

By the Committee on Governmental Reform and Oversight and  
Senator Gutman

302-1703-98

1                                   A bill to be entitled  
2           An act relating to the rulemaking authority of  
3           the Department of Management Services and other  
4           agencies (RAB); creating s. 110.224, F.S.;  
5           requiring a review and performance planning  
6           system; requiring the department to adopt rules  
7           to implement a review and performance planning  
8           system to assess employee performance; amending  
9           s. 110.1095, F.S.; directing the department to  
10          provide technical assistance; requiring annual  
11          review of state training programs; requiring  
12          agencies to develop and implement training  
13          programs; directing the department to adopt  
14          rules for training programs; amending s.  
15          110.207, F.S.; prohibiting positions from being  
16          filled before they have been classified;  
17          amending s. 110.227, F.S.; directing the  
18          department to adopt a grievance procedure for  
19          career service employees; requiring a grievance  
20          process to be available for career service  
21          employees; defining the term "grievance";  
22          authorizing the adoption of rules for the  
23          grievance process; amending s. 216.262, F.S.;  
24          providing rulemaking authority; detailing use  
25          and value of perquisites; amending s. 946.515,  
26          F.S.; making a determination not to use  
27          corporation products or services; providing an  
28          effective date.

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30 Be It Enacted by the Legislature of the State of Florida:  
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1           Section 1. Section 110.224, Florida Statutes, is  
2 created to read:

3           110.224 Review and performance planning system.--A  
4 review and performance planning system shall be established as  
5 a basis for improving the performance of the state's  
6 workforce, to provide documentation in support of  
7 recommendations for salary increases, promotions, demotions,  
8 reassignments, or dismissals; to inform employees of strong  
9 and weak points in the employee's performance, improvements  
10 expected, and current and future training needs; and to assist  
11 in determining the order of layoff and reemployment.

12           (1) Upon original appointment, promotion, demotion, or  
13 reassignment, each career service employee must be given a  
14 statement of the work expectations and performance standards  
15 applicable to the position. The statement may be included in  
16 the position description or in a separate document. An  
17 employee will not be required to meet work expectations or  
18 performance standards that have not been furnished in writing  
19 to the employee.

20           (2) Each employee's performance must be reviewed at  
21 least annually, and the employee must receive an oral and  
22 written assessment of his or her performance. The assessment  
23 may include a plan of corrective action for improvement of the  
24 employee's performance based on the work expectations or  
25 performance standards applicable to the position.

26           (3) The department may adopt rules to administer the  
27 review and performance planning system which establish  
28 procedures for performance evaluation, procedures to be  
29 followed in case of failure to meet performance standards,  
30 review periods, and forms.

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1           Section 2. Section 110.1095, Florida Statutes, is  
2 amended to read:

3           110.1095 Supervisory and management training and  
4 continuing education for executive branch agencies.--The  
5 department shall represent the public interest in the  
6 improvement of administration by providing training programs  
7 for all executive branch agencies, except the State University  
8 System, aimed at improving managerial, administrative, and  
9 technical skills.

10           (1) The department shall establish a basic supervisory  
11 skills training program that provides a standard set of  
12 fundamental supervisory skills to ensure that all persons  
13 filling supervisory or managerial positions in state  
14 government are instructed in basic supervisory functions. The  
15 program shall be designed so that a person who is hired or  
16 promoted into a supervisory position attends the training  
17 within 6 months after the date that he or she is hired or  
18 promoted into such position; when there are extenuating  
19 circumstances, this period may be extended up to 6 months.

20           (2) The department shall provide technical assistance  
21 to agencies for the development and evaluation of training  
22 programs and shall establish a continuing education program  
23 for supervisors and managers to ensure that persons filling  
24 such positions update their skills on a regular and continuing  
25 basis.

26           (3) The department shall annually review, monitor for  
27 compliance, and evaluate all state training programs developed  
28 pursuant to this section. The department may adopt rules  
29 establishing procedures for the annual review, monitoring,  
30 evaluation, oversight of state training programs, and agency  
31 reporting requirements.

1           (4) Each agency is responsible for the development,  
2 implementation, administration, and evaluation of agency  
3 training programs for supervisors and managers.

4           Section 3. Subsection (1) of section 110.207, Florida  
5 Statutes, is amended to read:

6           110.207 Classification plan.--

7           (1) The department shall establish and maintain a  
8 uniform classification plan applicable to all positions in the  
9 career service and shall be responsible for the overall  
10 coordination, review, and maintenance of the plan. No action  
11 may be taken to fill any position until it has been classified  
12 in accordance with the classification plan.

13           (a) The department shall develop class specifications  
14 necessary for the establishment of new classes or for the  
15 revision of existing classes and shall adopt the appropriate  
16 class title and class code for each class. Such class  
17 specifications, titles, and codes shall not constitute rules  
18 within the meaning of s. 120.52.

19           (b) The department shall be responsible for conducting  
20 periodic studies and surveys to assure that the classification  
21 plan is maintained on a current basis.

22           (c) The department may review in a postaudit capacity  
23 the action taken by an employing agency in classifying or  
24 reclassifying a position.

25           (d) The department shall effect a classification  
26 change on any classification or reclassification action taken  
27 by an employing agency if the action taken by the agency was  
28 not based on the duties and responsibilities officially  
29 assigned the position as they relate to the concepts and  
30 allocation factors contained in the official class  
31 specifications adopted by the department.

1           (e) Any action taken by the department in regard to  
2 the classification or reclassification of a position which  
3 affects a department headed by a Cabinet officer or by the  
4 Governor and Cabinet may be reviewed by the Administration  
5 Commission, and the decision of the department may be changed  
6 by a majority vote of the Administration Commission.

7           (f) In cooperation and consultation with the employing  
8 agencies, the department shall adopt rules necessary to govern  
9 the administration of the classification plan. Such rules  
10 shall be approved by the Administration Commission prior to  
11 their adoption by the department.

12           (g) In consultation with the Executive Office of the  
13 Governor, the department shall facilitate the statewide  
14 planning of the career service broadbanding compensation and  
15 classification system.

16           1. Upon approval by the Executive Office of the  
17 Governor, the department shall begin developing the  
18 broadbanding system to ensure agency flexibility and  
19 accountability on a statewide basis, and shall have the  
20 authority to determine system modifications necessary to  
21 permit use by all agencies. The proposed structure shall  
22 address all issues raised in the January 1997 report on the  
23 "Review of the Department of Transportation Model  
24 Classification Plan" submitted to the Governor, the President  
25 of the Senate, and the Speaker of the House of  
26 Representatives. The Department of Management Services shall  
27 provide alternatives for a rate funding formula that will not  
28 exceed the statewide cost under the current formula and will  
29 ensure that agencies are able to effectively recruit and  
30 retain employees. The Department of Transportation shall

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1 continue to use the model system it developed under the  
2 provision of s. 334.0445 until July 1, 1999.

3 2. Once the Executive Office of the Governor has  
4 approved a statewide broadbanding compensation and  
5 classification system, state agencies will come under the  
6 uniform personnel system based on an implementation schedule  
7 developed by the Department of Management Services and  
8 approved by the Executive Office of the Governor.

9 Section 4. Section 110.227, Florida Statutes, is  
10 amended to read:

11 110.227 Suspensions, dismissals, reductions in pay,  
12 demotions, layoffs, ~~and transfers,~~ and grievances.--

13 (1) Any employee who has permanent status in the  
14 career service may only be suspended or dismissed for cause.  
15 Cause shall include, but not be limited to, negligence,  
16 inefficiency or inability to perform assigned duties,  
17 insubordination, willful violation of the provisions of law or  
18 agency rules, conduct unbecoming a public employee,  
19 misconduct, habitual drug abuse, or conviction of any crime  
20 involving moral turpitude. Each agency head shall ensure that  
21 all employees of the agency are completely familiar with the  
22 agency's established procedures on disciplinary actions and  
23 grievances.

24 (2) The department shall establish rules and  
25 procedures for the suspension, reduction in pay, transfer,  
26 layoff, demotion, and dismissal of employees in the career  
27 service. Such rules shall be approved by the Administration  
28 Commission prior to their adoption by the department.

29 (3)(a) When a layoff becomes necessary, such layoff  
30 shall be conducted within the competitive area identified by  
31 the agency head and approved by the Department of Management

1 Services. Such competitive area shall be established taking  
2 into consideration the similarity of work; the organizational  
3 unit, which may be by agency, department, division, bureau, or  
4 other organizational unit; and the commuting area for the work  
5 affected.

6 (b) Layoff procedures shall be developed to establish  
7 the relative merit and fitness of employees and shall include  
8 a formula for uniform application among all employees in the  
9 competitive area, taking into consideration the type of  
10 appointment, the length of service, and the evaluations of the  
11 employee's performance within the last 5 years of employment.

12 (4) Any permanent career service employee subject to  
13 reduction in pay, transfer, layoff, or demotion from a class  
14 in which he or she has permanent status in the Career Service  
15 System shall be notified in writing by the agency prior to its  
16 taking such action. The notice may be delivered to the  
17 employee personally or may be sent by certified mail with  
18 return receipt requested. Such actions shall be appealable to  
19 the Public Employees Relations Commission, pursuant to s.  
20 447.208 and rules adopted by the commission.

21 (5)(a) Any permanent career service employee who is  
22 subject to suspension or dismissal shall receive written  
23 notice of such action at least 10 days prior to the date such  
24 action is to be taken. Subsequent to such notice, and prior  
25 to the date the action is to be taken, the affected employee  
26 shall be given an opportunity to appear before the agency or  
27 official taking the action to answer orally and in writing the  
28 charges against him or her. The notice to the employee  
29 required by this paragraph may be delivered to the employee  
30 personally or may be sent by certified mail with return  
31 receipt requested. An employee who is suspended or dismissed

1 shall be entitled to a hearing before the Public Employees  
2 Relations Commission or its designated agent pursuant to s.  
3 447.208 and rules adopted by the commission.

4 (b) In extraordinary situations such as when the  
5 retention of a permanent career service employee would result  
6 in damage to state property, would be detrimental to the best  
7 interest of the state, or would result in injury to the  
8 employee, a fellow employee, or some other person, such  
9 employee may be suspended or dismissed without 10 days' prior  
10 notice, provided that written or oral notice of such action,  
11 evidence of the reasons therefor, and an opportunity to rebut  
12 the charges are furnished to the employee prior to such  
13 dismissal or suspension. Such notice may be delivered to the  
14 employee personally or may be sent by certified mail with  
15 return receipt requested. Agency compliance with the foregoing  
16 procedure requiring notice, evidence, and an opportunity for  
17 rebuttal must be substantiated. Any employee who is suspended  
18 or dismissed pursuant to the provisions of this paragraph  
19 shall be entitled to a hearing before the Public Employees  
20 Relations Commission or its designated agent pursuant to s.  
21 447.208, except that such hearing shall be held no more than  
22 20 days after the filing of the notice of appeal by the  
23 employee.

24 (6) A grievance process shall be available to career  
25 service employees. A grievance is defined as the  
26 dissatisfaction that occurs when an employee thinks or feels  
27 that any condition affecting the employee is unjust,  
28 inequitable, or a hinderance to effective operation, or  
29 creates a problem, except that an employee shall not have the  
30 right to file a grievance against performance evaluations  
31 unless it is alleged that the evaluation is based on factors



1 other than the employee's performance. Claims of  
2 discrimination and sexual harassment, suspensions, reductions  
3 in pay, transfers, layoffs, demotions, and dismissals are not  
4 subject to the career-service grievance process.

5 (7) The department shall adopt rules for  
6 administration of the grievance process for career-service  
7 employees. Such rules shall establish agency grievance  
8 procedures, eligibility, filing deadlines, forms, and review  
9 and evaluation governing the grievance process.

10 Section 5. Paragraphs (e), (f), and (g) of subsection  
11 (1) and subsection (3) of section 216.262, Florida Statutes,  
12 are amended to read:

13 216.262 Authorized positions.--

14 (1)

15 (e) An individual employed by a state agency or by the  
16 judicial branch may not fill more than a total of one  
17 full-time equivalent established position, receive  
18 compensation simultaneously from any appropriation other than  
19 appropriations for salaries, or receive compensation  
20 simultaneously from more than one state agency unless approved  
21 by the Department of Management Services, or otherwise  
22 delegated to the agency head, or by the Chief Justice,  
23 respectively, during each fiscal year. The Department of  
24 Management Services may adopt uniform rules applicable to the  
25 executive branch agencies to implement its responsibilities  
26 under this paragraph.

27 (f) Perquisites may not be furnished by a state agency  
28 or by the judicial branch unless approved by the Department of  
29 Management Services, or otherwise delegated to the agency  
30 head, or by the Chief Justice, respectively, during each  
31 fiscal year. Whenever a state agency or the judicial branch is

1 to furnish perquisites, the Department of Management Services  
2 or the agency head to which the approval has been delegated or  
3 the Chief Justice, respectively, must approve the kind and  
4 monetary value of such perquisites before they may be  
5 furnished. Perquisites may be furnished only when in the best  
6 interest of the state due to the exceptional or unique  
7 requirements of the position. The value of a perquisite may  
8 not be used to compute an employee's base rate of pay or  
9 regular rate of pay unless required by the Fair Labor  
10 Standards Act. Permissible perquisites include, but are not  
11 limited to, moving expenses, clothing, use of vehicles and  
12 other transportation, domestic services, groundskeeping  
13 services, telephone services, medical services, housing,  
14 utilities, and meals. The Department of Management Services  
15 may adopt uniform rules applicable to the executive branch  
16 agencies to implement its responsibilities under this  
17 paragraph, which rules may specify additional perquisites,  
18 establish additional criteria for each kind of perquisite,  
19 provide the procedure to be used by executive agencies in  
20 applying for approvals, and establish the required  
21 justification.

22 (g) If goods and services are to be sold to officers  
23 and employees of a state agency or of the judicial branch  
24 rather than being furnished as perquisites, the kind and  
25 selling price thereof shall be approved by the Department of  
26 Management Services, unless otherwise delegated to the agency  
27 head, or by the Chief Justice, respectively, during each  
28 fiscal year before such sales are made. The selling price may  
29 be deducted from any amounts due by the state to any person  
30 receiving such things. The amount of cash so deducted shall  
31 be faithfully accounted for. This paragraph does not apply to

1 sales to officers or employees of items generally sold to the  
2 public and does not apply to meals which may be provided  
3 without charge to volunteers under a volunteer service program  
4 approved by the Department of Management Services. The goods  
5 and services may include, but are not limited to, medical  
6 services, long-term and short-term rental housing, and laundry  
7 and transportation services. The Department of Management  
8 Services may adopt uniform rules applicable to the executive  
9 branch agencies to implement its responsibilities under this  
10 paragraph, which rules may specify other items that may be  
11 approved, the required justification for proposed sales, and  
12 the manner in which agencies will apply for approvals.

13 (3) No full-time position shall be filled by more than  
14 the equivalent of one full-time officer or employee, except  
15 when extenuating circumstances exist. Extenuating  
16 circumstances will be as provided for in rules to be adopted  
17 by the Department of Management Services or by the Chief  
18 Justice, respectively.

19 Section 6. Subsection (2) of section 946.515, Florida  
20 Statutes, is amended to read:

21 946.515 Use of goods and services produced in  
22 correctional work programs.--

23 (2) No similar product or service of comparable price  
24 and quality found necessary for use by any state agency may be  
25 purchased from any source other than the corporation if the  
26 corporation certifies that the product is manufactured by, or  
27 the service is provided by, inmates and the product or service  
28 meets the comparable performance specifications and comparable  
29 price and quality requirements as specified under s.  
30 287.042(1)(f) or as determined by an individual agency as  
31 provided in this section. The purchasing authority of any such

1 state agency may make reasonable determinations of need,  
2 price, and quality with reference to products or services  
3 available from the corporation. If corporation products are  
4 available and not used, the agency will produce a written  
5 determination of its needs, pricing, and quality requirements  
6 relating to the purchase of corporation products, which shall  
7 be forwarded to the corporation 10 business days prior to any  
8 commitment by the agency to purchase from an entity other than  
9 the corporation, with copies to the agency division director.  
10 The written determination must also state in factual detail:  
11 (a) Needs for the agency's use of the products and  
12 services, whether the requirements are long-term or  
13 short-term, quantities required, incompatibilities with  
14 existing equipment or usages, and any other facts justifying  
15 the agency's determination not to use corporation products;  
16 (b) Pricing justification in comparative terms,  
17 showing the disparity in pricing compared with that for  
18 similar goods or services, quantity discounts, or other cost  
19 factors pertinent to the price comparison; and  
20 (c) Quality justification addressing specific  
21 deficiencies or shortcomings that show that the product or  
22 service is not compatible or appropriate for agency use.  
23  
24 In the event of a dispute between the corporation and any  
25 purchasing authority based upon price or quality under this  
26 section or s. 287.042(1)(f), either party may request a  
27 hearing with the Division of Purchasing and if not resolved,  
28 either party may request a proceeding pursuant to ss. 120.569  
29 and 120.57, which shall be referred to the Division of  
30 Administrative Hearings within 60 days after such request, to  
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1 resolve any dispute under this section. No party is entitled  
2 to any appeal pursuant to s. 120.68.

3 Section 7. This act shall take effect upon becoming a  
4 law.

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6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
7 COMMITTEE SUBSTITUTE FOR  
8 SB 1144

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9 If adopted, the bill will provide statutory authorization for  
10 existing administrative rules previously identified as  
11 exceeding the requirements of s. 120.536(1), F.S. The  
12 committee substitute provides additional clarification in the  
13 amended statutes of agency powers and duties as related to the  
14 substantive content of the identified rules.

15 Two sections of the bill were removed: section 3, relating to  
16 agency statements of penalties or ranges of penalties for  
17 misconduct; and section 7, relating to upkeep of the  
18 Governor's Mansion. A new section, relating to the  
19 determination by an agency not to use goods and services, of  
20 the corporation organized ch. 946, was added to the CS because  
21 it was inadvertently left out of the original bill.

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