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HOUSE OF REPRESENTATIVES

SMARTER GOVERNMENT COUNCIL
ANALYSIS

BILL #: HB 369

RELATING TO: Public Employees

SPONSOR(S): Representative(s) Diaz-Balart

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) STATE ADMINISTRATION YEAS 4 NAYS 2
(2) SMARTER GOVERNMENT COUNCIL
(3)
(4)
(5)

I. SUMMARY:

Part II of Chapter 110, F.S., establishes the Career Service System, and as required by Part II, the Department of Management Services (DMS) has developed a uniform classification and pay plan applicable to all positions in the career service; developed guidelines for employee selection procedures and recruitment; adopted rules and procedures for the suspension, reduction in pay, transfer, layoff (including "bumping"), demotion, and dismissal of employees; and developed uniform rules, in consultation with affected agencies and pursuant to approval by the Administration Commission, regarding employee appointment, promotion, demotion, reassignment, separation, status, attendance, and leave.

The Public Employees Relations Commission (PERC) decides cases regarding, for example, career service employee appeals, unfair labor practices, and veteran's preference; and, issues final orders accordingly. In addition to hearing cases, PERC is required to determine questions and controversies concerning claims for recognition as the bargaining agent for a bargaining unit; determine or approve collective bargaining units; and, administer the impasse resolution process.

This bill renumbers Chapter 110, F.S., to Chapter 109, F.S.; removes the requirement for agencies to prepare affirmative action plans and reports; requires all career service employees to participate in direct deposit; requires employees to pay the cost of optional salary deductions; changes the other-personnel-services (OPS) work hour limit; requires DMS to develop a model civil service classification and compensation plan within certain guidelines; removes "bumping" from layoff procedures; effective January 1, 2002, makes all career service employees "at-will" employees, abolishes PERC, and transfers its duties regarding collective bargaining to the Division of Human Resource Management within DMS; provides that employees who have been suspended, demoted, transferred, had a reduction in pay, laid off, or reassigned may appeal to circuit court or opt for Voluntary Binding Arbitration; establishes a Voluntary Binding Arbitrations program within the Division; provides that unfair labor practice complaints are to be filed with the circuit court, not with PERC; and makes other changes to the state personnel systems and to Chapter 447, F.S. *See* "Section-By-Section Analysis" section of this analysis.

There appears to be a significant impact to Florida's circuit courts due to an increased workload as a result of the employee grievance cases, unfair labor charges, and other litigation, formerly handled by PERC, now going to the circuit courts. This bill raises certain constitutional concerns, and there is significant opposition to the bill. Please see the "Comments" section for further detail.

There is an amendment traveling with the bill that has a substantial fiscal impact. Please see the "Fiscal Comments" section for further detail.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes [X]	No []	N/A []
2.	Lower Taxes	Yes []	No []	N/A [X]
3.	Individual Freedom	Yes [X]	No []	N/A []
4.	Personal Responsibility	Yes [X]	No []	N/A []
5.	Family Empowerment	Yes []	No []	N/A [X]

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Chapter 110, Florida Statutes – State Employment

Chapter 110, F.S., is divided into five parts. Part I contains general state employment provisions; Part II addresses the Career Service System; Part III deals with the Senior Management Service System (SMS); Part IV relates to Volunteers; and Part V establishes the Selected Exempt Service System (SES).

Part I of Chapter 110, F.S., covers such areas as education and training opportunities for state employees; personnel pilot projects; productivity improvement and personnel audits of executive branch agencies; use of telephone voice mail systems; employee security checks; employee wage deductions; paid holidays; sick leave pool; terminal pay for accumulated sick leave; sexual harassment policy; employee long-term-care plan; state group insurance program; prescription drug program; health insurance; meritorious service awards program; termination or transfer of employees aged 65 years or older; state officers' and employees' child care services; other-personal-services (OPS) temporary employment; adoption benefits; pretax benefits program; the Florida State Employees' Charitable Campaign contribution program; and state employee leasing.

Part II of Chapter 110, F.S., establishes the Career Service System,[1] and requires the Department of Management Services to develop and maintain a uniform classification and equitable pay plan applicable to all positions in the career service; to determine guidelines for employee selection procedures and recruitment to be used by employing agencies; to adopt rules and procedures for the suspension, reduction in pay, transfer, layoff, demotion, and dismissal of employees; and to develop uniform rules, in consultation with affected agencies and pursuant to the approval of the Administration Commission, regarding employee appointment, promotion, demotion, reassignment, separation, status, attendance, and leave.[2]

The Department of Management Services has adopted rules to implement the requirements of Part II, which can be found in Chapters 60K and 60L of the Florida Administrative Code (FAC).

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[1] In 1999, the State Personnel System consisted of 124,160 employee positions, 119,878 of which were Career Service employee positions (45 percent male, average salary $33,326; 55 percent female, average salary $28,351). Annual Workforce Report – 1999, Department of Management Services, at 3 and 11.

[2] ss. 110.207, .209, .211, .213, and .217, F.S.

It is interesting to note that "career service" or "career service employee" is not defined in the statutes or explained.[3] The constitutional requirement to create a career service system is of course being implemented;[4] however, the purpose of such a system, and the goals and objectives of the statutory requirements (which are largely left to rule-making to flesh out) are not clear. Apparently, a "career service employee" can be a short-term or long-term employee. The rules distinguish among probationary, overlap, temporary, trainee, and permanent status. The rules further provide that an employee "who has been appointed in accordance with this Chapter and granted probationary status will attain permanent status in a class upon successful completion of the designated probationary period for the class."[5] The statutes do provide that an employee classified as a "permanent career service employee" may only be suspended or dismissed for cause.[6] Cause includes negligence, inefficiency or inability to perform assigned duties, insubordination, willful violation of the provisions of law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or conviction of any crime involving moral turpitude.[7]

Part III of Chapter 110, F.S., establishes the Senior Management System,[8] which is a separate system of personnel administration for positions in the executive branch, the duties and responsibilities of which are primarily and essentially policymaking or managerial in nature. The Department of Management Services is charged with adopting rules that provide for a system for employing, promoting, or reassigning managers that is responsive to organizational or program needs. Employees in SMS serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotions, transfer, or other personnel action at the discretion of the agency head. The number of positions included in SMS cannot exceed .5 percent of the total full-time equivalent positions in the career service.

Part IV of Chapter 110, F.S., addresses volunteers by, in part, setting forth the responsibilities of departments and agencies utilizing volunteers. Volunteers recruited, trained, or accepted by any state department or agency are not subject to any provisions of law relating to state employment or to any collective bargaining agreement between the state and any employees' association or union.

Finally, Part V of Chapter 110, F.S., creates the Selected Exempt Service System.[9] SES is a separate system of personnel administration that includes those positions that are exempt from the Career Service System. The Department of Management Services must designate all positions

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[3] The rules, however, do define "career service": "All state authorized and established positions not exempted by Section 110.205, F.S." Rule 60K-14.001(9), F.A.C. This definition does not, however, provide insight into what career service is or is meant to be, as opposed to making a statement as to what it is not.

[4] Article 3, section 14 of the State Constitution provides: "By law there shall be created a civil service system for state employees, except those expressly exempted, and there may be created civil service systems and boards for county, district or municipal employees and for such offices thereof as are not elected or appointed by the governor, and there may be authorized such boards as are necessary to prescribe the qualifications, method of selection and tenure of such employees and officers."

[5] 60K-4.004, F.A.C.

[6] s. 110.227, F.S. In 1974, the Senate Committee on Education held a public hearing regarding various collective bargaining issues. The written summary of that hearing provided in part: "With respect to tenure and continuing contracts, a view frequently expressed was that there is no incompatibility between tenure and the collective bargaining process, and that the two are not mutually exclusive . . . The consultant from the University of California at Berkley agreed that tenure and collective bargaining are not automatically antithetical, but said that tenure could become superfluous and a 'double guarantee' if the scope of bargaining includes due process guarantees and if bargaining agreements do in fact cover due process."

[7] s. 110.227, F.S.

[8] Of the 124,160 State Personnel System employee positions, 536 are SMS positions (68.9 percent male, average salary $90,914; 31.5 percent female $85,289). Annual Workforce Report – 1999, Department of Management Services, at 3 and 13.

[9] Of the 124,160 State Personnel System positions, 3,746 are SES positions (61.1 percent male, average salary $67,124; 38.9 percent female, average salary $57, 469). Annual Workforce Report – 1999, Department of Management Services, at 3 and 12.

included in the SES as managerial/policymaking, professional, or nonmanagerial/nonpolicymaking. The number of positions included in SES, excluding those positions designated as professional or nonmanagerial/nonpolicymaking, cannot exceed 1.5 percent of the total fulltime equivalent positions in the career service.[10] Employees in SES serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the agency head.[11]

Florida's Career Service System (Part II, Chapter 110, F.S.)

Florida's Career Service System, as found in Chapter 110, F.S., has been in place since 1979, and has been amended several times during the course of its existence. Over time the Career Service System has come under increasing scrutiny and more recently has garnered substantial criticism.

Florida TaxWatch has worked for a number of years in a bi-partisan effort to modernize the Career Service System. In 1986, Florida TaxWatch recommended legislation to create a performance-based compensation and personnel system coupled with increased public management authority and accountability.[12] Florida TaxWatch has clearly stated its position regarding the Career Service System:

> A thorough, major overhaul of Florida's Career Service is required if Florida is to keep pace with productivity in the private sector. This requires . . .:
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> - Meaningful management and supervisory authority and accountability for public service results and unit costs.
> - An inviting, challenging workplace and culture that provides employees with opportunities for career growth and mobility.
> - Compensation that is competitive with the private sector for recruitment / retention / promotion purposes.
> - Compensation / career advancement tied to the application of good performance measures and outcome performance (individuals and groups).
> - An ability by managers to reward meritorious performance by employees and to sanction unacceptable, under-performance.
> - A flexible compensation benefits system (defined contribution retirement option).[13]

In 1991, the Commission for Government by the People (Commission), created by then Governor Chiles, reported that Florida's Career Service system, like many other civil service systems, has become a "straight jacket" on managers. The Commission further stated that the career service system was designed for an "Industrial Era government of clerks and manual laborers, it long ago became obsolete. Its job classification system is too rigid; its pay system does not reward high performers; and its 'bumping' system during layoffs makes it difficult to slim down state government

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[10] s. 110.602, F.S.
[11] s. 110.604, F.S.
[12] "Modernizing Florida's Civil Service: A Necessary Beginning for Meaningful Change," Florida TaxWatch, Briefings, December 2000, at 1.
[13] *Id*. at 1-2.

without virtually destroying it . . . [W]e urge the Legislature to . . . create an entirely new personnel system to replace Career Service."[14]

One of the most vocal critics of the Career Service System is the Florida Council of 100 (Council).[15] The council, in its report entitled "Modernizing Florida's Civil Service System: Moving from Protection to Performance," November 2000, identifies numerous problems with state government, including "slower implementation of technology, lack of long-term planning, inefficient use of capital, insufficient flexibility for managers, improper budget incentives, and even at times 'over-management' by past legislatures."[16] More particularly, the Council finds that chief among the constraints to effective and efficient government performance is the state's Career Service System as found in Chapter 110, F.S., and Chapter 60K, Florida Administrative Code. "The system makes managing human resources cumbersome, is de-motivating for managers, and damages the reputation of all state employees."[17] In addition, the Council enumerates four ways the current career service employment practices damage productivity:

(1) Terms of employment constrain hiring and firing. . . . In the private sector, employees can be hired and dismissed "at will" – within the bounds of numerous statutory guidelines designed to ensure fairness and the absence of discrimination.

(2) Seniority as the principal retention criterion sacrifices performance. . . . This use of seniority creates the grounds for the practice of "bumping," in which a longer-tenured employee whose position has been eliminated can take the job of a more recently hired employee occupying an equivalent or lower title in the same job classification . . . The bumped employee may be out of work, regardless of performance – unless s/he has "permanent" status, in which case s/he can bump someone else in turn, propagating the disruption and lowering productivity further.

(3) Compensation system does not adequately differentiate employees by performance. . . . In Florida's state government, legislative allocations dictate how employees will receive compensation. In most years – though not all – Career Service employees receive an across-the-board salary adjustment . . . The across-the-board adjustment as a management tool has the effect of rewarding under-performing workers and neglecting the high-performing ones.

(4) Tight control of daily activities inhibits responsiveness and problem solving. . . . [H]aving to abide by cumbersome, work-increasing rules deadens personal initiative and cooperation and fosters an attitude of indifference among employees.[18]

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[14] "Government by the People: A Prescription for Florida's Future," The Report of Governor's Commission for Government by the People, Volume 1991.

[15] The Florida Council of 100 was formed in 1961 at the request of Governor Farris Bryant. It is a private, non-profit, non-partisan association whose members represent a cross-section of key business leaders in Florida. The Civil Service Reform Task Force was established in 1999 to review Florida's human resources management system and to propose improvements. "Modernizing Florida's Civil Service System, Moving from Protection to Performance, " A Report from the Florida Council of 100, November 2000, at 2.

[16] *Id*. at 4.

[17] *Id*. at 8.

[18] *Id*. at 9-13.

However, the Career Service System critics have their own critics. Recently, for example, an overflow crowd of more than 500 state workers attended a "town hall meeting" in Tallahassee, conducted by various Representatives, Senators, and public officials. The career service "employment at will" concept was discussed hand-in-hand with the Governor's "budget exercise", of trimming state work rolls 25 percent over the next five years, and with privatization efforts. Lottery Secretary, David Griffin, one of the Governor's designated persons to answer employee questions about Career Service changes, told the meeting participants that "there is no intent on the part of the governor to make all employees at-will employees."[19] Nonetheless, state workers testified to "a litany of fear, favoritism, retaliation, intimidation, short-staffing, heavy workloads and light pay envelopes." Jeanette Wynn, president of the American Federation of State, County, and Municipal Employees testified that state employees often live in fear of layoff or retaliation by supervisors. She said that Florida government costs each taxpayer approximately $33 a year, the lowest in the nation. She also stated that Florida is 47th in its ratio of civil-service employees to total population.[20] Meeting participants also expressed concerns regarding bonuses as incentives, questioning whether the people who actually do the work will receive the bonuses.[21]

Those who believe that the protected status employment of state workers is no longer necessary, point to the at-will employment status of the Lottery's[22] and the Legislature's[23] employees as demonstration of this point, and are rebutted by opponents:

> [W]hen a new speaker of the House is elected, the entire staff of the speaker's office changes, including the lowest clerical staff . . . There is a difference in the public and private sectors. We have a public sector because the community at large has decided that there are things they want for which there is not profit or bottom line. This is desirable and often crucial to the existence of the community. Because those critical things are so hard to measure, the processes and institutions that produce them are very susceptible to outside influences and therefore must be protected. Thus, federal judges are appointed for life, university professors are given tenure and the civil service is protected employment.[24]
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> It is no more appropriate to elect CEOs by the public than to do away with a professional and protected civil service untouchable by patronage-oriented elected

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[19] "Wary state workers pack forum," Bill Cotterell, Tallahassee Democrat, Feb. 8, 2001.

[20] "The U.S. Census Bureau asks each state to report a count of the total number of state employees. The ratio of state employees to 10,000 population is useful as one indicator in gauging the efficiency of a state public workforce in comparison to those found in other states. In 1998, Florida ranked third of 50 states. Florida's ratio of state workers per 10,000 population in 1998 was 145 compared to 155 in 1997. . . . The national average [was] 176 . . . The U.S. Census Bureau also asks each state to submit its total state public payroll expenditures for the month of March 1998. . . . In 1998, the Florida state public workforce moved to the lowest position of the 50 states in payroll costs borne by taxpayers [$33 for each state resident]." Annual Workforce Report – 1999, Department of Management Services, at 5.

[21] *Id.*

[22] In 1999, the Department of Lottery had 715 employee positions: 23 managerial and 714 non-managerial. Annual Workforce Report – 1999, Department of Management Services, at 3.

[23] As of February 2001 the number of legislative employees (all at-will) are as follows: House of Representatives 671; Senate 337; Auditor General 386; Office of Legislative Services (OLS) and Office of Legislative Information Technology Services (OLITS) 241; Office of Program and Policy Analysis and Government Accountability (OPPAGA) 82; Joint Legislative Auditing Committee (JLAC), Administrative Procedures Committee, Legislative Committee on Intergovernmental Relations, Technology Review Workgroup, Commission on Ethics, and Office of Public Counsel 71. Esperant Ad Hoc Reporting, accessed by the Personnel Office, Feb. 14, 2001.

[24] The average age of a typical State employee is 44 years old, with 11 years of service. Annual Workforce Report – 1999, Department of Management Services, at 7.

officials. To do away with the professional civil service is to open the door to patronage that hurts us all.[25]

The Public Employees Relations Commission

The Public Employees Relations Commission (PERC)[26] was established in 1974 to provide statutory implementation of Article I, Section 6 of the Florida Constitution (the right of public employees to collectively bargain). PERC is currently composed of a chair and two full-time commissioners appointed by the Governor, confirmed by the Senate.[27] PERC is within the Department of Labor and Employment Security[28] for administrative purposes but is not subject to control, supervision, or direction by the department.[29]

PERC decides cases sitting as a quasi-judicial collegial body and issues final orders.[30] Any appeal of a PERC final order is taken to the District Court of Appeals. In addition to hearing cases, PERC is required to determine questions and controversies concerning claims for recognition as the bargaining agent for a bargaining unit; determine or approve units appropriate for purposes of collective bargaining;[31] conduct secret ballot elections to determine whether public employees desire to be represented by a union; process charges of unfair labor practices[32] as well as charges relating to a public employee or employee organization participating in a strike[33] and provide appropriate remedies; assign mediators to assist parties in negotiations when collective bargaining impasse occurs; and administer the impasse resolution process.[34]

In 1986, the Legislature abolished the Career Service Commission and transferred its jurisdiction to PERC. This jurisdiction provides implementation of Article II, Section 14 of the Florida Constitution (providing a civil service system for state employees). In 1987, the Legislature expanded PERC's jurisdiction over Veteran's Preference Appeals, and in 1988, PERC was assigned jurisdiction over appeals arising under the "Drug-Free Workplace" Act.[35]

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[25] "State should indeed have protected employment," Jim Croushorn, Tallahassee Democrat, January 6, 2001.

[26] The Public Employees Relations Commission handles public sector cases (unfair labor practice charges, representation petitions, amendments to certification, petitions to revoke certifications, and labor organizations registration), career service appeals, Drug-Free Workplace appeals, Whistle-blower appeals, veterans' preference appeals, attorney's fees appeals, backpay appeals, elections, mediation, and district court appeals.

[27] For Fiscal Year 2000-2001 forty Full Time Equivalent (FTE) positions were assigned to PERC with a Salaries and Benefits expense of $2,658,253.

[28] The restructuring of the delivery of services provided by the Department of Labor and Employment Security was generally initiated by the Workforce Florida Act of 1996. Ch. 96-404, L.O.F. Thereafter, Chapter 2000-165, L.O.F., provides legislative intent for the transfer of programs and workforce development from the Department of Labor and Employment Security to the Agency for Workforce Innovation.

[29] s. 447.205, F.S.

[30] PERC hears cases and issues final orders regarding, for example, the suspension, reduction in pay, transfer, layoff, demotion, and dismissal of career service employees. s. 110.227, F.S.

[31] There are currently 10 collective bargaining units: Administrative/Clerical, Operational Services, Professional, Professional Health Care, Law Enforcement, Security Services, Special Agent, Selected Exempt Physicians, and Supervisory. Annual Workforce Report -- 1999, Department of Management Services, at 37.

[32] Unfair labor practices, on the part of the employer, include encouraging or discouraging membership in any employee organization by discrimination in regard to hiring, tenure, or other conditions of employment; refusing to bargain collectively, failing to bargain collectively in good faith, or refusing to sign a final agreement; and refusing to discuss grievances in good faith. Unfair labor practices, on the part of the public employee organization, include causing or attempting to cause a public employer to discriminate against an employee because of the employee's membership or nonmembership in an employee organization; and refusing to bargain collectively or failing to bargain collectively in good faith; and, participating in a strike. s. 447.501, F.S.

[33] Section 447.505, F.S., prohibits strikes by public employees and employee organizations. Such strikes are also prohibited by s. 6, Art. I of the State Constitution.

[34] s. 447.207, F.S.

[35] *See* Senate Staff Analysis and Economic Impact Statement, CS/SB 1694, March 19, 1991, at 1.

According to statistics accumulated by PERC for the Fiscal Year 1999-2000, PERC made 1,368 "final order decisions".[36] The breakdown of those decisions by subject area is as follows:

497 Career Service -- Any permanent career service employee subject to reduction in pay, transfer, layoff, demotion, suspension, or dismissal can appeal his or her case to PERC.[37] Of the 497 final order decisions made by PERC regarding career service employees, 227 were settled, 128 sustained agency action, 4 altered agency action, 73 were withdrawn, 55 were dismissed, and 10 reversed agency action.[38]

313 Labor -- PERC is charged with settling unfair labor practice disputes between an employee and the collective bargaining agent; between the collective bargaining agent and a local governmental entity; and between a local governmental entity and collective bargaining agents.[39] Additionally, disputes arise regarding recognition of bargaining units, de-certification of bargaining units; and unit clarification (which employee positions should be in a particular bargaining unit) are counted within this category.[40]

272 Registration -- Every employee organization seeking to become a certified bargaining agent (or seeking to maintain certification) for public employees must register with PERC prior to requesting recognition by a public employer for purposes of collective bargaining.[41]

63 Special Master -- If, during contract negotiations, an impasse occurs between a public employer and a bargaining agent, if no mediator is appointed and if both parties do not waive their right to a special master, or upon request of either party, PERC must appoint and submit all unresolved issues to a special master acceptable to both parties. If the parties are unable to agree, PERC appoints a qualified special master.[42]

58 Impasse Resolution -- If either party rejects a recommendation by the Special Master, a written notice to that affect must be provided to PERC.[43]

55 Court Cases -- If the parties involved with regard to PERC's "career service," "labor," "whistle-blower," "veterans preference," or "Drug Free Workplace" decisions choose to appeal, then PERC will be a party to that suit.

50 Elections -- PERC is required, pursuant to its responsibilities for certification of employee organizations, to order an election by secret ballot,

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[36] According to the Department of Management Services the latest available data is for fiscal year 1998-99, and is as follows: 1251 career service employees were dismissed (320 were appealed to PERC), 1922 were demoted (21 appealed to PERC), 1094 laid off (97 appealed to PERC), and 58 abandoned their positions (O appeals). Annual Workforce Report – 1999, Department of Management Services, at 32.

[37] s. 110.227, F.S.

[38] Fiscal Year 1999-2000, Number of PERC Career Service Final Order Decisions – 497, pie chart, undated, provided to committee staff by PERC on Feb. 14, 2001.

[39] *See infra* fn. 30; *See also*, ss. 447.501 and 447.503, F.S.

[40] Telephone conference, Feb. 14, 2001, with Steve Meck, General Counsel, PERC.

[41] s. 447.305, F.S.

[42] s. 447.403, F.S.

[43] s. 447.403(3), F.S.

as well as provide for runoff elections. When an employee organization is selected by a majority of the employees voting in an election, PERC must certify the employee organization as the exclusive collective bargaining representative of all employees in the unit.[44] According to PERC, such elections occur on the average of about once a week.[45]

26 Attorney's Fees -- Veterans preference, career service, and unfair labor practice laws provide for certain attorney's fees. PERC hears disputes regarding such fees.

12 Veterans Preference – Chapter 295, F.S., deals with Veterans and requires that "employing agencies of the state and its political subdivisions" give Veterans (and spouses) certain preferences in appointment and retention as well as in reinstatement or reemployment. This affects Career Service, SMS, and SES positions. PERC is responsible for hearing disputes arising with regard to these Veteran rights.[46]

11 Back Pay -- Career service cases as well as unfair labor practices cases can involve determinations regarding back pay. Additional disputes regarding back pay are also heard by PERC.

Their remaining caseload figures consist of 7 Whistle-blower cases, 3 Drug-Free Workplace cases, and 1 District Court of Appeals remand.

C. EFFECT OF PROPOSED CHANGES:

See "Section-By-Section Analysis".

D. SECTION-BY-SECTION ANALYSIS:

Sections 1, 3, 5, 7-8, 11-19, 22-23, 25-35, 37, 41-42, 45-47, 51-52, 54-56, 58-64, 66, 68-146, 148, 155, 159, 161, 164, 167-168, 172, 174, 179-185, F.S.:

Renumbers sections within Chapter 110 to the new Chapter 109 numbers; conforms references; and makes technical changes.

Section 2:

Repeals s. 110.108, F.S., Personnel Pilot Projects.

Section 110.108, F.S., authorizes agencies, on a pilot basis, to develop pilot personnel plans that try different approaches to current personnel procedures.

Repeals s 110.1082, F.S., Telephone voice mail systems and telephone menu options systems.

Section 110.1082, F.S., provides that state employees are not allowed to use their voice mail system to take calls if those employees are at their desks and their telephones are functional.

[44] s. 447.307(3), F.S.
[45] Telephone conference, Feb.14, 2001, with Steve Meck, General Counsel, PERC.
[46] ss. 295.065 – 295.14, F.S.

Repeals s. 110.109, F.S., Productivity improvement and personnel audits of executive branch agencies.

Section 110.109, F.S., authorizes the Department of Management Services to conduct agency personnel administration and management reviews, or personnel audits to ensure compliance with state laws and regulations. The repeal of s. 110.109, F.S., removes the Department's authority to audit state agency personnel systems.

Section 4:

Repeals s. 110.1095, F.S., Supervisory and management training and continuing education for executive branch agencies.

Under s. 110.1095, F.S., the Department of Management Services must establish a basic supervisory skills training program that provides a standard set of fundamental supervisory skills. The Department is also responsible for monitoring and reviewing the training programs within each agency.

Section 6:

Amends s. 110.112, F.S., Affirmative action; equal employment opportunity, and renumbers to s. 109.112, F.S.

Present Situation:

Section 110.112, F.S., provides that it is the policy of the state to "assist in providing the assurance of equal employment opportunity through programs of affirmative and positive action that will allow full utilization of women and minorities."

In addition, this section requires an executive agency to develop and implement an affirmative action plan, as well as establish annual affirmative action goals, and design its plan to meet those goals. The Department of Management Services is required to report information regarding the executive agencies' affirmative action plans in its annual workforce report. The Department is also required to provide training in the principles of equal employment opportunity and affirmative action to all supervisory personnel. The Department must review and monitor executive agency actions pursuant to this section.

Each state attorney and public defender must also develop and implement an affirmative action plan incorporating annual goals, as well as appoint an affirmative action equal employment opportunity officer. Each state attorney and public defender must also report annually to the Justice Administration Commission regarding their affirmative action plans.

Effect of Proposed Changes:

This bill amends s. 110.112, F.S., providing that the new policy of the state is to "fully utilize the rich diversity of Florida's human resources and to assist in providing the assurance of equal employment opportunity through education and other programs of affirmative and positive action that will allow the citizens of Florida to benefit from the full utilization of all human resources." This amended policy statement focuses on the utilization of all Florida human resources, which is more global in nature, and incorporates the utilization of women and minorities.

This bill removes the requirement that the executive agencies, state attorneys, and public defenders develop affirmative action goals or plans; and removes the requirement that the Department of

Management Services include information regarding the agencies' affirmative action plans in its workforce report, or provide supervisory training on those issues. Accordingly, the Department's duty to review and monitor agencies regarding these issues is eliminated.[47]

In lieu of an affirmative action plan, the state attorneys, public defenders, and executive agencies must develop and implement methodologies designed to fully utilize available human resources.

Section 9:

Amends s. 110.113, F.S., Pay periods for state officers and employees; salary payments by direct deposit, and renumbers to s. 109.113, F.S.

Present Situation:

Section 110.113, F.S., provides that a person appointed to a position in state government on or after July 1, 1996, is required to participate in the direct deposit program, unless such an employee can demonstrate a hardship. Other-personal-service employees are exempt from this requirement.

Effect of Proposed Changes:

This bill amends, s. 110.113, F.S., effective January 1, 2002, removing the exception for other-personal-services employees and employees appointed before July 1, 1996. Accordingly, all state government employees must participate in the direct deposit program. However, the exemption from the requirement based on hardship is retained.

Section 10:

Amends s. 110.114, F.S., Employee wage deductions, and renumbers to s. 109.114, F.S.

Present Situation:

Section 110.114, F.S., authorizes the Department of Banking and Finance to make deductions from the salary or wage of any employee in the amount authorized and requested by that employee.

Effect of Proposed Changes:

This bill amends s. 110.114, F.S., to provide that, effective January 1, 2002, the cost of making *employee requested* salary or wage deductions be deducted by the Department of Banking and Finance from the employee's compensation at the same time as the deduction is made. Therefore, each employee requesting salary deductions such as deferred compensation, supplemental insurance, union dues, or charitable contribution deductions will be charged a fee for each deduction. *See* "Comments" section of this analysis.

Section 20:

Amends s. 110.124, F.S., Termination or transfer of employees aged 65 or older, and renumbers to s. 109.124, F.S.

[47] The Florida Commission on Human Relations and the U.S. Equal Employment Opportunity Commission are forums where an employee can challenge employment decisions on the basis of discrimination.

Present Situation:

Section 110.124, F.S., provides that employees aged 65 or older that are terminated or transferred, may apply for relief from that action to the Public Employees Relations Commission (PERC). PERC may require an arrangement where the employee aged 65 or older may be reduced to a part-time position and thereby phase into retirement.

Effect of Proposed Changes:

Effective January 1, 2002, an employee aged 65 or older who is terminated or transferred may apply to the circuit court for relief, or may pursue voluntary binding arbitration, as newly provided for in this bill. [48]

Section 21:

Amends s. 110.1245, F.S., Meritorious service awards program, and renumbers to s. 109.1245, F.S.

Present Situation:

Section 110.1245, F.S., provides for the meritorious service awards program. The Department of Management Services is required to set policy, develop procedures, and promote a program of meritorious service awards, incentives, and recognition to employees who propose procedures or ideas which, when adopted, increase productivity, eliminate or reduce state expenditures, or generate revenue; or, by their accomplishments, make exceptional contributions to the efficiency, economy, or other improvement in state government. Section 110.1245, F.S., also sets caps on the amount of the awards. The agencies set the awards.

Effect of Proposed Changes:

This bill removes references to the "meritorious service awards" program, and replaces this program with the "gain sharing" program. The gain sharing program, like the meritorious service awards program, rewards employees who propose procedures or ideas, which, when adopted, result in increased productivity, the elimination or reduction of state expenditures, or the generation of additional revenues, provided such proposals can be implemented. Language regarding exceptional contributions is removed. The Legislative Budgeting Commission sets the awards for this program, instead of the employing agency, and there is no monetary limit placed on the awards.

Section 24:

Amends s. 110.131, F.S., Other-personal-services temporary employment, and renumbers to s. 109.131, F.S.

Present Situation:

Section 110.131, F.S., provides for other-personal-services (OPS) temporary employment. OPS employment is temporary employment which includes full-time and part-time workers for the accomplishment of short term tasks. There were an average of 12,292 OPS employees per month

[48] The Florida Commission on Human Relations and the U.S. Equal Employment Opportunity Commission also handle age discrimination appeals.

in 1998-1999 Fiscal Year.[49] Agencies may employ any individual in OPS employment for 1,040 hours within any 12 month period. An extension requires the approval of the agency head or a designee. Extensions must be made in accordance with rules established by the Department of Management Services, and information regarding extensions must be maintained by the agency. The time limitation does not apply to board members, consultants, seasonal employees, institutional clients employed as a part of their rehabilitation, or degree seeking students.

Effect of Proposed Changes:

This bill amends s. 110.131, F.S., effective July 1, 2001, changing the limitation on the number of hours worked by OPS employees from 1,040 hours within a 12 month period to 100 hours in any calendar month, and changing the source of approval for any extension of those hours from the agency head to the Governor's Office of Policy and Budget for good cause. These changes mean that OPS hours are monitored on a monthly basis instead of a yearly basis, and that the Governor's Office of Policy and Budgeting is the monitoring agency.[50] This bill eliminates the requirement that the agency maintain records regarding extensions for OPS hours.

This bill eliminates the exception to the cap on work hours for consultants and seasonal employees and retains the exception for board members, institutional clients, and degree seeking students.

The rationale for placing consultants and seasonal employees within the cap requirement is uncertain. The effect of changing the limit of work hours for OPS employees to 100 hours a month could mean that an agency can hire twice the number of unique individuals to accomplish what one employee was doing for twice as long. Providing a budgetary cap, by way of a flat hourly cap or a limit on the percentage of the budget spent on OPS, may better resolve the issue of too much reliance by managers on OPS workers.

Section 36:

Creates s. 109.202, Career Service System.

Present Situation:

Currently, there is no declaration of policy regarding the Career Service System in the Florida Statutes.

Effect of Proposed Changes:

This bill creates s. 109.202, which states that the purpose of the Career Service System is to ensure the delivery of high-quality performance in career service classifications by facilitating the state's ability to attract, select, and retain qualified personnel in these positions based on merit, while also providing sufficient management flexibility to ensure that the workforce is responsive to agency needs.

Section 38:

Amends s. 109.203, F.S., Definitions, (previously renumbered in Section 37 of this bill to s. 109.203, F.S., from s. 110.203, F.S.)

[49] Annual Workforce Report-1999, Department of Management Services, at 36.
[50] The U.S. Department of Labor is a forum for employees to challenge employment decisions regarding wages and hours.

Present Situation:

Section 110.203, F.S., provides definitions for various terms used in the Florida Statutes with regard to the Career Service System and the "personnel affairs of the state." "Dismissal" is defined as "a disciplinary action taken by an agency against an employee resulting in termination of his or her employment for a violation of agency standards or for cause." "Suspension" is defined as "a disciplinary action taken by an agency against an employee to temporarily relieve the employee of his or her duties and place him or her on leave without pay for violation of agency standards or for cause." "Layoff" is defined as "termination of employment due to abolishment of positions necessitated by a shortage of funds or work, or a material change in the duties or organization of an agency."

Effect of Proposed Changes:

This bill, effective July 1, 2001, amends the definitions of "dismissal" and "suspension" to add that agency standards are to be "determined by the agency head." Additionally, this section amends the definitions to provide for suspension or dismissal for other "*reasonable* cause as determined within the discretion of the agency head."

The new language makes it clear that suspension or dismissal of an employee is at the discretion of the agency head, yet continues to require cause for the dismissal. The addition of the word "reasonable" before "cause" appears to narrow the justification required, though "cause" is generally construed to mean reasonable cause. This amendatory language may have been intended simply as clarifying language.

This bill also amends the definition of "layoff", effective July 1, 2001, to add that a termination of employment due to a material change in the duties or organization of an agency includes "the outsourcing or privatization of an activity or function previously performed by career service employees."

Section 39:

Amends 109.203, F.S., (previously renumbered in Section 37 of this bill to s. 109.203, F.S., from s. 110.203, F.S.)

This bill, yet again, amends the definitions of "dismissal" and "suspension;" however, this time the changes are effective January 1, 2002. This section removes the language requiring violation of agency standards and reasonable cause to terminate or suspend an employee. This comports with other provisions of this bill which create "at-will" employment for career service employees. *See* discussion in "Constitutional Issues" section of this analysis.

Section 40:

Creates s. 109.2035, Civil service classification and compensation program.

Present Situation:

There are six different autonomous personnel structures: the State Personnel System (Career Service, Selected Exempt Service, Senior Management Service); Legislature; Lottery; State University System; Judicial; Auditor General; as well as, other miscellaneous executive pay plans.[51] There are a total of approximately 124,160 employee positions within the State Personnel System,

[51] Annual Workforce Report-1999, at 2.

which includes 119,878 Career Service employee positions[52], 3,746 Selected Exempt employee positions[53], and 536 Senior Management employee positions.[54]

Within the Career Service System there are 1,364 classes[55], 50 occupational groups,[56] and, as of 1997, 86 different pay ranges.[57] In many classes, there is little distinction between duties and responsibilities. Minimum qualification requirements are often based on years of experience, which may not be a good indicator of whether an employee can successfully do the job. The Department of Management Services has concluded that the pay grade minimums are too low to attract and maintain well-qualified candidates, and that the actual pay grades have little distinction between them, making it difficult to distinguish between the value of the different jobs.[58]

Effect of Proposed Changes:

This bill creates s. 109.2035, which directs the Department of Management Services, in consultation with the Executive Office of the Governor, the Legislature, and the affected collective bargaining units, to develop a model civil service classification and compensation program, which includes a reduced position classification system, and an equitable pay plan. The bill sets forth various requirements and goals to be considered in designing and implementing the model program. This bill expressly provides that the model plan must not include a step pay plan.

The Florida Police Benevolence Association's (P.B.A.) representatives have expressed their concerns regarding the statutory exclusion of the step pay plan. P.B.A. asserts that, currently, all of its state officers have a step pay plan compensation plan, and although other compensation plans should be considered, eliminating this option by statute is inappropriate.[59]

This bill requires the Department of Management Services to submit the proposed model civil service classification and compensation program to the Executive Office of the Governor, the presiding officers of the Legislature, and the appropriate legislative fiscal and substantive standing committees, on or before December 1, 2001.

See "Other Comments" section of this bill analysis.

Section 43:

Amends s. 110.211, F.S., Recruitment, and renumbers to s. 109.211, F.S.

Present Situation:

Section 110.211, F.S., provides that the Department of Management Services must adopt model recruitment rules, which employing agencies *may* use. Employing agencies that elect to adopt recruitment rules inconsistent with the Department of Management Services' model rules must

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[52] Annual Workforce Report-1999, at 11.
[53] Annual Workforce Report-1999, at 12.
[54] Annual Workforce Report-1999, at 13.
[55] As a result of a review of classes no longer being used within Career Service , the total number of classes was reduced from 1,522 in 1998, to 1,364 in 1999. Annual Workforce Report-1999, at 8.
[56] Annual Workforce Report-1999, at 30.
[57] *Model Classification Plan Report*, Department of Management Services (January 1997), at 5.
[58] *Id*.
[59] Memo from David Murrell, Executive Director, Florida Police Benevolence Association (P.B.A.) regarding the Florida P.B.A. concerns with House Bill 369 (February 15, 2001).

consult with and submit those rules to the Department for review. Also, the Administration Commission must approve the employing agencies' rules before their adoption.

Effect of Proposed Changes:

This bill provides that the uniform recruitment rules, developed by the Department of Management Services, must be used by the employing agencies, unless the Administration Commission grants an exception to an employing agency.

Section 44:

Amends s. 110.213, F.S., Selection, and renumbers to s. 109.213, F.S.

Present Situation:

Section 110.213, F.S., provides that the Department of Management Services must adopt model selection rules, which employing agencies *may* use; employing agencies that elect to adopt selection rules inconsistent with the Department of Management Services' model rules can consult with and submit those rules to the Department for review. Also, the Administration Commission must approve the employing agencies' rules before their adoption.

Effect of Proposed Changes:

This bill provides that the uniform selection rules, developed by the Department of Management Services, must be used by the employing agencies, unless the Administration Commission grants an exception to an employing agency.

Section 48:

Amends s. 110.219, F.S., Attendance and leave; general policies, and renumbers to s. 109.219, F.S.

Present Situation:

Section 110.219, F.S., provides for a review and performance planning system which is established as a basis to improve the performance of the state's workforce, to provide documentation in support of wage or employment changes, to inform the employee of strong and weak points, to evaluate training needs, and to assist in determining layoff order. This section also requires that each career service employee, upon original appointment, promotion, demotion, or reassignment, must be given a statement of work expectations. An employee is not required to meet worker expectations or performance standards that have not been furnished in writing. Each employee's performance must also be reviewed at least annually. The department may adopt rules to administer this program, including procedures to be followed in case of failure to meet performance goals.

Effect of Proposed Changes:

This bill changes the current review and performance "planning" system, to the review and performance "evaluation" system, and removes the requirement for documentation in support of recommendations for employment and wage changes, including layoffs. This is in keeping with the bill's other provisions that make career service employees at-will employees. This bill also only requires that a job description be *made available* to the career service employee, not *given* to the employee, and eliminates the provision that does not require an employee to meet certain

standards and expectations, if such was not provided in writing. This bill further provides that performance evaluations of the employee be conducted at least annually.

This bill removes the authorization for the Department to adopt rules regarding procedures in the case of failure by the employee to meet performance goals, but retains the authorization to adopt rules regarding the procedures for performance evaluation.

Section 49:

Amends s. 110.227, F.S, Suspensions, dismissals, reductions in pay, demotions, layoffs, transfers, and grievances, and renumbers to s. 109.227, F.S.

Present Situation:

Section 110.227, F.S., provides that any career service employee with permanent status may only be suspended or dismissed "for cause". The agency head is responsible for making sure that his or her employees are completely familiar with the disciplinary actions and grievance procedures. The Department of Management Services is responsible for establishing the rules and procedures for suspensions, dismissals, reductions in pay, demotions, layoffs, and transfers.

Section 110.227, F.S., also provides that layoff procedures be conducted within the competitive area established for the affected positions by the agency head and approved by the Department. The competitive area is established by taking into consideration the similarity of work; the organizational unit, which may be by agency, department, division, bureau, or other organizational unit; and the commuting area for the work affected.

Effect of Proposed Changes:

This bill, effective July 1, 2001, shifts the burden of proof from the employer to the employee. The adversely affected employee must prove by a preponderance of the evidence that the agency head abused his or her discretion in "suspending, dismissing, reducing the pay of, demoting, laying off, or transferring" the employee, and that there was no "*reasonable* cause" for the alleged adverse agency action. This bill changes "cause" to "*reasonable* cause" and provides that *reasonable* cause is a determination made within the sound discretion of the agency head.

This bill eliminates the language that a layoff must be conducted within a competitive area, and also provides that rules regarding layoff procedures must not include "bumping." Additionally, this bill expressly provides that its provisions do not preclude collective bargaining units from including "bumping" in their collective bargaining agreements.

The Florida P.B.A. asserts that the elimination of seniority and bumping rights from consideration or use in effecting layoffs is inappropriate. The Florida P.B.A. states that in the correctional and law enforcement fields, seniority is a primary consideration in effecting layoffs.[60]

Section 50:

Substantially rewords s. 109.227, Suspensions, dismissals, reductions in pay, demotions, layoffs, transfers, and grievances (formerly s. 110.227, F.S.).

[60] Memo from David Murrell, Executive Director, Florida Police Benevolence Association (P.B.A.) regarding the Florida P.B.A. concerns with House Bill 369 (February 15, 2001), at 2.

Effective January 1, 2002, the requirement that "*reasonable* cause" exist for taking an adverse action (as provided in Section 49 of this bill) is removed. All career service employees are made "at-will" employees serving at the pleasure of their agency head. Employees who are subject to a suspension, dismissal, reduction in pay, transfer, layoff or demotion are no longer entitled to a hearing before the Public Employees Relations Commission, but are entitled to a hearing before the circuit court, or they may pursue voluntary binding arbitration. All references to PERC have been eliminated.

Section 53:

Creates s. 109.240, on Voluntary binding arbitration.

This bill creates, effective January 1, 2002, s. 109.240, a voluntary binding arbitration program for eligible employees subject to an adverse agency action. "Adverse agency action" means the "suspension, dismissal, reduction in pay or withholding of bonuses, demotion, layoff, and transfer of an employee." Upon receipt of notice of an adverse agency action, any permanent career service employee may request voluntary binding arbitration, but the request must be filed within 14 days of the receipt of notice. The arbitration request must stipulate that the employee: is voluntarily participating in the arbitration, agrees to participate in binding arbitration, will abide by the arbitration order, and acknowledges that the arbitration order is final and may not be set aside.

The Division of Human Resource Management, within the Department of Management Services, must provide, upon receipt of the arbitration request, written notice to the affected agency. The agency must participate in the binding arbitration, unless within 10 days after it receives the arbitration request, the agency provides written notice to the Division declining to participate.

The employee bears the burden of proving by a preponderance of the evidence that the agency action complained of was adverse and that the agency head abused his or her discretion in taking the such action, and that no reasonable cause existed for that action.

The arbitration is heard and determined by a panel of three career service employees randomly selected, with the direction and legal advice of an attorney arbitrator appointed by the Division. The arbitrator and the employee panel must complete all arbitration of the employee's claims raised in the request within 60 days after the receipt of the claim. The arbitrator may extend the 60-day period upon request of the parties, or at the request of one party, after a hearing on the request for an extension.

The arbitrator must not be a career service employee, a select management service employee, or a selected exempt service employee. The minimum requirements for the arbitrator, in addition to being an attorney, are completion of a Florida Supreme Court certified circuit or county arbitration program, or other approved arbitration program, in addition to a minimum of 1 day of training regarding Chapter 109, F.S., and Chapter 447, F.S.; and, compliance with the Code of Ethics for Arbitrators in Employment Disputes. Compensation for an arbitrator may not to exceed $500 a day.

The arbitrator has the power to commence and adjourn the arbitration hearing, to issue subpoenas, and to effect discovery, but does not have the authority to hold anyone in contempt, or to impose sanctions against anyone. The arbitrator must also schedule all arbitration proceedings.

One member of the employee panel must be from the same pay classification as the aggrieved employee. In addition, none of the members of the employee panel can be employed, or have been employed within the prior 6 months, by the agency participating in the binding arbitration. The employee panel hears all evidence submitted by the parties, makes all findings of fact, and determines all claims. The employee panel must render its decision within 10 days of the closing of

the hearing. The arbitrator must draft the arbitration decision, which becomes final 10 days after its execution by the panel.

The Division on Human Resource Management's duties in administering the voluntary binding arbitration program include: supporting the arbitration process, providing for the selection of the arbitrators and employee panels, and publishing the final arbitration orders.

Either party may apply to the appropriate circuit court for an order enforcing, vacating, or modifying the arbitration order. This application must be filed within 30 days after the moving party's receipt of the written decision or the date the decision becomes final, whichever date is later.

The Division, arbitrator, and the employee panel members are given absolute immunity from liability arising out of the performance of their duties.

Section 109.240, also provides for records maintenance, various procedural requirements, objections to panel members and to the arbitrator, and rule-making.

Section 57:

Amends s. 110.403, F.S., Powers and duties of the Department of Management Services, and renumbers to s. 109.403, F.S.

Section 110.403, F.S., provides a cap for Senior Management Service positions at 0.5 percent of the total full-time equivalent positions in the career service. This bill, effective July 1, 2001, raises that cap by 1 percent to 1.5 percent of the total full-time equivalent positions in the career service.

Section 65:

Amends s. 110.602, F.S., Selected Exempt Service; creation, coverage, and renumbers to s. 109.403, F.S.

Section 110.602, F.S., provides that the number of positions included in the Selected Exempt Service must not exceed 1.5 percent of the total full-time equivalent positions in the career service. This bill removes that cap effective July 1, 2001, and repeals related reporting requirements.

Section 67:

Amends 110.605, F.S., Powers and duties; personnel rules, records, reports, and performance appraisal, and renumbers to s. 109.605, F.S.

Section 110.605, F.S., deletes language regarding the utilization of certain workforce participants; which is otherwise addressed in s. 109.112 of this bill.

Section 147:

Amends s. 20.22, F.S., Department of Management Services.

Section 20.22, F.S., provides for the organizational structure of the Department of Management Services. This bill makes the existing Human Resource Management section of the Department into a Division.

Section 149:

Amends s. 447.203, F.S., Definitions.

Section 447.203, F.S., provides the definitions of various terms used within Part II of Chapter 447, F.S., relating to public employees. This bill adds a definition of "Division" to mean the Division of Human Management Services within the Department of Management Services.

Section 150:

Repeals ss. 447.203(1)(b), definition of "Commission", 447.203(3)(h); reference to the Public Employees Relations Commission; and, 447.205, F.S., Public Employees Relations Commission.

This bill repeals the Public Employees Relations Commission, effective June 30, 2002, and removes cross-references to PERC.

Section 151:

Amends s. 447.207, F.S., Commission; powers and duties.

Present Situation:

Section 447.207, F.S., provides for the powers and duties of the Public Employees Relations Commission. PERC is responsible for resolving questions and controversies concerning collective bargaining issues, unfair labor practice charges, and other eligible charges.

Effect of Proposed Changes:

This bill amends s. 447.207, F.S., effective July 1, 2001, by removing the references to PERC, and replacing them with references to the Division of Human Resource Management. Accordingly, the Division can adopt, promulgate, amend, or rescind such rules and regulations as it deems necessary; issue subpoenas for, administer oaths or affirmations to, and compel the attendance and testimony of witnesses; or issue subpoenas for, and compel the production of, books, papers, records, documents, and other evidence; keep the proceedings orderly; adopt rules as to the qualifications of persons who may serve as mediators and special masters and must maintain lists of such qualified persons; and, resolve questions and controversies concerning claims for recognition as the bargaining agent of a collective bargaining unit. This bill removes language that provides for PERC to hear unfair labor practice charges.

This bill removes the requirement, as of July 1, 2001, that PERC establish a procedure for the filing and prompt disposition of a petition for declaratory statement as to the applicability of any statutory provision or any rule or order of PERC.

This bill provides, effective January 1, 2002, that the Division must provide voluntary binding arbitration for termination of employees age 65 or older, age discrimination, and veterans preference complaints, and removes the remedy of appealing to PERC.

The Florida P.B.A. has expressed its concern regarding the abolishment of PERC. The Florida P.B.A. asserts that uniform public sector labor policy and law is necessary, and that PERC, as the

single regulatory agency, should be the entity to control that policy and law. Otherwise, public sector law will vary from city to city, county to county, and court to court.[61]

Section 152:

Under this section, the bill provides PERC with limited authority while the transition from PERC to the Division is occurring. PERC is finally terminated as of June 30, 2002.

Section 153:

Amends s. 447.208, F.S., Procedure with respect to certain appeals under s. 447.207.

Present Situation:

Section 447.208, F.S., sets forth the appeals procedure for a career service employee with regard to adverse agency actions. The employing agency has the burden to prove that there was just cause to demote, suspend, or dismiss an employee. If PERC finds that just cause existed, but did not warrant the severity of the discipline, then PERC can reduce the penalty.

Effect of Proposed Changes:

This bill, effective July 1, 2001, shifts the burden of proof from the employer to the employee. For incidents occurring on or after July 1, 2001, the employee must prove that the agency head abused his or her discretion, and that no reasonable cause existed for the alleged adverse agency action.

Section 154:

Repeals ss. 447.208, F.S., with regard to procedure with respect to appeals, and 447.2085, F.S., regarding PERC rules concerning appeals.

Effective January 1, 2002, all of the provisions regarding the new, shifted burden of proof (discussed above in Section 153 of the bill), are repealed. This is in conformance with the rest of the bill's provisions making career service employees at-will employees as of January 1, 2002.

Section 156:

Amends s. 447.305, F.S., Registration of employee organization.

Present Situation:

Section 447.305, F.S., requires any employee organization that wants to become a certified bargaining unit, to register with the Public Employees Relations Commission. If such an employee organization is not registered they may not participate in a representation election, or be certified as an exclusive bargaining agent. PERC may prescribe the form of the application for registration. PERC also receives the application for renewal of an employee organization's registration, as well as a fee for each application not to exceed 15 dollars. PERC may inspect the registered employee organizations' financial accounts, regarding income and expenses, at any reasonable time.

[61] Memo from David Murrell, Executive Director, Florida Police Benevolence Association (P.B.A.) regarding the Florida P.B.A. concerns with House Bill 369 (February 15, 2001), at 2.

Effect of Proposed Changes:

This bill amends s. 447.305, F.S., effective July 1, 2001, to remove references to PERC, and to replace them with references to the Division of Human Resource Management. Accordingly, the Division is responsible for the registration of employee organizations. In addition, the fee for an application for recognition or renewal of registration of an employee organization is raised from $15 to $25.

Section 157:

Amends s. 447.307, F.S., Certification of employee organization.

Present Situation:

Section 447.307, F.S., provides that any employee organization that is designated or selected by a majority of public employees in an appropriate unit as their collective bargaining representative must request recognition by the public employer. Upon recognition by the employer, the employee organization must immediately petition the Public Employees Relations Commission for certification. PERC must review only the appropriateness of the unit as proposed by the employee organization, considering: the principles of efficient administration of government; the number of employee organizations with which the employer might have to negotiate; the compatibility of the unit with the joint responsibilities of the public employer and public employees to represent the public; the power of the officials of government at the level of the unit to agree, or make effective recommendations to another administrative authority or to a legislative body, with respect to matters of employment upon which the employee desires to negotiate; the organizational structure of the public employer; community of interest among the employees to be included in the unit; the statutory authority of the public employer to administer a classification and pay plan; and such other factors and policies as PERC deems appropriate.

PERC also must determine whether the petition for certification is sufficient. If PERC has reasonable cause to find the petition *sufficient*, then PERC must provide for a hearing on the petition to define the proposed bargaining unit, identify the appropriate public employer, and order an election by secret ballot. If PERC has reasonable cause to find the petition *insufficient*, then PERC may dismiss the petition.

If the proposed bargaining unit is elected by a majority of employees voting, then PERC must certify the employee organization as the exclusive bargaining representative of all the employees in the unit.

Effect of Proposed Changes:

This bill amends s. 447.307, F.S., effective July 1, 2001, to remove references to PERC, and to replace them with references to the Division of Human Resource Management. Accordingly, the Division is responsible for the certification of employee organizations for collective bargaining.

Section 158:

Amends s. 447.308, F.S., Revocation of certification of employee organization.

Present Situation:

Section 447.308, F.S., provides that any employee or group of employees who no longer desire to be represented by the certified bargaining agent may file a petition to revoke certification with the

Public Employees Relations Commission. PERC must investigate the petition to determine its sufficiency. If PERC finds the petition to be insufficient, it may dismiss the petition. If PERC finds the petition sufficient then PERC must: identify the bargaining unit and determine which public employees are qualified and entitled to vote in the election held by PERC; identify the public employer or employers; and, order an election by secret ballot.

Effect of Proposed Changes:

This bill amends, effective July 1, 2001, s. 447.308, F.S., to remove references to PERC, and to replace them with references to the Division of Human Resource Management. Accordingly, the Division is responsible for the revocation of certification of employee organizations.

Section 160:

Amends s. 447.403, F.S., Collective bargaining; approval or rejection.

Present Situation:

Section 447.403, F.S., provides for the resolution of impasse in collective bargaining negotiations. Currently, impasse occurs when one of the parties declares impasse in writing to the other party and to the Public Employees Relations Commission. When an impasse occurs, the public employer or the bargaining agent, or both parties acting jointly, may appoint, or secure the appointment of, a mediator to assist in the resolution of the impasse. If no mediator is appointed, or a party requests a special master, PERC must appoint, and submit all issues to, a special master acceptable to both parties. If the parties are unable to agree on the appointment of a special master, PERC must appoint, in its discretion, a qualified special master. However, if the parties agree in writing to waive the appointment of a special master, the parties may proceed directly to resolution of the impasse by the appropriate legislative body.

"Public employer" is defined to mean

> the state or any county, municipality, or special district or any subdivision or agency thereof which the commission determines has sufficient legal distinctiveness properly to carry out the functions of a public employer. With respect to all public employees determined by the commission as properly belonging to a statewide bargaining unit composed of State Career Service System employees or Selected Professional Service employees, the Governor shall be deemed to be the public employer; and the Board of Regents shall be deemed to be the public employer with respect to all public employees within the State University System . . . The board of trustees of a community college shall be deemed to be the public employer with respect to all employees of the community college. The district school board shall be deemed to be the public employer with respect to all employees of the school district. The Board of Trustees of the Florida School for the Deaf and the Blind shall be deemed to be the public employer with respect to the academic and academic administrative personnel of the Florida School for the Deaf and the Blind. The Governor shall be deemed to be the public employer with respect to all employees in the Correctional Education Program of the Department of Corrections.[62]

When the Governor is deemed the employer, the Chief Negotiator for the Department of Management Services negotiates with the various bargaining units. If an impasse is reached, and one of the parties so requests, a special master is appointed. The special master's

[62] s. 447.203(2), F.S.

recommendations are then brought before the Florida Legislature for consideration, because it is the Florida Legislature that ultimately resolves such impasse issues. Both parties must agree if use of a special master is waived, and then impasse issues will be immediately brought to the Florida Legislature. A House and Senate select committee is appointed to hear the impasse issue and to makes recommendations. Such recommendations may be captured in the appropriations bill. In this scenario the employer, the Governor, is not the same entity ultimately resolving the impasse issue – that responsibility falls to an entirely different branch of government, the Florida Legislature.

However, this bifurcation of responsibility is not the case at the local government level. For example, if the employer, the county (County Board of Commissioners), comes to an impasse with a particular bargaining unit, it is the county, in its role as the legislative body, where will ultimately resolve the impasse issue. Accordingly, having a special master as an independent, third party reviewer of the impasse issue provides a buffer between the county as negotiator and the county as the legislative body that ultimately decides the issue.

It has been argued that when the Florida Legislature is the deciding legislative entity, having to use a special master (which is the case if either party so requests) is an intermediate step which is not as critical to the process as it is when the employer and the deciding legislative entity is one and the same.

Effect of Proposed Changes:

This bill provides that, effective July 1, 2001, if impasse occurs, one of the parties must declare impasse in writing to the *legislative body* of the governmental entity involved, instead of making the declaration of impasse to PERC. This bill retains the provisions regarding securing a mediator to assist in the resolution of impasse, and the provision that nothing in the bill precludes the use of a mediator at any point during collective bargaining.

If no mediator is secured, upon the request of either party, the *appropriate legislative body,* instead of PERC, must appoint, and submit all issues to a special master acceptable to both parties. If the parties are unable to agree on the appointment, then the Division of Human Resources Management, instead of PERC, must appoint the special master.

Also, when the Legislature is the appropriate legislative body, within 15 days after the declaration of impasse is received by the Legislature, the public employer's chief executive officer and the employee organization must submit their recommendations for settling the disputes to the Legislature and the other party. This completely eliminates the use of a special master. If the dispute involves employees of the Board of Regents, then the Governor may also submit recommendations to the Legislature.

Section 162:

Amends s. 447.501, F.S., Unfair labor practices.

Present Situation:

Section 447.501, F.S., defines unfair labor practices. Unfair labor practices, on the part of the employer, include encouraging or discouraging membership in any employee organization by discrimination in regard to hiring, tenure, or other conditions of employment; refusing to bargain collectively, failing to bargain collectively in good faith, or refusing to sign a final agreement; and refusing to discuss grievances in good faith. Unfair labor practices, on the part of the public employee organization, include causing or attempting to cause a public employer to discriminate against an employee because of the employee's membership or nonmembership in an employee

organization; and refusing to bargain collectively or failing to bargain collectively in good faith; and, participating in a strike.[63]

Effects of Proposed Changes:

This bill amends s. 447.501, F.S., effective July 1, 2001, to provide that unfair labor practice complaints must be filed with a court of competent jurisdiction within 180 days after the alleged violation, instead of filing the complaint with the Public Employees Relations Commission. This section further provides that a court may award to the prevailing party all or part of the costs of the litigation, reasonable attorney's fees, and expert witness fees whenever the court determines that such award is appropriate.

Section 163:

Repeals s. 447.503, F.S., Charges of unfair labor practices.

Section 447.503, F.S., is repealed effective July 1, 2001. Section 447.503, F.S., provides for the review of unfair labor practice complaints by PERC. As provided in the previous section of this bill, complaints must be filed with a court of competent jurisdiction. Concerns have previously been expressed regarding the development of a disparate body of law as a result of the various circuit courts handling such cases.[64]

Section 165:

Repeals s. 447.504, F.S., Judicial review.

Section 447.504, F.S., provides that the district courts of appeal are empowered upon the filing of appropriate notices of appeal to review PERC's final orders. Effective January 1, 2002, s. 447.504, F.S., is repealed.

Section 166:

Amends s. 447.507, F.S., Violation of strike prohibition; penalties.

Present Situation:

Section 447.507, F.S., provides penalties for violating the strike prohibition for public employees. Circuit courts having jurisdiction of the parties are vested with the authority to hear and determine all actions alleging violations of s. 447.505, F.S., prohibiting strikes by public employees. If a public employee, a group of employees, an employee organization, or any officer, agent, or representative of any employee organization engages in such a strike, either PERC or any public employer whose employees are involved or whose employees may be affected by the strike may file suit to enjoin the strike in the circuit court having proper jurisdiction and proper venue of such actions. If an injunction enjoining a strike is not promptly complied with, on the application of the employee, the circuit court must immediately initiate contempt proceedings against those who appear to be in violation. An employee organization found to be in contempt of court for violating an injunction against a strike will be fined an amount deemed appropriate by the court. An employee organization shall be liable for any damages which might be suffered by a public employer as a result of such a violation. No action can be maintained until all proceedings which were pending

[63] s. 447.501, F.S.
[64] *See infra* at 28-32.

before PERC at the time of the strike or which were initiated within 30 days of the strike have been finally adjudicated or otherwise disposed of.

If PERC, after a hearing on notice, determines that an employee has violated s. 447.505, F.S., prohibiting strikes, it may order the termination of his or her employment by the public employer. A person knowingly violating s. 447, 505, F.S., may, subsequent to such violation, be appointed, reappointed, employed, or reemployed as a public employee, but only upon the following conditions: the employee must be on probation for a period of 6 months following his or her appointment, reappointment, employment, or reemployment, during which period he or she will serve without tenure. During this period, the person may be discharged only upon a showing of just cause; his or her compensation may in no event exceed that received immediately prior to the time of the violation; and, the compensation of the person may not be increased until after the expiration of 1 year from such appointment, reappointment, employment, or reemployment.

If PERC determines that an employee organization has violated s. 447.505, F.S., it may issue cease and desist orders; suspend or revoke the certification of the employee organization; revoke the right of dues deduction and collection; fine the organization up to $20,000 for each calendar day of such violation or determine the approximate cost to the public due to each calendar day of the strike and fine the organization an amount equal to such cost.

Effect of Proposed Changes:

This bill amends s. 447.507, F.S., effective January 1, 2002, to remove references to PERC, and to replace them with references to the Division of Human Resource Management. This bill removes the language which provides that "[n]o action shall be maintained pursuant to this subsection until all proceedings which were pending before the commission at the time of the strike or which were initiated within 30 days of the strike have been finally adjudicated or otherwise disposed of."

This bill also removes the power to order the termination of an employee who is found in violation of the strike prohibition. This bill transfers all other powers provided in s. 447.507, F.S., to the Division.

Section 170:

Amends s. 112.044, F.S., Public employers, employment agencies, labor organizations; discrimination based on age prohibited; exceptions; remedy.

Effective January 1, 2002, s. 112.044, F.S., is amended to remove all career service employee age discrimination appeals from PERC. The appropriate remedy is to bring a civil action in a court of competent jurisdiction or participate in voluntary binding arbitration.

Section 171:

Amends s. 112.0455, F.S., Drug-Free Workplace Act.

Present Situation:

Section 112.0455, F.S., provides that prior to drug testing, all employees and job applicants for employment must be given a written policy statement from the employer which contains certain information regarding the policy of the employer, as well as a statement regarding any applicable collective bargaining agreement or contract and the right to appeal to the Public Employees Relations Commission. This section also provides that an executive branch employee who is

disciplined or who is a job applicant for another position and who is not hired under the Drug-Free Workplace Act, may file an appeal with PERC.

Section 112.0455, F.S., also states that "[a] hearing on the appeal shall be conducted within 30 days of the filing of the appeal, unless an extension is requested by the employee or job applicant and granted by the commission or an arbitrator." This section provides that PERC must promulgate rules concerning the receipt, processing, and resolution of appeals, and that appeals to PERC must be the exclusive administrative remedy for any employee who is disciplined or any job applicant who is not hired because of a Drug-Free Workplace violation. This section requires the employee or job applicant who has been disciplined or not hired to exhaust either the administrative appeal process or collective bargaining grievance-arbitration process. PERC may order relief by rescinding the disciplinary order, expunging related records, ordering compliance, or awarding back pay and benefits.

Effect of Proposed Changes:

This bill amends s. 112.0455, F.S, effective January 1, 2002, by removing the references to PERC, and replacing them with references to the circuit court. This bill also provides that an extension of the 30-day time frame for a hearing on the appeal can be granted by the *circuit court* or *a collective bargaining grievance* arbitrator. The language authorizing PERC to promulgate rules concerning Drug-Free Workplace appeals is removed, as well as the language requiring the employee or job applicant to exhaust the administrative appeals process or the collective bargaining grievance process. This bill also removes the language, which provides that PERC can rescind the disciplinary action, expunge related records, order compliance, or award back pay and benefits.

Section 173:

Amends s. 112.31895, F.S., Investigative procedures in response to prohibited personnel actions.

Present Situation:

Section 112.31895, F.S., provides that the Florida Commission on Human Relations (Commission) has certain powers, including to: receive and investigate complaints from employees alleging retaliation by state agencies; protect employees and applicants for employment with such agencies from prohibited personnel practices under the Whistle-blower's Act; petition for stays and petition for corrective actions, including, but not limited to, temporary reinstatement; recommend disciplinary proceedings pursuant to investigation and appropriate agency rules and procedures; review rules pertaining to personnel matters issued or proposed by the Department of Management Services, the Public Employees Relations Commission, and other agencies; investigate, request assistance from other governmental entities, and, if appropriate, bring actions concerning, allegations of retaliation by state agencies; and, intervene or otherwise participate, as a matter of right, in any appeal or other proceeding arising under this section before PERC or any other appropriate agency, except that the Commission must comply with the rules of the commission or other agency and may not seek corrective action or intervene in an appeal or other proceeding without the consent of the person protected under the Whistle-blower's Act. PERC and the Commission both have jurisdiction to hear appeals under the Whistle-blower's Act. Also, both PERC and the judiciary have jurisdiction to review the termination of the Commission's investigation. This section also provides for judicial review of any final order of PERC.

Section 112.31895, F.S., also provides for a right to appeal. Not more than 60 days after receipt of a notice of termination of the Commission's investigation, the complainant may file, with the PERC,

a complaint against the employer regarding the alleged prohibited personnel action. PERC has jurisdiction over such complaints.

Effect of Proposed Changes:

This bill amends s. 112.31895, F.S., by removing all references to PERC, and provides that the complainant may file for judicial review of the Commission on Human Relations' notice of termination of the investigation, instead of filing with PERC. This bill eliminates the double review provided by PERC, and the Commission.

Section 175-178:

Repeals s. 125.0108(2)(d), F.S., regarding the Career Service Commission, repealed in 1986; amends ss. 376.75(9)(b), Tax on production or importation of perchloroethylene, and, 403.718(b)(3), F.S., Waste tire fees.

Removes references to the defunct Career Service Commission. Its duties were transferred to the Public Employees Relations Commission in 1986.

Section 181:

Amends s. 295.11, F.S., Investigation; administrative hearing for not employing preferred applicant.

Present Situation:

Section 295.11, F.S., provides that the Department of Veterans' Affairs must, upon written request of any veteran,[65] investigate any complaint filed with the Department of Veterans' Affairs or any agency of a political subdivision in the state for a position of employment, which was awarded to a nonveteran and the person feels aggrieved under the veteran's preference provided by Florida law.[66] The Department of Veterans' Affairs must review each case and may issue an opinion to the Public Employees Relations Commission. When the investigation is completed, the Department of Veterans' Affairs must furnish a copy to the complainant and the agency. When a satisfactory resolution to the complaint is not forthcoming, any department of the state or political subdivision of the state may testify telephonically or in person at the discretion of PERC. The complainant may be represented at the hearing by counsel at his or her expense. Jurisdiction of these cases is with PERC for appropriate administrative determination. If PERC agrees with the Department of Veterans' Affairs' determination that a case lacks merit, PERC must dismiss the complaint.

Effect of Proposed Changes:

This bill, effective January 1, 2002, removes the language providing for the Department of Veterans' Affairs to issue an opinion to PERC. This bill also removes the language providing that any department or agency of the state may testify telephonically or in person, at the discretion of PERC. This bill provides that the jurisdiction for veterans' preference complaints resides with the circuit court, unless the employee opts to use voluntary binding arbitration, as provided in this bill.

[65] Veteran is defined in s. 295.07, F.S.
[66] Chapter 295, F.S.

Section 185:

Repeals ss. 944.35(3)(c), on Authorized use of force; malicious battery and sexual misconduct prohibited; reporting required; penalties within the State Correction System, and 985.4045(1)(b), F.S., on Sexual misconduct prohibited; reporting required; penalties.

Present Situation:

Section 944.35, F.S., provides penalties for an employee of the State Correctional System who, with malicious intent commits a battery upon an inmate or an offender supervised by the Department of Corrections, or commits a battery or inflicts cruel or inhuman treatment by neglect or otherwise, and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to an inmate or an offender; or engages in sexual misconduct with an inmate or an offender. If any employee commits any of the above violations, as determined by the Public Employees Relations Commission, those violations will constitute sufficient cause for dismissal from employment with the Department of Corrections, and such person will not again be employed in any capacity in connection with the correctional system.

Section 985.4045(1)(b), F.S., provides that an employee of the Juvenile Justice System who engages in sexual misconduct with a juvenile offender detained or supervised by, or committed to the custody of, the Department of Juvenile Justice commits a felony of the second degree. If any employee commits any of the above violations, as determined by the Public Employees Relations Commission, those violations will constitute sufficient cause for dismissal from employment with the Department of Juvenile Justice, and such person will not again be employed in any capacity in connection with the juvenile justice system.

Effect of Proposed Changes:

This bill, effective January 1, 2002, removes PERC's role in determining violations of the provisions described above, and removes PERC's ability to dismiss an employee of the correctional or juvenile justice system.

Section 186:

Provides for the Department of Management Services to coordinate the development and implementation of a transition plan implementing the elimination of PERC and the transfer of powers and duties to the Division of Human Resource Management.

Section 187:

Provides that until July 1, 2001, PERC continues to exercise its duties pursuant to the Florida Statutes 2000. On or after July 1, 2001, PERC must comply with the changes made effective July 1, 2001; except, for cases pending before PERC on July 1, 2001, those cases continue to be governed by PERC's authority as provided in Florida Statutes 2000. This bill also provides that after June 30, 2002, PERC ceases to exist.

Section 188:

Effective July 1, 2001, appropriates to the Division of Human Resource Management $400,000 for the 2001-2002 fiscal year.

Section 189:

Provides for the Executive Office of the Governor to process a budget amendment after July 1, 2001, to transfer all of PERC's records, property, and unexpended appropriations to the Division of Human Resource Management. Such budget amendment must maintain sufficient budget authority, resources, and personnel at PERC to finalize existing PERC cases.

Section 190:

Provides that, on or before October 1, 2002, the Department of Management Services must adopt, amend, or repeal rules as necessary to implement Chapter 109 provisions.

Section 191:

Provides that except as otherwise provided, this bill will take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Effective July 1, 2001, appropriates to the Division of Human Resource Management $400,000 for the 2001-2002 fiscal year. After July 1, 2001, the Executive Office of the Governor must process a budget amendment, or budget amendments to transfer the records, property, and unexpanded balances of appropriations, allocations, or other funds of the Public Employees Relations Commission to the Division of Human Resource Management.

The strike-everything amendment traveling with the bill contains appropriations and other state expenditures that explained in detail in the "Fiscal Comments" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments" section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

With the elimination of the Public Employees Relations Commission, career service employees will have to either submit to Voluntary Binding Arbitration, or pursue their claims in circuit court. The costs associated with either remedy are indeterminable, but the circuit court remedy may result in greater expenditures, for both the employee and the agency, than preparation for a PERC hearing.

There also appears to be a significant fiscal impact on Florida's circuit courts due to their increased workload as a result of receiving the employee grievance cases, unfair labor practices complaints, and other litigation, formerly handled by PERC. Additionally, another cost factor to consider is the number of appeals made to circuit court. The "at-will" status of employees may reduce the number of complaints filed.

The Office of the State Court Administrator states that the proposed transfer of career service and unfair labor practices cases from the Public Employees Relations Commission to the circuit courts will have an impact on judicial workload.[67] The Office estimates that that case filings for PERC for the last four fiscal years have averaged 771 cases per year, while the cases for this fiscal year are estimated at 716. The Office states that cases involving unfair labor practices are heavily litigated, have extensive discovery, and are extremely time consuming. According to the data provided by PERC to the Office, 14 hearing officers spend approximately 75 percent of their time handling case specific matters.[68] This equates to 10.5 FTE hearing officers. These hearing officers have 2.5 FTE support staff. The Office states that "[w]hile we can't determine the impact of these cases on judicial workload due to differences in procedure, we anticipate staffing requirements for the courts would be fairly comparable to those used by PERC."[69]

The Office also expresses concerns that the absence of a body of law to decide these cases may lead to longer average case processing times, particularly for unfair labor practice cases.[70] They assert that, if the anticipated jury trials for these cases lasts for several weeks, this is probably much greater than the average jury trial time, and accordingly, will disrupt may courts trial dockets, and, delay litigants trials in other cases.

There is a fiscal impact on state employees who request salary or wage deductions, such as deferred compensation, union dues, supplemental insurance, and charitable contributions. This bill provides that the Department of Banking and Finance must also deduct the cost of such transaction at the time the Department makes the requested deduction. This could discourage state employees from utilizing such programs due to the cost.

Strike-Everything Amendment

On March 6, 2001, the Committee on State Administration adopted a strike-everything amendment.

The strike-everything amendment provides that certain managerial, confidential, and supervisory employees are transferred from the Career Service to the Selected Exempt Service. The Office of Planning and Budgeting within the Executive Office of the Governor estimates that, as of March 2001, 16,320 employees would be transferred to Selected Exempt Service, at a cost of $17.3 million dollars to the state annually. This number is mainly attributable to the cost of the increased benefits in the Selected Exempt Service.

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[67] Comments regarding HB 369, Florida State Courts System, Office of the State Courts Administrator, February 20, 2001.
[68] *Id*.
[69] *Id*., at 2.
[70] *Id*.

The strike-everything eliminates the requirement that that the Department of Banking and Finance must deduct the cost of an employee requested deduction at the time the Department makes the requested deduction, which addresses the Department's concerns as addressed in the "Other Comments" section of this analysis.

This amendment also eliminates the provision that requires unfair labor practice complaints to be filed with the circuit courts. This addresses one of the fiscal concerns identified by the Office of the State Court Administrator. Instead, these complaints must be filed with the Office of Employee Relations. However, the Office of the State Court Administrator is still concerned about the additional resources the court will need to hear the career service employee appeals that are not handled by the Office of Employee Relations through Voluntary Binding Arbitration.[71]

The strike-everything amendment appropriates $26,208 of nonrecurring general revenue to DMS for fiscal year 2000-2001 (The fiscal year ends June 30, 2001.) This amount is to fund the start up costs of the administrative staff of the Office of Employee Relations. The Governor is to appoint the executive director, and the director is to select the general counsel and an administrative assistant as the initial employees.

The strike-everything amendment appropriates 18 full-time equivalent positions and $1,331,289 in recurring general revenue for staffing the Office of Employee Relations, and provides that the annualized salary and expense amounts must not exceed $1.7 million. However, one of the amendments to the strike-everything amendment changes that figure to $2.1 million, which includes leave payout, arbitrator's fees, witness fees, expenses, and funding for the three administrative coordinators, four administrative assistants, eight senior attorneys, and three commissioners.

The strike-everything amendment also appropriates $2,885,327 in nonrecurring general revenue for the Public Employee Relations Commission for fiscal year 2001-2002.

See "Amendments or Committee Substitute Changes."

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

[71] Telephone conversation with Margie Howard, Office of the State Courts Administrator, March 7, 2001.

Florida Civil Service

Florida is one of the few states that address the civil service system in its Constitution. A provision concerning civil service was first added to the Constitution in 1956. Section 14 of Article 3, Florida Constitution, now provides that :

> By law there shall be created a civil service system for state employees, except those expressly exempted . . .

The constitutional requirement is implemented by a series of statutes. Section 110.201(1)(a), F.S., provides:

> The [Department of Management Services], in consultation with agencies that must comply with these rules, shall develop uniform personnel rules, guidelines, records, and reports relating to employees and positions in the career service.

Section 110.227, F.S., provides for suspensions, dismissal, reductions in pay, demotions, layoffs, transfers, and grievances, and authorizes the Department of Management Services to address these matters by rule.[72] But it is the legislature itself which limits the dismissal of employees with "permanent status," although it does not define "permanent status."[73]

Federal Due Process Rights Regarding Public Employment

The Due Process Clause of the Fourteenth Amendment of the United States Constitution restricts states from engaging in arbitrary action which deprives citizens of life, liberty or property. Under due process analysis, "property" includes such items as personal belongings, real property, intellectual property, or money. The right to contract and the right to engage in a particular occupation may also receive due process protection.[74] Two United States Supreme Court decisions established that public employees possess significant property interests in their jobs, and that states can not deprive public employees of these interests without providing due process.[75] In more recent decisions, however, the Court has been less willing to interfere with the state employment practices.[76]

Vested Property Rights in Florida Career Service employment positions

The Florida Supreme Court has succinctly stated the general rule for career service employees: "It is undisputed that tenured employees acquire a property right in their employment."[77]

Accordingly, Florida law establishes that career service employees who have obtained permanent status in the career service system have acquired a property interest in their public positions and benefits thereof, such as job security and seniority, which they may not be deprived of without due process of law.

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[72] The Department of Management Services must establish rules and procedures for the suspension, reduction in pay, transfer, layoff, demotion, and dismissal of employees in the career service. Such rules shall be approved by the Administration Commission prior to their adoption by the department. s. 110.227, F.S.

[73] "Any employee who has permanent status in the career service may only be suspended or dismissed for cause." This section does not define "permanent status." *Id.*

[74] Board of Regents vs. Roth, 408 U.S. 564 (1972).

[75] *Id.*; s*ee also* Perry v. Sinderman, 408 U.S. 593 (1972).

[76] *See* Arnett v. Kennedy, 416 U.S. 134 (1974).

[77] Department of Corrections v. Florida Nurses Ass'n, 508 So.2d 317, 320 (Fla. 1987).

However, when the public entity creates a position, with or without vested property rights, abolishment of that position is generally allowed. Recently, this principle was reinforced in *City of Miami vs. Rodriguez-Quesada*, 388 So. 2d 258 (3 DCA Fla. 1980), where the members of a local board sought to enjoin the abolishment of the board by the City of Miami. The court stated that "[i]t is the general rule that the power to create an office generally includes the power to modify or abolish it even though the office is occupied by a duly appointed incumbent."[78]

Accordingly, in Florida, when a public entity abolishes an employee position that it has created, the public entity has not violated that employee's due process rights.

Fee Provisions[79]

This bill provides that the cost of making an employee requested salary or wage deduction be deducted from the employee's compensation. Typically, when a fee provision is provided in the Florida Statutes, unless there is a cap on that fee, a formula or specific criteria set forth which are to be used in determining the calculation of that fee, a constitutional issue of unlawful delegation of legislative authority arises. However, this bill states that the "cost" of the deduction, be deducted. This may be construed to limit the fee to the "actual cost" of the deduction services. Also, the number of deductions that employees choose to voluntarily incur may be affected as a result of this fee.

B. RULE-MAKING AUTHORITY:

This bill provides rule-making authority to the Department of Management Services in order to implement the grievance procedures, voluntary binding arbitration, the provisions of Chapter 109, F.S., and other provisions. This bill removes the authorization for the Department to adopt rules regarding procedures in the case of failure by the employee to meet performance goals, but retains the authorization to adopt rules regarding the procedures for performance evaluation.

Within the Department, the Division of Human Resources is authorized to adopt rules as to the qualifications of mediators and special masters participating in the collective bargaining process, and other rules as necessary to carry out that process.

C. OTHER COMMENTS:

Florida Police Benevolence Association

The Florida Police Benevolence Association (P.B.A.) has approximately 30,000 members. Those members are comprised of law enforcement, correctional, and correctional probation officers. In the P.B.A.'s opinion, all of their members will be adversely affected if House Bill 369 passes in its current form. They assert that the security services unit (with 20,000 correctional and correctional probation officers), and the special agent unit (with 400 Florida Department of Law Enforcement officers) will be the most directly impacted members.[80]

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[78] *City of Miami vs. Rodriguez-Quesada*, 388 So. 2d 258, 259 (3 DCA Fla. 1980); s*ee also, City of Jacksonville vs. Smoot*, 83 Fla. 575, 92 So. 2d 617, 623 (1922).

[79] The United Way estimates that state employees donate approximately $4.5 million dollars, annually, that go to 1,300 charities, the vast majority from payroll deductions. The fees on these deductions, provided in this bill, may reduce the number of charitable contributions. The United Way is opposed to these fees. Conference with Theodore G. Granger representing the United Way, February 20, 2001.

[80] Memo from David Murrell, Executive Director, Florida Police Benevolence Association (P.B.A.) regarding the Florida P.B.A. concerns with House Bill 369 (February 15, 2001), at 1.

The P.B.A. believes that the duties and responsibilities of law enforcement, correctional and correctional probation officers are both unique and hazardous, and that therefore these officers must be ensured the ability to perform freely and independently without fear of retaliation, coercion, or influence. The primary responsibilities of these officers are to enforce laws, investigate criminal allegations, control inmates, and supervise probationers. "If these officers are to perform their duties fairly and safely, they need the job protections and security they enjoy under the current career service system . . . [i]f these protections are lost, the State will have great difficulty recruiting and retaining qualified officers for the positions.[81]

Department of Banking and Finance

The Department of Banking and Finance anticipates an impact on several different areas.[82] The Department states that the requirement for all state employees to participate in the direct deposit program appears to present several challenges. First, the requirement may be difficult to adhere to by the Department of Military Affairs. Currently, they submit payroll requests to the Bureau of State Payrolls for National Guardsmen, when they are called for duty for state emergencies and non-emergencies.[83] The Department is currently working with the guardsmen to establish direct deposit; however, due to the changing duty rosters, the Department of Military Affairs would be required by this bill's provisions to send a new file every two weeks to the Department of Banking and Finance.[84]

Second, this bill provides that the Department of Banking and Finance must deduct the cost of making employee requested wage deductions. The Department states that this requirement will involve changes to the State Payroll System. The deductions that are employee-requested (i.e. voluntary) need to be identified, and the salary calculated programs need to be modified to effectuate this provision. Also, procedures must be rendered in order to define what deductions will be affected, what the fees will be, and where the fees will be remitted. In addition, current payroll initiatives for cost saving measures and payroll system enhancements will be delayed as resources are already fully extended.[85]

Third, the State Payroll System may be affected by the changes to the career service classification and pay plan. Significant system modifications may be required, including adding new fields to track the new pay bands.[86]

Department of Management Services

It is the practice of the House of Representatives for committee staff to request that an affected agency provide an analysis of any bill that affects it, which includes the provision of fiscal impact data, and comments regarding areas of concern. On February 12, 2001, committee staff asked the Department of Management Services to analyze House Bill 369. On February 15, 2001, department staff advised committee staff: "We are not going to analyze HB 369 at this time." Accordingly, although this bill significantly affects the Department of Management Services, committee staff cannot provide our members with key information that only the Department of Management Staff can provide, nor can we provide the Department of Management Service's fiscal analysis regarding the impacts of this bill.

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[81] *Id.*
[82] Analysis on House Bill 369, Department of Banking and Finance (February 15, 2001), at 3.
[83] *Id.*
[84] *Id.*
[85] *Id.*
[86] *Id.*, at 4.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 6, 2001, the Committee on State Administration heard HB 369, adopted one strike-everything amendment offered by Representative Diaz-Balart, and also adopted 10 amendments to the strike-everything amendment.

The strike-all amendment (229-191AXA-01):

- Eliminates the Public Employees Relations Commission (PERC), as does the bill; however, the amendment transfers the three PERC commissioners to the Office of Employee Relations.

- Creates the Office of Employee Relations (OER) within the Department of Management Services (DMS). OER is an independent budgetary entity not subject to DMS control. OER is headed by an Executive Director appointed by the Governor. The Executive Director is responsible for all of the duties and functions assigned to OER, which include the collective bargaining unit certifications and elections. The three PERC Commissioners transferred to OER constitute the Executive Board, which is responsible for handling voluntary binding arbitration and impasse issues, subject to the direction of the Executive Director.

- Retains Voluntary Binding Arbitration but moves it from Human Resources Management within DMS to OER. Requires the employer to participate if the employee requests arbitration. Establishes a different selection process for panel members when the career service employee is a law enforcement or correctional officer or firefighter.

- Provides that unfair labor practice complaints are to be filed with OER; the bill requires that such complaints be filed in circuit court.

- Retains the collective bargaining impasse duties performed by PERC (which were eliminated by the bill) and transfers those duties to OER.

- Provides an exception to the burden of proof provided in the bill (that the employee must establish by a preponderance of the evidence that the agency head abused his or her discretion and that no reasonable cause existed for the alleged adverse action) for law enforcement or correctional officers, or firefighters, so their burden of proof remains the same as in current law--the burden of proof is on the employer to prove just cause.

- Removes the language in the bill that provides that as of January 1, 2002, all career service employees will be “at-will” employees.

- Provides that certain managerial, confidential, and supervisory employees are transferred from the Career Service to the Selected Exempt Service, which is an “at-will” class. **This has a substantial fiscal impact.** The Office of Planning and Budgeting within the Executive Office of the Governor estimates that, as of March 2001, 16,320 employees would be transferred to Selected Exempt Service, at a cost of $17.3 million dollars to the state.

- Retains the elimination of bumping, including exceptions if collectively bargained, but provides an exception for law enforcement or correctional officers, or firefighters, so that current law is retained for them.

- Removes the requirement that the cost of making employee requested salary or wage deductions must be deducted from that employee’s compensation.

- Establishes a minimum, 1 year probationary period for an employee before that employee can attain permanent status.

- Provides for Efficiency Awards when a state agency has modified an approved program to increase efficiency and provide cost savings.

- Appropriates $26,208 of general revenue to DMS for fiscal year 2000-2001, for the salary for the executive director (appointed by the Governor), the general counsel, and an administrative assistant.

- Appropriates 18 full-time equivalent positions and $1,331,289 in recurring general revenue for staffing the Office of Employee Relations, and provides that the annualized salary and expense amounts must not exceed $1.7 million, an amendment changed this amount to $2.1 million.

- Appropriates $2,885,327 in nonrecurring general revenue for the Public Employee Relations Commission for fiscal year 2001-2002.

Ten amendments were adopted to the strike-everything amendment. All of the amendments to the strike-everything amendment were offered by Rep. Diaz-Balart, unless otherwise provided.

- Eliminates the reference in the strike-everything amendment to meritorious service and gain sharing, and sets forth a program for "savings sharing, bonus payments and other awards." Requires each agency to develop a plan for awarding lump-sum bonuses which must be submitted to OPB; sets forth eligibility criteria; requires employees to be evaluated quarterly; requires that peer input must account for 40 percent of bonus award determination; limits bonus distributions to equal to 35 percent of agency's total authorized positions; and provides that each proposed award and amount still must be approved by the Legislative Budgeting Commission.

- Adds that the pay administration system developed must contain provisions to allow managers the flexibility to move employees through pay ranges and provides for salary increase additives and lump-sum bonuses. In addition, some of the pay plan requirements set forth in s. 110.209, F.S, which are repealed in another amendment, are incorporated in this amendment.

- Provides that the leave benefits provided to Senior Management Service (SMS) must not exceed those provided to Selected Exempt Service (SES). SES employees now get 176 hours of annual leave and 104 hours of sick leave; SMS currently gets 240 hours annual leave and 120 hours of sick leave. Provides that each December, a Career Service employee is entitled to a payout for 24 hours of unused annual leave, provided the employee has 24 hours left, and no employee will receive a payout of greater than 240 hours over the course of the employee's career.

- Adds that the current review and performance evaluation is also for the purpose of "award[ing] lump sum bonuses".

- Repeals ss. 110.207 and 110.209, F.S., which address classification and pay plan requirements, otherwise addressed in other amendments.

- Eliminates the requirement that DMS develop model recruitment and selection rules.

- Eliminates the repeal of the provision that regulates state employees use of the telephone voice mail systems and telephone menu options. This amendment was offered by Rep. Dockery.

- Amends the annualized salary and expense cap for the Office of Employee Relations to $2.1 million from $1.7 million. This amendment was a result of revised calculations by appropriations staff. This amendment was offered by Chairman Brummer.

- Removes the language prohibiting a step pay plan as an option for the career service pay plan. This amendment was offered by Chairman Brummer.

- Reinstates the current provisions in s. 110.112, F.S.(renumbered as s. 109.112, F.S.), which provide for affirmative action and equal employment opportunity. This amendment was offered by Chairman Brummer.

The strike-everything amendment, as amended, is traveling with the bill. HB 369, as amended, was reported favorably.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:	Staff Director:
Jennifer D. Krell, J.D. and J. Marleen Ahearn	J. Marleen Ahearn, Ph.D., J.D.

AS REVISED BY THE SMARTER GOVERNMENT COUNCIL:

Prepared by:	Council Director:
Jennifer D. Krell, J.D. and J. Marleen Ahearn	Don Rubottom