

**STORAGE NAME:** h1453a.go  
**DATE:** March 8, 2000

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
GOVERNMENTAL OPERATIONS  
ANALYSIS**

**BILL #:** HB 1453  
**RELATING TO:** School Administrative Personnel  
**SPONSOR(S):** Representative Lacasa  
**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
  - (2)
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

Under Article I, Section 6 of the Florida Constitution, “public” employees have the right to bargain collectively. The exclusion from collective bargaining for “managerial” employees has long been justified under basic tenets of labor law as a method of ensuring that an employer has the undivided loyalty of its representatives. In order to establish the compelling state interest in excluding certain persons from the right to collective bargaining, the state must show that the exclusion is needed for an important societal need.

This bill revises the definition of “administrative personnel” in s. 228.041(10), F.S., to include certain school administrators by title rather than by description of their duties. The definition excludes district based and school based personnel, such as vocational center directors, and directors of major instructional and non-instructional areas. It revises the definition of “managers” in subsection (39) to include only district based instructional or non-instructional employees with some managerial and supervisory functions. It revises the definition of “administrative personnel” in s. 236.685(2)(a), F.S., to make it identical to the definition found above. It also revises the definition of “managerial employees” in s. 447.203(3)(4)6., F.S., to reflect the revisions to the previous definitions.

The bill provides legislative findings and a statement of compelling state interest regarding the legislative history of the relevant sections of Florida Statutes and in continuing the exclusion of certain administrative personnel from collective bargaining.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

**The Right to Collective Bargaining for Public Employees**

Under Article I, Section 6 of the Florida Constitution, "public" employees have the right to bargain collectively. Our courts have found that this right to collective bargaining is a fundamental right. The section reads:

Right to work.--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.

However, there have been legislatively created limitations on this right in the Public Employees Relations Act (PERA). For example, certain individuals are not considered to be "public employees". See 447.203(3)(a)-(j), F.S. Among them are individuals who are determined by the Public Employees Relations Commission (PERC) to be "managerial" or "confidential" employees. The exclusion from collective bargaining for "managerial" employees has long been justified under basic tenets of labor law as a method of ensuring that an employer has the undivided loyalty of its representatives.

There is a process in PERA by which employee organizations can petition PERC for permission to collectively bargain on behalf of their members, and the public employer can then respond by declaring one or more of those employees as being "managerial" or "confidential". PERC would then make the determination as to whether the particular employee is "managerial" or "confidential," and thus excluded from collective bargaining, pursuant to the criteria found in the definitions.

There are also instances, although few in number, in which the legislature has attempted to provide by statute an automatic exclusion from collective bargaining for a group of employees who hold certain job classifications, such as gubernatorial appointees, agency heads, employees of the state legislature and PERC itself, graduate assistants, attorneys, fire chiefs and police chiefs. In that instance, the employees would thus never have the right to present their arguments to PERC. The most recent example has been the attorney unionization case, which resulted in opinions by the First District Court of Appeal in Chiles

v. State Employees Attorneys Guild, 714 So.2d 502, 505 (Fla. 1st DCA 1998), and by the Supreme Court in Chiles v. State Employees Attorneys Guild, 734 So.2d 1030 (1999).

In those cases in which union organizations have challenged the statutes that automatically excluded a group of individuals from collective bargaining, and have asked the court to declare the statute unconstitutional, the courts have stated that to survive constitutional challenge, the statute must vindicate a "compelling state interest" by "minimally necessary means". In order to establish the compelling state interest, the state must show that the exclusion is needed for an important societal need. At the same time, to demonstrate that the exclusion is being accomplished by the minimally necessary means, the state must show that the exclusion is the least intrusive means available to achieve that need or goal.

As a result of the aforementioned constitutional test, there is a heavy burden on the state to justify any provision in sec. 447.203 that automatically excludes a group of employees from having collective bargaining rights. Despite the heavy burden, public employers have succeeded in preventing the personal secretaries of principals from collective bargaining, since they were "confidential" employees of "managerial" employees. School Bd. of Palm Beach County v. PERC, 374 So.2d 527 (Fla. 1st DCA 1978). In justifying the blanket exclusion based on job title, the court wrote, "There is no need for PERC to reconstruct the statutory definition and thereby undertake the case-by-case evaluation of the confidential status of personal secretaries to each and every principal in the state."

### **The Exclusion of Managerial Employees from Collective Bargaining**

As stated earlier, the exclusion of "managerial" employees from collective bargaining has long been justified under basic tenets of labor law as a method of ensuring that an employer has the undivided loyalty of its representatives. Recently, the Florida Supreme Court re-affirmed the exclusion of managerial employees from collective bargaining in Service Employees Int'l Union v. Public Employees Relations Comm'n, No. SC94427 (Fla., January 13, 2000), stating:

The abiding bright line for determining coverage under [chapter 447] part II is the simple "public employee/managerial employee" dichotomy set forth in section 447.203. If an individual works as an employee in the ordinary sense of the word under the criteria set forth in section 447.203(3), he or she is entitled to the protections of part II. On the other hand, if an individual works as a managerial level employee under the criteria set forth in section 447.203(3) or falls within any of the other exceptions listed in section 447.203(3), the protections of part II are inapplicable. (emphasis in original)

There is a two-step process under s. 447.203(4)(a), F.S., to determine if an employee is "managerial" or not. First, he or she must "perform jobs that are not of a routine, clerical, or ministerial nature and require the exercise of independent judgment in the performance of such jobs . . . ." Second, he or she must satisfy one of the seven criteria listed, which relate to the nature of the duties for formulating policy applicable to bargaining unit employees, collective bargaining negotiations, personnel relations, employee relations, or preparation of budgets, or if they are included in the definition of administrative personnel. Only one of the seven criteria needs to be met for the employee to be included in the definition, and thereby excluded from collective bargaining.

### **School Administrators as Managerial Employees**

In chapter 96-269, Laws of Florida, the Florida School Code's definition of "administrative personnel" in s. 228.041(10), F.S., was substantially lengthened and revised, without

reenacting the cross reference in s. 447.203(4)(a)6., F.S., to refer to the revised definition; and the same term was defined differently in s. 236.685(2)(a), F.S. Also, in chapter 96-269, Laws of Florida, the definition of "managers" in s. 228.041(39), F.S., was substantially lengthened and revised, and the same term was defined differently in s. 236.685(2)(f), F.S.

Chapters 228 through 246, F.S., provide numerous managerial duties that must be performed by principals, which require the exercise of independent judgment, and which are not routine, clerical, or ministerial in nature. These are in addition to those managerial duties imposed by local school boards. For example:

- Sec. 228.0565(3), F.S., "A proposal to be a deregulated school must be developed by the school principal and the school advisory council."
- Sec. 230.03(4), F.S., "Responsibility for the administration of any school or schools at a given school center, for the supervision of instruction therein, and for providing leadership in the development or revision and implementation of a school improvement plan . . . shall be delegated to the principal . . . ."
- Sec. 230.235(2), F.S., "The school principal shall be responsible for ensuring that all school personnel are properly informed as to their responsibilities regarding crime reporting, that appropriate delinquent acts and crimes are properly reported, and that actions taken in cases with special circumstances are properly taken and documented."
- Sec. 230.33(12)(m), F.S., "The superintendent shall "[p]repare, after consulting with the principals of the various schools, tentative annual budgets for the expenditure of district funds for the benefit of public school pupils of the district."
- Sec. 231.085, F.S., "Duties of principals.-- A district school board shall employ, through written contract, public school principals who shall supervise the operation and management of the schools and property as the board determines necessary. Each principal is responsible for the performance of all personnel employed by the school board and assigned to the school to which the principal is assigned. The principal shall faithfully and effectively apply the personnel assessment system approved by the school board pursuant to s. 231.29. . . . Each principal shall provide leadership in the development or revision and implementation of a school improvement plan pursuant to s. 230.23(16). . . . A principal who fails to comply with this section shall be ineligible for any portion of the performance pay policy initiative under s. 230.23(5)(c)."
- Sec. 231.0861, F.S., "The Legislature recognizes that the principal is the administrative and instructional leader of a public school."
- Sec. 232.2451(b)1., F.S., "The school principal shall: 1. Designate a member of the existing instructional or administrative staff to serve as a specialist to help coordinate the use of student achievement strategies to help students succeed in their coursework. . . . 2. Institute strategies to eliminate reading, writing, and mathematics deficiencies of secondary students."
- Sec. 232.26(1)(a), F.S., "[T]he principal or the principal's designee shall develop policies for delegating to any teacher or other member of the instructional staff or to any bus driver transporting students of the school responsibility for the control and

direction of students.” This section also discusses the power of the principal to suspend and recommend the expulsion of certain students.

### The Importance Of The Principal And Assistant Principal

Our statutes state that the principal is the administrative and instructional leader of the public school, that strong, competent principals can improve our public schools, and that quality education requires excellence in its principals and other managers. Studies have long shown that effective schools have effective principals. A Harvard study concluded that the first factor in establishing an effective school is the instructional leadership of the principal. At the same time, an assistant principal should be just as important as the principal because he is an extension of the principal, performs the delegated duties that the principal is responsible for, and stands in for him when the principal is out.

Principals have tremendous influence and discretion in most phases of school management. For example, they make important budget decisions, deciding how and when money should be spent, and make the recommendations regarding what money the school needs. Principals often give important input for the terms and conditions of collective bargaining agreements, and are called upon to participate in collective bargaining on behalf of the board. They also are the board’s representatives at the school site to interpret and administer the contract’s terms and conditions when issues arise with the school’s unionized employees.

Principals have enormous discretion and responsibility in school facility management, and all phases of labor relations and personnel management such as recruitment, hiring, supervision, evaluation, and discipline. At the same time, principals are the school’s central figure in the instructional program and student services, as well in such situations as discipline.

### The Principals Have More Pressure And Responsibility

Clearly, the pressures and demands on principals and assistant principals are greater than those that existed 25 years ago, and are greater than ever with the recent improvement and accountability legislation. For example:

- A principal’s salary and job security are now tied to school performance. We now focus on student achievement and seek to hold the principal and assistant principal accountable for that performance. In the 1970’s, the principal was not being held personally responsible for the student’s performance. Now they are, and whether they continue to keep their job may depend on the performance of the students at the school.
- The principal has to wear so many more hats. For instance, school security is a big issue today, but was not as important 25 years ago. Today, a principal is involved in and is an essential part of the school security. Also, the principal often has to be a public relations representative for the school. This could involve overseeing the publishing of a newsletter, attending chamber of commerce functions, etc. In our schools today, a principal could be involved in fund raising activities to generate non-tax funds. Thus, he or she might enter negotiations with Coca-Cola on a contract to make Coke products the exclusive soft drink at the school. In return, the school would get money from that soft drink manufacturer.

- Now the focus of decision making is at the school level. We are giving greater latitude to the schools by letting decisions be made at the school level, rather than be dictated by the State Board of Education. As the leader in the school, the principal or assistant principal assumes greater responsibility for this. The principal is asked to develop policy, and make independent judgments that people will depend on.
- Things are more procedurally complicated. A comparison of any collective bargaining agreement for teachers today with what existed in the mid-70's will demonstrate that they are much more detailed today. In fact, most aspects of a teacher's job are described and regulated in detail in the contract. This has resulted in added pressure and responsibility for principals.
- The state has a much larger population. Moreover, there is a lot more variation in languages, cultures, incomes, etc. among the students. This has resulted in a whole host of new issues and problems.
- Parents and community members expect more out of our schools. Parents are demanding that the principal or assistant principals be more involved and visible in after-school activities, etc.

#### Some Envisioned Effects On The "A+" Legislation

(A) Removal/dismissal: With collective bargaining, a principal's removal or dismissal may be subject to "just cause," with the potential for arbitration, etc. On the other hand, the Board may need to comply with improvement legislation by removing the principal and reconstituting the school. If the Board needs to go in to revitalize a school, the first step is usually to replace the principal. A principal will want to secure his job in a contract out of fear of being fired because he is at an "F" school. Also, with current teacher contracts, the Board has to take certain steps before the teacher can be fired. The Board may find itself caught in the middle, and hamstrung when it needs to be able to move quickly. Most teacher contracts have language related to reductions in force based on some sort of scale, or seniority. Similar language in a principal's contract might require the layoff of potentially the most talented leaders in favor of others less talented based on a variety of considerations other than performance and ability.

(B) Transfer: Principals may want to negotiate a term that will provide that they cannot be transferred at will. Again, the Board may need to comply with legislation by moving principals around. A principal at an "A" school may not want to be moved to an "F" school. Language in a principal's contract that is similar to a teacher's contract could require a system based on seniority, or a voluntary transfer to vacancies first. That would restrict the board's ability to put the most competent person in a position, and reduce the quality of education.

(C) Hiring: Seniority provisions may decide who fills vacancies rather than merit. This comes at a time when the Board needs the best, most highly motivated principals. The Board needs more than ever to choose principals based on merit, not seniority.

(D) A bargaining contract is an impediment to change. "A+" and other improvement legislation compels school boards to change quickly or else lose their schools. However, it is important to realize that any collective bargaining contract really becomes another set of school board rules. It can supersede school board rules if a contract term conflicts with a term in a Board rule. Thus, it will become the most important body of rules on employee

conduct and performance in the district. The realities of collective bargaining, including what items are mandatory subjects of negotiation and the political forces that principals can bring to the table, will result in a negotiated set of rules for principals, rather than rules that are designed to achieve an efficient, safe, secure, and high quality education.

**C. EFFECT OF PROPOSED CHANGES:**

This bill revises the definition of "administrative personnel" in s. 228.041(10), F.S., to include certain school administrators by title rather than by description of their duties. The definition excludes district based and school based personnel, such as vocational center directors and directors of major instructional and non-instructional areas. It revises the definition of "managers" in subsection (39) to include only district based instructional or non-instructional employees with some managerial and supervisory functions. It revises the definition of "administrative personnel" in s. 236.685(2)(a), F.S., to make it identical to the definition found above. It also revises the definition of "managerial employees" in s. 447.203(3)(4)6., F.S., to reflect the revisions to the previous definitions.

The bill provides legislative findings and a statement of compelling state interest regarding the legislative history of the relevant sections of Florida Statutes, which were revised in ch. 96-269, laws of Florida, without incorporating the cross reference in s. 407.203, F.S., and in such a manner as to create confusion and internal conflict within the Florida School Code itself. The bill reasserts the compelling state interest in continuing the exclusion of certain specified administrative personnel from collective bargaining.

**D. SECTION-BY-SECTION ANALYSIS:**

This section need be completed only in the discretion of the Committee.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

N/A

2. Expenditures:

N/A

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

N/A

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2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the total aggregate percentage share of a state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A



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VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Staff Director:

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Douglas Pile

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Jimmy O. Helms