

By Senator Argenziano

3-323-05

1 A bill to be entitled
2 An act relating to the Career Service System;
3 amending s. 110.227, F.S.; revising
4 requirements for disciplining an employee;
5 providing for appeals of agency actions
6 imposing penalties on employees to be reviewed
7 by administrative law judges; revising review
8 procedures; providing standards for awards of
9 back pay; amending s. 447.207, F.S., relating
10 to powers and duties of the Public Employees
11 Relations Commission, to conform; providing an
12 effective date.

14 Be It Enacted by the Legislature of the State of Florida:

16 Section 1. Subsections (1), (5), (6), and (7) of
17 section 110.227, Florida Statutes, are amended to read:

18 110.227 Suspensions, dismissals, reductions in pay,
19 demotions, layoffs, transfers, and grievances.--

20 (1) Any employee who has satisfactorily completed at
21 least a 1-year probationary period in his or her current
22 position may be suspended or dismissed only for just cause. In
23 appropriate circumstances cause shall include, but is not
24 limited to, poor performance, negligence, inefficiency or
25 inability to perform assigned duties, insubordination,
26 violation of the provisions of law or agency rules, conduct
27 unbecoming a public employee, misconduct, habitual drug abuse,
28 or conviction of any crime. The agency head shall ensure that
29 all employees of the agency have reasonable access to the
30 agency's personnel manual.

1 (5)(a) A career service employee who has
2 satisfactorily completed at least a 1-year probationary period
3 in his or her current position and who is subject to a
4 suspension, reduction in pay, demotion, or dismissal shall
5 receive written notice of such action at least 10 days prior
6 to the date such action is to be taken. Subsequent to such
7 notice, and prior to the date the action is to be taken, the
8 affected employee shall be given an opportunity to appear
9 before the agency or official taking the action to answer
10 orally and in writing the charges against him or her. The
11 notice to the employee required by this paragraph may be
12 delivered to the employee personally or may be sent by
13 certified mail with return receipt requested. Such actions
14 shall be reviewable by an administrative law judge assigned by
15 the Division of Administrative Hearings ~~appealable to the~~
16 ~~Public Employees Relations Commission~~ as provided in
17 subsection (6). Written notice of any application for review
18 ~~such appeal~~ shall be filed by the employee with the division
19 ~~commission~~ within 14 calendar days after the date on which the
20 notice of suspension, reduction in pay, demotion, or dismissal
21 is received by the employee. The division shall develop a
22 standard form to facilitate applications for review by
23 employees. The agency shall provide the employee a copy of the
24 form for filing an application for review with each notice
25 required by this section.

26 (b) In extraordinary situations such as when the
27 retention of a career service employee who has satisfactorily
28 completed at least a 1-year probationary period in his or her
29 current position would result in damage to state property,
30 would be detrimental to the best interest of the state, or
31 would result in injury to the employee, a fellow employee, or

1 | some other person, such employee may be suspended or dismissed
2 | without 10 days' prior notice, provided that written or oral
3 | notice of such action, evidence of the reasons therefor, and
4 | an opportunity to rebut the charges are furnished to the
5 | employee prior to such dismissal or suspension. Such notice
6 | may be delivered to the employee personally or may be sent by
7 | certified mail with return receipt requested. Agency
8 | compliance with the foregoing procedure requiring notice,
9 | evidence, and an opportunity for rebuttal must be
10 | substantiated. Any employee who is suspended or dismissed
11 | pursuant to ~~the provisions of~~ this paragraph may apply for
12 | review ~~appeal to the Public Employees Relations Commission~~ as
13 | provided in subsection (6). Written notice of application for
14 | review ~~any such appeal~~ shall be filed with the division
15 | ~~commission~~ by the employee within 14 days after the date on
16 | which the notice of suspension, reduction in pay, demotion, or
17 | dismissal is received by the employee.

18 | (6) The following procedures ~~shall~~ apply to
19 | applications for review ~~appeals~~ filed pursuant to subsection
20 | (5) with the Division of Administrative Hearings ~~Public~~
21 | ~~Employees Relations Commission~~, hereinafter referred to as the
22 | division ~~commission~~:

23 | (a) The division ~~commission~~ must conduct a hearing
24 | within 30 calendar days following the filing of an application
25 | for review ~~a notice of appeal~~. Unless the administrative law
26 | judge determines that the due process rights of any party
27 | would be adversely affected, an ~~no~~ extension of time for the
28 | hearing may not exceed 30 calendar days, absent exceptional
29 | circumstances, and an ~~no~~ extension of time may not be granted
30 | without the consent of all parties. Discovery may be granted
31 | only upon the showing of extraordinary circumstances. A party

1 requesting discovery shall demonstrate a substantial need for
2 the information requested and an inability to obtain relevant
3 information by other means. Failure of the agency to timely
4 share with the employee all of the information it has
5 collected in making and supporting its decisions constitutes
6 substantial need. Except where inconsistent with the
7 requirements of this subsection, ~~the provisions of s.~~
8 ~~447.503(4) and (5) and~~ chapter 120 applies apply to
9 proceedings held pursuant to this subsection.

10 (b) A person may represent himself or herself in
11 proceedings before the division ~~commission~~ or may be
12 represented by legal counsel or by any individual who
13 qualifies as a representative pursuant to rules adopted by the
14 division ~~commission~~.

15 (c) If the administrative law judge ~~commission~~ finds
16 that sufficient cause did not exist to justify for the
17 discipline imposed by the agency action, the administrative
18 law judge ~~commission~~ shall reverse the decision of the agency
19 head and the employee shall be reinstated with or without back
20 pay. If the administrative law judge ~~commission~~ finds that
21 sufficient cause existed to justify for the agency action, the
22 administrative law judge ~~commission~~ shall affirm the decision
23 of the agency head. When sufficient cause exists to justify
24 the penalty, the administrative law judge ~~commission~~ may not
25 reduce the penalty imposed by the agency head, except in the
26 case of law enforcement or correctional officers,
27 firefighters, and professional health care providers, if the
28 administrative law judge ~~commission~~ makes specific written
29 findings of mitigation. Every award of back pay must be
30 reduced by any mitigating interim earnings of the employee
31 which exceed legal expenses in seeking review. The

1 administrative law judge shall otherwise be bound by the
2 common law of this state in fixing the amount of back pay.

3 (d) The administrative law judge's order is final
4 agency action. The final order shall be issued ~~A recommended~~
5 ~~order shall be issued by the hearing officer~~ within 30 days
6 following the hearing. ~~Exceptions to the recommended order~~
7 ~~shall be filed within 5 business days after the recommended~~
8 ~~order is issued. The final order shall be filed by the~~
9 ~~commission no later than 30 calendar days after the hearing or~~
10 ~~after the filing of exceptions or oral arguments if granted.~~

11 (e) Final orders issued by the administrative law
12 judge under ~~commission pursuant to~~ paragraph (d) shall be
13 reviewable as provided in s. 120.68 ~~s. 447.504~~.

14 (7) Other than for law enforcement or correctional
15 officers, firefighters, and professional health care
16 providers, each suspension, dismissal, demotion, or reduction
17 in pay must be reviewed without consideration of any other
18 case or set of facts unless the administrative law judge
19 determines that due process of law requires otherwise.

20 Section 2. Subsections (8), (9), (10), and (11) of
21 section 447.207, Florida Statutes, are amended to read:

22 447.207 Commission; powers and duties.--

23 ~~(8) The commission or its designated agent shall hear~~
24 ~~appeals arising out of any suspension, reduction in pay,~~
25 ~~demotion, or dismissal of any permanent employee in the State~~
26 ~~Career Service System in the manner provided in s. 110.227.~~

27 ~~(8)(9)~~ Pursuant to s. 447.208, the commission or its
28 designated agent shall hear appeals, and enter such orders as
29 it deems appropriate, arising out of:

1 (a) Section 110.124, relating to termination or
2 transfer of State Career Service System employees aged 65 or
3 older.

4 (b) Section 112.044(4), relating to age
5 discrimination.

6 (c) Section 295.11, relating to reasons for not
7 employing a preferred veteran applicant.

8 (9)~~(10)~~ Appeals to the commission pursuant to
9 subsection (8) ~~or subsection (9)~~ shall be the exclusive
10 administrative review of such actions, notwithstanding the
11 provisions of chapter 120. However, nothing in this subsection
12 shall affect an employee's rights pursuant to s. 447.401 or s.
13 447.503.

14 (10)~~(11)~~ Decisions issued by the commission pursuant
15 to subsection (8) ~~or subsection (9)~~ shall be final agency
16 action which shall be reviewable pursuant to s. 447.504.

17 Section 3. This act shall take effect July 1, 2005.

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20 SENATE SUMMARY

21 Transfers the authority to review actions of employers
22 which impose discipline on career service employees from
23 the Public Employees Relations Commission to
24 administrative law judges. Provides that suspension or
25 dismissal may be for just cause only. Provides that an
26 agency's failure to share information with the employee
27 constitutes substantial need for purposes of compelling
28 discovery. Provides certain constraints on awards of back
29 pay.
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