

1 A bill to be entitled

2 An act relating to the Career Service System; amending s.
3 110.227, F.S.; revising provisions relating to layoff
4 procedures to include applicability to correctional
5 probation officers; providing that certain grievances may
6 not be reviewed beyond Step Two; authorizing certain law
7 enforcement officers to seek review of agency penalties
8 before an administrative law judge assigned by the
9 Division of Administrative Hearings; requiring the
10 division to develop a standard form to facilitate
11 applications for review; requiring the employing agency to
12 provide certain employees with a copy of the appropriate
13 application for review; providing for an extension of time
14 in which the hearing must take place for cases in which
15 the due process rights of any party would be adversely
16 affected; providing what may constitute substantial need
17 for the purposes of discovery; providing standards for
18 awards of back pay; providing that awards of back pay must
19 be reduced by certain mitigating interim earnings of the
20 employee; providing that an order of the Public Employees
21 Relations Commission or of the division shall be final
22 agency action; revising provisions relating to judicial
23 review of final orders; amending s. 447.207, F.S.;
24 clarifying what appeals the commission shall hear;
25 providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:
28

HB 723

2006

29 Section 1. Section 110.227, Florida Statutes, is amended
30 to read:

31 110.227 Suspensions, dismissals, reductions in pay,
32 demotions, layoffs, transfers, and grievances.--

33 (1) Any employee who has satisfactorily completed at least
34 a 1-year probationary period in his or her current position may
35 be suspended or dismissed only for cause. Cause shall include,
36 but is not limited to, poor performance, negligence,
37 inefficiency or inability to perform assigned duties,
38 insubordination, violation of the provisions of law or agency
39 rules, conduct unbecoming a public employee, misconduct,
40 habitual drug abuse, or conviction of any crime. The agency head
41 shall ensure that all employees of the agency have reasonable
42 access to the agency's personnel manual.

43 (2) The department shall establish rules and procedures
44 for the suspension, reduction in pay, transfer, layoff,
45 demotion, and dismissal of employees in the career service.
46 Except with regard to law enforcement officers, correctional
47 officers, ~~or~~ correctional probation officers, firefighters, or
48 professional health care providers, rules regarding layoff
49 procedures shall not include any system whereby a career service
50 employee with greater seniority has the option of selecting a
51 different position not being eliminated, but either vacant or
52 already occupied by an employee of less seniority, and taking
53 that position, commonly referred to as "bumping." For the
54 implementation of layoffs as defined in s. 110.107, the
55 department shall develop rules requiring that consideration be
56 given to comparative merit, demonstrated skills, and the

HB 723

2006

57 | employee's experience. Such rules shall be approved by the
58 | Administration Commission prior to their adoption by the
59 | department.

60 | (3) (a) With regard to law enforcement officers,
61 | correctional officers, ~~or~~ correctional probation officers,
62 | firefighters, or professional health care providers, when a
63 | layoff becomes necessary, such layoff shall be conducted within
64 | the competitive area identified by the agency head and approved
65 | by the Department of Management Services. Such competitive area
66 | shall be established taking into consideration the similarity of
67 | work; the organizational unit, which may be by agency,
68 | department, division, bureau, or other organizational unit; and
69 | the commuting area for the work affected.

70 | (b) With regard to law enforcement officers, correctional
71 | officers, ~~or~~ correctional probation officers, firefighters, or
72 | professional health care providers, layoff procedures shall be
73 | developed to establish the relative merit and fitness of
74 | employees and shall include a formula for uniform application
75 | among all employees in the competitive area, taking into
76 | consideration the type of appointment, the length of service,
77 | and the evaluations of the employee's performance within the
78 | last 5 years of employment.

79 | (4) A grievance process shall be available to career
80 | service employees who have satisfactorily completed at least a
81 | 1-year probationary period in their current positions. A
82 | grievance is defined as the dissatisfaction that occurs when an
83 | employee believes that any condition affecting the employee is
84 | unjust, inequitable, or a hindrance to effective operation.

HB 723

2006

85 Claims of discrimination and sexual harassment or claims related
86 to suspensions, reductions in pay, demotions, and dismissals are
87 not subject to the career service grievance process. The
88 following procedures shall apply to any grievance filed pursuant
89 to this subsection, except that all timeframes may be extended
90 in writing by mutual agreement:

91 (a) Step One.--The employee may submit a signed, written
92 grievance on a form provided by the agency to his or her
93 supervisor within 7 calendar days following the occurrence of
94 the event giving rise to the grievance. The supervisor must meet
95 with the employee to discuss the grievance within and provide a
96 written response to the employee 5 business days following
97 receipt of the grievance.

98 (b) Step Two.--If the employee is dissatisfied with the
99 response of his or her supervisor, the employee may submit the
100 written grievance to the agency head or his or her designee
101 within 2 business days following receipt of the supervisor's
102 written response. The agency head or his or her designee must
103 meet with the employee to discuss the grievance within 5
104 business days following receipt of the grievance. The agency
105 head or his or her designee must respond in writing to the
106 employee within 5 business days following the meeting. The
107 written decision of the agency head shall be the final authority
108 for all grievances filed pursuant to this subsection. Such
109 grievances may not be appealed or reviewed beyond Step Two.

110 (5) (a) A career service employee who has satisfactorily
111 completed at least a 1-year probationary period in his or her
112 current position and who is subject to a suspension, reduction

HB 723

2006

113 in pay, demotion, or dismissal shall receive written notice of
114 such action at least 10 days prior to the date such action is to
115 be taken. Subsequent to such notice, and prior to the date the
116 action is to be taken, the affected employee shall be given an
117 opportunity to appear before the agency or official taking the
118 action to answer orally and in writing the charges against him
119 or her. The notice to the employee required by this paragraph
120 may be delivered to the employee personally or may be sent by
121 certified mail with return receipt requested. Such actions shall
122 be appealable to the Public Employees Relations Commission as
123 provided in subsection (6). Alternatively, a certified law
124 enforcement officer, correctional officer, or correctional
125 probation officer may seek review by an administrative law judge
126 assigned by the Division of Administrative Hearings. Written
127 notice of any such appeal or application for review shall be
128 filed by the employee with the commission or the division, as
129 appropriate, within 14 calendar days after the date on which the
130 notice of suspension, reduction in pay, demotion, or dismissal
131 is received by the employee. The division shall develop a
132 standard form to facilitate applications for review by certified
133 law enforcement officers, correctional officers, and
134 correctional probation officers. The agency shall provide the
135 employee a copy of the appropriate application for review with
136 each notice required by this section.

137 (b) In extraordinary situations such as when the retention
138 of a career service employee who has satisfactorily completed at
139 least a 1-year probationary period in his or her current
140 position would result in damage to state property, would be

141 detrimental to the best interest of the state, or would result
 142 in injury to the employee, a fellow employee, or some other
 143 person, such employee may be suspended or dismissed without 10
 144 days' prior notice, provided that written or oral notice of such
 145 action, evidence of the reasons therefor, and an opportunity to
 146 rebut the charges are furnished to the employee prior to such
 147 dismissal or suspension. Such notice may be delivered to the
 148 employee personally or may be sent by certified mail with return
 149 receipt requested. Agency compliance with the foregoing
 150 procedure requiring notice, evidence, and an opportunity for
 151 rebuttal must be substantiated. Any employee who is suspended or
 152 dismissed pursuant to the provisions of this paragraph may
 153 appeal to the Public Employees Relations Commission or apply for
 154 review with the Division of Administrative Hearings as provided
 155 in subsection (6). Written notice of any such appeal or
 156 application for review shall be filed with the commission or the
 157 division by the employee within 14 days after the date on which
 158 the notice of suspension, reduction in pay, demotion, or
 159 dismissal is received by the employee.

160 (6) The following procedures shall apply to appeals or
 161 applications for review filed pursuant to subsection (5) with
 162 the Public Employees Relations Commission or the Division of
 163 Administrative Hearings, hereinafter referred to as the
 164 commission or division:

165 (a) The commission or division must conduct a hearing
 166 within 30 calendar days following the filing of a notice of
 167 appeal or an application for review. Unless the commission or
 168 division determines the due process rights of any party would be

HB 723

2006

169 adversely affected, no extension of time for the hearing may
170 exceed 30 calendar days, absent exceptional circumstances, and
171 no extension of time may be granted without the consent of all
172 parties. Discovery may be granted only upon the showing of
173 extraordinary circumstances. A party requesting discovery shall
174 demonstrate a substantial need for the information requested and
175 an inability to obtain relevant information by other means.
176 Failure of the agency to timely share with the employee all of
177 the information it has collected in making and supporting its
178 decisions shall constitute substantial need. Except where
179 inconsistent with the requirements of this subsection, the
180 provisions of ~~s. 447.503(4) and (5)~~ and chapter 120 apply to
181 proceedings held pursuant to this subsection.

182 (b) A person may represent himself or herself in
183 proceedings before the commission or division or may be
184 represented by legal counsel or by any individual who qualifies
185 as a representative pursuant to rules adopted by the commission
186 or division.

187 (c) If the commission or division finds that sufficient
188 cause did not exist to justify the penalty imposed by ~~for~~ the
189 ~~agency action,~~ it the commission shall reverse the decision of
190 the agency head and the employee shall be reinstated with or
191 without back pay. If the commission or division finds that
192 sufficient cause existed to justify the penalty imposed by ~~for~~
193 ~~the agency action,~~ it the commission shall affirm the decision
194 of the agency head. Where sufficient cause exists to justify the
195 penalty, the commission or division may not reduce the penalty
196 imposed by the agency head, except in the case of law

HB 723

2006

197 enforcement officers, correctional officers, ~~or~~ correctional
 198 probation officers, firefighters, and professional health care
 199 providers, if the commission or division makes specific written
 200 findings of mitigation. Every award of back pay must be reduced
 201 by any mitigating interim earnings of the employee that exceed
 202 legal expenses in seeking review. The administrative law judge
 203 shall be otherwise bound by the common law of the state in
 204 fixing the amount of back pay.

205 (d) The order of the commission or division shall be final
 206 agency action. The final ~~A recommended~~ order shall be issued by
 207 ~~the hearing officer~~ within 30 days following the hearing.
 208 ~~Exceptions to the recommended order shall be filed within 5~~
 209 ~~business days after the recommended order is issued. The final~~
 210 ~~order shall be filed by the commission no later than 30 calendar~~
 211 ~~days after the hearing or after the filing of exceptions or oral~~
 212 ~~arguments if granted.~~

213 (e) Final orders issued by the commission or division
 214 pursuant to paragraph (d) shall be reviewable as provided in s.
 215 120.68 or s. 447.504.

216 (7) Other than for law enforcement officers, correctional
 217 officers, ~~or~~ correctional probation officers, firefighters, and
 218 professional health care providers, each suspension, dismissal,
 219 demotion, or reduction in pay must be reviewed without
 220 consideration of any other case or set of facts.

221 Section 2. Subsection (8) of section 447.207, Florida
 222 Statutes, is amended to read:

223 447.207 Commission; powers and duties.--

HB 723

2006

224 (8) The commission or its designated agent shall hear
225 appeals arising out of any suspension, reduction in pay,
226 demotion, or dismissal of any permanent employee in the State
227 Career Service System, other than a law enforcement officer,
228 correctional officer, or correctional probation officer, in the
229 manner provided in s. 110.227.

230 Section 3. This act shall take effect July 1, 2006.