

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 835 Employee Organizations
SPONSOR(S): Government Operations Subcommittee, Byrd
TIED BILLS: **IDEN./SIM. BILLS:** SB 1014

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 6 N, As CS	Villa	Smith
2) Education & Employment Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Collective bargaining is a constitutional right afforded to public employees in Florida. 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 such activities. An employee organization authorized to represent public employees in collective bargaining is known as a certified bargaining agent. In order to become a certified bargaining agent, the employee organization must register with and be certified by the Public Employees Relations Commission (commission). A registration granted to an employee organization is valid for one year and must be renewed annually.

An employee organization that represents K-12 instructional personnel is subjected to additional registration renewal requirements. These additional requirements include submitting, as part of its application for renewal, the number of instructional personnel in the bargaining unit who are eligible for representation by the employee organization and the number who are actually represented, including the specific number of members who pay dues and the number of members who do not pay dues. If dues paying membership drops to less than 50 percent of the employees eligible to be represented, the employee organization must petition the commission for recertification.

Currently, an employee organization certified to represent K-12 instructional personnel is authorized to have its dues and uniform assessments deducted and collected by the district school board from the salaries of consenting employees. The deductions commence upon the bargaining agent's written request to the district school board.

The bill prohibits employee organizations representing K-12 instructional personnel from having their union dues and uniform assessments deducted and collected by the district school board. In addition, before an employee organization may collect dues or uniform assessments for the upcoming school year, the employee must sign and submit to the employee organization a form acknowledging that Florida is a right-to-work state and union membership is not required as a condition of employment.

The bill authorizes the commission to conduct investigations to confirm the validity of information submitted pertaining to membership registration renewal requirements. If the employee organization fails to submit any other required information, or intentionally misstates any required information, the employee organization's certification will be revoked.

The bill requires an employee organization certified as the bargaining agent for a unit of instructional personnel employed by a Florida College System or State University System institution to include certain membership information and verification documentation in its registration renewal application. If an application is incomplete, the commission is required to notify the employee organization. Upon receiving such notice, the employee organization has 10 days to include the missing information, otherwise the application must be dismissed.

The bill authorizes a Florida College System or State University System institution to challenge an employee organization's registration renewal application under certain conditions. If the commission finds the application to be inaccurate or not in compliance with applicable requirements, the commission must revoke the employee organization's registration and certification.

If the dues paying membership of an employee organization representing Florida College System or State University System instructional personnel drops to less than 50 percent of the employees eligible to be represented, the bill requires the employee organization to petition the commission for recertification.

The bill may have a negative fiscal impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Right-to-Work

The State Constitution provides that Florida is a right to work state; therefore, the right of an individual to work cannot be denied or abridged based on membership or non-membership in any employee organization.¹ As such, public employees² 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.³

Collective Bargaining

Collective bargaining is a constitutional right afforded to public employees in Florida.⁴ 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.⁵ Through collective bargaining, public employees collectively negotiate with their public employer⁶ in the determination of the terms and conditions of their employment.⁷ The Public Employees Relations Commission (commission) is responsible for assisting in resolving disputes between public employees and public employers.⁸

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.”⁹ An employee organization that is authorized to

¹ Article I, s. 6, FLA. CONST.

² 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 university.

³ Section 447.301(1) and (2), F.S.

⁴ Article I, s. 6, FLA. CONST.

⁵ Section 447.201, F.S.

⁶ Section 447.203(2), F.S., defines the term “public employer” to mean 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.

⁷ Section 447.301(2), F.S.

⁸ Section 447.201(3), F.S.

⁹ Section 447.203(11), F.S.

represent public employees in collective bargaining is known as a certified bargaining agent.¹⁰ A certified bargaining agent is the exclusive representative of all employees in that bargaining unit.^{11,12}

An employee organization seeking to become a certified bargaining agent for a unit of public employees must register with and be certified by the commission. To register, the employee organization must submit an application, under oath, to the commission that includes the following information:

- The name and address of the organization and of any parent 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 that 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.
- A copy of the current constitution and bylaws of the state and national groups with which the employee organization is affiliated or associated.¹³

A registration granted to an employee organization is valid for one year and must be renewed annually.¹⁴ The renewal application must reflect any changes to the information provided to the commission in the preceding application and must include a current annual financial report, signed by its president and treasurer (or corresponding principal officers), that contains the following information:

- Assets and liabilities at the beginning and end of the fiscal year.
- Receipts of any kind and the sources thereof.
- Salary, allowances, and other direct or indirect disbursements, including reimbursed expenses, to each officer and each employee who, during such fiscal year, received more than \$10,000 in the aggregate from the employee organization and any other affiliated employee organization.
- Direct and indirect loans made to any officer, employee, or member that aggregated more than \$250 during the fiscal year, together with a statement of the purpose, security, if any, and arrangements for repayment.
- Direct and indirect loans to any business enterprise, together with a statement of the purpose, security, if any, and arrangements for repayment.¹⁵

After registering with the commission, an employee organization may begin the certification process. In order to be certified, an employee organization that is selected by a majority of the employees in an appropriate unit as their representative must first request recognition by the public employer.¹⁶ If the public employer recognizes the employee organization as the collective bargaining representative for that unit, the employee organization must then petition the commission for certification.¹⁷ If the unit proposed by the employee organization is deemed appropriate, the commission must immediately certify the employee organization as the exclusive representative of all employees in the unit.¹⁸

¹⁰ Section 447.203(12), F.S.

¹¹ Section 447.307(1), F.S.

¹² Section 447.203(8), F.S., defines the term “bargaining unit” to mean either that unit determined by the commission, that unit determined through local regulations, or that unit determined by the public employer and the public employee organization and approved by the commission to be appropriate for the purposes of collective bargaining. However, no bargaining unit may be defined as appropriate, which includes employees of two employers that are not departments or divisions of the state, a county, a municipality, or other political entity.

¹³ Section 447.305(1), F.S.

¹⁴ Section 447.305(2), F.S.

¹⁵ *Id.*

¹⁶ Section 447.307(1)(a), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

However, if the employer refuses to recognize the employee organization, the employee organization must file a petition with the commission that is 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 by the employee organization.¹⁹ If the commission determines the petition to be sufficient, it must order an election by secret ballot to determine whether the employee organization will be certified.²⁰ The petitioning employee organization is placed on the ballot along with any other registered employee organization that submits dated statements signed by at least 10 percent of the employees in the proposed unit, indicating their desire to be represented by that employee organization.²¹ When an employee organization is selected by a majority of the employees voting in an election, the commission must certify the employee organization as the exclusive collective bargaining representative of all employees in the unit.²²

An employee or group of employees who no longer desires to be represented by the certified bargaining agent may file with the commission a petition to revoke certification. The petition must be accompanied by dated statements signed by at least 30 percent of the employees in the unit, indicating that such employees no longer desire to be represented by the certified bargaining agent. If the commission finds the petition to be sufficient, it must immediately order an election by secret ballot. If a majority of voting employees vote against the continuation of representation by the certified bargaining agent, the organization's certification is revoked.²³

K-12 Instructional Personnel

An employee organization that has been certified as the collective bargaining agent for a unit of K-12 instructional personnel²⁴ must include for each such certified bargaining unit the following statistics 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.²⁵

If the employee organization's dues-paying membership for a unit of K-12 instructional personnel is less than 50 percent of the employees eligible for representation in the unit, the organization must petition the commission for recertification as the exclusive representative of all employees in the unit within one month after the date on which the organization applies for renewal of registration.²⁶

¹⁹ Section 447.307(2), F.S.

²⁰ Section 447.307(3)(a), F.S.

²¹ Section 447.307(2), F.S.

²² Section 447.307(3)(b), F.S.

²³ Section 447.308, F.S.

²⁴ Section 1012.01(2), F.S., defines the term "instructional personnel" to mean any K-12 staff member whose function includes the provision of direct instructional services to students and includes K-12 personnel whose functions provide direct support in the learning process of students. Included in the classification of instructional personnel are the following K-12 personnel:

- Classroom teachers: Classroom teachers are staff members assigned the professional activity of instructing students in courses in classroom situations, including basic instruction, exceptional student education, career education, and adult education, including substitute teachers.
- Student personnel services: Student personnel services include staff members responsible for advising students with regard to their abilities and aptitudes, educational and occupational opportunities, and personal and social adjustments; providing placement services; performing educational evaluations; and similar functions.
- Librarians and media specialists: Librarians and media specialists are staff members responsible for providing school library media services.
- Other instructional staff: Other instructional staff are staff members who are part of the instructional staff but are not classified in one of the categories specified above.
- Education paraprofessionals: Education paraprofessionals are individuals who are under the direct supervision of an instructional staff member, aiding the instructional process.

²⁵ Section 1012.2315(4)(c)1., F.S.

²⁶ Section 1012.2315(4)(c)2., F.S.

If the certified employee organization does not comply with the recertification requirements or if it does not include the required information in its application for registration renewal, the organization's certification for the unit is revoked.²⁷

Employee Dues

The certified bargaining agent may have its dues and uniform assessments deducted and collected by the public employer from the salaries of those employees who authorize the deductions.²⁸ Such authorization is revocable by the employee upon 30 days' written notice to the employer and employee organization.²⁹ The deductions commence upon the bargaining agent's written request to the employer.³⁰ The right to deductions remains in force for as long as the employee organization remains the certified bargaining agent for that group of employees.³¹

Florida College System

The Florida College System consist of 28 state colleges.³² The State Board of Education is the chief implementing and coordinating body of public education in Florida, except for the State University System, and as such, has governing authority over the Florida College System institutions and district school boards.³³ Each institution is governed by a local board of trustees³⁴ that is responsible for implementing state policy, budgeting, and education standards.³⁵ The primary mission and responsibility of Florida College System institutions is to respond to community needs for postsecondary academic education and career degree education, and to provide associate and baccalaureate degrees that will best meet the state's employment needs.³⁶

State University System

The university system consists of 12 state universities.³⁷ The Board of Governors is a constitutionally created body that operates, regulates, controls, and is fully responsible for managing the university system.³⁸ The Board of Governor's responsibilities include, but are not limited to, 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.³⁹ The Board of Governor's management is subject to the powers of the Legislature to appropriate for the expenditures of funds, and the Board of Governors must account for such expenditures as provided by law.⁴⁰ Each institution in the State University System is governed locally by a board of trustees comprised of 13 members. The mission of the State University System is

²⁷ *Id.*

²⁸ Section 447.303, F.S.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² The 28 Florida College System institutions are: Eastern Florida State College; Broward College; College of Central Florida; Chipola College; Daytona State College; Florida SouthWestern State College; Florida State College; The College of the Florida Keys; Gulf Coast State College; Hillsborough Community College; Indian River State College; Florida Gateway College; Lake-Sumter State College; State College of Florida; Miami Dade College; North Florida College; Northwest Florida State 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. Section 1000.21(3), F.S.

³³ Section 1001.02(1), F.S.

³⁴ Section 1001.60(3), F.S.

³⁵ Section 1001.64(1), F.S.

³⁶ Section 1001.60(1), F.S.

³⁷ The state university system consists of the following 12 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; The Florida International University; The Florida Gulf Coast University; New College of Florida; The Florida Polytechnic University. Section 1000.21(6), F.S.

³⁸ Article IX, s. 7(d), FLA CONST.

³⁹ Article IX, s. 7(d), FLA. CONST.; s. 1001.705(2), F.S.

⁴⁰ Article IX, s. 7(d), FLA. CONST.

to “achieve excellence through teaching students, advancing research and providing public service for the benefit of Florida’s citizens, their communities and economies.”⁴¹

Effect of the Bill

K-12 Instructional Personnel

The bill specifies that the information required to be reported by an employee organization, representing K-12 instructional personnel, as part of its registration renewal application must be as of December 31 of the renewal period. This information includes the number of employees eligible for representation and the number of employees actually represented by the employee organization, specifying the number of members who pay dues and the number of members who do not pay dues.

If the employee organization’s dues-paying membership as of December 31 of that renewal period is less than 50 percent of the employees eligible for representation in the unit, the organization must petition the commission for recertification as the exclusive representative of all employees in the unit within one month after the date on which the organization applies for renewal of registration.

As provided in current law, if the certified employee organization does not comply with the recertification requirements or if it does not include the required information in its application for registration renewal, the organization’s certification for the unit is revoked.

The bill authorizes the commission to conduct an investigation to confirm the validity of any information submitted by the employee organization in its registration renewal application. If the commission has reason to believe a registered employee organization has reported inaccurate figures, it may 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, if the employee organization does not submit or intentionally misstates any required information, the employee organization’s certification for that unit will be revoked.

Beginning August 1, 2021, and each August 1 thereafter, before an employee organization representing K-12 instructional personnel may collect dues or uniform assessments for the upcoming school year, the employee must sign and submit a form to the employee organization acknowledging that Florida is a right-to-work state. The bill requires the form to contain the following acknowledgement in at least 14-point boldfaced 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 uniform 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 bill prohibits an employee organization that has been certified as the bargaining agent for a unit of K-12 instructional personnel from having its dues and uniform assessments deducted and collected by a district school board.

The bill requires the commission to adopt rules to implement certain provisions of the bill.

Florida College System and State University System Instructional Personnel

The bill requires an employee organization that has been certified as the bargaining agent for a unit of instructional personnel employed by a Florida College System or State University System institution to include the following information and documentation in its registration renewal application:

- The number of employees eligible for representation.
- 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.

- Documentation from the institution verifying such information.
- Documentation from the institution verifying that it was provided with a copy of the employee organization's registration renewal application.

An application for registration renewal that does not include all of the required information and documentation is considered incomplete and is not eligible for consideration. The bill requires the commission to notify an employee organization if its application is incomplete. If the commission does not receive the missing information or documentation within 10 days after the employee organization receives the commission's notice, the commission must dismiss the incomplete application.

Additionally, if the employee organization's dues-paying membership is less than 50 percent of the employees eligible for representation in the unit, the employee organization must petition the commission for recertification as the exclusive representative of all employees in the unit within one month after the date on which the employee organization applies for registration renewal. If the certified employee organization does not comply with the recertification requirements, the organization's certification for the unit is revoked.

The bill authorizes a Florida College System or State University System institution to challenge an employee organization's registration renewal application. In order to bring a challenge the institution must believe that the application is inaccurate. The commission or one of its designated agents must then review the application to determine its accuracy and compliance with registration renewal requirements. If the commission finds that the application is inaccurate or does not comply, the commission must revoke the employee organization's registration and certification.

B. SECTION DIRECTORY:

Section 1 amends s. 1012.2315, F.S., relating to instructional personnel collective bargaining.

Section 2 creates s. 1012.8552, F.S., relating to collective bargaining of instructional personnel employed by a Florida College System institution.

Section 3 creates s. 1012.916, F.S., relating to collective bargaining of instructional personnel employed by a State University System institution.

Section 4 provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill requires employee organizations representing K-12 instructional personnel and instructional personnel employed by a Florida College System or State University System institution with less than 50 percent of the eligible employees in the unit paying union dues to recertify with the commission. If there is an increase in the number of recertification petitions filed with the commission, or if more elections must be held during the recertification process, the commission estimates an increase in expenditures of at least \$379,736.⁴²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁴² Public Employees Relations Commission, Agency Analysis of 2021 HB 835, (February 24, 2021) (on file with the Government Operations Subcommittee).

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on certain employee organizations related to the recertification or dues collection process.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the commission to adopt rules to implement certain provisions in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2021, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment included various provisions related to employee organizations representing K-12 personnel as well as employee organizations representing instructional personnel of the Florida College System or State University System. Specific to employee organizations representing K-12 instructional personnel, the strike-all amendment:

- Requires an employee organization to report the number of employees eligible for representation and the number of employees represented, specifying the number of members that pay dues and the number of members that do not pay dues, as of December 31 of the renewal period in its application for registration renewal;
- Requires 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 to petition the commission for recertification;
- Authorizes the commission to conduct an investigation to confirm the validity of information submitted as part of the registration renewal;
- Specifies that an employee organization's certification will be revoked under certain conditions;
- Prohibits an employee organization from having its dues and uniform assessments deducted from K-12 instructional personnel's salaries;
- Requires K-12 instructional personnel to sign and submit an acknowledgment form before an employee organization may collect dues or uniform assessments;

Specific to employee organizations representing instructional personnel employed by a Florida College System or State University System institution the strike- all amendment:

- Requires an employee organization to include the following information and documentation in its registration renewal application:
 - The number of employees eligible for representation on the date of the application.
 - The number of employees represented by the employee organization, specifying the number of members who pay dues and the number who do not.
 - Documentation provided by the institution verifying the above information, and that the institution was provided a copy of the employee organization's registration renewal application.
- Prohibits the commission from considering an incomplete registration renewal application;
- Requires the commission to notify an employee organization if its registration renewal application is incomplete;
- Requires the commission to dismiss an incomplete application if the missing information or documentation is not received by the commission within 10 days after the employee organization receives the commission's notice;
- 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 in the unit;
- Provides that the certification of an employee organization that does not comply with the law is revoked;
- Authorizes an institution to challenge an employee organization's application for registration renewal if it believes the application is inaccurate; and
- Requires the commission to revoke the registration and certification of an employee organization under certain conditions.

This analysis is drafted to the committee substitute as approved by the Government Operations Subcommittee.