

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1197 Employee Organizations Representing Public Employees

**SPONSOR(S):** Plakon and Byrd

**TIED BILLS:** IDEN./SIM. BILLS: SB 1458

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	10 Y, 7 N	Villa	Toliver
2) State Administration & Technology Appropriations Subcommittee			
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. A certified bargaining agent may have its dues and uniform assessments deducted from the salaries of employees who authorize such a deduction.

The bill requires a public employee who desires to join an employee organization to sign a membership authorization form. The form must contain an acknowledgement that Florida is a right to work state and union membership and payment of union dues is not required as a condition of employment. An employee organization is required to revoke an employee's membership upon the employee's written request. If the employee must complete a form to request revocation, the form may not require the employee to provide a reason for membership revocation.

The bill prohibits an employee organization that has been certified as a bargaining agent for a unit of public employees from having its dues and uniform assessments deducted from the salaries of employees in the unit and collected by the employer.

The bill requires an employee organization certified to represent public employees 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 will be dismissed.

The bill authorizes a public employer or a bargaining unit employee to challenge an employee organization's registration renewal application. 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 certified to represent public employees 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 does not apply to an employee organization that has been certified as the bargaining agent to represent law enforcement officers, correctional officers, correctional probation officers, or firefighters.

The bill may have a fiscal impact on state and local government, as well as the private sector. See Fiscal Comments section.

# 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.<sup>1</sup> As such, public employees<sup>2</sup> 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.<sup>3</sup>

##### Collective Bargaining

Collective bargaining is a constitutional right afforded to public employees in Florida.<sup>4</sup> 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.<sup>5</sup> Through collective bargaining, public employees collectively negotiate with their public employer<sup>6</sup> in the determination of the terms and conditions of their employment.<sup>7</sup> The Public Employees Relations Commission (commission) is responsible for assisting in resolving disputes between public employees and public employers.<sup>8</sup>

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.”<sup>9</sup> An employee organization that is authorized to

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<sup>1</sup> Article I, s. 6, FLA. CONST.

<sup>2</sup> 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.

<sup>3</sup> Section 447.301(1) and (2), F.S.

<sup>4</sup> Article I, s. 6, FLA. CONST.

<sup>5</sup> Section 447.201, F.S.

<sup>6</sup> 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.

<sup>7</sup> Section 447.301(2), F.S.

<sup>8</sup> Section 447.201(3), F.S.

<sup>9</sup> Section 447.203(11), F.S.

represent public employees in collective bargaining is known as a certified bargaining agent.<sup>10</sup> A certified bargaining agent is the exclusive representative of all employees in that bargaining unit.<sup>11,12</sup>

### *Registration of an Employee Organization*

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.<sup>13</sup>

A registration granted to an employee organization is valid for one year and must be renewed annually.<sup>14</sup> 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.<sup>15</sup>

### *Certification of an Employee Organization*

After registering with the commission, an employee organization may begin the certification process. In order to be certified, an employee organization selected by a majority of the employees in a unit as their representative must first request recognition by the public employer.<sup>16</sup> If satisfied as to the majority status of the employee organization and the appropriateness of the proposed unit, the employer will recognize the employee organization as the collective bargaining representative for that unit.<sup>17</sup>

Following recognition by the employer, the employee organization must immediately petition the

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<sup>10</sup> Section 447.203(12), F.S., defines the term “bargaining agent” to mean the employee organization which has been certified by the commission as representing the employees in the bargaining unit, as provided in s. 447.307, F.S., or its representative.

<sup>11</sup> Section 447.307(1), F.S.

<sup>12</sup> 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.

<sup>13</sup> Section 447.305(1), F.S.

<sup>14</sup> Section 447.305(2), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Section 447.307(1)(a), F.S.

<sup>17</sup> *Id.*

commission for certification.<sup>18</sup> If the unit proposed by the employee organization is deemed appropriate, the commission will immediately certify the employee organization as the exclusive representative of all employees in the unit.<sup>19</sup>

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.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup>

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.<sup>24</sup>

#### *K-12 Instructional Personnel*

An employee organization that has been certified as the collective bargaining agent for a unit of K-12 instructional personnel<sup>25</sup> must include certain statistics in its application for renewal of registration, including the number of employees who are represented by the employee organization and the number of members who pay dues and the number of members who do not pay dues.<sup>26</sup> 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 a certain time. If the certified employee organization does not comply with the recertification requirements

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Section 447.307(2), F.S.

<sup>21</sup> Section 447.307(3)(a), F.S.

<sup>22</sup> Section 447.307(2), F.S.

<sup>23</sup> Section 447.307(3)(b), F.S.

<sup>24</sup> Section 447.308, F.S.

<sup>25</sup> 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.

<sup>26</sup> Section 1012.2315(4)(c)1., F.S.

or if it does not include the required information in its application for registration renewal, the organization's certification for the unit is revoked.<sup>27</sup>

### Employee Dues

A 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.<sup>28</sup> Such authorization is revocable by the employee upon 30 days' written notice to the employer and employee organization.<sup>29</sup> The deductions commence upon the bargaining agent's written request to the employer.<sup>30</sup> The right to deductions remains in force for as long as the employee organization remains the certified bargaining agent for that group of employees.<sup>31</sup>

According to the Department of Management Services, 71,605 state employees (excluding state university system employees) were represented by unions during Fiscal Year 2019-2020. Of these employees, 9,339 paid union dues and assessments.<sup>32</sup> Local government union membership levels are unknown.

### **Effect of the Bill**

#### Membership Authorization

The bill requires a public employee who wants to join an employee organization to sign a membership authorization form that contains the following acknowledgement:

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 bill requires an employee organization to revoke a public employee's membership upon receipt of the employee's written request. If the public employee must complete a form to request revocation, the form may not require the public employee to provide a reason for membership revocation.

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<sup>27</sup> Section 1012.2315(4)(c)2., F.S.

<sup>28</sup> Section 447.303, F.S.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> State Personnel System, Annual Workforce Report for Fiscal Year 2019-2020, page 23,

<https://www.dms.myflorida.com/content/download/155111/1030012/FY2019-20AnnualWorkforceReport-FINAL.pdf> (last visited January 14, 2022).

The bill provides that these provisions do not apply to members of an employee organization that has been certified as a bargaining agent to represent law enforcement officers,<sup>33</sup> correctional officers,<sup>34</sup> correctional probation officers,<sup>35</sup> or firefighters.<sup>36</sup>

### Employee Dues

The bill prohibits an employee organization that has been certified as a bargaining agent for a unit of public employees from having its dues and uniform assessments deducted from the salaries of employees in the unit and collected by the employer. However, public employees may pay their dues and uniform assessments directly to the employee organization that has been certified as their bargaining agent.

The prohibition on the deduction and collection of dues and uniform assessments by a public employer does not apply to an employee organization that has been certified as a bargaining agent to represent law enforcement officers, correctional officers, correctional probation officers, or firefighters.

### Registration Renewal of an Employee Organization

The bill requires an employee organization that has been certified as the bargaining agent for a unit of public employees to include the following information and documentation in its registration renewal application:

- The number of employees in the bargaining unit who are eligible for representation by the employee organization as of December 31 of that renewal period.
- The number of employees who are represented by the employee organization as of December 31 of that renewal period, specifying the number of members who pay dues and the number of members who do not pay dues.
- Documentation provided by the public employer verifying such information.
- Documentation provided by the public employer verifying it was provided 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 bargaining 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.

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<sup>33</sup> "Law enforcement officer" is defined to mean any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. Section 943.10(1), F.S.

<sup>34</sup> "Correctional officer" is defined to mean any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel. Section 943.10(2), F.S.

<sup>35</sup> "Correctional probation officer" is defined to mean a person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community. The term includes supervisory personnel whose duties include, in whole or in part, the supervision, training, and guidance of correctional probation officers, but excludes management and administrative personnel above, but not including, the probation and parole regional administrator level. Section 943.10(3), F.S.

<sup>36</sup> "Firefighter" is defined to mean an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services. Section 633.102(9), F.S.

The bill authorizes a public employer or bargaining unit employee to challenge an employee organization's registration renewal application if the employer or employee believes 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 with such requirements, the commission must revoke the employee organization's registration and certification.

The bill provides that these provisions do not apply to an employee organization that has been certified as the bargaining agent representing law enforcement officers, correctional officers, correctional probation officers, or firefighters.

**B. SECTION DIRECTORY:**

Section 1 amends s. 447.301, F.S., relating to public employees' rights to join or refrain from joining an employee organization.

Section 2 amends s. 447.303, F.S., relating to dues and uniform assessments.

Section 3 amends s. 447.305, F.S., relating to registration of employee organizations.

Section 4 amends s. 1012.2315, F.S., conforming provisions to changes made by the act.

Section 5 reenacts s. 110.114, F.S., relating to employee wage deductions.

Section 6 reenacts s. 447.507, F.S. relating to violations of the strike prohibition.

Section 7 provides an effective date of July 1, 2022.

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

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

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

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

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have an indeterminate negative fiscal impact on certain employee organizations related to creating membership authorization forms and the recertification and dues collection process.

**D. FISCAL COMMENTS:**

Certain public employers may see a reduction in administrative costs due to the prohibition on the collection of dues and uniform assessments.

The bill requires certain employee organizations 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 a need for additional resources.<sup>37</sup>

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties and municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

The bill does not require rulemaking nor confer rulemaking authority.

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

None.

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

None.

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<sup>37</sup> See Public Employees Relations Commission, Agency Analysis of 2022 HB 1197, (January 13, 2022).  
**STORAGE NAME:** h1197a.GOS  
**DATE:** 1/27/2022