

By Senator Hargrett

21-1318B-00

1 A bill to be entitled
2 An act relating to the Public Employees
3 Relations Commission; amending s. 447.203,
4 F.S.; clarifying the definition of professional
5 employee; amending section s. 447.205, F.S.;
6 providing conforming language for the transfer
7 of the Public Employees Relations Commission to
8 the Department of Management Services and
9 deleting obsolete language; amending s.
10 447.208, F.S.; clarifying the procedure for
11 appeals, charges, and petitions; amending s.
12 447.307, F.S.; authorizing the commission to
13 modify existing bargaining units; amending s.
14 447.503, F.S.; clarifying procedures; amending
15 s. 447.504, F.S.; authorizing the commission to
16 stay certain procedures; providing for the
17 transfer of the commission to the Department of
18 Management Services by a type two transfer;
19 repealing s. 447.609, F.S., relating to
20 representation in commission cases; providing
21 an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

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25 Section 1. Paragraph (a) of subsection (13) of section
26 447.203, Florida Statutes, is amended to read:

27 447.203 Definitions.--As used in this part:

28 (13) "Professional employee" means:

29 (a) Any employee engaged in work requiring advanced
30 knowledge in a field of science or learning customarily
31 acquired by a prolonged course of specialized intellectual

1 instruction and study in an institution of higher learning or
2 a hospital, as distinguished from a general academic
3 education, an apprenticeship, or training in the performance
4 of routine mental or physical processes and in any two or more
5 of the following categories:

6 1. Work predominantly intellectual and varied in
7 character as opposed to routine mental, manual, mechanical, or
8 physical work;

9 2. Work involving the consistent exercise of
10 discretion and judgment in its performance; and

11 3. Work of such a character that the output produced
12 or the result accomplished cannot be standardized in relation
13 to a given period of time. ~~and~~

14 ~~4. Work requiring advanced knowledge in a field of~~
15 ~~science or learning customarily acquired by a prolonged course~~
16 ~~of specialized intellectual instruction and study in an~~
17 ~~institution of higher learning or a hospital, as distinguished~~
18 ~~from a general academic education, an apprenticeship, or~~
19 ~~training in the performance of routine mental or physical~~
20 ~~processes.~~

21 Section 2. Subsections (1), (3), and (4) of section
22 447.205, Florida Statutes, are amended to read:

23 447.205 Public Employees Relations Commission.--

24 (1) There is hereby created within the Department of
25 Management Services ~~Labor and Employment Security~~ the Public
26 Employees Relations Commission, hereinafter referred to as the
27 "commission." The commission shall be composed of a chair and
28 two full-time members to be appointed by the Governor, subject
29 to confirmation by the Senate, from persons representative of
30 the public and known for their objective and independent
31 judgment, who shall not be employed by, or hold any commission

1 with, any governmental unit in the state or any employee
2 organization, as defined in this part, while in such office.
3 In no event shall more than one appointee be a person who, on
4 account of previous vocation, employment, or affiliation, is,
5 or has been, classified as a representative of employers; and
6 in no event shall more than one such appointee be a person
7 who, on account of previous vocation, employment, or
8 affiliation, is, or has been, classified as a representative
9 of employees or employee organizations. The commissioners
10 shall devote full time to commission duties and shall not
11 engage in any other business, vocation, or employment while in
12 such office. ~~Beginning January 1, 1980, the chair shall be~~
13 ~~appointed for a term of 4 years, one commissioner for a term~~
14 ~~of 1 year, and one commissioner for a term of 2 years.~~
15 ~~Thereafter,~~Every term of office shall be for 4 years; and
16 each term of the office of chair shall commence on January 1
17 of the second year following each regularly scheduled general
18 election at which a Governor is elected to a full term of
19 office. In the event of a vacancy prior to the expiration of
20 a term of office, an appointment shall be made for the
21 unexpired term of that office. The chair shall be responsible
22 for the administrative functions of the commission and shall
23 have the authority to employ such personnel as may be
24 necessary to carry out the provisions of this part. Once
25 appointed to the office of chair, the chair shall serve as
26 chair for the duration of the term of office of chair.
27 Nothing contained herein prohibits a chair or commissioner
28 from serving multiple terms.

29 (3) The commission, in the performance of its powers
30 and duties under this part, shall not be subject to control,
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1 supervision, or direction by the Department of Management
2 Services ~~Labor and Employment Security~~.

3 (4) The property, personnel, and appropriations
4 related to the commission's specified authority, powers,
5 duties, and responsibilities shall be provided to the
6 commission by the Department of Management Services ~~Labor and~~
7 ~~Employment Security~~.

8 Section 3. Subsections (1) and (3) of section 447.208,
9 Florida Statutes, are amended to read:

10 447.208 Procedure with respect to certain appeals
11 under s. 447.207.--

12 (1) Any person filing an appeal, charge, or petition
13 pursuant to subsection (6), subsection (8), or subsection (9)
14 of s. 447.207 shall be entitled to a hearing pursuant to
15 subsections (4) and (5) of s. 447.503 and in accordance with
16 chapter 120; however, the hearing shall be conducted within 30
17 days of the filing of an appeal with the commission, unless an
18 extension of time is granted by the commission for good cause
19 or unless the basis for the appeal is an allegation of abuse
20 or neglect under s. 415.1075, in which case the hearing by the
21 Public Employees Relations Commission may not be held until
22 the confirmed report of abuse or neglect has been upheld
23 pursuant to the procedures for appeal in s. 415.1075.

24 Discovery may be granted only upon a showing of extraordinary
25 circumstances. A party requesting discovery shall demonstrate
26 a substantial need for the information requested and an
27 inability to obtain relevant information by other means. To
28 the extent that chapter 120 is inconsistent with these
29 provisions, the procedures contained in this section shall
30 govern.

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1 (3) With respect to career service appeal hearings
2 relating to demotions, suspensions, or dismissals pursuant to
3 the provisions of this section:

4 (a) Upon a finding that just cause existed for the
5 demotion, suspension, or dismissal, the commission shall
6 affirm the demotion, suspension, or dismissal.

7 (b) Upon a finding that just cause did not exist for
8 the demotion, suspension, or dismissal, the commission may
9 order the reinstatement of the employee, with or without back
10 pay.

11 (c) Upon a finding that just cause for disciplinary
12 action existed, but did not justify the severity of the action
13 taken, the commission may, in its limited discretion, reduce
14 the penalty.

15 (d) The commission is limited in its discretionary
16 reduction of dismissals and suspensions to consider only the
17 following circumstances:

18 1. The seriousness of the conduct as it relates to the
19 employee's duties and responsibilities.

20 2. Action taken with respect to similar conduct by
21 other employees.

22 3. The previous employment record and disciplinary
23 record of the employee.

24 4. Extraordinary circumstances beyond the employee's
25 control which temporarily diminished the employee's capacity
26 to effectively perform his or her duties or which
27 substantially contributed to the violation for which
28 punishment is being considered.

29
30 The agency may present evidence to refute the existence of
31 these circumstances.

1 (e) Any order of the commission issued pursuant to
2 this subsection may include back pay, if applicable, and an
3 amount, to be determined by the commission and paid by the
4 agency, for reasonable attorney's fees, witness fees, and
5 other out-of-pocket expenses incurred during the prosecution
6 of an appeal against an agency in which the commission
7 sustains the employee. In determining the amount of an
8 attorney's fee, the commission shall consider only the number
9 of hours reasonably spent on the appeal, comparing the number
10 of hours spent on similar Career Service System appeals and
11 the reasonable hourly rate charged in the geographic area for
12 similar appeals, but not including litigation over the amount
13 of the attorney's fee. This paragraph applies to future and
14 pending cases.

15 Section 4. Paragraph (b) of subsection (3) of section
16 447.307, Florida Statutes, is amended to read:

17 447.307 Certification of employee organization.--

18 (3)

19 (b) When an employee organization is selected by a
20 majority of the employees voting in an election, the
21 commission shall certify the employee organization as the
22 exclusive collective bargaining representative of all
23 employees in the unit. Certification is effective upon the
24 issuance of the final order by the commission or, if the final
25 order is appealed, at the time the appeal is exhausted or any
26 stay is vacated by the commission or the court. A party may
27 petition the commission, pursuant to its established
28 procedures, to modify an existing certification due to changed
29 circumstances, an inadvertent mistake by the commission in the
30 original bargaining unit description, or newly created or
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1 deleted jobs, or to recognize a name change of the employee
2 organization.

3 Section 5. Paragraph (a) of subsection (5) of section
4 447.503, Florida Statutes, is amended to read:

5 447.503 Charges of unfair labor practices.--It is the
6 intent of the Legislature that the commission act as
7 expeditiously as possible to settle disputes regarding alleged
8 unfair labor practices. To this end, violations of the
9 provisions of s. 447.501 shall be remedied by the commission
10 in accordance with the following procedures and in accordance
11 with chapter 120; however, to the extent that chapter 120 is
12 inconsistent with the provisions of this section, the
13 procedures contained in this section shall govern:

14 (5) Whenever the proceeding involves a disputed issue
15 of material fact and an evidentiary hearing is to be
16 conducted:

17 (a) The commission shall issue and serve upon all
18 parties a notice of hearing before an assigned hearing officer
19 at a time and place specified therein. Such notice shall be
20 issued at least 14 days prior to the scheduled hearing. If a
21 party fails to appear for the hearing, the hearing officer
22 shall, after waiting a reasonable time, open the record, note
23 the nonappearance, and close the hearing. Thereafter, the
24 hearing may be reconvened only if the party establishes that
25 the failure to appear was due to circumstances beyond his or
26 her control.

27 Section 6. Subsection (4) of section 447.504, Florida
28 Statutes, is amended to read:

29 447.504 Judicial review.--

30 (4) The commencement of proceedings under this section
31 shall not, unless specifically ordered by the district court

1 of appeal, operate as a stay of the commission's order.
2 However, the commission may stay determination of the amount
3 of back pay, benefits, or attorney's fees until the court
4 decides the appeal.

5 Section 7. All powers, duties, functions, rules,
6 records, personnel, property, and unexpended balances of
7 appropriations, allocations, and other funds of the Public
8 Employees Relations Commission relating to the commission's
9 specified authority, powers, duties, and responsibilities are
10 transferred by a type two transfer, as defined in section
11 20.06, Florida Statutes, to the Department of Management
12 Services.

13 Section 8. Section 447.609, Florida Statutes, is
14 repealed.

15 Section 9. This act shall take effect upon becoming a
16 law.

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19 SENATE SUMMARY

20 Provides for the transfer of the Public Employees
21 Relations Commission from the Department of Labor and
22 Employment Security to the Department of Management
23 Services by a type two transfer pursuant to s. 20.06,
24 F.S. Clarifies the procedure for appeals, charges, and
25 petitions. Authorizes the commission to modify existing
26 bargaining units. Clarifies procedures. Authorizes the
27 commission to stay a determination of the amount of back
28 pay, benefits, or attorney's fees until the court decides
29 the appeal. Repeals s. 447.609, F.S., relating to
30 representation in commission cases.
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