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HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS

BILL #: HB 1943 (PCB SA 01-15)

RELATING TO: The Deduction and Collection of Bargaining Agent's Dues and Uniform Assessments

SPONSOR(S): Committee on State Administration and Representative Brummer

TIED BILL(S): None

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

(1) STATE ADMINISTRATION YEAS 3 NAYS 2
(2) COUNCIL FOR LIFELONG LEARNING
(3)
(4)
(5)

I. SUMMARY:

Florida is a right to work state under the State Constitution and the Florida Statutes. This means that employees have the right to self-organization; to form, join or assist labor unions or labor organizations; or to *refrain* from such activity, and to bargain collectively. Twenty-one of the states are right to work states, and the other states are not. The latter allow union or agency shop agreements where even nonmembers must pay union dues to retain employment.

This bill amends current law to remove the right for a collective bargaining agent *for instructional personnel* to have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize such deductions. Such deduction and collection may, however, be a proper subject of collective bargaining.

If the deduction and collection of such a certified bargaining agent's dues or uniform assessments are collectively bargained, then the collective bargaining agreement must provide that the payroll deduction cannot exceed an amount actually used for activities of the agent necessary to perform its duties regarding the resolution of labor-management issues, which is collective bargaining, contract administration, and grievance adjustment. The collective bargaining agreement must also require the written authorization of the employee; that commencement of the deductions is contingent upon the bargaining agent's written request to the employer; and, that the reasonable costs incurred by the employer for making such deduction will be collected. Finally, the collectively bargained agreement must contain certain revocation provisions and a prohibition upon the public employer from collecting fines, penalties, special assessments, or any other amount for purposes other than labor-management issues.

This bill provides a statement of Legislative intent and purpose. This statement provides that the state of Florida is reaching a teacher shortage crisis, caused in part, by the collective bargaining agent's emphasis on the tenured teachers, instead of beginning teachers, when bargaining for better benefits. The statement also provides that, because of the recent merger of the collective bargaining agents for instructional personnel, there is a lack of competition and choice of collective bargaining representatives for that group of employees.

This bill also provides that any taxpayer or other aggrieved party may seek enforcement of these provisions in a court of competent jurisdiction.

This bill does not appear to have a fiscal impact on state or local governments. This bill may raise constitutional concerns. See "Constitutional Issues" section of the bill analysis.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [X]
2.	Lower Taxes	Yes []	No []	N/A [X]
3.	Individual Freedom	Yes [X]	No []	N/A []
4.	Personal Responsibility	Yes []	No []	N/A [X]
5.	Family Empowerment	Yes []	No []	N/A [X]

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

B. PRESENT SITUATION:

Florida Constitution

Section 6, Article I of the Florida Constitution, provides that "[t]he 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."

Florida Statutes

Chapter 447, F.S., addresses labor organizations. Most of Part I (General Provisions), has been a part of the Florida Statutes since 1943. Section 447.01, F.S., provides Florida's public policy with regard to labor organizations, and the importance of protecting working persons.

The term "labor organization" is defined in s. 447.02(1), F.S., as

> any organization of employees or local or subdivision thereof, having within its membership residents of the state, whether incorporated or not, organized for the purpose of dealing with employers concerning hours of employment, rate of pay, working conditions, or grievances of any kind relating to employment and recognized as a unit of bargaining by one or more employers doing business in this state, except that an 'employee organization', as defined in s. 447.203(11), F.S., shall be included in this definition at such time as it seeks to register pursuant to s. 447.305, F.S.

Section 447.03, F.S., states that employees have the right to self-organization; to form, join or assist labor unions or labor organizations; or to refrain from such activity, and to bargain collectively.

Section 447.303, F.S., provides for the deduction of a bargaining agent's dues from the member-employee's salary by that member's employer. This section states that

> Any employee organization which has been certified as a bargaining agent shall have the right to have its dues and uniform assessments deducted and collected

> by the employer from the salaries of those employees who authorize the deduction of said dues and uniform assessments. However, such authorization is revocable at the employee's request upon 30 days' written notice to the employer and employee organization.

Currently, twenty-one states have enacted "right to work" laws.[1]

Agency Shop States

Some states, unlike Florida, allow compulsory union dues.[2] Arrangements where nonmembers must pay union dues to retain employment are called agency shop agreements. Arrangements where the employee must actually be a member of the union to retain employment are called union shop or closed shop agreement. The rationale for these arrangements is because the union acts as the collective bargaining agent for all of the employees, and if a nonmember did not pay his or her portion of the union dues allocated for collective bargaining representation, then a nonmember would receive the benefits of the union's representation without making any fair-share financial contribution for the cost of that representation.

However, even in the states where a union can require dues from members as well as nonmembers, the courts have held that the First and Fourteenth Amendments to the U.S. Constitution prohibit these unions from using the dues from objecting employees to finance political or ideological activities *unrelated* to collective bargaining.

In *Abood v. Detroit Bd. of Education*,[3] the court stated:

> We do not hold that a union cannot constitutionally spend funds for the expression of political views, on behalf of political candidates, or toward the advancement of other ideological causes not germane to its duties as collective-bargaining representative. Rather, the Constitution requires only that such expenditures be financed from charges, dues, or assessments paid by employees who do not object to advancing those ideas and who are not coerced into doing so against their will by the threat of loss of governmental employment.

In *Chicago Teachers Union v. Hudson,*[4] the court held that nonmembers must be given adequate information about the representation fee and what it is spent on; that all of the dissenting employees' representation fees must be placed in an escrow account unless the initial disclosure includes an independent audit of the union's expenses; and, that the union must provide for a "reasonably prompt decision by an impartial decisionmaker" to confirm the nature of the union's expenditures and the uses of union dues.[5]

However, these cases arise in states where agency or union shop agreements are used. These arrangements are not allowed in Florida; Florida is a Right to Work state.[6]

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[1] Correspondence from Meyers and Brooks, P.A., April 6, 2001.
[2] Such states include Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Indiana, Kentucky, Maine, parts of Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, West Virginia, and Wisconsin.
[3] 431 U.S. 209, 236 (U.S. Mich. 1977).
[4] 475 U.S. 292 (1986).
[5] *Id*. at 309.
[6] Section 6, Article I of the Florida Constitution

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 447.303, F.S., to remove the right for a collective bargaining agent *for instructional personnel* to have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize such deductions.

This bill provides a statement of Legislative intent and purpose. This statement provides that the state of Florida is reaching a teacher shortage crisis, caused in part, by the collective bargaining agent's emphasis on the tenured teachers, instead of beginning teachers, when bargaining for better benefits. The statement also provides that, because of the recent merger[7] of the collective bargaining agents for instructional personnel, there is a lack of competition and choice of collective bargaining representatives for that group of employees.

Because of these unique circumstances, the requirement that an employer deduct and collect the instructional personnel's certified bargaining agent's dues and uniform assessments from the employee's salary is eliminated, however, such deduction and collection is made a permissive subject of collective bargaining. The bill states that although Florida is a right to work state pursuant to the state Constitution, the constitution does not require the employer to deduct and collect the dues for the bargaining agent; and, that the statutory construct that *does* require that deduction can no longer withstand support.

This bill requires that if the deduction and collection of a certified bargaining agent's dues or uniform assessments are collectively bargained, then the collective bargaining agreement must provide that the payroll deduction cannot exceed an amount actually used for activities of the agent necessary to perform its duties regarding the resolution of labor-management issues, which is collective bargaining, contract administration, and grievance adjustment. The amount deducted must not include any amount used for other purposes, such as, electoral activities, independent expenditures or contributions to any candidate or other political entity, including ballot initiatives.

This bill also requires that such collective bargaining agreement must require the written authorization of the employee, commencement of the deductions upon the bargaining agent's written request to the employer, collection of reasonable costs to include the cost of the deduction borne by the employer, revocation provisions, and a prohibition upon the public employer from collecting fines, penalties, special assessments, or any other amount for purposes other than labor-management issues. The collective bargaining agreement must also provide for reasonable accounting, either through segregation of funds, or an independent audit of the use of the funds.

This bill also provides that any taxpayer or other aggrieved party may seek enforcement of these provisions in a court of competent jurisdiction.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

[7] The FTP-NEA (Florida Teaching Professions-National Education Association) and the FEA -United merged in 2000 to create the new FEA; these two entities were the collective bargaining agents for all of the educational professions. Telephone conversation with staff of the Office of the President of the FEA, April 10, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This 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:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Equal protection arguments arise as a result of this bill, which treats certified bargaining agents who represent instructional staff differently than other certified bargaining agents. This bill attempts to address that concern by distinguishing the critical teaching shortage and the certified bargaining

agent's role therein from other employment situations in other arenas, and otherwise supporting a rational basis for the distinguishment.

Under equal protection law, if a classification "neither burdens a fundamental right nor targets a suspect class" the classification will be upheld "so long as it bears a rational relation to some legitimate end."[8]

> Legislative classifications do not have to be a "perfect fit" for the problem they are intended to address in order to survive rational basis review. Accordingly, a legislature can address a perceived problem incrementally if in its judgment that is the best way to address the problem. As the [United States] Supreme Court has noted:
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> The problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same field may be of different dimensions and proportions, requiring remedies. . . [T]he reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. The legislature may select one field and apply a remedy there, neglecting the others.
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> . . . "And, under the case law discussed above, the Board does not act irrationally by addressing the problems presented . . . one step at a time.[9]

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:	Staff Director:
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[8] Romer v. Evans, 517 U.S. 620, 116 S.Ct. 1620, 1627.

[9] *Judi Justiana etc. et al. v. Soos etc. et al*., 45 F. Supp. 2d 236, 242-243 (1999); *see also*, *Williamson etc. v. Lee Optical etc.*, 348 U.S. 483, 489 (1955); In re Estate of Holly E. Gainer etc. et al. v. Dorothy Doran et al., 466 So.2d 1055 (reiterating recognition that the legislature may move in increments to regulate business within this state); *Federal Communications Commission et al. v. Beach Comminications, Inc., et al*., 508 U.S. 307 (1993).