

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 25 Labor Organizations  
**SPONSOR(S):** Government Accountability Committee; Plakon  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1036

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Accountability Committee	14 Y, 9 N, As CS	Moore	Williamson

### SUMMARY ANALYSIS

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

Current law specifies that public employees have the right to be represented in collective bargaining by any employee organization of their own choosing or to refrain from being represented. An employee organization that is authorized to represent public employees is known as a certified bargaining agent. An employee organization seeking to become a certified bargaining agent for a unit of public employees must register with and be certified by the commission. A registration granted to an employee organization is valid for one year and must be renewed annually. The renewal application must include a current annual financial report that contains specific information.

The bill requires an employee organization to include the following information in its annual financial report for each certified bargaining unit that the organization represents:

- The number of employees in the bargaining unit who are eligible for representation by the employee organization; and
- The number of employees who are represented by the organization, specifying the number of members who pay dues and the number of members who do not pay dues.

If a registered employee organization does not submit this information for a certified bargaining unit it represents, the organization's certification for that unit is revoked. This provision does not apply to an employee organization that represents, or seeks to represent, employees who are law enforcement officers, correctional officers, or firefighters.

The bill also requires an employee organization that has been certified as the bargaining agent for a unit whose dues-paying membership is less than 50 percent of the employees eligible for representation in that unit to petition the commission for recertification as the exclusive representative of all employees in the unit within one month after the date on which the organization applies for registration renewal. The petition must be accompanied by dated statements signed by at least 30 percent of the employees in the unit, indicating that such employees desire to be represented by the employee organization. If the commission determines the petition to be sufficient, it must order an election to determine whether the employee organization will be certified. The certification of an employee organization that does not comply with this recertification requirement is revoked. This requirement does not apply to an employee organization that represents, or seeks to represent, employees who are law enforcement officers, correctional officers, or firefighters.

For the 2018-2019 fiscal year, the bill appropriates \$286,516 in recurring funds and \$14,288 in nonrecurring funds from the Public Employees Relations Commission Trust Fund to the commission and authorizes two full-time equivalent positions with an associated salary rate of 150,500 for the purpose of implementing the bill.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

Collective bargaining is a constitutional right afforded to public employees<sup>1</sup> in Florida.<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> Through collective bargaining, public employees collectively negotiate with their public employer in the determination of the terms and conditions of their employment.<sup>4</sup> The Public Employees Relations Commission (commission) is responsible for assisting in resolving disputes between public employees and public employers.<sup>5</sup>

Chapter 447, F.S., specifies that public employees have the right to be represented in collective bargaining by any employee organization of their own choosing or to refrain from being represented.<sup>6</sup> An employee organization is defined as a "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>7</sup> An employee organization that is authorized to represent public employees in collective bargaining is known as a certified bargaining agent.<sup>8</sup>

An employee organization seeking to become a certified bargaining agent for a unit of public employees must register with and be certified by the commission. To register, the employee organization must submit an application to the commission that includes the following information:

- The name and address of the organization and of any parent organization or organization with which it is affiliated.
- The names and addresses of the principal officers and all representatives of the organization.
- The amount of the initiation fee and of the monthly dues that members must pay.

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<sup>1</sup> The term "public employee" means 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 Public Employees Relations Commission (commission) as managerial or confidential employees pursuant to specific criteria.
- (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 commission.
- (i) Persons enrolled as undergraduate students in a state university who perform part-time work for the state university.

The term "public employer" means the state or any county, municipality, or special district or any subdivision or agency thereof which the commission determines has sufficient legal distinctiveness properly to carry out the functions of a public employer. Section 447.203, F.S.

<sup>2</sup> Art. I, s. 6, FLA. CONST.

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

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

<sup>5</sup> Section 447.201(3), F.S.

<sup>6</sup> Section 447.301(2), F.S.

<sup>7</sup> Section 447.203(11), F.S.

<sup>8</sup> Section 447.203(12), F.S.

- The current annual financial statement of the organization.
- The name of its business agent, if any; if different from the business agent, the name of its local agent for service of process; and the addresses where such person or persons can be reached.
- A pledge, in a form prescribed by the commission, that the employee organization will conform to the laws of the state and that it will accept members without regard to age, race, sex, religion, or national origin.
- A copy of the current constitution and bylaws of the employee organization.
- A copy of the current constitution and bylaws of the state and national groups with which the employee organization is affiliated or associated.<sup>9</sup>

A registration granted to an employee organization is valid for one year and must be renewed annually.<sup>10</sup> The renewal application must reflect any changes to the information provided to the commission in the preceding application and must include a current annual financial report that contains the following information:

- Assets and liabilities at the beginning and end of the fiscal year.
- Receipts of any kind and the sources thereof.
- Salary, allowances, and other direct or indirect disbursements, including reimbursed expenses, to each officer and each employee who, during such fiscal year, received more than \$10,000 in the aggregate from the employee organization and any other affiliated employee organization.
- Direct and indirect loans made to any officer, employee, or member that aggregated more than \$250 during the fiscal year, together with a statement of the purpose, security, if any, and arrangements for repayment.
- Direct and indirect loans to any business enterprise, together with a statement of the purpose, security, if any, and arrangements for repayment.<sup>11</sup>

After registering with the commission, an employee organization may begin the certification process. In order to be certified, an employee organization that is selected by a majority of the employees in an appropriate unit as their representative must first request recognition by the public employer.<sup>12</sup> If the public employer recognizes the employee organization as the collective bargaining representative for that unit, the employee organization must then petition the commission for certification.<sup>13</sup> If the unit proposed by the employee organization is deemed appropriate, the commission must immediately certify the employee organization as the exclusive representative of all employees in the unit.<sup>14</sup>

However, if the employer refuses to recognize the employee organization, the employee organization must file a petition with the commission that is accompanied by dated statements signed by at least 30 percent of the employees in the proposed unit, indicating that such employees desire to be represented by the employee organization.<sup>15</sup> If the commission determines the petition to be sufficient, it must order an election by secret ballot to determine whether the employee organization will be certified.<sup>16</sup> The petitioning employee organization is placed on the ballot along with any other registered employee organization that submits dated statements signed by at least 10 percent of the employees in the proposed unit, indicating their desire to be represented by that employee organization.<sup>17</sup> When an employee organization is selected by a majority of the employees voting in an election, the commission must certify the employee organization as the exclusive collective bargaining representative of all employees in the unit.<sup>18</sup>

<sup>9</sup> Section 447.305(1), F.S.

<sup>10</sup> Section 447.305(2), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Section 447.307(1)(a), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

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

<sup>16</sup> Section 447.307(3)(a), F.S.

<sup>17</sup> Section 447.307(2), F.S.

<sup>18</sup> Section 447.307(3)(b), F.S.

An employee or group of employees who no longer desires to be represented by the certified bargaining agent may file with the commission a petition to revoke certification. The petition must be accompanied by dated statements signed by at least 30 percent of the employees in the unit, indicating that such employees no longer desire to be represented by the certified bargaining agent. If the commission finds the petition to be sufficient, it must immediately order an election by secret ballot. If a majority of voting employees vote against the continuation of representation by the certified bargaining agent, the organization's certification is revoked.<sup>19</sup>

### **Effect of Proposed Changes**

The bill requires an employee organization to include the following information in its annual financial report for each certified bargaining unit that the organization represents:

- The number of employees in the bargaining unit who are eligible for representation by the employee organization; and
- The number of employees who are represented by the organization, specifying the number of members who pay dues and the number of members who do not pay dues.

If a registered employee organization does not submit this information for a certified bargaining unit it represents, the organization's certification for that unit is revoked. This provision does not apply to an employee organization that represents, or seeks to represent, employees who are law enforcement officers as defined in s. 943.10(1), F.S.,<sup>20</sup> correctional officers as defined in s. 943.10(2), F.S.,<sup>21</sup> or firefighters as defined in s. 633.102, F.S.<sup>22</sup>

The bill also requires an employee organization that has been certified as the bargaining agent for a unit whose dues-paying membership is less than 50 percent of the employees eligible for representation in that unit to petition the commission for recertification as the exclusive representative of all employees in the unit within one month after the date on which the organization applies for registration renewal. The petition must be accompanied by dated statements signed by at least 30 percent of the employees in the unit, indicating that such employees desire to be represented by the employee organization. If the commission determines the petition to be sufficient, it must order an election to determine whether the employee organization will be certified pursuant to the election procedures outlined above. The certification of an employee organization that does not comply with this recertification requirement is revoked. This requirement does not apply to an employee organization that represents, or seeks to represent, employees who are law enforcement officers, correctional officers, or firefighters.

### **B. SECTION DIRECTORY:**

Section 1. amends s. 447.305, F.S., relating to registration of employee organizations.

Section 2. amends s. 447.307, F.S., relating to certification of employee organizations.

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<sup>19</sup> Section 447.308, F.S.

<sup>20</sup> Section 943.10(1), F.S., defines the term "law enforcement officer" to mean any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The term includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

<sup>21</sup> Section 943.10(2), F.S., defines the term "correctional officer" to mean any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity that has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution. The term does not include any secretarial, clerical, or professionally trained personnel.

<sup>22</sup> Section 633.102, F.S., defines the term "firefighter" to mean an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services under s. 633.408, F.S.

Section 3. provides an appropriation and authorizes positions.

Section 4. provides an effective date of July 1, 2018.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have an impact on state government revenues.

#### 2. Expenditures:

For the 2018-2019 fiscal year, the bill appropriates \$286,516 in recurring funds and \$14,288 in nonrecurring funds from the Public Employees Relations Commission Trust Fund to the commission and authorizes two full-time equivalent positions with an associated salary rate of 150,500 for the purpose of implementing the bill.<sup>23</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have an impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have an impact on local government expenditures.

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

The bill may have an indeterminate negative fiscal impact on employee organizations if more elections must be held during the recertification process.<sup>24</sup>

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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

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

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<sup>23</sup> The commission estimates that the fiscal impact of the bill would be between \$300,000 and \$350,000. Public Employees Relations Commission, Agency Analysis for 2018 House Bill 25, p. 3-4 (Nov. 2, 2017) (on file with the Government Accountability Committee).

<sup>24</sup> The costs of an election held during the certification process are borne equally by the parties, except as the commission may provide by rule. Section 447.307(3)(a)3., F.S.

2. Other:

Constitutional Right to Collective Bargaining

Article I, s. 6 of the Florida Constitution provides that “[t]he right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.” Chapter 447, F.S., provides the process by which employee organizations may register and become certified to represent a unit of employees in collective bargaining. The bill amends such registration and certification processes.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On December 5, 2017, the Government Accountability Committee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. For the 2018-2019 fiscal year, the proposed committee substitute appropriated \$286,516 in recurring funds and \$14,288 in nonrecurring funds from the Public Employees Relations Commission Trust Fund to the commission and authorized two full-time equivalent positions with an associated salary rate of 150,500 for the purpose of implementing the bill.

This analysis is drafted to the committee substitute as approved by the Government Accountability Committee.