

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 Governmental Oversight and Accountability

BILL: SB 256

INTRODUCER: Senator Ingoglia

SUBJECT: Employee Organizations Representing Public Employees

DATE: March 6, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|--------------------|
| 1. | <u>McVaney</u> | <u>McVaney</u> | <u>GO</u> | <u>Pre-meeting</u> |
| 2. | _____ | _____ | <u>FP</u> | _____ |

I. Summary:

SB 256 enacts several new requirements of the employee organizations that represent public employees in collective bargaining. Specifically, the bill:

- Requires employees who wish to join certain employee organizations to sign a membership authorization form that is prescribed by the Public Employees Relations Commission (PERC), which must contain specific information.
- Requires specific employee organizations to allow a member to revoke his or her membership in the organization at any time, and without any reason.
- Allows the PERC to inspect specific employee organization's membership authorization forms and membership revocation forms.
- Prohibits certain employee organizations from receiving their members' dues and assessments via salary deduction from the members' public employer.
- Expands the information required in an employee organization's annual registration renewal with the PERC. This newly required information includes a pledge that the employee organization's employee salaries will not exceed the highest salary of a member represented in the unit, and information that relates to the number and percentage of dues-paying members in each bargaining unit. In addition, the employee organization's current annual financial report must be audited by an independent certified public accountant.
- Authorizes the public employer or an employee who is eligible for representation in the bargaining unit to challenge the application for registration renewal. The PERC must investigate to confirm the information submitted.
- Requires the employee organization to be recertified as the bargaining agent if the number of employees paying dues to the employee organization during the last registration period is less than 60 percent of the number of employees eligible for representation in the bargaining unit.
- Requires the certified bargaining agent to provide certain information to its members, including the annual costs of membership.

- Expands the prohibited activities by certain employee organizations and its representatives to include the distribution of literature at any time in areas where actual work of public employees is performed.

The bill is expected to have an indeterminate fiscal impact on state and local government expenditures.

The bill takes effect July 1, 2023.

II. Present Situation:

Right-to-Work

The State Constitution provides that 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.”¹ Based on this constitutional right, Florida is regarded as a “right-to-work” state.

Collective Bargaining

The State Constitution also guarantees that “the right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.”² 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.³ 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.⁴ Regardless of union membership, each employee is subject to the negotiated collective bargaining agreement that is applicable to the employee’s position. Through collective bargaining, public employees⁵

¹ FLA. CONST. art. 1, s. 6.

² *Id.*

³ Section 447.201, F.S.

⁴ Section 447.301(1) and (2), F.S.

⁵ 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.

collectively negotiate with their public employer⁶ in the determination of the terms and conditions of their employment.⁷ The Public Employees Relations Commission (PERC) is responsible for assisting in resolving disputes between public employees and public employers.⁸

Registration of Employee Organization

An employee organization⁹ that seeks to become a certified bargaining agent for public employees must register with the PERC prior to (a) requesting recognition by a public employer for purposes of collective bargaining and (b) submitting a petition to the PERC to request certification as an exclusive bargaining agent.¹⁰ The application for registration must include:

- 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 which members must pay;
- The current annual financial statement of the organization;
- The name of its business agent, if any; the name of its local agent for service of process, if different from the business agent; 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 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.¹¹

A registration granted to an employee organization is valid for 1 year from the date of issuance. A registration must be renewed annually by filing an application for renewal under oath with the PERC. An application for renewal must reflect any changes in the information provided to the PERC in conjunction with the employee organization's preceding application for registration or previous renewal. Each application for renewal of registration must include a current annual financial report with the following information:¹²

- Assets and liabilities at the beginning and end of the fiscal year;
- Receipts of any kind and the sources thereof;

⁶ 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.

⁷ Section 447.301(2), F.S.

⁸ Section 447.201(3), F.S.

⁹ Section 447.203(11), F.S., defines employee organization as 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."

¹⁰ Section 447.305(1), F.S.

¹¹ Section 447.305(1)(a-h), F.S.

¹² Section 447.305(2), F.S.

- Salary, allowances, and other direct or indirect disbursements to each officer and to each employee who received during the fiscal year more than \$10,000 in the aggregate from the employee organization and any affiliated employee organization;
- Direct and indirect loans made to any officer, employee, member which aggregated more than \$250 during the fiscal year; and
- Direct and indirect loans to any business enterprise.

A registration fee of \$15 must be submitted for each registration and renewal.¹³

Certification of Employee Organization as bargaining agent

After registering with the PERC, an employee organization may begin the certification process. Any employee organization that 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.

The employer, if satisfied as to the majority status of the employee organization and the appropriateness of the unit, must recognize 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.¹⁴ The PERC 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.¹⁵ If the unit is appropriate, the PERC will immediately certify the employee organization as the exclusive representative of all employees in the unit. If the unit is inappropriate, the PERC may dismiss the petition.

If the public employer refuses to recognize the employee organization, the employee organization may file a petition with the PERC 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 proposed unit. The PERC 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 that desires to be placed on the ballot in any election may be permitted by the commission to intervene. If an employee organization is selected by the majority of the employees *who vote* in the election, the commission must certify the employee organization as the exclusive collective representative for all employees in the unit.¹⁶

Authority of the Certified Bargaining Agent

The certified bargaining agent and the chief executive of the public employer must bargain collectively and in good faith in the determination of wages, hours, and terms and conditions of employment of the employees.¹⁷ Any collective bargaining agreement reached between the

¹³ Section 447.305(3), F.S.

¹⁴ Section 447.307(1)(a), F.S.

¹⁵ Section 447.307(4)(f), F.S.

¹⁶ Section 447.307(3)(a-d), F.S.

¹⁷ Section 447.309(1), F.S.

parties must be put in writing and signed by the chief executive officer and the bargaining agent.¹⁸ Such agreement is not binding on the employer until the agreement has been ratified by the employer and the employees in the bargaining unit.¹⁹ Current law prohibits a collective bargaining agreement from providing for a term of existence of more than 3 years and requires the agreement to contain all of the terms and conditions of employment of the employees during such term.²⁰ The bargaining agent also has the authority to process grievances to settle disputes between the employer and the employees in the bargaining unit.²¹

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.²²

For state agencies, the Department of Financial Services (DFS) must concur with the agencies before deductions are allowed. However, the deductions from salary for the membership dues of a certified bargaining agent does not require the concurrence of the DFS;²³ provided the deductions may be permitted only for an organization that has been certified as the exclusive bargaining agent for a unit in which the employee is included.²⁴

Likewise, cities, counties and special districts are permitted in their sole discretion to make wage deductions as authorized and directed by the employee.²⁵

Records Exempt from Public Records Inspection and Copying Requirements

The petitions and statements signed and dated by employees indicating that the employee wants to be represented by an employee organization for purposes of collective bargaining are confidential and exempt from public inspection and copying requirements. However, the names appearing on the petition may be challenged by any employee, employer, or employer organization with sufficient reason to believe that the names were obtained by collusion, coercion, intimidation, or misrepresentation or are otherwise invalid.²⁶

The payroll deduction records of an employee of a school board are confidential and exempt from public inspection and copying requirements.²⁷

Prohibited Acts by Employee Organizations and Employees

An employee organization, its members, agents, or representatives, or any person's action on its behalf is prohibited from:

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Section 447.309(5), F.S.

²¹ Section 447.401, F.S.

²² Section 447.303, F.S.

²³ Section 110.114(1), F.S.

²⁴ Section 110.114(3), F.S.

²⁵ Section 112.171, F.S.

²⁶ Section 447.307(2), F.S.

²⁷ Section 1012.31(3)(a)4., F.S.

- Soliciting public employees during working hours of any employee involved in the solicitation;
- Distributing literature during working hours in areas where the actual work of public employees is performed; and
- Instigating or advocating support, in any positive manner, for an employee organization's activities from high school or grade school students during classroom time.²⁸

Enforcement of these prohibitions is in the circuit court through injunctive relief and contempt proceedings. A public employee who is convicted of such violation may be discharged or disciplined otherwise.²⁹

For state employees, an organization, entity, or person is prohibited from intentionally soliciting a state employee, through any means, for fundraising or business purposes within work areas during work hours.³⁰ This prohibition does not apply to state-approved communications by entities with whom the state has contracted to provide employee benefits or services,³¹ noncoercive voluntary communications between state employees in work areas,³² or activities at authorized public events that occur in nonwork areas of state owned or leased facilities.³³

Revocation of certification

An employee or group of employees who no longer desires to be represented by the certified bargaining agent may file with the PERC 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 PERC finds the petition to be sufficient, it must immediately order an election by secret ballot.³⁴

If a majority of voting employees vote against the continuation of representation by the certified bargaining agent, the organization's certification is revoked.³⁵ Otherwise, the employee organization is retained as the exclusive bargaining agent for the unit.³⁶

Additional Requirements for Certified Bargaining Agents of Educational Personnel

In 2018, the Legislature enacted an additional requirement for the renewal of registration of an employee organization certified as the bargaining agent for a unit of instructional personnel.³⁷ These employee organizations are required to report:

²⁸ Section 447.509(1), F.S.

²⁹ Section 447.509(3), F.S.

³⁰ Section 110.182, F.S.

³¹ Section 110.182(1), F.S.

³² Section 110.182(2), F.S.

³³ Section 110.182(3), F.S.

³⁴ Section 447.308(1), F.S.

³⁵ Section 447.308(2), F.S.

³⁶ Section 447.308(3), F.S.

³⁷ Section 1012.01(2), F.S., defines instructional personnel as any K-12 staff member whose functions include direct instructional services to students. This includes classroom teachers, student personnel services, librarians and media specialists, educational paraprofessionals, and other instructional staff such as specialists and trainers.

- 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.³⁸

If a bargaining unit’s dues-paying membership is less than 50 percent of the employees eligible for representation, the employee organization must petition PERC for recertification as the certified bargaining agent of that bargaining unit. If the petition is not filed within 1 month of the date of renewal registration, the employee organization’s certification as the exclusive representative of the unit is revoked.³⁹

For the 2021-22 renewal period, only one bargaining unit reported less than 50 percent due-paying membership. That employee organization petitioned for recertification and was approved by over 92 percent of the employees voting in the recertification election.⁴⁰

The table below represents the key data reported for the 2021-22 fiscal year for the employee organizations representing instructional personnel bargaining units.⁴¹

| Union Name | Number of Employees in the Bargaining Unit | Percentage Dues Paying |
|---|--|------------------------|
| Alachua County Education Association | 1868 | 70.45% |
| Association of Bay County Educators | 1474 | 54.14% |
| Association of Calhoun Educators | 145 | 51.72% |
| Baker County Education Association | 330 | 64.24% |
| Bradford Education Association | 242 | 55.79% |
| Brevard Federation of Teachers | 4671 | 65.40% |
| Broward Teachers Union, Local 1975 (Rep. Broward County S.B) | 13,964 | 64.25% |
| Broward Teachers Union, Local 1975 (Rep. Pembroke Pines Charter School) | 352 | 55.40% |
| Charlotte FEA | 1028 | 73.25% |
| Citrus County Education Association | 1158 | 50.86% |
| Clay County Education Association | 2816 | 59.77% |
| Collier County Education Association | 3204 | 69.94% |
| Columbia Teachers Association | 645 | 52.09% |
| DeSoto County Education Association | 302 | 52.65% |
| Dixie County Education Association | 132 | 50.00% |
| Duval Teachers United | 7393 | 71.41% |

³⁸ Section 1012.2325(4)(c)1., F.S.

³⁹ Section 1012.2315(4)(c)2., F.S.

⁴⁰ *Santa Rosa Professional Educators v. School Board of Santa Rosa County, Florida*, EL2022-018 (Sept. 15, 2022), http://perc.myflorida.com/download.aspx?Prefix=EL&CaseYr=22&CaseNo=018&File=EL22018_Fil32_09152022_135328.pdf.

⁴¹ Email from Jennifer Okwabi, Impasse Resolution Coordinator, Public Employees Relations Commission, to Gabriela Limones-Borja, Legislative Research Assistant, The Florida Senate (Jan. 30, 2023) (on file with Governmental Oversight and Accountability).

| Union Name | Number of Employees in the Bargaining Unit | Percentage Dues Paying |
|---|---|-------------------------------|
| Education Association of St. Lucie | 2770 | 62.17% |
| Escambia Education Association | 2813 | 51.44% |
| Flagler County Education Association | 802 | 61.60% |
| Florida School for the Deaf & Blind Education Association | 160 | 74.38% |
| Franklin County Teachers Association | 69 | 63.77% |
| Gadsden County Classroom Teachers Association | 293 | 52.90% |
| Gilchrist Employees United | 167 | 56.89% |
| Glades County Teachers Association | 107 | 56.07% |
| Gulf County Education Association | 151 | 58.28% |
| Hamilton County Education Association | 120 | 58.33% |
| Hardee Education Association/United | 347 | 51.59% |
| Hendry County Education Association | 502 | 58.37% |
| Hernando County Teachers Association | 1598 | 61.89% |
| Highlands County Education Association | 800 | 50.50% |
| Hillsborough Classroom Teachers Association | 14,160 | 63.10% |
| Holmes County Teachers Association | 243 | 57.20% |
| Indian River CEA | 1100 | 69.27% |
| Jackson County Education Association | 487 | 57.70% |
| Lafayette Education Association | 80 | 56.25% |
| Lake County Education Association | 3134 | 50.70% |
| Leon Classroom Teachers Association | 2023 | 51.71% |
| Levy County Education Association, AFT Local 4077 | 347 | 50.72% |
| Liberty Education Association | 101 | 51.49% |
| Madison County Education Association | 154 | 61.04% |
| Manatee Education Association | 2924 | 53.04% |
| Marion Education Association | 2881 | 53.21% |
| Martin County Education Association | 1224 | 58.74% |
| Nassau Teachers Association | 802 | 55.24% |
| Okaloosa County Education Association | 1939 | 77.26% |
| Okeechobee County Education Association | 447 | 56.38% |
| Orange County Classroom Teachers Association | 14,322 | 54.00% |
| Osceola County Classroom Teachers Association | 3984 | 54.94% |
| Palm Beach County Classroom Teachers Association | 12,655 | 56.40% |
| Pinellas County Teachers Association | 7,250 | 53.56% |
| Polk Education Association | 6,978 | 50.34% |
| Putnam Federation of Teachers/United | 601 | 61.06% |
| Santa Rosa Professional Educators | 2104 | 36.07% |
| Sarasota Classified/Teachers Association, Incorporated | 2857 | 85.68% |
| Seminole Education Association | 4569 | 50.19% |

| Union Name | Number of Employees in the Bargaining Unit | Percentage Dues Paying |
|---|--|------------------------|
| St. Johns Education Association | 3198 | 53.75% |
| Sumter County Education Association | 403 | 62.28% |
| Taylor Education Association | 193 | 53.37% |
| Teachers Association of Lee County (TALC) | 5265 | 66.57% |
| Union County Teachers Organization | 173 | 68.21% |
| United School Employees of Pasco | 5079 | 51.07% |
| United Teachers of Dade, Local 1974, FEA, AFT, NEA, AFL-CIO | 27604 | 50.84% |
| United Teachers of Monroe, Local 3709, FEA, AFT, AFL-CIO | 611 | 78.89% |
| United Teachers of Suwannee | 385 | 57.66% |
| Volusia United Educators, Inc. Local 1605, FEA, AFT, NEA, AFL-CIO | 4323 | 66.13% |
| Wakulla Classroom Teachers Association | 337 | 51.34% |
| Walton County Education Association | 767 | 52.67% |
| Washington County Education Association | 274 | 50.73% |
| United Faculty of Florida - FAMU DRS | 51 | 88.24% |
| United Faculty of Florida - FSU DRS | 99 | 80.81% |

Code of Ethics for Public Officers and Employees

Section 112.313, F.S., sets forth the standards of conduct for public officers, agency employees, and local government attorneys.

Section 112.313(2), F.S., provides that:

“No public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.”

Section 112.313(4), F.S, provides that:

“No public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.”

The term “public officer” means any person elected or appointed to hold office in an agency.⁴²

⁴² Section 112.313(1), F.S.

If a filed complaint alleges that a public officer has violated subsections (2) or (4) of section 112.313, F.S., the Commission on Ethics (Commission) has jurisdiction to investigate the complaint.⁴³ If the Commission finds that a violation has occurred, the Commission may recommend appropriate action to the agency or official having power to impose any penalty provided in s. 112.317.⁴⁴ Penalties for public officers include impeachment, removal from office, suspension from office, public censure and reprimand, forfeiture of a portion of salary for a time period, a civil penalty not to exceed \$10,000, and restitution of any pecuniary benefits received because of the violation committed.⁴⁵

Section 838.015, F.S., provides that any person who commits bribery commits a felony of the second degree. “Bribery” means to knowingly and intentionally give, offer, or promise to any public servant, or, if a public servant, to knowingly and intentionally request, solicit, accept, or agree to accept for himself or herself or another, any pecuniary or other benefit not authorized by law with an intent or purpose to influence the performance of any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of a public servant, in violation of a public duty, or in performance of a public duty.⁴⁶

III. Effect of Proposed Changes:

Section 1 amends s. 447.301, F.S., to require employees eligible for union representation to sign a membership authorization form in order to be a member of an employee organization beginning July 1, 2023. The form must be prescribed by the PERC and contain certain information and statements. A member of an employee organization must be allowed to revoke membership at any time upon the employee’s organization’s receipt of the written revocation. The PERC is granted rulemaking authority to implement the requirements of the membership authorization form and the revocation of membership.

The requirement for a signed membership form, and the provisions relating to the revocation of membership do not apply to members of an employee organization certified as a bargaining agent to represent law enforcement officers, correctional officers, correctional probation officers, and firefighters.

This section is effective upon becoming a law.

Section 2 amends s. 447.303, F.S., to prohibit an employee organization from having a public employer deduct dues and assessments from a public employee’s salary. However, an employee organization certified as a bargaining agent to represent law enforcement officers, correctional officers, correctional probation officers, and firefighters continues to have the right to have its dues and assessments deducted and collected by the public employer from the salaries of those employees who authorize the deduction and collection of the dues and assessments. This section is effective July 1, 2023.

⁴³ Section 112.322, F.S.

⁴⁴ Section 112.322(2)(a), F.S.

⁴⁵ Section 112.317(1)(a), F.S.

⁴⁶ Section 838.015(1), F.S.

Section 3 amends s. 447.305, F.S., to expand the information that must be submitted to PERC by an employee organization at the time of registration and renewal of registration. The current annual financial statement of the employee organization must be “audited” by an independent certified public accountant. The information must include a pledge by the employee organization that the annual salary of an organization official will not exceed the salary of the highest salary of any employee member in the organization. The pledge requirement does not apply to employee organizations that have been certified as the bargaining agent to represent law enforcement officers, correctional officers, correctional probation officers, or firefighters.

Section 3 also requires an employee organization, at the time of its renewal of registration, to submit information regarding its membership and whether employees eligible for representation pay dues to the employee organization. If this information shows that less than 60 percent of the employees eligible for representation paid dues to the employee organization certified as the bargaining agent during its last registration period, the employee organization must petition PERC for recertification as the bargaining agent. This means the employee organization and the employer will share the cost of conducting an election. If the majority of the employees voting in this election choose to be represented by the employee organization, the employee organization retains its certification as the exclusive bargaining agent.

Section 3 allows the public employer or a bargaining unit employee to challenge an employee organization’s renewal of registration based on a belief that the application is inaccurate. If PERC finds the application is inaccurate or does not comply with the requirements of s. 447.305, F.S., the employee organization’s registration and certification must be revoked.

Section 3 grants PERC authority to initiate an investigation to confirm the validity of the information submitted in the registration or renewal of registration. The PERC may revoke or deny an employee organizations registration or certification if PERC finds that the employee organization failed to cooperate with the investigation intentionally misrepresented the information submitted on the registration or renewal.

Section 3 requires each certified bargaining agent to provide its members an annual audited financial report and must notify its members of all costs of membership.

The following provisions of this section do not apply to employee organizations that have been certified as the bargaining agent to represent law enforcement officers, correctional officers, correctional probation officers, or firefighters:

- Requirement to submit information regarding membership and dues payments;
- Requirement that an employee organization must petition for recertification as the bargaining agent if fewer than 60 percent of its eligible members pay dues;
- Right of public employer or bargaining unit employee to challenge the accuracy of the renewal application; and
- Authority of PERC to revoke or deny a registration or certification based on the employee organization’s failure to cooperate in an investigation.

Section 4 amends s. 447.509, F.S., to expand the list of unlawful acts committed by an employee organization, its members, and agents to include:

- The distribution of literature at any time (not just during work hours) in areas where actual work of public employees, other than law enforcement officers, correctional officers, correctional probation officers, and firefighters, is performed.
- Offering anything of value to a public officer which the public officer is prohibited from accepting.
- Offering any compensation, payment, or thing of value to a public officer which the public officer is prohibited from accepting.

A public officer is defined to include “any person elected or appointed to hold office in any agency.”

The current prohibition on the distribution of literature during work hours in areas where actual work is performed by law enforcement officers, correctional officers, correctional probation officers, and firefighters is performed continues.

This section is effective upon becoming a law.

Section 5 amends s. 1012.2315, F.S., to repeal the current additional requirement on renewal of registration that applies only to employee organizations representing units of instructional personnel employees. This provision will no longer be necessary with the enactment of the process in s. 447.305 (section 3 of this bill) which applies to all employee organizations that do not represent law enforcement officers, correctional officers, correctional probation officers, or firefighters. This section takes effect October 1, 2023, to coincide with the effective date of the section 3.

Section 6 reenacts s. 110.114, F.S., to incorporate by reference the modifications made to s. 447.303, F.S.

Section 7 reenacts s. 447.507(6)(a), F.S., to incorporate by reference the modifications made to s. 447.303, F.S.

Section 8 provides that the act shall take effect upon becoming a law, except as otherwise expressly provided in this act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides, in pertinent part, that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless:”

- The law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; or
- The expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments.

The State Constitution exempts a law from these requirements if the law has an insignificant fiscal impact on cities and counties.

Cities and counties will be required to incur additional workload to comply with the changes in the payroll deduction process. However, the workload should be absorbed within current resources and any additional expenditures should be insignificant. Cities and counties may also incur some costs associated with recertification elections. However, it is unclear how many elections will be required (and requested by the employee organizations), but any additional expenditures associated with these elections is expected to be minimal.

Based on these expected insignificant costs, it appears the bill is exempt from the mandates requirements.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article I, section 6 of the State Constitution states:

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 organizations, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

The Florida Supreme Court has recognized this constitutional provision endows public employees with the same constitutional rights to bargain collectively as private employees possess, excluding the right to strike.⁴⁷ Moreover, as part of the State Constitution's declaration of rights, the right to collectively bargain is considered to be a fundamental right. As such, the right may be abridged only upon the showing of a compelling state interest.⁴⁸

⁴⁷ Dade County Classroom Teachers Ass'n. v. Ryan, 225 So.2d 903 (Fla.1969).

⁴⁸ Hillsborough County Governmental Employees Ass'n. v. Hillsborough County Aviation Authority, 552 So.2d 358 (1988).

The United States Supreme Court has stated the right of employees “to self-organize and bargain collectively . . . necessarily encompasses the right effectively to communicate with one another regarding self-organization at the jobsite.”⁴⁹

Federal and Florida courts have recognized that no restriction may lawfully be placed on the right of one employee to discuss organizational interest with another on site, on the nonworking time of both, unless by reason of some extraordinary circumstances the restriction is necessary for order and discipline in pursuit of the employer’s institutional purposes.⁵⁰ However, distinctions can be made between oral communication (solicitation) and written communication (literature) in maintaining a balance between the competing interests of employer discipline and employee organization.

Consistent with these principles, the current s. 447.509, F.S., prohibits the solicitation of public employees during the work hours of any employee involved in the solicitation and the distribution of literature during working hours in areas where actual work of public employees is performed.

The bill modifies the prohibition on the distribution of literature at any time in areas where actual work of public employees, other than law enforcement officers, correctional officers, correctional probation officers, and firefighters, is performed.

This new restriction most likely will be subjected to a strict scrutiny standard, and the public employer will be required to show a compelling state interest.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Employee organizations may experience additional workload and costs associated with the reporting requirements and maintaining the 60 percent dues-paying threshold. On the other hand, to the extent active membership increases for an employee organization the amount of revenue generated should increase proportionately.

An employee organization that does not have 60 percent dues-paying membership will incur additional costs to the extent the employee organization chooses to be recertified as the bargaining agent for the employee unit.

Employee organizations will incur additional expenses associated with the new requirement that an independent certified public accountant audit certain data submitted to the PERC.

⁴⁹ Beth Israel Hospital v. NLRB, 437 U.S. 483,491, 98 S. Ct. 2463, 2469, 57 L.ED.2d 370, 380 (1978).

⁵⁰ Okaloosa-Walton Jr. College Bd. Of Trustees v PERC, 373 So.2d 1378 (1979).

C. Government Sector Impact:

The DFS, as the common paymaster for employees of the State of Florida, and the counties, cities, school districts, and special districts with unionized employees will experience an initial short-term increase in workload associated with eliminating any payroll deductions that will no longer be authorized by law. In the long run, the DFS and the other public employers will have reduced workload as the number of payroll deductions permitted will be reduced. State agencies will experience similar workload impacts as the personnel units of each state agency adjusts its records for its employees.

The fiscal impact on the PERC is indeterminate.

The fiscal impact on public sector employers is indeterminate. To the extent employee organizations must conduct an election to be certified as the bargaining agent for public employees, the public employer (the State of Florida, counties, cities, school boards, and special districts) will incur some costs in holding the election for its employees to decide whether an employee organization will represent the employees in collective bargaining.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 447.301, 447.303, 447.305, 447.509, and 1012.2315 of the Florida Statutes.

This bill reenacts portions of sections 110.114 and 447.507 of the Florida Statutes.

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

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

None.

B. Amendments:

None.