SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2584

SPONSOR: Senator Cowin

SUBJECT: School Administrative Personnel

DATE: April 6, 2000 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	O'Farrell	ED	Favorable
2.			GO	
3.				
4.				
5.				

I. Summary:

The Florida Constitution (Article I, Section 6) provides that workers, including "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 means 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 and that the exclusion is the least intrusive means available to meet the goal.

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

- "administrative personnel" in s. 228.041(10), F.S., to include deputy superintendents, assistant superintendents, area superintendents, assistant principals, vice principals, and principals, and excludes certain district-based and school-based personnel.
- "managers" in s. 228.041(39), F.S., to include only district based instructional and non-instructional employees with some managerial and supervisory functions.
- "administrative personnel" in s. 236.685(2)(a), F.S., to conform to other changes to the definition.

The definition of "public employee" excludes those persons designated by the Public Employees Relations Commission as "managerial employees" or "confidential employees" under the criteria in s. 447.203, F.S. The bill revises the definition of "managerial employees" in s. 447.203(4)6., F.S., to reflect the changes to the definitions in ss. 228.041(10) and 236.685(2)(a), F.S. The bill is effective upon becoming a law.

The bill amends s. 228.041(10)&(39), F.S., s. 236.685, F.S., and s. 447.203, F.S. The bill creates an undesignated section of law.

II. Present Situation:

The Right to Collective Bargaining for Public Employees

The Florida Constitution (Article I, Section 6) provides that workers, including "public employees," have the right to bargain collectively. Florida 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."

Part II of chapter 447, F.S., the Public Employees Relations Act or PERA, implements this right for public employees and contains legislatively created limitations. For example, certain individuals (s. 447.203(3)(a)-(j), F.S.) are not considered to be "public employees," including gubernatorial appointees, agency heads, employees of the state legislature, employees of the Public Employees Relations Commission, and graduate assistants. Also included are individuals who are determined by the Public Employees Relations Commission (PERC) to be "managerial" or "confidential" employees, according to specific criteria in law.

Under the Act, employee organizations can petition PERC for permission to collectively bargain on behalf of their members. PERC then makes a factual determination as to whether the particular employee is "managerial" or "confidential." There is a two-step process under s. 447.203(4)(a), F.S., to determine if an employee is "managerial" or not. The person 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.
- satisfy one or more of the seven criteria listed, relating to the nature of the duties for making policy applicable to bargaining unit employees, collective bargaining negotiations, personnel administration, 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 consequently excluded from collective bargaining. The Commission may also consider historic relationships of the employee to the public employer and to co-employees.

There are also instances 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. 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 (Fla.1999). The Supreme Court held that the statute (s. 447.203(3)(j), F.S.) preventing public employees working as attorneys from collective bargaining was unconstitutional because the State failed to prove the requisite need for a wholesale ban.

The Supreme Court requires strict judicial scrutiny of any statute that interferes with public employees' rights to collectively bargain. Florida courts have stated that to survive constitutional challenge, the state must show 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 goal.

As a result of the constitutional test, there is a heavy burden on the state to justify any provision in s. 447.203, F.S., that automatically excludes a group of employees from exercising collective bargaining rights. Despite the heavy burden, public employers have succeeded in preventing the personal secretaries of school 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).

The Exclusion of Managerial Employees from Collective Bargaining
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 <u>works as</u> 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)

School Administrators as Managerial Employees
In chapter 96-269, L.O.F., 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. In chapter 96-269, L.O.F., the definition of "managers" in s. 228.041(40), F.S., was substantially lengthened and revised, and the same term was defined differently in s. 236.685(2)(f), F.S. Also, the law eliminated language related to the relationship between the provisions of s. 236.685, F.S., and part II of chapter 447, 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:

- Section 228.0565(3), F.S., requiring a proposal for a deregulated school to be developed by the school principal and the school advisory council.

- Section 230.03(4), F.S., related to the principal's responsibility for administering any school or schools at a given school center, supervising instruction, and providing leadership in the development or revision and implementation of a school improvement plan.

- Section 230.235(2), F.S., relating to the principal's responsibilities for ensuring crime reports and the documentation of actions taken in cases with special circumstances.

- Section 230.33(12)(m), F.S., relating to the superintendent's preparation of tentative annual budgets for the expenditure of district funds for the benefit of public school pupils, after consulting with the school principals.

- Section 231.085, F.S., relating to the duties of principals to supervise the operation and management of the schools and property as the school board determines necessary.

- Section 231.0861, F.S., recognizing the principal as the administrative and instructional leader of a public school.

- Section 232.26(1)(a), F.S., relating to the principal's responsibility to develop policies for delegating responsibility for the control and direction of students to teachers and others.

Chapter 99-398, L.O.F., provided additional duties for principals, including:

- responsibility for the performance of all personnel employed by the school board and assigned to the school to which the principal is assigned.
- faithfully and effectively applying the personnel assessment system approved by the school board pursuant to s. 231.29, F.S.

III. Effect of Proposed Changes:

Section 1. The bill provides legislative findings and a statement of compelling state interest regarding the legislative history of the relevant sections of the Florida Statutes and in continuing the exclusion of certain administrative personnel from collective bargaining. The bill states that a flexible, cohesive management structure from the district through the school levels is needed.

Section 2. This bill revises the definition of "administrative personnel" in s. 228.041(10), F.S., to include deputy superintendents, assistant superintendents, area superintendents, assistant principals, vice principals, and principals. The bill removes the current descriptions for the duties of most administrative personnel. The new definition excludes certain district-based and school-based personnel, such as vocational center directors, school directors, and directors of major instructional and non-instructional areas. The bill revises the definition of "managers" in s. 228.041(39), F.S., to include only district based instructional and non-instructional employees with some managerial and supervisory functions. These personnel are primarily responsible for general operations.

Section 3. The bill revises the definition of "administrative personnel" in s. 236.685(2)(a), F.S., to conform to the changes to the definition in s. 228.041(10), F.S. It eliminates the current description of duties for these personnel.

Section 4. The bill revises the definition of "public employee" to exclude those persons designated by PERC as "managerial employees" or "confidential employees" under the criteria in s. 447.203, F.S. The bill revises the definition of "managerial employees" in s. 447.203(4)6., F.S., to reflect the revisions to the previous definitions in ss. 228.041(10) and 236.685(2)(a), F.S.

Section 5. The bill provides an effective date (upon becoming a law).

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:

The Florida Constitution (Article I, Section 6) provides that workers have the right to bargain collectively. In order to establish the compelling state interest in excluding certain public employees from the right to collective bargaining, the state must show that the exclusion is needed for an important societal need and that the exclusion is the least intrusive means available to meet the goal.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None anticipated.

C. Government Sector Impact:

The definition of "administrative personnel" in s. 228.041(10), F.S., excludes certain district-based and school-based personnel, such as vocational center directors, school directors, and directors of major instructional and non-instructional areas. Persons in these classifications will not be subject to a loss of collective bargaining rights.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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