-12 instructional personnel to sign and submit an acknowledgment form to the employee organization acknowledging Florida is a right-to-work state before dues and uniform assessments may be deducted.

³⁴ Public Employees Relation Commission, Agency Analysis for SB 1014, (February 25, 2021)(on file with the Governmental Oversight and Accountability Committee). However, this analysis addressed the costs associated with the original filed bill, not the Committee Substitute.

- For employee organizations representing instructional personnel employed by an FCS or SUS institution:
 - Provides for information required for on an employee organization's application for renewal of registration;
 - Prohibits the Commission from accepting or considering an application that is considered incomplete;
 - Requires an employee organization with less than 50 percent dues-paying membership to petition the Commission for recertification as the exclusive representative of all employees;
 - Authorizes the FCS and SUS institutions to challenge an employee organization's application for renewal if the institution believes such application is inaccurate; and
 - Authorizes the Commission to revoke the registration and certification of the employee organization if the Commission finds the application to be inaccurate or in noncompliance.

B. Amendments:

None.