

By the Committee on Governmental Oversight and Productivity;
and Senator Argenziano

585-2474-06

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 certified law enforcement

7 officers, correctional officers, and

8 correctional probation officers to be reviewed

9 by administrative law judges; revising review

10 procedures; providing standards for awards of

11 back pay; amending s. 447.207, F.S., relating

12 to powers and duties of the Public Employees

13 Relations Commission, to conform; providing an

14 effective date.

15

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

17

18 Section 1. Subsections (1), (5), and (6) of section

19 110.227, Florida Statutes, are amended to read:

20 110.227 Suspensions, dismissals, reductions in pay,

21 demotions, layoffs, transfers, and grievances.--

22 (1) Any employee who has satisfactorily completed at

23 least a 1-year probationary period in his or her current

24 position may be suspended or dismissed only for just cause. In

25 appropriate circumstances cause shall include, but is not

26 limited to, poor performance, negligence, inefficiency or

27 inability to perform assigned duties, insubordination,

28 violation of the provisions of law or agency rules, conduct

29 unbecoming a public employee, misconduct, habitual drug abuse,

30 or conviction of any crime. The agency head shall ensure that

31

1 all employees of the agency have reasonable access to the
2 agency's personnel manual.

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

1 (b) In extraordinary situations such as when the
2 retention of a career service employee who has satisfactorily
3 completed at least a 1-year probationary period in his or her
4 current position would result in damage to state property,
5 would be detrimental to the best interest of the state, or
6 would result in injury to the employee, a fellow employee, or
7 some other person, such employee may be suspended or dismissed
8 without 10 days' prior notice, provided that written or oral
9 notice of such action, evidence of the reasons therefor, and
10 an opportunity to rebut the charges are furnished to the
11 employee prior to such dismissal or suspension. Such notice
12 may be delivered to the employee personally or may be sent by
13 certified mail with return receipt requested. Agency
14 compliance with the foregoing procedure requiring notice,
15 evidence, and an opportunity for rebuttal must be
16 substantiated. Any employee who is suspended or dismissed
17 pursuant to ~~the provisions of~~ this paragraph may apply for
18 review ~~appeal to the Public Employees Relations Commission~~ as
19 provided in subsection (6). Written notice of application for
20 review ~~any such appeal~~ shall be filed with the commission or
21 the division by the employee within 14 days after the date on
22 which the notice of suspension, reduction in pay, demotion, or
23 dismissal is received by the employee.

24 (6) The following procedures ~~shall~~ apply to
25 applications for review ~~appeals~~ filed pursuant to subsection
26 (5) with the Public Employees Relations Commission,
27 hereinafter referred to as the commission, or with the
28 Division of Administrative Hearings, hereinafter referred to
29 as the division:

30 (a) The commission or division must conduct a hearing
31 within 30 calendar days following the filing of an application

1 for review a notice of appeal. Unless the administrative
2 tribunal determines that the due-process rights of any party
3 would be adversely affected, an ~~no~~ extension of time for the
4 hearing may not exceed 30 calendar days, absent exceptional
5 circumstances, and an ~~no~~ extension of time may not be granted
6 without the consent of all parties. Discovery may be granted
7 only upon the showing of extraordinary circumstances. A party
8 requesting discovery shall demonstrate a substantial need for
9 the information requested and an inability to obtain relevant
10 information by other means. Failure of the agency to timely
11 share with the employee all of the information it has
12 collected in making and supporting its decisions constitutes
13 substantial need. Except where inconsistent with the
14 requirements of this subsection, ~~the provisions of s.~~
15 ~~447.503(4) and (5) and chapter 120~~ applies apply to
16 proceedings held pursuant to this subsection.

17 (b) A person may represent himself or herself in
18 proceedings before the commission or division or may be
19 represented by legal counsel or by any individual who
20 qualifies as a representative pursuant to rules adopted by the
21 tribunal ~~commission~~.

22 (c) If the administrative tribunal ~~commission~~ finds
23 that sufficient cause did not exist to justify for the
24 discipline imposed by the agency action, it the ~~commission~~
25 shall reverse the decision of the agency head, and the
26 employee shall be reinstated with or without back pay. If the
27 administrative tribunal ~~commission~~ finds that sufficient cause
28 existed to justify for the agency action, it the ~~commission~~
29 shall affirm the decision of the agency head. If sufficient
30 cause exists to justify the penalty, the administrative
31 tribunal ~~commission~~ may not reduce the penalty imposed by the

1 agency head, except in the case of law enforcement or
2 correctional officers, firefighters, and professional health
3 care providers, if the administrative law judge commission
4 makes specific written findings of mitigation. Every award of
5 back pay must be reduced by any mitigating interim earnings of
6 the employee which exceed legal expenses in seeking review.
7 The administrative law judge shall be otherwise bound by the
8 common law of this state in fixing the amount of back pay.

9 (d) The administrative tribunal's order is final
10 agency action. The final ~~A recommended~~ order shall be issued
11 ~~by the hearing officer~~ within 30 days following the hearing.
12 ~~Exceptions to the recommended order shall be filed within 5~~
13 ~~business days after the recommended order is issued. The final~~
14 ~~order shall be filed by the commission no later than 30~~
15 ~~calendar days after the hearing or after the filing of~~
16 ~~exceptions or oral arguments if granted.~~

17 (e) Final orders issued by an administrative tribunal
18 ~~the commission~~ pursuant to paragraph (d) shall be reviewable
19 as provided in s. 447.504 or s. 120.68.

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

22 447.207 Commission; powers and duties.--

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

28 Section 3. This act shall take effect July 1, 2006.
29
30
31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 956

Provides that a correctional officer who has been subject to certain types of employment actions by an agency may seek review of any such action with the Division of Administrative Hearings.