

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1021 Labor and Employment  
**SPONSOR(S):** Dorworth and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 830

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) State Affairs Committee		Kliner	Hamby
2) Appropriations Committee			

### SUMMARY ANALYSIS

The bill prohibits state, county, municipal, and special district employee payroll deductions for dues, uniform assessments, penalties, or special assessments of an employee organization. It further prohibits public employee payroll deductions for purposes of political activity, including contributions to a candidate, political party, political committee, committee of continuous existence, electioneering communications organization, or organization exempt from taxation under 501(c)(4), or s. 527, of the Internal Revenue Code. The bill deletes the explicit authorization for "employee organizations" that are the exclusive bargaining agent for a unit of state employees to deduct membership dues.

With regard to labor organizations generally, unless an employee has executed a written authorization, the employee is entitled to a pro rata refund of any dues, uniform assessments, fines, penalties, or special assessments paid by the employee and used by the labor organization to make political contributions or expenditures. The written authorization for political expenditures must be executed by the employee separately for each fiscal year and must be accompanied with 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 employee may revoke the authorization at any time. If an employee revokes the authorization, the pro rata refund to the employee for such fiscal year shall be in the same proportion as the proportion of the fiscal year for which the authorization was not in effect. 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.

The bill deletes language made obsolete by the previous sections of the bill, and deletes references to deductions or check-offs by public employee organizations with respect to civil penalties for violation of the statutory strike prohibition.

The bill provides a severability clause, in the event any provision of this act or its application to any person or circumstance is held invalid.

The bill provides an effective date of July 1, 2011.

Reasonable costs to the public employer for payroll deductions have been a subject for collective bargaining agreements, pursuant to state law. Depending upon the particular system utilized by public employers to manage payroll deductions, the elimination of payroll deduction for employee organizations may result in a neutral to insignificant fiscal impact to public employers.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **Employee Unions and Federal Labor Law**

The Federal National Labor Relations Act (NLRA)<sup>1</sup> of 1935 and the Federal Labor Management Relations Act of 1947<sup>2</sup> constitute a comprehensive scheme of regulations guaranteeing to private employees 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.<sup>3</sup> The NLRA also established the National Labor Relations Board (NLRB), an independent federal agency that administers and interprets the statute and enforces its terms.

The NLRA contains no express preemption provision, and because the NLRA regulates in an area of law traditionally regulated by the states, any NLRA preemption analysis starts with the basic assumption that Congress did not intend to displace state law. Under the *Garmon* preemption doctrine, state regulations and causes of action are presumptively preempted if they concern conduct that is actually or arguably either prohibited or protected by the NLRA.<sup>4</sup> A state regulation or cause of action may, however, be sustained if the behavior to be regulated is behavior that is of only peripheral concern to the federal law or touches interests deeply rooted in local feeling and responsibility. In such cases, the state's interest in controlling or remedying the effects of the conduct is balanced against both the interference with the National Labor Relations Board's ability to adjudicate controversies committed to it by the NLRA, and the risk that the state will sanction conduct that the NLRA protects.<sup>5</sup>

##### **Employee Unions and Florida's Labor Law**

In 1943, the Florida Legislature passed legislation to regulate the activities of union officials and certain aspects of labor-management relations.<sup>6</sup> Among the rights created was the right of employees to organize themselves. The Declaration of Rights of the Florida Constitution was amended to protect workers from employment discrimination resulting from membership or non-membership in an employee organization. As such, Florida is one of twenty-two states with right-to-work laws that secure the right of employees to decide whether or not to join or financially support a labor union.<sup>7</sup> As amended in 1968, Article I, section 6, of the Florida Constitution states:

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

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<sup>1</sup>29 U.S.C. §§ 151 to 169. See, *Nash v. Florida Indus. Commission*, 389 U.S. 235, 88 S. Ct. 362, 19 L. Ed. 2d 438 (1967).

<sup>2</sup> 29 U.S.C. §§ 141 to 187. Also known as the Taft-Hartley Act, the Labor Management Relations Act prohibits jurisdictional strikes and secondary boycotts by unions, authorizes individual states to pass "right-to-work laws", regulates pension and other benefit plans established by unions, and provides that federal courts have jurisdiction to enforce collective bargaining agreements.

<sup>3</sup>With limited exceptions, the NLRA, and amendments thereto, addresses private sector employee/employer relations only, and does not provide employees of state and local governments with the right to organize or engage in union activities, except to the extent that the United States Constitution protects their rights to freedom of speech and freedom of association. Such labor rights derive from state law. Governmental employees were covered, however, in the Fair Labor Standards Act, 29 U.S.C. §§ 201 to 219. Passed in 1938, the Act establishes standards for minimum wages, overtime pay, record keeping, and child labor.

<sup>4</sup> *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 79 S.Ct. 773, 3 L.Ed.2d 775 (1959),

<sup>5</sup> 2003 A.L.R. Fed. 1 (Originally published in 2003)

<sup>6</sup> Chapter Law 21968, 1943. Formerly in Chapter 481, F.S. Labor organizations are regulated in Chapter 447, F.S.

<sup>7</sup> The remaining states permit union security provisions in collective labor contracts that may require the employer hire only union members, ensuring a so-called "closed shop," or require that newly hired workers join the union within a certain period. Other states with right to work laws include Alabama, Arizona, Arkansas, Georgia, Idaho, Iowa, Kansas, Louisiana, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming.

See: <http://www.nrtw.org/rtws.htm>

labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

Chapter 447, F.S., regulates labor organizations. Part I provides general provisions applicable to labor unions in the state and provides employees' right to self-organization and to refrain from such activity. Part I places regulatory oversight of licensing and permitting union representatives, registration of labor organizations, and collection of fees with the Department of Business and Professional Development.

Part II of chapter 447, F.S., regulates labor organizations for public employees, and establishes the Public Employees Relations Commission to regulate collective bargaining in the state. The public policy of the state is to promote harmonious and cooperative relationships between employees and governments and to assure orderly and uninterrupted government operations and functions.

Under current law, an employee organization<sup>8</sup> that is certified as a bargaining agent 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.<sup>9</sup> Authorizations are revocable at the employee's request upon 30 days' written notice to the employer and employee organization. Deductions commence upon the bargaining agent's written request to the employer. Reasonable costs to the employer of said deductions are a proper subject of collective bargaining. Such right to deduction, unless revoked by a court due to a violation on the prohibition on strikes, is operable 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.<sup>10</sup>

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.<sup>11</sup>

## **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.<sup>12</sup>

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<sup>8</sup> An employee organization is the public employee's labor union. See, subsection 447.02(1), F.S.

<sup>9</sup> Subsection 447.203(12), F.S., defines bargaining agent as the employee organization which has been certified by the Public Employees Relations Commission as representing the employees in the bargaining unit or its representative.

<sup>10</sup> Section 447.303, F.S.

<sup>11</sup> Sections 110.114 and 112.171, F.S. Voluntary payroll deductions may include contributions to charities, non-profit organizations, retirement plans, deferred compensation and health plans, academic tuition and fees, membership dues for professional organizations, and labor organization dues (as well as funds, committees or subsidiary organizations maintained by labor organizations).

<sup>12</sup> Section 106.011, F.S.

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 the purpose of influencing the results of an election or making an electioneering communication. There is an exception for internal newsletters.<sup>13</sup>

### Effect of Proposed Changes

The bill prohibits state, county, municipal, and special district employee payroll deductions for dues, uniform assessments, penalties, or special assessments of an employee organization. It further prohibits public employee payroll deductions for purposes of political activity, including contributions to a candidate, political party, political committee, committee of continuous existence, electioneering communications organization, or organization exempt from taxation under 501(c)(4), or s. 527, of the Internal Revenue Code. The bill deletes the explicit authorization for “employee organizations” that are the exclusive bargaining agent for a unit of state employees to deduct membership dues.

With regard to labor organizations generally, unless an employee has executed a written authorization, the employee is entitled to a pro rata refund of any dues, uniform assessments, fines, penalties, or special assessments paid by the employee and used by the labor organization to make political contributions or expenditures, as defined in s. 106.011, F.S. The written authorization for political expenditures must be executed by the employee separately for each fiscal year and must be accompanied with 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 employee may revoke the authorization at any time. If an employee revokes the authorization, the pro rata refund of the employee for such fiscal year shall be in the same proportion as the proportion of the fiscal year for which the authorization was not in effect. 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.

With regard to public employee labor organizations, the bill prohibits public employers from deducting or collecting money from their employees for an employee organization. The bill deletes language made obsolete by the previous sections of the bill, specifically:

- Authorizing a bargaining agent 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
- Allowing the employee to revoke authorization for employer deduction with 30 days’ written notice
- Allowing reasonable costs to the employer for deductions as a subject for collective bargaining
- Providing procedures regarding the deduction and revocation process
- Prohibiting the public employer from any involvement in the collection of fines, penalties, or special assessments

In addition the bill deletes references to deductions or check-offs by employee organizations with respect to penalties for violation of the strike prohibition, also made obsolete by the previous statutory changes.

The bill provides a severability clause, in the event any provision of this act or its application to any person or circumstance is held invalid.

The bill provides an effective date of July 1, 2011.

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<sup>13</sup> Section 106.011, F.S.

## **B. SECTION DIRECTORY:**

Section 1 amends s. 110.114, F.S., to prohibit state employee payroll deductions for dues, uniform assessments, penalties, or special assessments of an employee organization, and further prohibits deductions for purposes of political activity.

Section 2 amends s. 112.171, F.S., to prohibit county, municipal, and special district employee payroll deductions for dues, uniform assessments, penalties, or special assessments of an employee organization, and further prohibits deductions for purposes of political activity.

Section 3 creates s. 447.18, F.S., to require an employee/union member to annually submit written authorization to the union to make contributions or expenditures of a political nature. This section also requires an accounting of union political expenditures or contributions for the preceding 24 months, provides for a pro-rata refund in the absence of written authorization, provides for revocation of employee authorization, and prohibits employee authorization as a condition of union membership.

Section 4 amends s. 447.303, F.S., to prohibit public employers from deducting or collecting money from their employees for an employee organization. This section removes language made obsolete by the prohibition of employee payroll deductions for union activity.

Section 5 amends s. 447.507, F.S., deleting references to payroll deductions or check-offs by employee organizations with respect to penalties for violation of the strike prohibition.

Section 6 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 7 provides an effective date of July 1, 2011.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

See, Section D FISCAL COMMENTS

#### **2. Expenditures:**

See, Section D FISCAL COMMENTS

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

See, Section D FISCAL COMMENTS

#### **2. Expenditures:**

See, Section D FISCAL COMMENTS

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

To the extent financial institutions' may "sweep" accounts receiving payroll deductions from members of labor organizations, institutions servicing state labor organizations may lose some indeterminate financial benefit.<sup>14</sup>

Employee organizations are likely to have more difficulty collecting dues, fees, assessments and penalties from public employees. Labor organizations are likely to have more difficulty collecting funds from employees for political purposes.

#### D. FISCAL COMMENTS:

Reasonable costs to the public employer for payroll deductions were a subject for the collective bargaining agreement. The elimination of payroll deduction for employee organizations may result in a neutral fiscal impact to public employers.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

The bill provides for a refund for certain employee dues, assessments, fines, or penalties unless the employee has executed a written authorization. The written authorization must be executed by the employee separately for each fiscal year. Depending on the labor organization's scheduled fiscal year, the bill's effective date of July 1, 2011, may result in a conflict between statutory rights and contractual obligations.

The United States Constitution and the Florida Constitution prohibit the state from passing any law impairing the obligation of contracts.<sup>15</sup> "[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear."<sup>16</sup> If a law does impair contracts, the courts will assess whether the law is deemed reasonable and necessary to serve an important public purpose.<sup>17</sup> The factors that a court will consider when balancing the impairment of contracts with the public purpose include: whether the law was enacted to deal with a broad, generalized economic or social problem; whether the law operates in an area that was already subject to state regulation at the time the parties undertook their contractual obligations, or whether it invades an area never before subject to regulation; and whether the law effects a temporary alteration of the contractual relationships of those within its scope, or whether it works a severe, permanent, and immediate change in those relationships, irrevocably and retroactively.<sup>18</sup>

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<sup>14</sup>In banking, sweep accounts are primarily used as a legal workaround to the prohibition on paying interest on business checking accounts. In this system, the funds are being described as being "swept overnight" into an investment vehicle of some kind. <http://free.thebankaccounts.com/2008/06/sweep-account.html>

<sup>15</sup> U.S. Const. Art. I, § 10; Art. I, s. 10, Fla. Const.

<sup>16</sup> *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So 2d 774 (Fla. 1979). See also *General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

<sup>17</sup> *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So 2d 681 (Fla. 1980); *Yellow Cab C. v. Dade County*, 412 So 2d 395 (Fla. 3rd DCA 1982). See also *Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983) (construing the federal constitutional provision). An important public purpose would be a purpose protecting the public's health, safety, or welfare. See *Khoury v. Carvel Homes South, Inc.*, 403 So2d 1043 (Fla. 1st DCA 1981).

<sup>18</sup> *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So 2d 774 (Fla. 1979).

**B. RULE-MAKING AUTHORITY:**

The bill does not provide rule making authority and none is needed to implement provisions therein.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**