

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Governmental Operations Committee

BILL: SB 2202

INTRODUCER: Senator Dean

SUBJECT: Career Service System

DATE: March 16, 2008      REVISED: 3/19/08

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/1 amendment</u>
2.	<u>                    </u>	<u>                    </u>	<u>JU</u>	<u>                    </u>
3.	<u>                    </u>	<u>                    </u>	<u>GA</u>	<u>                    </u>
4.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
5.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
6.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/>            | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input checked="" type="checkbox"/> | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The bill reinstates and modifies several of the procedural due process provisions for state employees affected by the Career Service System, which was last amended in 2001.

This bill substantially amends, s. 110.227, Florida Statutes.

**II. Present Situation:**

Like most states, Florida has a civil service system for public employees not deemed to be executive or managerial. Section.14, Art. III, State Constitution, mandates such a system be created by the Legislature and s. 6, Art. I, authorizes a system for the collective bargaining of wages, hours and terms of conditions of employment by public employees with their public employer.

**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 ch. 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 ch. 110, F.S., establishes the Career Service System and requires the Department of Management Services (DMS) to develop and maintain a uniform classification and equitable pay plan applicable to all positions in the career service; to determine guidelines for employee recruitment and selection 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.

The terms "career service" and "career service employee" are not defined in the statutes. A "career service employee" may 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. The statutes provide that an employee classified as a "permanent career service employee" may only be suspended or dismissed for cause. 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.

Part III of ch. 110, F.S., establishes the SMS, 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 DMS 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 ch. 110, F.S., addresses volunteers by 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 nor to any collective bargaining agreement between the state and any employees' association or union.

Finally, Part V of ch. 110, F.S., creates the SES. The SES is a separate system of personnel administration that includes those positions that are exempt from the Career Service System. The DMS is required to designate all positions 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. 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.

**Florida's Career Service System:** Florida's Career Service System, as found in ch. 110, F.S., has been in place since 1979, and has been amended several times during the course of its existence. Over time, the system has been criticized.

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. Florida TaxWatch has indicated that: "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:

- 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)."

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

One of the most vocal critics of the Career Service System is the Florida Council of 100. The council, in its report entitled "Modernizing Florida's Civil Service System: Moving from Protection to Performance," November 2000, identified 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.” More particularly, the council found that chief among the constraints to effective and efficient government performance is the state’s Career Service System as found in ch. 110, F.S., and Chapter 60K, F.A.C. “The system makes managing human resources cumbersome, is de-motivating for managers, and damages the reputation of all state employees.” 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. “Government by the People: A Prescription for Florida’s Future,” The Report of Governor’s Commission for Government by the People, Volume 1991.

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.”

In his “Recommended Budget” for the State of Florida for the fiscal year ending June 30, 2002, Governor Jeb Bush suggested changes to the Career Service System. The electronic version of the budget recommendations highlighted the Governor’s priorities as: a smaller, more efficient government with a reduced infrastructure which does more with less; performance pay; the implementation of portable retirement plans; a reduction in the number of boards, councils and commissions; consolidation of multiple information technology operations into an enterprise organization; and pursuit of purchasing, facility and travel economies which produce value and avoid expense.

**The Public Employees Relations Commission:** The Public Employees Relations Commission (PERC) was established in 1974 to provide statutory implementation of Art. I, s. 6, State Constitution. The PERC is currently composed of a chair and two full-time commissioners appointed by the Governor and confirmed by the Senate. The PERC is housed within the Department of Management Services for administrative purposes, but is not subject to control, supervision, or direction by the department. The PERC decides cases sitting as a quasi-judicial collegial body and issues final orders. Any appeal of a PERC final order is taken to the District Court of Appeal. 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; conduct secret ballot elections to determine whether public employees desire to be represented by a union; process charges of unfair labor practices as well as charges relating to a public employee or employee organization. The PERC 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, Whistleblower appeals, veterans' preference appeals, attorney's fees appeals, back pay appeals, elections, mediation, and district court appeals.

### III. Effect of Proposed Changes:

The bill revises the changes made to the Career Service System by the 2001 legislation, as follows:

- The bill reinstates the practice of "bumping" for Career Service employees not otherwise classified as law enforcement, firefighters, correctional officer, or professional health care providers;
- The bill requires the promulgation of rules on layoffs by the Administration Commission (Governor and Cabinet) prior to the taking of any actions;
- Provides that suspension or dismissal for a career service employee may be imposed only for cause to a person who has achieved permanent status following completion of a one-year probationary period.
- Provides that layoff procedures shall apply to all career service employees.
- Provides that a grievance process shall be available to all employees including those on probationary status; revises the time frames for the filing of a grievance; and permits the grieving party to appeal an unsatisfactory result above the level of the agency head;
- Provides for the return of a probationary employee to the former position from which promoted;
- Authorizes the PERC to consider mitigation of a disciplinary action imposed by an agency, modifies the basis for the action as "just" cause as opposed to "cause," and requires reinstatement with pay if the decision of the agency is reversed.
- Requires that PERC disciplinary actions not consider any other set of facts in reaching its decision.

The bill is effective July 1, 2008.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

The bill reinstates the practice of "bumping" for the remainder of the Career Service work force not otherwise classified as law enforcement, correctional, firefighting, or professional health care.

## C. Government Sector Impact:

There will be additional workload to the agencies and to the Public Employees Relations Commission for the additional actions now covered by the expanded workforce and the lifting of the level two cap on appeals. The bill makes the reinstatement of pay for prevailing employee parties non-discretionary.

On March 19, 2008 the Department of Management Services issued an amended bill analysis for SB 2202. That analysis indicated that an informal survey of state agencies it conducted would produce the workload equivalent of 67 or more full-time equivalent positions to manage what it believes to be additional workload. The agency estimated the cost to be \$4.1 million.

The estimated workload will be a complex function of the

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill requires that the Administration Commission (the Governor and Cabinet) approve the rules on the development of objective retention criteria before their adoption by the Department of Management Services.

The bill expands the practice of "once permanent, always permanent" to the remainder of the workforce. It is uncommon for reductions in force to reach to the occupational levels now recognized in statute.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

**Barcode 852032 by Governmental Operations on March 19,2008:**

Changes the effective date of the bill from July 1, 2008 to January 1, 2009.