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**DATE:** January 10, 2002

**HOUSE OF REPRESENTATIVES  
SMARTER GOVERNMENT COUNCIL  
ANALYSIS**

**BILL #:** HB 641 (PCB SA 02-01)  
**RELATING TO:** Resolution of Impasse  
**SPONSOR(S):** Committee on State Administration and Representative(s) Brummer  
**TIED BILL(S):** None

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

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
  - (2) SMARTER GOVERNMENT COUNCIL YEAS 6 NAYS 5
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

If a public employer and a collective bargaining agent are unable to reach agreement regarding an employment contract then certain procedures must be followed to resolve the impasse. Those procedures are set forth in law. When the Governor is deemed the employer, the Legislature may be called upon to resolve issues that remain at impasse between the employer and the collective bargaining agent.

This bill eliminates the requirement that the presiding officers of the Legislature appoint a joint select committee to review and recommend resolution of impasse issues arising from collective bargaining disputes, when the Governor is deemed the employer. In addition, this bill eliminates the specified time requirements within which the joint select committee was to have made its recommendations.

The elimination of this requirement does not mean that the presiding officers cannot appoint a joint select committee to deal with impasse resolutions; the Legislature has always had the power to create whatever committees it so chooses. The elimination of these provisions simply recognizes that the Legislature, through its constitutional and rulemaking authority, can manage its procedural affairs as it deems appropriate, and recognizes the well-founded principle that one Legislature cannot bind another.

Finally, this bill provides that the parties in a collective bargaining dispute, when the Governor is deemed the employer, may submit written explanation of their positions on disputed impasse issues to the Legislature, addressed to the President of the Senate and the Speaker of the House. The Legislature retains full discretion to investigate or otherwise address such issues. Any disputed impasse issues may be addressed by the Legislature through legislation it deems to be in the public interest.

This bill does not appear to have a fiscal impact on state or local governments.

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:

Chapter 447, F.S., governs labor organizations. Part II of Chapter 447, F.S., deals solely with public employees. In addition to establishing the Public Employees Relations Commission (PERC), Part II sets forth, in part, the requirements for registration and certification of employee organizations, employer and employee rights, grievance procedures, and the collective bargaining process requirements. If a public employer and a collective bargaining agent are unable to reach agreement regarding an employment contract then certain procedures must be followed to resolve the impasse. Section 447.403, F.S., sets forth the resolution procedures.

Section 447.403, F.S., provides that if no mediator is appointed, or upon the request of either party, PERC must appoint and submit all unresolved issues to a special master. This provision was amended last session to prohibit the appointment of a mediator or special master if the Governor is the public employer.<sup>1</sup>

Last session also resulted in the following language being added to s. 447.403, F.S.:

Within 5 days after the beginning of the impasse period in accordance with s. 216.163(6)<sup>2</sup>, each party shall notify the President of the Senate and the Speaker of the House of Representatives as to all unresolved issues. Upon receipt of the notification, the presiding officers shall appoint a joint select committee to review the position of the parties and render a recommended resolution of all issues

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<sup>1</sup> Section 44, Ch. 2001-43, L.O.F. (CS/SB 466). The Governor is the public employer with respect to all public employees determined by PERC as properly belonging to a statewide bargaining unit composed of State Career Service System employees or Selected Professional Service employees; and the Governor is the public employer with respect to all employees in the Correctional Education Program of the Department of Corrections. The Board of Regents is the public employer with respect to all public employees within the State University System. The board of trustees of a community college is the public employer with respect to all employees of the community college; the district school board is the public employer with respect to all employees of the school district; and the board of trustees of the Florida School for the Deaf and the Blind is the public employer with respect to the academic and academic administrative personnel of the Florida School for the Deaf and the Blind. Counties, municipalities, and special districts or any subdivision or agency thereof which PERC determines has sufficient legal distinctiveness properly to carry out the functions of a public employer are considered the public employers for their respective governmental units. s. 447.203 (2), F.S.

<sup>2</sup> Section 216.163(6), F.S., provides that at the time the Governor is required to furnish copies of his or her recommended budget to each senator and representative, the Governor must declare an impasse in all collective bargaining negotiations for which he or she is deemed to be the public employer and for which a collective bargaining agreement has not been executed.

remaining at impasse. The recommended resolution shall be returned by the joint select committee to the presiding officers not later than 10 days prior to the date upon which the legislative session is scheduled to commence. During the legislative session, the Legislature shall take action in accordance with this section.

Concerns arise regarding the language *requiring* the presiding officer to appoint a joint select committee as well as *requiring* that the recommended resolution be returned by the joint select committee not later than 10 days prior to the date session is scheduled to commence. Setting forth such requirements is an attempt by one Legislature to bind the next. This can lead to unnecessary litigation<sup>3</sup> when the Legislature, within its constitutional prerogative<sup>4</sup>, chooses to act in a different manner, and is further contrary to existing case law that clearly recognizes that one Legislature cannot bind another.<sup>5</sup>

#### C. EFFECT OF PROPOSED CHANGES:

This bill eliminates the requirement that the presiding officers of the Legislature appoint a joint select committee to review and recommend resolution of impasse issues arising from collective bargaining disputes, when the Governor is deemed the employer. In addition, this bill eliminates the specified time requirements within which the joint select committee was to have made its recommendations.

The elimination of this requirement does not mean that the presiding officers cannot appoint a joint select committee to deal with impasse resolutions; the Legislature has always had the power to create whatever committees it so chooses. The elimination of these provisions simply recognizes that the Legislature, through its constitutional and rulemaking authority, can manage its procedural affairs as it deems appropriate, and recognizes the well-founded principle that one Legislature cannot bind another.

Finally, this bill provides that the parties in a collective bargaining dispute, when the Governor is deemed the employer, may submit written explanation of their positions on disputed impasse issues to the Legislature, addressed to the President of the Senate and the Speaker of the House. The Legislature retains full discretion to investigate or otherwise address such issues. Any disputed impasse issues may be addressed by the Legislature through legislation it deems to be in the public interest. The bill recognizes that impasse is the end of collective bargaining, when the Governor is deemed the employer. The Legislature may then resolve the impasse issues as it deems appropriate.

#### D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes".

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<sup>3</sup> *Florida Senate v. Florida Public Employees Council 79, AFSCME*, 784 So. 2d 404 (Fla. 2001). The court below entered an order granting a temporary injunction that provided, among other things, that the Florida House and the Florida Senate prematurely asserted jurisdiction over an impasse in collective bargaining, "in a manner and at a time that is at variance with the provision of Section 447.403, Florida Statutes." The Florida Supreme Court held that under the doctrine of separation of powers, the circuit court lacked authority to enter a temporary restraining order barring legislators from convening a scheduled public hearing to resolve impasse between a public employees union and the Governor.

<sup>4</sup> See Article III, s. 4 of the State Constitution, regarding legislative procedures. "Each house shall be the sole judge for the interpretation, implementation, and enforcement of [section 4]."

<sup>5</sup> *Gonzales, Collector of Revenue v. Sullivan*, 16 Fla. 791, (Fla. Sup. Ct. 1878) (1878 WL 2261, \*8(Fla.)); *Trustees of the Internal Improvement Fund v. St. Johns Railway Co.*, 16 Fla. 531, (Fla. Sup. Ct. 1878) (1878 WL 2240, \*9(Fla.)); *Kirklands v. Town of Bradley*, 139 So. 144, (Fla. Sup. Ct. 1932) (104 Fla. 390).

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:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. OTHER COMMENTS:**

The American Federation of State, County and Municipal Employees, Council 79, do not support the provisions of this bill. That organization's representative, who testified before the Committee on State Administration, asserted that by eliminating the requirement that the legislature appoint a joint select committee to review impasse issues, the legislature eliminates the point of entry for collective bargaining agents to present their side of the issues to the legislature. The organization's representative also testified that the elimination of this requirement, as well as the elimination of the existing timeframe requirements for certain action, will leave the bargaining agents uncertain as to when or where to go to present their issues.

This bill, however, permits the affected parties to submit written explanation of their positions on disputed impasse issues to the President of the Senate and the Speaker of the House, which is a point of entry. In addition, as pointed out in testimony, if any hearing is conducted on the matter, the rules of both houses require (as does the Florida Constitution – Article III, section 4) that all meetings be "open and noticed to the public." Furthermore, as a practical matter, impasse issues are resolved in the budgeting process. (The General Appropriations Act addresses each matter at impasse.) The budgeting process is an open and noticed process. The ability of a bargaining agent to advise the legislature of its needs and desires is, like every other lobbying effort, dependent upon the strength of that lobbying unit's relationship with the members of the Legislature.

**VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

None.

**VII. SIGNATURES:**

**COMMITTEE ON STATE ADMINISTRATION:**

Prepared by:

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