

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 1746
INTRODUCER: Senator Ingoglia
SUBJECT: Public Employees
DATE: January 19, 2024 REVISED: _____

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

I. Summary:

SB 1746 modifies the requirements for employee organizations and bargaining units to maintain registration and certification requirements. Specifically, the bill:

- Clarifies the Public Employee Relations Commission’s (PERC) authority to waive requirements regarding the prohibition on dues and assessment deductions applies only to mass transit employees who have signed membership authorization forms and submitted the forms to the public employer as part of the employees’ authorizations for the public employer to deduct amounts from the employees’ salaries.
- Requires a public employee to submit the signed membership authorization form to the bargaining agent if the employee wants to join the bargaining unit. Under current law, these forms must be maintained by the employee organization and are subject to inspect by the PERC.
- Exempts from the membership authorization form requirements those bargaining units (not the employee organization generally) the majority of whose employees eligible for representation are employed as law enforcement officers, correctional officers, correctional probation officers, firefighters, 911 public safety telecommunicators, emergency medical technicians or paramedics.
- Clarifies that an employee organization has the right to have its dues and assessments deducted from employees’ salaries only if the affected bargaining unit the majority of whose employees eligible for representation are employed in particular occupations. The occupations that are eligible to have union dues and assessments deducted from public salaries are expanded to include 911 public safety telecommunicators, emergency medical technicians and paramedics.
- Modifies the information an employee organization must submit to the PERC during the renewal of registration process to include the frequency of collection of membership dues and data on expenditures. The annual financial statement will no longer be required to be “audited” by a certified public accountant. Instead, the statement must be “prepared” by a certified public accountant.

- Requires an employee organization that has not had 60 percent of its unit employees pay dues during its last registration period and submit membership authorization forms to petition the PERC for recertification as the bargaining agent within 30 days (rather than 1 month) after the date the employee organization applied for renewal of registration. If the employee organization fails to petition timely, the certification as the bargaining agent is revoked.
- Modifies the circumstances under which the PERC may revoke an employee organization's registration or certification as a bargaining agent to include:
 - The employee organization's refusal to permit the PERC to inspect membership authorization forms or revocations.
 - The employee organization intentionally misrepresenting any information submitted for its registration renewal rather than just the information submitted to determine whether a bargaining unit has 60 percent of its eligible employees paying dues to the employee organization.
- Modifies the exemption regarding the submission of membership information and the associated consequences if a bargaining unit does not meet the 60 percent threshold. The exemption applicable to a bargaining unit the majority of whose employees eligible for representation are employed as law enforcement officers, correctional officers, correctional probation officers, firefighters, 911 public safety telecommunicators, emergency medical technicians or paramedics. This clarifies that the exemption is applicable to the bargaining unit rather than the employee organization as a whole. Moreover, the occupations exempted are expanded to include 911 public safety telecommunicators, emergency medical technicians, and paramedics.
- Modifies the requirements placed on each employee organization to make certain information available to its members. The annual financial report will no longer be required to be "audited" by a certified public accountant. Instead, the report must be "prepared" by a certified public accountant. In addition, the PERC is granted authority to prescribe the categories of revenues and expenditures to be included in the annual financial report.

The fiscal impact on the PERC is indeterminate. The bill is not expected to otherwise impact state or local government revenues and expenditures.

The bill takes effect July 1, 2024.

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.

¹ FLA. CONST. art. 1, s. 6.

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 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:

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.

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.

- 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 audited 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 one 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;
- 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

In addition to the information above, certain employee organizations¹⁴ must submit the following information for any renewal of registration on or after October 1, 2023:

- The number of employees in the bargaining unit who are eligible for representation by the employee organization.

¹¹ Section 447.305(1)(a-h), F.S.

¹² Section 447.305(2), F.S.

¹³ Section 447.305(10), F.S.

¹⁴ Employee organizations that have been certified as the bargaining agent to represent law enforcement officers, correctional officers, correctional probation officers, or firefighters are exempt from providing this information. Section 447.305(9), F.S.

- The number of employees in the bargaining unit who have submitted signed membership authorization forms without a subsequent revocation of such membership.
- The number of employees in the bargaining unit who paid dues to the employee organization.
- The number of employees in the bargaining unit who did not pay dues to the employee organization.
- Documentation provided by an independent certified public accountant retained by the employee organization which verifies the information provided.¹⁵

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.¹⁶ 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.¹⁷ 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.¹⁸

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.¹⁹ Any collective bargaining agreement reached between the parties must be put in writing and signed by the chief executive officer and the bargaining

¹⁵ Section 447.305(3), F.S.

¹⁶ Section 447.307(1)(a), F.S.

¹⁷ Section 447.307(4)(f), F.S.

¹⁸ Section 447.307(3)(a-d), F.S.

¹⁹ Section 447.309(1), F.S.

agent.²⁰ Such agreement is not binding on the employer until the agreement has been ratified by the employer and the employees in the bargaining unit.²¹ Current law prohibits a collective bargaining agreement from providing for a term of existence of more than three years and requires the agreement to contain all of the terms and conditions of employment of the employees during such term.²² The bargaining agent also has the authority to process grievances to settle disputes between the employer and the employees in the bargaining unit.²³

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.²⁴

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,²⁵ 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.²⁶

Likewise, cities, counties and special districts are permitted in their sole discretion to make wage deductions as authorized and directed by the employee.²⁷

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.²⁸

If a majority of voting employees vote against the continuation of representation by the certified bargaining agent, the organization's certification is revoked.²⁹ Otherwise, the employee organization is retained as the exclusive bargaining agent for the unit.³⁰

An employee organization that has applied for a renewal of its registration must petition for recertification as a bargaining unit if it has less than 60 percent of its unit members paying dues during the prior registration period. If the employee organization fails to petition the PERC for

²⁰ *Id.*

²¹ *Id.*

²² Section 447.309(5), F.S.

²³ Section 447.401, F.S.

²⁴ Section 447.303, F.S.

²⁵ Section 110.114(1), F.S.

²⁶ Section 110.114(3), F.S.

²⁷ Section 112.171, F.S.

²⁸ Section 447.308(1), F.S.

²⁹ Section 447.308(2), F.S.

³⁰ Section 447.308(3), F.S.

recertification as the exclusive representative of the bargaining unit within one month of its application of renewal of registration, the certification is revoked.³¹

The PERC may 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 the PERC finds that the employee organization failed to cooperate with the investigation intentionally misrepresented the information submitted on the registration or renewal.³²

Federal Transit Act

As a precondition to a grant of federal assistance by the United States Department of Transportation's Federal Transit Administration (FTA), the Federal Transit Act requires fair and equitable protective arrangements be made to protect the labor rights of transit employees affected by such assistance. Specifically, the statute requires the following matters be included in such protective arrangements:

- The preservation of rights, privileges, and benefits under existing collective bargaining agreements;
- The continuation of collective bargaining rights;
- The protection of employees against a worsening of their positions with respect to their employment;
- Assurances of employment to employees of acquired mass transportation systems and priority of reemployment for employees terminated or laid off; and
- Paid training or retraining programs.

The U.S. Department of Labor must certify that protective arrangements are in place and meet the above requirements before the FTA can release grant funds. Accordingly, states and local governments that violate the provisions of this law risk losing access to federal funding for public transportation projects. In 2022, Florida received approximately \$529 million to improve public transportation options throughout the state.

The PERC has discretion to waive certain requirements upon a petition by a public employer that the employer's protective arrangement covering mass transit employees does not meet federal requirements and would jeopardize the public employer's continued eligibility to receive federal funding. The statutory requirements that the PERC may waive include any of the following for an employee organization that has been certified as a bargaining agent to represent mass transit employees:

- The prohibition on dues and assessment deductions.
- The requirement to petition the commission for recertification if the bargaining unit has fewer than 60 percent of its unit members paying dues during the prior registration period.
- The revocation of certification in certain circumstances.³³

³¹ Section 447.305(6), F.S.

³² Section 447.305(8), F.S.

³³ Section 447.207(12), F.S.

Membership in an Employee Organization

Employees eligible for union representation must 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.³⁴

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.³⁵

III. Effect of Proposed Changes:

Section 1 amends s. 447.207, F.S., to clarify that the PERC's authority to waive requirements regarding the prohibition on dues and assessment deductions applies only to mass transit employees who have signed membership authorization forms and submitted the forms to the public employer as part of the employees' authorizations for the public employer to deduct amounts from the employees' salaries.

Section 2 amends s. 447.301, F.S., to require a public employee submit the signed membership authorization form to the bargaining agent. This requirement assists the employee organization in its collection and maintenance of the membership authorization forms which are required to be retained by the employee organization for inspection by the PERC.

Section 2 also exempts those bargaining units (not the employee organization generally) the majority of whose employees eligible for representation are employed as law enforcement officers, correctional officers, correctional probation officers, firefighters, 911 public safety telecommunicators, emergency medical technicians or paramedics. This exemption means that members of these bargaining units will not be required to sign and submit membership authorization forms to the bargaining unit. Thus, the employee organization will not be required to collect and retain membership forms for members of these bargaining units.

Section 3 amends s. 447.303, F.S., to clarify that an employee organization has the right to have its dues and assessments deducted from employees' salaries only if the affected bargaining unit the majority of whose employees eligible for representation are employed in particular occupations. The occupations eligible to have union dues and assessments deducted from public salaries are expanded to include 911 public safety telecommunicators, emergency medical technicians and paramedics.

Section 4 amends s. 447.305, F.S., to modify the information an employee organization must submit to the PERC during the renewal of registration process. In addition to the current

³⁴ Section 447.301(1), F.S.

³⁵ Section 447.301(1)(b)6., F.S.

information regarding the amount of initiation fees and membership dues, the collection frequency of the membership dues and uniforms must be included. In addition to assets, liabilities and revenues identified on the annual financial statement of the employee organization, the disbursements made during the year must be identified. The annual financial statement will no longer be required to be “audited” by a certified public accountant. Instead, the statement must be “prepared” by a certified public accountant.

Section 4 requires an employee organization that has not had 60 percent of its unit employees pay dues during its last registration period and submit membership authorization forms to petition the PERC for recertification as the bargaining agent within 30 days (rather than one month) after the date the employee organization applied for renewal of registration. If the employee organization fails to petition timely, the certification as the bargaining agent is revoked.

Section 4 modifies the circumstances under which the PERC may revoke an employee organization’ registration or certification as a bargaining agent to include:

- The employee organization’s refusal to permit the PERC to inspect membership authorization forms or revocations.
- The employee organization intentionally misrepresenting any information submitted for its registration renewal rather than just the information submitted to determine whether a bargaining unit has 60 percent of its eligible employees paying dues to the employee organization.

Section 4 also modifies the exemption regarding the submission of membership information and the associated consequences if a bargaining unit does not meet the 60 percent threshold. The exemption applicable to a bargaining unit the majority of whose employees eligible for representation are employed as law enforcement officers, correctional officers, correctional probation officers, firefighters, 911 public safety telecommunicators, emergency medical technicians or paramedics. This clarifies that the exemption is applicable to the bargaining unit rather than the employee organization as a whole. Moreover, the occupations exempted are expanded to include 911 public safety telecommunicators, emergency medical technicians, and paramedics.

Section 4 modifies the requirements placed on each employee organization to make certain information available to its members. The annual financial report will no longer be required to be “audited” by a certified public accountant. Instead, the report must be “prepared” by a certified public accountant. In addition, the PERC is granted authority to prescribe the categories of revenues and expenditures to be included in the annual financial report.

Section 5 provides that the bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to

raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

An employee organization whose membership fails to submit membership authorization forms to the employee organization will incur additional costs to the extent the employee organization chooses to be recertified as the bargaining agent for the employee unit.

Employee organizations may enjoy reduced costs associated with the new requirement that an independent certified public accountant prepare (rather than audit) certain data submitted to the PERC.

C. Government Sector Impact:

The fiscal impact on the PERC is indeterminate. The bill is not expected to impact other state and local government revenues and expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the sections 447.207, 447.301, 447.303, 447.305 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
