

**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.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: SB 1328

INTRODUCER: Senator Fine

SUBJECT: Public Employee Collective Bargaining

DATE: March 17, 2025

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McVaney	GO	<b>Pre-meeting</b>
2.			JU	
3.			RC	

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**I. Summary:**

SB 1328 amends several provisions relating to ch. 447, F.S., which governs public employee unions in the state. Specifically, the bill:

- Unifies many of the certification, recertification, and decertification processes and timeframes.
- Institutes a two-tier voting threshold for the certification and recertification of an employee organization where public safety employee organizations may be certified or recertified by a majority of the employees who voted in the election, and non-public safety employee organizations may be certified or recertified by a majority vote of the employees in the bargaining unit.
- Re-formats the decertification election of a bargaining agent by requiring non-public safety employee organizations to vote to retain the agent by a majority vote of its bargaining unit against decertification (therefore allowing a decertification by a minority's vote to decertify). Public safety employee bargaining agents are decertified upon a majority vote of those who participate in the election to revoke.
- Narrows paid union leave for non-public safety union members to only those situations where the union fully reimburses the public employer for the employee's time performing duties that are directly-related to the union, such as engaging in collective bargaining, participating in grievances, or representing other employees in disciplinary proceedings. Members of unions in public safety fields may still engage in paid union leave for these activities.
- Requires a public employer to allow equal access to any employee organization or not-for-profit organization to access their communal spaces, communications systems, or other resources as it provides for another employee organization or its affiliate.

The bill is not expected to affect state and local government revenues and expenditures.

The bill takes effect on July 1, 2025.

## 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.”<sup>1</sup> 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.”<sup>2</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>3</sup> 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.<sup>4</sup> 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 employees<sup>5</sup> 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 (PERC) is responsible for assisting in resolving disputes between public employees and public employers.<sup>8</sup>

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<sup>1</sup> FLA. CONST. art. 1, s. 6.

<sup>2</sup> *Id.*

<sup>3</sup> Section 447.201, F.S.

<sup>4</sup> Section 447.301(1) and (2), F.S.

<sup>5</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 state university.

<sup>6</sup> 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.

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

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

### ***Registration of Employee Organization***

An employee organization<sup>9</sup> 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.<sup>10</sup> 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 the amount and collection frequency of the monthly dues and uniform assessments that members must pay;
- The current annual financial statement of the organization as prepared by an independent certified public accountant who is licensed under ch. 473, F.S.;
- 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.<sup>11</sup>

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 statement with the following information:<sup>12</sup>

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

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<sup>9</sup> 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."

<sup>10</sup> Section 447.305(1), F.S.

<sup>11</sup> Section 447.305(1)(a-h), F.S.

<sup>12</sup> Section 447.305(2), F.S.

- Direct and indirect loans to any business enterprise.

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

In addition to the information above, certain employee organizations<sup>14</sup> must submit the following information for any renewal of registration:

- The number of employees in the bargaining unit who are eligible for representation by the employee organization.
- 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.<sup>15</sup>

### ***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.<sup>16</sup> 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.<sup>17</sup> 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. Both the employee organization's petition and the interested employees' dated signed statements are confidential and exempt from disclosure pursuant to public records laws.<sup>18</sup> The PERC will investigate the petition to determine its sufficiency, and

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<sup>13</sup> Section 447.305(10), F.S.

<sup>14</sup> 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.

<sup>15</sup> Section 447.305(3), F.S.

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

<sup>17</sup> Section 447.307(4)(f), F.S.

<sup>18</sup> Section 447.307(2), F.S.

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.<sup>19</sup>

### ***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.<sup>20</sup> Any collective bargaining agreement reached between the parties must be put in writing and signed by the chief executive officer and the bargaining agent.<sup>21</sup> Such agreement is not binding on the employer until the agreement has been ratified by the employer and the employees in the bargaining unit.<sup>22</sup> 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.<sup>23</sup> The bargaining agent also has the authority to process grievances to settle disputes between the employer and the employees in the bargaining unit.<sup>24</sup>

### **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.<sup>25</sup>

If a majority of voting employees vote against the continuation of representation by the certified bargaining agent, the organization's certification is revoked.<sup>26</sup> Otherwise, the employee organization is retained as the exclusive bargaining agent for the unit.<sup>27</sup>

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 recertification as the exclusive representative of the bargaining unit within one month of its application of renewal of registration, the certification is revoked.<sup>28</sup>

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<sup>19</sup> Section 447.307(3)(a-d), F.S.

<sup>20</sup> Section 447.309(1), F.S.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Section 447.309(5), F.S.

<sup>24</sup> Section 447.401, F.S.

<sup>25</sup> Section 447.308(1), F.S.

<sup>26</sup> Section 447.308(2), F.S.

<sup>27</sup> Section 447.308(3), F.S.

<sup>28</sup> Section 447.305(6), F.S.

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.<sup>29</sup>

### **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 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.<sup>30</sup> The PERC has prescribed a membership authorization form<sup>31</sup> which requires certain information regarding the employee organization and other information specific to the employee. The employee organization or another person may assist the employee in completing the form. The employee must sign and date the form.

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.<sup>32</sup>

### **“Union Release Time” or “Paid Union Leave”**

Release time is a negotiated benefit wherein a public employer releases an employee from duty work during work hours to tend to union activities or business while being compensated by the public employer. The provision of release time is a contractual benefit, not statutory, that may be found in the collective bargaining agreement, school board policy, personnel manual, or other procedures and practices.<sup>33</sup>

Florida law provides that “a public employer or their agent or representative is prohibited from [...] contributing financial support to a union.”<sup>34</sup> Therefore, release time cannot constitute a payment or benefit to the union in the form of salary paid to the employee for union work. Employer-funded release time does not violate the law if the paid release time is used for official

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<sup>29</sup> Section 447.305(8), F.S.

<sup>30</sup> Section 447.301(1), F.S.

<sup>31</sup> PERC, *Employee Organization Membership Authorization Form*, <https://perc.myflorida.com/forms/PERC%20FORM%202023-1.101%20WITH%20INSTRUCTIONS.pdf> (last visited Mar. 14, 2025).

<sup>32</sup> Section 447.301(1)(b)6., F.S.

<sup>33</sup> School Board of Volusia County, Michael Dyer, *Avoiding Paid Union Leave Pitfalls After PERC's Decision in Allen v. United Faculty of Miami-Dade College*: A presentation to the Florida Education Negotiators, Volusia County Schools (Jan. 27, 2017), <https://www.flfen.org/wp-content/uploads/2017/02/Paid-union-leave-presentation-to-FEN-2017.pdf.pdf> (last visited Mar. 14, 2025).

<sup>34</sup> Section 457.501(1)(e), F.S.

union business,<sup>35</sup> such as the direct representation of employees in grievances, discipline meetings, or contract negotiations.<sup>36</sup> PERC has found other activities, such as attendance at a union-sponsored picnic, lobbying for political issues, coordinating with other unions, or the continued payment of a salary for unspecified union activities, to be an improper use of release time that constitutes an unfair labor violation prohibited by Florida law.<sup>37</sup>

Currently, collective bargaining agreements for public employee unions representing state employees provide for release time in the following manners:

- The Fraternal Order of Police provides administrative leave to union employees for the purposes of attending a consultation meeting with the Secretary of the Department of Management Services (DMS). Union representative employees may also use work hours to attend union negotiations with the State, and may use up to 8 hours of administrative leave to attend a negotiation preparatory meeting held during normal work hours.<sup>38</sup>
- The Florida State Fire Service Association “excuses [union representatives] without loss of pay” time used during a normal workday for the purposes of consultation with the Secretary of the DMS about non-grievance matters. The agreement further provides administrative leave with pay for up to 6 employees in the bargaining unit to attend each single-day session as Negotiation Committee members. For negotiation preparation, the FSFSA President is permitted up to 16 hours of leave with pay per fiscal year; the remaining five members of the negotiation committee are allowed to take up to eight hours of leave with pay, not to exceed 40 hours per fiscal year.<sup>39</sup>
- The Florida Police Benevolent Association (FPBA) provides to union members in its Highway Patrol unit up to eight hours of administrative leave for time spent in consultation with the Secretary of the DMS regarding non-grievance union matters, and, for up to four employees, administrative leave to attend negotiating sessions and negotiation preparatory meetings.<sup>40</sup>
- The FPBA provides to union members in its Law Enforcement unit deems time spent during normal work hours in consultation with the Secretary of the DMS regarding non-grievance union matters work hours. It additionally grants administrative leave for up to eight

<sup>35</sup> *In re City of Jacksonville*, 13 FPER 1118250 (1987).

<sup>36</sup> *United Faculty of Florida v. Florida A&M University Board of Trustees*, 32 FPER 34 (2006).

<sup>37</sup> *Del Pino Allen v. Miami-Dade College*, CA-2015-070 (May 27, 2016), <https://perc.myflorida.com/download.aspx?Prefix=CA&CaseYr=15&CaseNo=070&File=CA15070-Ord17-052716103809.pdf> (Last visited Mar. 12, 2025).

<sup>38</sup> The Florida State Lodge Fraternal Order of Police, Inc., *Special Agent Bargaining 2023-2026 Agreement, Article 5: Employee Representation and Union Activities*, 5-7, <https://dms-media.ccplatform.net/content/download/168301/file/SAU%20-Florida%20State%20Fraternal%20Order%20of%20Police%20FY%202024-2025%20Reopener%20Agreement.pdf> (last visited Mar. 17, 2025).

<sup>39</sup> Florida State Fire Service Association, *Fire Service Bargaining Unit 2024-2025 Imposed Agreement, Article 5: Representation Rights*, 5-7, <https://dms-media.ccplatform.net/content/download/171348/file/FSFSA-Fire%20Service%20Unit%20-%20FY%202024-2025%20Imposed%20Agreement%20%28corr%2012-16-24%29.pdf> (last visited Mar. 17, 2025).

<sup>40</sup> Florida Police Benevolent Association, *Florida Highway Patrol Bargaining Unit 2023-2026 Successor Agreement, Article 5: Employee Representation and PBA Activities*, 5-7, <https://dms-media.ccplatform.net/content/download/162095/file/PBA-Florida%20Highway%20Patrol%202023-2026%20Successor%20Agreement%20%2812-20-2023%29.pdf> (last visited Mar. 17, 2025).

employees to attend negotiation sessions with the state and up to a day of administrative leave for those employees who participate in a negotiation preparatory meeting.<sup>41</sup>

- The FBPA’s security services unit may use work hours to consult with the Secretary of DMS regarding non-grievance matters (limited for up to three union representatives), and to meet with the Step-1 Management Representative. The agreement further provides administrative leave to an unspecified number employees who serve on its Negotiation Committee for the purposes of attending negotiating sessions with the state and a negotiation preparatory meeting (if the preparatory meeting occurs during normal work hours). The total number of hours, including the hours spent in negotiation preparatory meetings, paid all employees on the PBA’s Negotiation Committee cannot exceed 1000 hours. The agreement lastly permits any employee in the unit to request leave without pay, annual, or compensatory leave for the purpose of attending PBA conventions, conferences, and meetings.<sup>42</sup>

### III. Effect of Proposed Changes:

#### Certification, Recertification and Decertification of Employee Organizations

**Section 2** removes a public employer’s option to recognize an employee organization as the employee’s appropriate representative for the purposes of collective bargaining, and instead routes all employee organization certifications, recertifications, and decertifications (a new process, discussed more fully below) immediately through the PERC.

This section distinguishes the vote requirement based on the type of employees comprising the union membership. Elections for the certification, recertification, or decertification of an employee organization in which a majority of the employees are law enforcement officers, correctional officers, correctional probation officers, firefighters, 911 public safety telecommunicators, emergency medical technicians or paramedics requires a majority vote of the employees *voting in the election*. All other employee organizations require a majority vote of the *total employees in the bargaining unit*.

The bill also distinguishes certification election runoffs based on the type of employee organization. Those organizations that represent public safety officers may proceed to a runoff election where none of the organizations received a majority vote (no matter how many organizations participate in the first election). All other employee organizations are permitted to proceed to a runoff election where there are *three or more choices on the ballot* and none receive a majority vote.

The bill replaces the term “dated statements” with “showing of interest.” The PERC still determines the sufficiency of the employee organization’s petition and sets the matter for a vote,

<sup>41</sup> Florida Police Benevolent Association, *Law Enforcement Bargaining Unit 2023-2026 Successor Agreement, Article 5: Employee Representation and PBA Activities*, 5-7, [https://dms-media.ccplatform.net/content/download/163249/file/PBA-LA\\_2.PDF](https://dms-media.ccplatform.net/content/download/163249/file/PBA-LA_2.PDF) (last visited Mar. 17, 2025).

<sup>42</sup> Florida Police Benevolent Association, *Security Services Bargaining Unit 2023-2026 Successor Agreement, Article 5: PBA Activities and Employee Representation*, 6-7, <https://dms-media.ccplatform.net/content/download/162088/file/PBA-Security%20Service%20Unit%202023-2026%20Successor%20Agreement%20%2812-20-2023%29.pdf> (last visited Mar. 17, 2025).



as in current law. The PERC still grants, by final order, the certification, recertification, or decertification of the employee organization pursuant to the outcome of the election.

The bill updates the public record exemption provided for in s. 447.307, F.S., to exclude the petition submitted by the employee organization seeking certification as the bargaining agent for a proposed bargaining unit. The exemption would now only provide confidential and exempt status to an employee's showing of interest (vote) submitted with the employee organization's petition for certification, recertification, or decertification.

The bill also creates a process called "decertification" of employee organizations, which replaces the revocation of certification previously provided for in s. 447.308, F.S. Similar to the process for certification, employees of a bargaining unit that wish to decertify their employee organization must file a petition with the PERC and a showing of interest of at least 30 percent of the affected employees in the bargaining unit. The employees cannot file a petition for decertification within 12 months after an employee organization is certified by the PERC's order verifying the results of the certification election.

The bill changes the threshold question for decertification—requiring a majority of the bargaining unit to vote to retain the employee organization to prevent its revocation. Current law requires a majority of the voting employees to vote against the continued representation by the bargaining agent in order for revocation to occur.

For employee organizations in which a majority of the employees are law enforcement officers, correctional officers, correctional probation officers, firefighters, 911 public safety telecommunicators, emergency medical technicians or paramedics, an employee union is decertified if the majority of the employees voting in the election vote in favor of decertification. In all other employee organizations, the vote to decertify is approved where the bargaining agent fails to receive the votes of a majority of the bargaining unit.

**Section 3** repeals s. 447.308, F.S., dealing with the revocation of certification of employee organizations, to conform to the bill's decertification process instead.

### **Paid Union Leave (Also known as "Release Time" or "Official Time")**

**Section 4** amends s. 447.509, F.S., to explicitly bar a public employer from providing any form of compensation or paid leave to a public employee for the purpose of engaging in employee organization activities, unless that employee is a member of a bargaining unit in which the majority of its employees are members of the public safety sector. The employer may agree in collective bargaining to allow a public employee to perform such employee organization activities during the employee's compensated personal leave (which may be his or her own, or donated by employees in the bargaining unit) or during time off without pay or benefits. This will override case law determinations from the PERC which allowed direct organizational representation activities to occur during paid leave time.

**Section 1** defines "employee organization activities" as those activities undertaken at the direction of, on behalf of, or to advance the purposes of an employee organization or any parent organization or affiliate of the employee organization, including, but not limited to, the:

- Supporting or opposing any candidate for public office.
- Influencing the passage or defeat of state or federal legislation or regulation; local ordinance or resolution; or ballot measure.
- Promoting or soliciting membership or participation in, or financial support of, an employee organization of any parent organization or affiliate of the employee organization.
- Seeking certification as a bargaining agent.
- Participating in the administration, business, or internal governance of an employee organization or any parent organization or affiliate of the employee organization.
- Preparing, conducting, or attending employee organization events, conferences, conventions, meetings, or training, unless such training is directly related to the performance of public employees' job duties.
- Distributing communications of an employee organization or any parent organization or affiliate of the employee organization.
- Representing or speaking on behalf of an employee organization or any parent organization or affiliate of the employee organization in any setting, venue, or procedure in which the public employer is not a participant.
- The following subset of employee organization activities are also defined as "representational employee organization activities:"
  - Preparing, filing, or pursuing unfair labor practice charges or grievances.
  - Representing public employees in investigatory interviews, disciplinary proceedings or appeals, up to and including termination, or other administrative or legal proceedings.
  - Engaging in collective bargaining and any related mediation, factfinding, or arbitration.
  - Administering a collective bargaining agreement.
  - Participating in labor-management committees.

The bill further permits a public employee to engage in representational employee organization activities either (1) by taking leave as described above; or (2) by remaining in duty status during the activities with the bargaining agent paying a pro rata value of the employee's compensation, including wages and fringe benefits, to the public employer for the time the employee spent on representational employee organization activities. In the second instance, the bargaining agent must track the employees' time spent on such activities and submit an (at least) biannual report to the public employer, who must then invoice the bargaining agent for payment within 30 days.

These employee activity prohibitions (and exceptions therefrom) do not apply to an employee in a bargaining unit in which the majority of employees are law enforcement officers, correctional officers, correctional probation officers, firefighters, 911 public safety telecommunicators, emergency medical technicians or paramedics.

### **Use of Public Employer Facilities**

**Section 4** requires a public employer to allow any employee organization or entity governed by the Florida Not for Profit Corporation Act to access their communal spaces, communications systems, or other resources if the employer allows another employee organization or its affiliate such access or use. This would appear to allow an employer to prohibit an employee organization that is a for-profit corporation, rather than a not-for-profit, access to its communal spaces and other benefits.

## Miscellaneous

**Section 1** alphabetizes the defined terms provided in s. 447.203, F.S., and defines the terms “employee organization activities” and “representational employee organization activities” as described above. This section also defines a “signature card” as a written statement by a public employee which is submitted to the PERC in support of a petition filed under s. 447.307, F.S. However, s. 447.307 does not use the term “signature card.”

**Sections 6-12** update cross-references in various sections of statute to conform to the re-ordering of definitions in s. 447.203, F.S.

**Section 5** maintains the mass transit employee bargaining union exemption from specific provisions in ch. 447, F.S., and extends the exemption to include the provisions of this bill.

**Section 13** re-enacts s. 120.80, F.S., which excludes s. 120.60, F.S. from the certification of employee organizations process provided for in s. 447.307, F.S.

**Section 14** provides an effective date of July 1, 2025.

## 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 not be required to incur significant additional workload to comply with the changes in the release time process. They may incur some costs associated with recertification and decertification elections.

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

### B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records disclosure requirements or public meeting requirements. This bill narrows

the current public records exemption for the petition and dated statements signed by employees to only showing of interest submitted by the employee, thus, the bill does not require an extraordinary vote for enactment.

C. Trust Funds Restrictions:

None identified.

D. State Tax or Fee Increases:

None identified.

E. Other Constitutional Issues:

**Equal Protection Clause**

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides, “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”<sup>43</sup> Florida’s Equal Protection Clause guarantees that “all natural persons, female and male alike, are equal before the law and have inalienable rights.”<sup>44</sup> Equal protection claims against government actors allege unconstitutionally unequal treatment between groups, which can be based on any form of classification. Unless a statute provokes “strict judicial scrutiny” because it interferes with a “fundamental right” or discriminates against a “suspect class,” it will ordinarily survive an equal protection attack so long as the challenged classification is rationally related to a legitimate governmental purpose.<sup>45</sup> To withstand strict scrutiny, a law must be necessary to promote a compelling governmental interest and must be narrowly tailored to advance that interest.”<sup>46</sup>

This bill appears to create two distinct classes of public employees. These groups experience their right to associate freely and collectively bargain (in virtue of the higher threshold to certify and decertify an employee organization and thus be a member of a union), and to freedom of speech to speak on behalf of the union in grievance procedures and similar union activities (in virtue of the bar on use of release time for the use of representational employee organizational activities for one group, but not the other).

These rights of free speech and freedom of association are fundamental rights guaranteed by the State Constitution. The right to collectively bargain, while not declared a fundamental right specifically by any court, is a right guaranteed in the state constitution’s declaration of rights.

<sup>43</sup> U.S. CONST. amend. XIV, s. 1.

<sup>44</sup> FLA. CONST. art. I, s. 2.

<sup>45</sup> *Kardmas v. Dickinson Public Schools*, 487 U.S. 450, 457-458 (1988); *Fla. High Sch. Activities Ass’n v. Thomas By & Through Thomas*, 434 So.2d 306, 308 (Fla. 1983).

<sup>46</sup> *Westerheide v. State*, 831 So.2d 93, 110 (Fla. 2002).

## **Right to Collectively Bargain**

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 organization, 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.<sup>47</sup> 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.<sup>48</sup>

Release time is a right subject to collective bargaining, and in its current form (as interpreted by case law), allows for the direct representation of employees during work hours for which the union employee is paid by his or her employer for normal work duties. Release time may be used for 'ancillary' union activities only where the union fully reimburses the public employer for its' employee's time.

An employer cannot impose through legislative action a waiver of the right to bargain over terms and conditions of employment.<sup>49</sup> However, it is not an unfair labor practice to impose language which constitutes a management right.<sup>50</sup>

The prohibition of the use of paid release time for direct representational activities on behalf of the union may constitute a legislative waiver of the right to bargain over terms and conditions of employment.

Additionally, the right to collectively bargain exists whether or not the bargaining agent is a not-for-profit corporation or a for-profit corporation. Differential treatment of bargaining agents on the basis of their corporate status could result negatively impact a bargaining agent's ability to represent the employees in the bargaining unit. This could be viewed as a harm to the employee's ability to collectively bargain and associate.

## **Freedom of Speech**

The First Amendment to the U.S. Constitution guarantees that "Congress shall make no law ... abridging the freedom of speech."<sup>51</sup> Generally, a government cannot restrict

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

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

<sup>49</sup> Section 447.203(14) and (17), F.S.

<sup>50</sup> Section 447.209, F.S. *Amalgamated Transit Union, Local 1593 v. HARTA*, 24 FPER para. 29247 (1998); *IAFF v. City of Cocoa*, 18 FPER, para. 23235 (1992).

<sup>51</sup> U.S. CONST. amend. I.

speech on the basis of the message expressed;<sup>52</sup> content-based restrictions are presumptively invalid.<sup>53</sup> The rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment.<sup>54</sup> While the text of the state and federal constitutions differs, the protection and freedom of speech under the state constitution “is the same as is required under the First Amendment.”<sup>55</sup>

In general, there are two types of restrictions on speech – content-based and content-neutral. Content-based restrictions target speech based on its subject-matter and is viewed with disfavor by the courts. Such restrictions are presumptively invalid and evaluated under strict scrutiny.<sup>56</sup> Strict scrutiny requires the government to prove that the restriction is narrowly tailored to achieve a compelling government interest.<sup>57</sup>

The U.S. Supreme Court has “held time and again that freedom of speech ‘includes both the right to speak freely and the right to refrain from speaking at all.’”<sup>58</sup> Conversely, the right to eschew association for expressive purposes is protected, or stated another way, freedom of association presupposes a freedom not to associate.<sup>59</sup>

In the context of an election to determine the right of all individuals within the bargaining unit to be represented (or not) by a union, the requirement that the election question pass by a vote of the majority of the employees in the bargaining unit may constitute an infringement on the bargaining unit’s employees’ freedom of speech. In this case, the failure to cast a vote is imputed to mean a vote against the question (whether it be to recertify or decertify an employee organization) and may therefore be interpreted as compelling the speech of a “no” vote, where that may not be the intent.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None identified.

### B. Private Sector Impact:

The increase in threshold to recertify an employee organization may result in fewer unions maintaining their certification to represent public employee bargaining units. Likewise, the lower standard (current law requires 50 percent of the unit members voting

<sup>52</sup> *Texas v. Johnson*, 491 U.S. 397 (1989); *State v. T.B.D.*, 656 So.2d 479 (Fla. 1995).

<sup>53</sup> *See, e.g., Police Dept. of Chicago v. Mosely*, 408 U.S. 92 (1972).

<sup>54</sup> U.S. CONST. amend. XIV; *see also* FLA. CONST., art. I.

<sup>55</sup> *Dep’t of Educ. v. Lewis*, 416 So.2d 455, 461 (Fla. 1982); *Scott v. State*, 368 So.3d 8, 10 (Fla. 4th DCA 2023), *review denied*, No. SC2023-1188 (Fla. Nov. 22, 2023), and *cert. denied sub nom.*; *Scott v. Fla.*, No. 23-7786 (U.S. Oct. 7, 2024).

<sup>56</sup> *Vidal v. Elster*, 602 U.S. 286, 292 (2024). In particular, the Supreme Court held that view-point discrimination, which targets not just the subject matter, “but particular views taken by the speakers,” is considered “a particularly egregious form of content discrimination.”

<sup>57</sup> *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 171 (2015).

<sup>58</sup> *Janus v. American Federation of State, County, and Mun. Employees, Council 31*, 558 U.S. 878, 892 (2018).

<sup>59</sup> *Id.*, citing *Roberts v. United States Jaycees*, 468 U.S. 609 (1984) and *Pacific Gas & Elec. Co. v. Public Util. Comm’n of Cal.*, 475 U.S. 1, 9 (1986).

in an election to decertify and the bill requires 50 percent of the bargaining unit to vote to retain the certification) to decertify (or revoke) may result in fewer unions representing public employee bargaining units.

**C. Government Sector Impact:**

The PERC may see an increase in elections it must administer as a result of the new provisions for recertification and decertification. This may increase the PERC's workload.

**VI. Technical Deficiencies:**

The bill provides for a runoff election in a certification, recertification, or decertification election in which there are three or more choices on the ballot, and none of the employee organizations receive a majority of the votes. It is unclear what should occur if there are only two employee organizations on the ballot, and neither receive a majority vote of the bargaining unit, as the bill requires a majority vote to be certified or recertified.

**VII. Related Issues:**

To the extent that an employee organization has a current contract that provides for paid release time, this legislation may impair that contracted right. The United States Constitution and the State Constitution prohibit the state from passing any law impairing the obligation of contracts.<sup>60</sup> The courts will subject state actions that impact state-held contracts to an elevated form of scrutiny when the Legislature passes laws that impact such contracts.<sup>61</sup> “[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear.”<sup>62</sup> If a law does impair contracts, the courts will assess whether the law is deemed reasonable and necessary to serve an important public purpose.<sup>63</sup>

**VIII. Statutes Affected:**

This bill substantially amends sections 110.114, 110.205, 112.3187, 121.031, 447.02, 447.203, 447.207, 447.305, 447.307, and 1011.60; and repeals section, 447.308 of the Florida Statutes.

This bill reenacts section 120.80 the Florida Statutes.

<sup>60</sup> U.S. CONST. art. I, s. 10; FLA. CONST., art. 1 s. 10.

<sup>61</sup> *Cf. Chiles v. United Faculty of Fla.*, 615 So.2d 671 (Fla. 1993).

<sup>62</sup> *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1980). See also *General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

<sup>63</sup> *Park Benzinger & Co. v. Southern Wine & Spirits, Inc.*, 391 So. 2d 681 (Fla. 1980); *Yellow Cab C., v. Dade County*, 412 So. 2d 395 (Fla. 3rd DCA 1982). See also *Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983). For the factors courts consider when balancing the impairment of contracts with the important public purpose, see *Pomponio*, 378 So.2d at 779.

**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.

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

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