

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 Committee on Governmental Oversight and Accountability

BILL: SB 816

INTRODUCER: Senator Bradley and others

SUBJECT: Collective Bargaining for Certain Public Employees

DATE: March 19, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	Pre-meeting
2.			CA	
3.			AP	

I. Summary:

Employees have the right to collectively bargain under Article I, section 6 of the Florida Constitution. Statewide regulations for collective bargaining amongst public employees are addressed in the Florida Statutes. Current law requires any matter addressing a public employee's wages, hours, and terms and conditions of employment to be collectively bargained in good faith by the chief executive officer and the bargaining agent.

Current law provides a definition for "legislative body" that contains two different classes: specifically named entities, and unnamed entities. For an unnamed entity to be classified as a "legislative body," it must have authority to appropriate funds, have authority to establish policy governing the entity's terms and conditions of employment, and be the appropriate legislative body for the bargaining unit.

SB 816 amends the definition of "legislative body" to specify that the following constitutional officers are deemed a "legislative body" for purposes of collective bargaining:

- The sheriff;
- The tax collector;
- The property appraiser;
- The supervisor of elections; and
- The clerk of the circuit court.

The bill authorizes the constitutional officer to provide the final resolution on all collective bargaining impasse issues amongst his or her respective employees except for wages. Wage issues (defined as base salary and adjustments to base salary) must be resolved by the board of county commissioners. If the county commission resolves the wage issues different from the constitutional officers' final offers, the commission is required to provide funding sufficient to fund the resolution as well as maintain the staffing at the previous fiscal year level. If the

commission fails to provide sufficient funding, the constitutional officer may seek redress in the circuit court.

The bill has an effective date of July 1, 2014.

II. Present Situation:

Background

Collective Bargaining

Employees have the right to collectively bargain under Article I, section 6 of the Florida Constitution.¹ Statewide regulations for collective bargaining amongst public employees are addressed in part II of chapter 447, F.S.² Section 447.309, F.S., requires any matter addressing a public employee's "wages, hours, and terms and conditions of employment" to be collectively bargained in good faith by the chief executive officer and the bargaining agent.

Collective bargaining pursuant to chapter 447, F.S., consists of a series of negotiations between a public employer's chief executive officer³ and the selected bargaining agent⁴ for an employee organization regarding the terms and conditions of employment.⁵ The purpose of collective bargaining is to encourage "cooperative relationships between the government and its employees," and provide public employees with a means to participate in the establishment of their employment conditions.⁶

Any collective bargaining agreement that is reached must be placed in writing and signed by both the chief executive officer and the bargaining agent. The agreement is effective for a period of not more than three years, at which point the contract must be renegotiated.⁷

If the parties cannot reach a collective bargaining agreement after a reasonable period of negotiation, either party can declare a written impasse to The Public Employees Relations Commission (Commission).⁸

¹ FLA. CONST. art. I, § 6 (1968) (amendment to the "Right to Work" section: "[t]he right of employees, by and through a labor organization, to bargain collectively [which] shall not be denied or abridged").

² See s. 447.201, F.S., The Public Employees Relations Act provided statutory implementation of the 1968 amendment to s. 6, Art. I of the State Constitution.

³ Section 447.203(9), F.S., defines "chief executive officer" as the Governor for the state and for all other public employees, the person selected or appointed that is "responsible to the legislative body of the public employer for the administration of the governmental affairs of the public employer".

⁴ The term "bargaining agent" is defined in s. 447.203(12), F.S., as the employee organization certified by the Public Employees Relations Commission (PERC) to represent the employees in the bargaining unit, as provided in s. 447.307, F.S., or its representative. Section 447.203(8) F.S., defines "bargaining unit" as a unit determined by either the Public Employer Relations Commission, through local regulations promulgated pursuant to s. 447.603, F.S., or by the public employer and the public employee organization; that is approved by the commission to be appropriate for the purposes of collective bargaining.

⁵ Section 447.203(14), F.S.

⁶ Section 447.201, F.S., See also, Public Employees Relations Commission, A Practical Handbook on Florida's Public Employment Collective Bargaining Law, at 6 (2d ed. 2004).

⁷ Section 447.309(5), F.S. ("Any collective bargaining agreement shall not provide for a term of existence of more than 3 years ...").

⁸ The Public Employees Relations Commission (PERC) is an independent agency that was created pursuant to s. 447.205, F.S., to assist in resolving disputes between public employers and their employees.

Impasse Resolution Process

The procedural guidelines to resolve a collective bargaining impasse between the parties are outlined in s. 447.403, F.S. Once an impasse has been declared, the parties may appoint a mediator to resolve the dispute. If mediation does not resolve the impasse or if the parties choose not to appoint a mediator, the Commission will appoint and submit the unresolved disputes to a Special Magistrate selected by both parties, or by the Commission if the parties cannot agree.⁹

The appointed Special Magistrate conducts a series of hearings and renders a recommended decision within 15 days after the final hearing.¹⁰ Upon receiving the special magistrate's recommended decision, the parties have 20 days to accept or reject each recommended item or it is considered to be approved by both parties. If either party rejects all or part of the recommendations, the employer's chief executive officer is required to direct the dispute to the appropriate "legislative body" for a final disposition.¹¹

The "legislative body" holds a public hearing where each party is given an opportunity to present their argument before the legislative body issues a final resolution pursuant to "the public interest [and] the interest of the public employees involved."¹²

Legislative Body

Section 447.203(10), F.S., defines "legislative body" as:

... the State Legislature, the board of county commissioners, the district school board, the governing body of a municipality, or the governing body of an instrumentality or unit of government having authority to appropriate funds and establish policy governing the terms and conditions of employment and, which as the case may be, is the appropriate legislative body for the bargaining unit. For purposes of s. 447.403, the Board of Governors of the State University System, or the board's designee, shall be deemed to be the legislative body with respect to all employees of each constituent state university. For purposes of s. 447.403 the board of trustees of a community college shall be deemed to be the legislative body with respect to all employees of a community college.¹³

This statutory definition contains two different classes: specifically named entities, and unnamed entities. For an unnamed entity to be classified as a "legislative body," it must meet all three of the following elements outlined in s. 447.203(10), F.S.:

- It must have authority to appropriate funds;
- It must have authority to establish policy governing the entity's terms and conditions of
- employment; and

⁹ This section does not apply if the public employer is the Governor; in that case, the parties may proceed directly to the Legislature for resolution. See s. 447.403(2)(b), F.S.

¹⁰ Under s. 447.403(2)(a), F.S., both parties can waive the appointment of a special magistrate and proceed directly to the legislative body upon written agreement between the parties.

¹¹ See s. 447.403(3) and (4), F.S. (If a party rejects the recommendation, then the party must file a written notice of rejection with the Commission and to the other party that includes a statement of the cause for each rejection.)

¹² Section 447.403(4)(c)-(e), F.S.

¹³ Section 447.203(10), F.S.

- It must be the appropriate legislative body for the bargaining unit.¹⁴

Of these three elements, courts have considered the power to appropriate funds to be an essential requirement for “legislative body” status.¹⁵ The Commission has determined that an entity’s ability to *disperse or transfer* funds already appropriated by the county or municipality does not suffice as having actual appropriation authority.¹⁶

Constitutional Officers and their appointees and employees

Constitutional officers are elected governmental officials whose duties and responsibilities are established by the State Constitution rather than the Legislature.¹⁷ With the exception of certain charter counties,¹⁸ article VII, section 1 of the Florida Constitution directs each county to elect the following constitutional officers: a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court.¹⁹

Since 1978, constitutional officers have been recognized as “public employers” under ch. 447, F.S. That means that the court recognized that the constitutional officers “possess the requisite control over the terms and conditions of employment of its personnel” and “are sufficiently distinct from other county offices to warrant . . . designation as a public employer.”²⁰

Appointees of constitutional officers, like deputy sheriffs, were given the right to collectively bargain in 2003.²¹

Under current law, the “legislative body” responsible for resolving impasses between a constitutional officer and their employees is generally the county commission or municipality - not the constitutional officer.²² The First District Court of Appeal stated that “it is clear the Legislature defined “legislative body” in section 447.203(10), F.S., so as to ensure the entity

¹⁴ Fla. State Lodge, Fraternal Order of Police, Inc. (FOP) v. Sheriff of Pasco County, Case No. CA-2008-026 at *3-4(Fla. PERC May 22, 2009) (The Commission determined that the statutory use of the word “and” in s. 447.203, F.S., denotes a three prong conjunctive assessment. Prior to this decision, the Commission only considered the first and second prong).

¹⁵ Fla. Sch. for the Deaf and the Blind, v. Teachers United, FTP-NEA, 483 So.2d 58, 60 (Fla. 1st DCA 1986) (citing *United Faculty of Fla., FEA/United, AFT, AFL-CIO v. Bd. of Regents*, 365 So.2d 1073, 1075 (Fla. 1st DCA 1979)).

¹⁶ *Id.* (The Board’s ability to transfer monies between categories of appropriations does not constitute appropriation authority.) See also *Florida State Lodge, Fraternal Order of Police, Inc (FOP)*, Case No. CA-2008-026 at *4 (Sheriff of Pasco County did not have actual appropriations authority since he only had the power to disperse funds that were already appropriated by the Pasco County Commission).

¹⁷ BLACK’S LAW DICTIONARY 312 (6th ed. 1990).

¹⁸ *Demings v. Orange County Citizens Review Bd.*, 15 So.3d 604,606 (Fla. 5th DCA 2009) (“In charter counties, the electorate has an option of either maintaining these independent constitutional offices or abolishing them [all together] and transferring their responsibilities to the board of the charter county or to local offices created by the charter.”).

¹⁹ FLA. CONST. art. III, § 1(g).

²⁰ *Murphy v. Mack*, 358 So.2d 822 (Fla. 1978) (deputy sheriffs were not “public employees” for collective bargaining purposes, but the sheriff was a “public employer” since the sheriff employed other persons such as typists, stenographers, bookkeepers, cooks, janitors and others that were “public employees”).

²¹ *Coastal Fla. Police Benevolent Assoc., Inc v. Williams*, 838 So.2d 543 (Fla. 2003) (overturning long term precedent that deputy sheriffs were excluded from collective bargaining rights on the premises that those deputies were not considered “public employees” under ch. 447, F.S.). See *Murphy v. Mack*, 358 So.2d 882 (Fla.1978) (deputy sheriffs are not public employees). See also *Fla. Public Employees Council 79, AFSCME v. Martin County Prop. Appraiser*, 521 So.2d 243 (Fla. 1st DCA 1988) (individuals employed by property appraisers are not public employees). See also *Fed’n of Pub. Employees, Dist. No 1, Pacific Coast Dist., M.E.B.A., AFL-CIO v. Pub. Employees Relations Comm’n* (Fla. 4th DCA 1985) (deputy clerks of circuit court are not public employees).

²² *Sheriff of Pasco County v. Florida State Lodge (FOP)*, 53 So.3d 1073 (Fla. 1st DCA 2011).

resolving collective bargaining impasse issues is the entity with authority to fund the resulting collective bargaining agreement.”²³

III. Effect of Proposed Changes:

Section 1 amends s. 447.203, F.S., to modify the definition of “legislative body” under s. 447.203(10), F.S., to specify that the following constitutional officers are deemed a “legislative body” for purposes of collective bargaining:

- The sheriff;
- The tax collector;
- The property appraiser;
- The supervisor of elections; and
- The clerk of the circuit court.

The bill authorizes the constitutional officer to provide the final resolution on all collective bargaining impasse issues amongst his or her respective employees except for disputed impasse issues over wages. These issues over wages, defined as base salary or base salary adjustments, continue to be within the authority of the board of county commissioners to be resolved.

Section 2 amends s. 447.403, F.S., to specify when the board of county commissioners must provide supplemental funds. In the first instance, if the board of county commissioners resolves a wage issue through an increase over the constitutional officer’s final offer at impasse and after the beginning of the fiscal year, the board must provide supplemental funds sufficient to fund the wages that exceed the final offer.

In the second instance, if the resolution of the wage issue impacts an upcoming year, the board is required to provide funds necessary to maintain the same staffing levels as the previous fiscal year.

If the board of county commissioners fails to provide the necessary funds, the constitutional officer may apply to the circuit court for an order requiring the board to appropriate the funding necessary to the constitutional officer.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (a) of s. 18, Art. VII of the Florida Constitution provides that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds . . . unless the legislature has determined that such law fulfills an important state interest and unless . . . the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature . . .”.

If this bill requires the county commission to spend funds on the constitutional offices that the county commission would not otherwise be required to allocate, the

²³ *Id.* at 1074.

constitutional restrictions may apply. This bill does not contain a legislative determination that the bill fulfills an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

No direct impact, but see VII. Related Issues below.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill allows certain constitutional officers to resolve collective bargaining impasses amongst their employees instead of the county commission. As such, the constitutional officer, who does not appropriate funds, could commit a county to expend funds for issues such officer has resolved as part of a collective bargaining impasse.

VI. Technical Deficiencies:

None.

VII. Related Issues:

By defining the constitutional officer as the legislative body to resolve issues at impasse other than wages, this bill allows the constitutional officer to resolve significant economic issues that may impact county budgets. These economic issues include staffing, vacation, leave, overtime, retirement benefits, health insurance benefits, deferred compensation benefits, and other compensation issues not related to base salary and adjustments to base salary. It is unclear whether the county commission is required to provide funding for each of these issues consistent with the constitutional officer's offers. See IV. A. Municipality/County Mandates Restrictions above.

By defining the county commission's authority to include "base salary and base salary adjustments," it appears that the county commission has the authority to set the minimum salary levels for the various jobs covered by the bargaining unit.

The provision requiring the county commission to provide funds necessary to maintain the same staffing levels as the previous fiscal year appears to negatively impact the commission's ability

to develop and implement budgets when county revenues have decreased from the prior year's revenues. If the commission must fund each of the constitutional offices at the same staffing level as the previous year, the commission's authority and flexibility to determine its remaining budget is limited. The county may have to reduce other government services significantly or increase revenues to maintain those other services.

VIII. Statutes Affected:

This bill substantially amends sections 447.203 and 447.403 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.