

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1652

SPONSOR: Senator Fasano and others

SUBJECT: Collective Bargaining for Public Employees

DATE: March 6, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
2.	<u> </u>	<u> </u>	<u>ED</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>JU</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u>AED</u>	<u> </u>
5.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

The bill limits the applicability of employer payroll deductions for non-instructional public employee certified bargaining agents. It provides a statement of legislative intent on the appropriate limits of employer wage deductions relative to activities sponsored by employee bargaining agents outside of their statutory purposes. Finally, it establishes that instructional personnel wage deductions should be a permissive subject of bargaining and places restrictions on the use of funds collected on behalf of represented employees. The bill gives a cause of action to any taxpayer for the return of funds collected on behalf of employees which violate the wage deduction provisions of the bill.

This bill substantially amends section 447.303 of the Florida Statutes.

II. Present Situation:

Article I, s. 6, State Constitution, provides that the State of Florida is a right to work state, that is, no employer may compel employee membership or nonmembership in a union. Article III, s. 14, State Constitution, further requires the State Legislature to provide for a civil service system for public employees at various levels of government with such exemptions from coverage as deemed appropriate by the employing authorities.

Part II of Chapter 447, F.S., implements Art. I, s. 6, State Constitution, and creates the Public Employees Relations Commission¹ as the entity that certifies collective bargaining agents that petition to represent public employees. The chapter specifies the respective legal rights of employers and employees, determines the procedures to be used for representational

¹ In the table of organization of state government the Commission is attached to the Department of Management Services although it exercises powers independent of that agency head.

certification, provides procedures for the resolution of conflicts, and details the penalties for violation of the right to strike provisions of Art. I, s. 6, State Constitution.

III. Effect of Proposed Changes:

Section 1. The bill amends s. 447.303(1), F.S., to provide an exception for certified bargaining agents for instructional personnel as defined in s. 1012.01, F.S., from the statutory provision authorizing employer payroll deductions for dues and assessments.

The bill creates subsection (2)(a) that provides a narrative statement that distinguishes the constitution's assurance of the right to collectively bargain from the imperative to provide dues and uniform assessment deductions. That statement declares that such deduction systems should be a part of the bargaining process, as any other system essentially takes a non-neutral position on employee membership by favoring a payroll deduction process. Moreover, other payroll deduction systems do not have the legal complexities associated with them as do those affecting labor organization membership. This could effectively work to the detriment of the employee's free speech rights as the deductions could be diverted to purposes other than those supported by the employee.

This subsection makes a finding that the unique challenges posed to the state educational system make it all the more important that instructional agents maintain neutrality. This is attributable to the looming teacher shortage over the next ten years of some 160,000 instructional employees and the consolidation of the two major teacher unions into one unified organization.

The subsection finds that these unique circumstances suggest that employee bargaining unit wage deductions should be made a part of the bargaining process and made a unilateral part of the certification process.

Paragraph (b) is created to limit the deduction and collection on an employee's wage deduction to an amount not exceeding the cost of collective bargaining, contract administration, and grievance adjustment. Excluded from the permissive deduction are amounts for electoral activities; independent expenditures; contributions to any candidate, political party, political committee, or committee of continuous existence; voter registration campaigns; and ballot initiatives. The public employer is prohibited from collecting fines, penalties, special assessments for any purpose other than the permissive labor and management collective bargaining issues provided in the subsection. Any amounts collected in compliance with the subsection shall be financially partitioned from funds not so authorized and shall provide for an independent audit.

Any taxpayer or aggrieved party is given a cause of action to seek injunctive relief in a court for violation of the subsection. A remedy may include a refund of unauthorized deductions and an order reducing future payroll deductions by up to fifty percent until the unauthorized amount has been repaid. The refund remedy acts supplemental to any other monetary judgment received on behalf of any prevailing party who had funds deducted in an unauthorized manner.

Section 2. The bill takes effect July 1, 2003.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, s. 6, State Constitution, is derived from a 1944 amendment to Section 12 of the Declaration of Rights in the 1885 State Constitution.

Decisional law has long distinguished the differences in representational rights afforded public employees compared to those in the private sector and has given great deference to the legislative body's collective bargaining prerogatives. *Pinellas County Police Benevolent Association v. Hillsborough County Aviation Authority*, App., 347 So.2d 801 (1977); *City of Coral Gables v. Coral Gables Employees Association, Inc.*, App., 289 So.2d 453 (1974).

Concurrent with the certification of a bargaining agent for public employees is the right in s. 447.303, F.S., to have its dues and uniform assessments deducted from the authorizing employees. In *School Board of Escambia County v. Public Employees Relations Commission*, App., 1 Dist., 350 So.2d 819 (1977), an appellate court upheld an order requiring such dues deductions where they were determined to be reasonable. Florida law prohibits public employer involvement in the collection of fines, penalties, and special assessments.

In *Op. Atty. Gen.* 2001-41 (June 19, 2001), the Attorney General of the State of Florida opined that voluntary payments made by public employees to a political action committee were not special assessments and could be collected by the public employer on behalf of the bargaining agent. That opinion relied upon the voluntary nature of the contribution and that it did not specifically violate the statutory provision that it was a special assessment and, therefore, prohibited from collection by the public employer. In a previous *Op. Atty. Gen.* 98-19 (March 3, 1998), a Florida local government was advised that it could impose reasonable criteria for the withholding of employee pay for enumerated purposes.

Payroll deduction is a convenience provided by the employer. The terms of its use are governed by s. 112.171, F.S., for state agencies and units of local government and s. 110.114(1), F.S., for state agencies as it affects collective bargaining.

In *City of Charlotte v. Local 660, International Association of Firefighters*, 426 U.S. 283 (1976), the United States Supreme Court upheld a city policy of approving employee wage deductions only for purposes it deemed beneficial to general employee interests. In *Communications Workers of America v. Beck*, 487 U.S. 735 (1988), also citing its prior holding in *Machinists v. Street*, 367 U.S. 740 (1961), the United States Supreme Court held that non-union dues-paying members could not be compelled to financially support activities unrelated to collective bargaining. Additionally, in *Lehnert v. Ferris Faculty Association*, 500 U.S. 507 (1991), a divided Supreme Court held that a collective bargaining agent could not compel nonmembers to subsidize legislative lobbying or other political union activities outside of the limited context of contract ratification or implementation.

Even in jurisdictions in which labor union membership can be compelled in the workplace, or charges imposed on non-union members who receive representation by their dues-paying co-workers, courts have held that there are limits to the largesse of the bargaining agent: employees may not be coerced to donate to causes unrelated to representation with which they may not agree. *Abood v. Detroit Board of Education*, 431 U.S. 209 (U.S. Mich. 1977); *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986).

On September 10, 1998 California Governor Pete Wilson issued Executive Order W-183-98 directing all public agencies and departments to notify public employees of their representational rights and limitations. On February 21, 2001, President George Bush issued Executive Order 13201 (“Notification of Employees Rights Concerning Union Dues or Fees”) which required federal government contractors and agencies to refund employee dues used for purposes other than collective bargaining, contract administration, and grievance adjustment.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The practical effect of this proposal is to make payroll deduction of collateral expenditure items more difficult, thus requiring more direct agent-to-employee contact. It is reasonable to assume there will be some attrition in funds collected as a consequence.

C. Government Sector Impact:

The impact should be small as payroll deduction codes are controlled by the public employer. In the case of agencies of the State of Florida, the Bureau of State Payrolls in the Department of Financial Services assigns these codes in its capacity as paymaster. Each district school board operates its own financial management system and establishes its own payroll deduction policy.

In cases where a single teachers' union² represents both instructional and other employees, the impact will vary as the bill provides a restriction only on the instructional personnel as defined in s. 1012.01, F.S. Payroll offices of those district school boards will have to make some judgments as to when such restrictions apply should such matters present themselves. This may create a situation in which two represented employees, one instructional and the other instructional with administrative duties, will be treated differently.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Management Services acts as the employer representative for agencies of the Executive Branch except for the Department of the Lottery. The Boards of Trustees of the several state universities and the Florida School for the Deaf and Blind are their respective separate public employers. There are twenty payroll deductions codes in effect for state agency level collective bargaining dues deductions.

Legal restrictions on the use of special assessments for advocacy purposes are summarized in the popular name *Paycheck Protection Act*³. A movement begun in the states of California and Nevada in the late 1990s prompted the gathering of signatures of electors for ballot initiatives to prohibit advocacy assessments for political purposes on behalf of public employees. The Proposition 226 Initiative in California would have prohibited foreign source donations for candidates for state elective office, special assessments from public employers, and public employees without their consent. Neither that initiative, nor similar proposed federal legislation (H.R. 2608, H.R. 1663), passed.

The bill provides a restriction for instructional personnel as defined in s. 1012.01, F.S. That restriction *includes* classroom teachers; student personnel services; librarians and media specialists; other instructional staff; and education paraprofessionals. It *excludes* administrative personnel, district-based instructional and non-instructional administrators, school administrators, educational support employees, and managers. These latter categories are contained within the section number but are defined separately from instructional personnel.

The bill restrictions also do not affect the very few State of Florida employees functioning as instructional personnel in their respective agencies.

VIII. Amendments:

None.

² In 2000, a single teachers' union resulted from the merger of the Florida Education Association-United and the Florida Teaching Professions-National Education Association.

³ Principal bibliographic resources for the paycheck protection proposals are available from the American Legislative Exchange Council, the Mackinac Center for Public Policy, and Americans for Tax Reform.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
