

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Rules Committee

BILL: CS/CS/SB 830

INTRODUCER: Rules Committee, Community Affairs Committee, and Senators Thrasher and Gaetz

SUBJECT: Labor and Employment

DATE: April 15, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Fav/CS
2.	Betta	Meyer, C.	BC	Favorable
3.	Wolfgang	Phelps	RC	Fav/CS
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill:

- Prohibits deductions from public employee wages that would directly or indirectly go toward political activity.
- Prohibits a labor organization from deducting moneys from employees that go toward political contributions or expenditures without written authorization from the employee.
- Requires a pro rata refund for moneys paid by a public or private employee to a union for political contributions and expenditures when an employee revokes their authorization.
- Prohibits labor organizations from requiring an authorization to spend funds for political contributions and expenditures as a condition of membership.
- Provides that the bill applies to all collective bargaining agreements entered into after the effective date.

This bill substantially amends the following sections of the Florida Statutes: 110.114, 112.171, and 447.303.

The bill creates section 447.18, Florida Statutes.

II. Present Situation:

State and Federal Constitutional Issues

Florida is a “right to work” state. Article I, section 6 of the Florida Constitution reads:

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.

Employees have a fundamental right to organize for the purposes of collective bargaining, but have no federal constitutional right to mandatory collective bargaining.¹ Under the Florida Constitution, however, courts have held that the right to collectively bargain is a fundamental right which may be abridged only for a compelling state interest, and therefore a statute under review must serve that compelling state interest in the least intrusive means possible.²

Certain restrictions may be placed on a union’s ability to collect dues or fees. In Florida, nonunion employees cannot be forced to pay union fees and dues as a condition of employment.³ In states where employees can be required to pay dues, the exaction of fees beyond those necessary to finance collective bargaining activities has been found to violate the unions’ judicially created duty of fair representation and nonunion members’ First Amendment rights.⁴ The U.S. Supreme Court has held that a local government’s restrictions on union wage deductions would be upheld against an equal protection challenge if it was reasonably related to a legitimate government purpose.⁵ In a more recent case, the U.S. Supreme Court has upheld a state statute banning public-employee payroll deductions for political activities against a First Amendment challenge.⁶ The Court held that the state was under no obligation to aid unions in their political activities, and the state’s decision not to do so was not abridgement of unions’ free speech rights, since unions remained free to engage in such speech as they saw fit, but without enlisting the state’s support.⁷

Federal Labor Law

The Federal National Labor Relations Act (NLRA) of 1935⁸ and the Federal Labor Management Relations Act of 1947⁹ constitute a comprehensive set of regulations guaranteeing to employees

¹ See *Sikes v. Boone*, 562 F. Supp. 74 (N.D. Fla. 1983) *aff’d* 723 F.2d 918 (11th Cir. 1983).

² *Chiles v. State Employees Attorneys Guild*, 734 So. 2d 1030 (Fla. 1999); *Dade County School Admins Assn, Local 77, AFSA, AFL-CIO v. School Bd.*, 840 So. 2d 1103 (Fla. 1st DCA 2003).

³ *Schermerhorn v. Local 1625 of Retail Clerks Intern. Ass’n, AFL-CIO*, 141 So. 2d 269 (Fla. 1962), *judgment aff’d on other grounds*, 375 U.S. 96 (1963); *AFSCME Local 3032 v. Delaney*, 458 So. 2d 372 (Fla. 1st DCA 1984).

⁴ *Comm’ns Workers of Am. v. Beck*, 487 U.S. 735 (1988).

⁵ *Charlotte v. Local 660, Int’l Assoc. of Firefighters*, 426 U.S. 283 (1976).

⁶ *Ysursa v. Pocatello Education Assoc.*, 129 S.Ct. 1093 (2009).

⁷ *Id.*

⁸ 29 U.S.C. §§ 151 to 169 (encouraging the practice and procedure of collective bargaining and protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection).

the right to organize, to bargain collectively through chosen representatives, and to engage in concerted activities to secure their rights in industries involved in or affected by interstate commerce. When conduct falls within the scope of the NLRA, the preemption doctrine applies and the state statutes are usually inoperative, unless the National Labor Relations Board has declined jurisdiction or has ceded jurisdiction to a state labor-relations board, or unless the conduct involves an area that the states are permitted to regulate despite the existence of the NLRA.¹⁰ However, when the subject matter of a labor relations dispute or regulatory issue touches overriding state or local interests, and in the absence of compelling congressional direction, state laws are not preempted by the NLRA.¹¹ Other federal labor-relations statutes that can preempt state action include the Labor-Management Reporting and Disclosure Act¹² and the Railway Labor Act.

Florida Statutes

Under the Florida Statutes, employees have the right to form, join, or assist labor unions or labor organizations or to refrain from such activity.¹³ The rights given by these provisions belong to the individual employee and not to the union.¹⁴ The regulation of labor unions is the responsibility of the Department of Business and Professional Regulation.¹⁵

Part II of ch. 447, F.S., governs labor organizations for public employees, and the Public Employees Relations Commission regulates collective bargaining in Florida. Part II of chapter 447, F.S., has two basic purposes:

- To encourage cooperation between government and its employees.
- To protect the public from the interruption of government services resulting from strikes by government employees.

Under current law, any employee organization which has been certified as a bargaining agent¹⁶ has 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.¹⁷ However, such authorization is revocable at the employee's request upon 30 days'

⁹ 29 U.S.C. §§ 141 to 187 (prescribing the rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce).

¹⁰ Am. Jur. 2d, Labor and Labor Relations § 516.

¹¹ 34 Fla. Jur 2d Labor and Labor Relations § 8.

¹² 29 U.S.C. §§ 401 to 531.

¹³ Section 447.03, F.S.

¹⁴ *Miami Laundry Co. v. Laundry, Linen, Dry Cleaning Drivers, Salesmen & Helpers, Local Union No. 935*, 41 So. 2d 305 (Fla. 1949).

¹⁵ Section 447.02(3), F.S.

¹⁶ Section 447.203, F.S. ("Bargaining agent" means the employee organization which has been certified by the Public Employees Relations Commission as representing the employees in the bargaining unit or its representative.) For more information about this process and Florida Labor Law in general, see PUBLIC EMPLOYEES RELATIONS COMMISSION, A PRACTICAL HANDBOOK ON FLORIDA'S PUBLIC EMPLOYMENT COLLECTIVE BARGAINING LAW (2004) available at <http://perc.myflorida.com/pubs/pubs.aspx> (last visited March 03, 2011).

¹⁷ Section 447.303, F.S.

written notice to the employer and employee organization. The deductions shall commence upon the bargaining agent's written request to the employer. Reasonable costs to the employer of said deductions shall be a proper subject of collective bargaining. Such right to deduction, unless revoked by a court due to a violation on the prohibition on strikes, shall be in force for so long as the employee organization remains the certified bargaining agent for the employees in the unit. The public employer is expressly prohibited from any involvement in the collection of fines, penalties, or special assessments.¹⁸

“Employee organization” or “organization” means any 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.¹⁹ An employee organization is a type of labor organization.²⁰

Counties, municipalities, and special districts as well as state departments, agencies, bureaus, commissions, and officers are authorized and permitted in their sole discretion to make deductions from the salary or wage of any employee or employees in such amount as is authorized and requested by such employee or employees and for such purpose as is authorized and requested by such persons and pay such sums so deducted as directed by such persons.²¹

Political Contributions

For purposes of campaign financing, a “contribution” is defined as:

- A gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the results of an election or making an electioneering communication.
- A transfer of funds between political committees, between committees of continuous existence, between electioneering communications organizations, or between any combinations of these groups.
- The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee without charge to the candidate or committee for such services.
- The transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, and the term includes any interest earned on such account or certificate.²²

An “expenditure” means a purchase, payment, distribution, loan, advance, transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, or gift of money or anything of value made for

¹⁸ Section 447.303, F.S.

¹⁹ Section 447.203(11), F.S.

²⁰ Section 447.02, F.S.

²¹ Section 110.114 and 112.171, F.S.

²² Section 106.011, F.S.

the purpose of influencing the results of an election or making an electioneering communication. There is an exception for internal newsletters.²³

III. Effect of Proposed Changes:

Section 1 amends s. 110.114, F.S., to prohibit state employee wage deductions from being made, directly or indirectly, for the purposes of any political activity, including contributions to a candidate, political party, political committee, committee of continuous existence,²⁴ electioneering communications organization, or organization exempt from taxation under 501(c)(4)²⁵ or s. 527²⁶ of the Internal Revenue Code. The bill deletes the explicit authorization allowing “employee organizations” that are the exclusive bargaining agent for a unit of state employees to deduct membership dues.

Section 2 amends s. 112.171, F.S., to provide the same prohibitions in section 1 for county, municipal, and special district employees.

Section 3 creates s. 447.18, F.S., to prohibit labor organizations from, directly or indirectly, collecting dues or other funds paid by an employee to make political contributions or expenditures, as defined in s. 106.011, F.S., unless the labor organization has the express written authorization of the employee. The types of political activity requiring written authorization would include funds that go to any candidate, political party, political committee, committee of continuous existence,²⁷ electioneering communications organization, or organization exempt from taxation under 501(c)(4) or s. 527 of the Internal Revenue Code. The written authorization for political expenditures must be executed by the employee separately for each fiscal year and must be accompanied by a detailed account, provided by the labor organization, of all political contributions and expenditures made by the labor organization in the preceding 24 months. The labor organization must maintain detailed records relating to any such collections of contributions used, directly or indirectly, for political activity. Such records are subject to review by the commission upon 30 days’ written request.

The employee may revoke the authorization at any time. If an employee revokes the authorization, the employee is entitled to the pro rata reduction in dues, fines, penalties, or assessments for the remainder of the fiscal year of the labor organization. A labor organization may not require an employee to provide the authorization for political contributions and expenditures as a condition of membership in the labor organization.

²³ Section 106.011, F.S.

²⁴ Section 106.011, F.S. defines “committee of continuous existence” to mean any group, organization, association, or other such entity which is certified pursuant to the provisions of s. 106.04, F.S.

²⁵ 26 U.S.C. § 501(c)(4) (Relating to Civic Leagues, Social Welfare Organizations, and Local Associations of Employees).

²⁶ 26 U.S.C. § 527 (Relating to tax exempt political organizations). The IRS defines “political organizations” as organized and operated primarily to accept contributions and make expenditures for the purpose of influencing the “selection, nomination, election, or appointment of any individual to Federal, State, or local public office or office in a political organization, or the election of Presidential electors.” Political organizations include political party committees, Federal, State and local candidate committees and other political committees such as political action committees (PACs). See IRS website available at <http://www.irs.gov/newsroom/article/0,,id=103480,00.html>.

²⁷ Section 106.011, F.S. defines “committee of continuous existence” to mean any group, organization, association, or other such entity which is certified pursuant to the provisions of s. 106.04, F.S.

Section 4 amends s. 447.303, F.S., to prohibit public employers from deducting or collecting money from their employees for political activity. The prohibition is the same prohibition as set out in sections 1 and 2, but it is placed in the chapter of law dealing with labor organizations.

Section 5 states that, if any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.

Section 6 provides an effective date of July 1, 2011, and states that the bill shall apply to collective bargaining agreements entered into after the effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Political organizations will lose a fund-raising tool by not being able to use paycheck deductions from public employees. Labor organizations may have more difficulty collecting funds from employees for political purposes.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

The bill creates s. 447.18, F.S., which would be located in part I of ch. 447, F.S., dealing with labor organizations generally. Under this new section a labor organization's records are subject to review by the "commission." There is no definition of commission for purposes of that part. For part II of ch. 447, F.S., governing labor relations for public employees, "commission" is

defined as the Public Employees Relations Commission; the term “commission” should be clarified as it applies to private entities.

VII. Related Issues:

Lines 41-42 and 50-57 delete the explicit authorization allowing employee organizations that are the exclusive bargaining agent for a unit of state employees to deduct membership dues. However, the CS for CS/SB 830 restored language in s. 447.303, F.S., allowing employee organizations that are certified bargaining agents to have dues deductions. If the intent is to allow employee organizations to deduct dues that are not used for political purposes, it would be clearer to restore both provisions.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Rules on April 15, 2011:

The CS prohibits payroll deductions for political organizations rather than prohibiting payroll deductions from employee organizations.

CS by Community Affairs on March 14, 2011:

The CS prohibits labor organizations from spending employee funds on political expenditures or contributions without the employee’s written authorization. The CS further proscribes how the political contributions and expenditures will be predicted and accounted for and provides for a refund in certain circumstances. The CS makes the bill apply prospectively to collective bargaining agreements entered into after the effective date of the CS.

- B. **Amendments:**

None.