

By Senator Dean

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1 A bill to be entitled
2 An act relating to career service employees; amending s.
3 110.227, F.S.; revising requirements for disciplining an
4 employee and which employees are subject to certain
5 personnel actions; specifying the requirements for
6 achieving permanent status in the Career Service System;
7 revising criteria for certain rules and procedures for the
8 suspension, reduction in pay, transfer, layoff, demotion,
9 and dismissal of career service employees; including
10 career service employees with other employees who may be
11 "bumped"; revising provisions relating to the
12 applicability of layoff procedures; providing that the
13 grievance process is available to all career service
14 employees; increasing the amounts of time in which to
15 submit grievances and respond to grievances; revising what
16 written decisions of the agency are the final authority
17 for all grievances at the Step Two level; authorizing
18 certain Step Two grievances to be submitted to the
19 Department of Management Services; revising notice
20 requirements; providing for the removal and placement of
21 certain career service employees serving a probationary
22 period; authorizing certain employees to appeal to the
23 Public Employees Relations Commission; increasing the
24 amount of time in which the employee must file an appeal;
25 revising procedures applicable to appeals filed with the
26 commission; providing for mitigation in disciplinary
27 actions; revising which actions must be reviewed without
28 consideration of any other case or set of facts; providing
29 an effective date.

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30
31 Be It Enacted by the Legislature of the State of Florida:

32
33 Section 1. Section 110.227, Florida Statutes, is amended to
34 read:

35 110.227 Suspensions, dismissals, reductions in pay,
36 demotions, layoffs, transfers, and grievances.--

37 (1) Any employee who has achieved permanent status in the
38 Career Service System by satisfactorily completing ~~completed~~ at
39 least a 1-year probationary period in a career service ~~his or her~~
40 ~~current~~ position and who has been continuously employed
41 thereafter in a career service position may be suspended or
42 dismissed only for cause. Cause includes ~~shall include~~, but is
43 not limited to, poor performance, negligence, inefficiency or
44 inability to perform assigned duties, insubordination, violation
45 of the provisions of law or agency rules, conduct unbecoming a
46 public employee, misconduct, habitual drug abuse, or conviction
47 of any crime. The agency head shall ensure that all employees of
48 the agency have reasonable access to the agency's personnel
49 manual.

50 (2) The department shall establish rules and procedures for
51 the suspension, reduction in pay, transfer, layoff, demotion, and
52 dismissal of employees in the career service. Except for ~~with~~
53 ~~regard to~~ law enforcement or correctional officers, firefighters,
54 ~~or~~ professional health care providers, and all other career
55 service employees who have achieved permanent status, rules
56 regarding layoff procedures may ~~shall~~ not include any system
57 whereby an ~~a career service~~ employee with greater seniority has
58 the option of selecting a different position not being eliminated

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59 | ~~that is, but either~~ vacant or already occupied by an employee of
60 | less seniority, and taking that position, commonly referred to as
61 | "bumping." For the implementation of layoffs ~~as defined in s.~~
62 | ~~110.107,~~ the department shall develop rules requiring retention
63 | of the agency's employees based upon objective measures of that
64 | ~~consideration be given to~~ comparative merit, demonstrated skills,
65 | and the employee's experience. Such rules must ~~shall~~ be approved
66 | by the Administration Commission before ~~prior to~~ their adoption
67 | by the department.

68 | (3) ~~(a)~~ With regard to law enforcement or correctional
69 | officers, firefighters, or professional health care providers,
70 | and all other career service employees who have achieved
71 | permanent status:

72 | (a) If ~~when~~ a layoff becomes necessary, the ~~such~~ layoff
73 | shall be conducted within the competitive area identified by the
74 | agency head and approved by the department ~~of Management~~
75 | ~~Services.~~ Identification of the ~~Such~~ competitive area shall take
76 | ~~be established taking~~ into consideration the similarity of work;
77 | the organizational unit, which may be by agency, department,
78 | division, bureau, or other organizational unit; and the commuting
79 | area for the work affected.

80 | (b) ~~With regard to law enforcement or correctional~~
81 | ~~officers, firefighters, or professional health care providers,~~
82 | Layoff procedures shall be developed to establish the relative
83 | merit and fitness of employees and shall include a formula for
84 | uniform application among all employees in the competitive area,
85 | taking into consideration the type of appointment, the length of
86 | service, and the evaluations of the employee's performance within
87 | the last 5 years of employment.

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88 (4) A grievance process shall be available to career
89 service employees ~~who have satisfactorily completed at least a 1-~~
90 ~~year probationary period in their current positions.~~ A grievance
91 is defined as the dissatisfaction that occurs when an employee
92 believes that a ~~any~~ condition affecting the employee is unjust,
93 inequitable, or a hindrance to effective operation. Claims of
94 discrimination and sexual harassment or claims related to
95 suspensions, reductions in pay, demotions, and dismissals are not
96 subject to the career service grievance process. The following
97 procedures ~~shall~~ apply to any grievance filed pursuant to this
98 subsection, except that all timeframes may be extended in writing
99 by mutual agreement:

100 (a) Step One.--The employee may submit a signed, written
101 grievance on a form provided by the agency to his or her
102 supervisor within 14 ~~7~~ calendar days after ~~following~~ the
103 occurrence of the event giving rise to the grievance. The
104 supervisor must meet with the employee to discuss the grievance
105 ~~within~~ and provide a written response to the employee within 7 ~~5~~
106 business days after ~~following~~ receipt of the grievance.

107 (b) Step Two.--If the employee is dissatisfied with the
108 response of his or her supervisor, the employee may submit the
109 written grievance to the agency head or his or her designee
110 within 7 ~~2~~ business days after ~~following~~ receipt of the
111 supervisor's written response. The agency head or his or her
112 designee must meet with the employee to discuss the grievance
113 within 5 business days after ~~following~~ receipt of the grievance.
114 The agency head or his or her designee must respond in writing to
115 the employee within 5 business days after ~~following~~ the meeting.
116 The written decision of the agency head shall be the final

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117 authority for all grievances filed pursuant to this subsection
118 not involving an allegation of the agency's failure to comply
119 with the uniform personnel rules of the agency as established
120 under s. 110.201. A claim of the violation of the agency's
121 personnel rules entitles the employee to pursue a review of the
122 grievance through the department if the grievant is dissatisfied
123 with the agency head's or his or her designee's decision. ~~Such~~
124 ~~grievances may not be appealed beyond Step Two.~~

125 (5) (a) A career service employee who has permanent status
126 satisfactorily completed at least a 1-year probationary period in
127 his or her current position and who is subject to a lay off,
128 suspension, reduction in pay, demotion, involuntary transfer of
129 more than 50 miles by highway, or dismissal shall receive written
130 notice of such action within at least 10 days before prior to the
131 date such action is to be taken. Subsequent to such notice, and
132 before prior to the date the action is to be taken, the affected
133 employee shall be given an opportunity to appear before the
134 agency or official taking the action to answer orally and in
135 writing the charges against him or her, as appropriate. The
136 notice to the employee ~~required by this paragraph~~ may be
137 delivered to the employee personally or may be sent by certified
138 mail with return receipt requested. Such actions are ~~shall be~~
139 appealable to the Public Employees Relations Commission as
140 provided in subsection (6). Written notice of ~~any such~~ appeal
141 shall be filed by the employee with the commission within 21 ~~14~~
142 calendar days after the date on which the notice of lay off,
143 suspension, reduction in pay, demotion, involuntary transfer of
144 50 miles or more, or dismissal is received by the employee.

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145 (b) A career service employee who has attained permanent
146 status, but who is serving a probationary period in a position to
147 which he or she has been promoted, may be removed from that
148 promotional position at any time during the probationary period
149 without a showing of cause but must be returned to his or her
150 former position or occupational group and occupational level from
151 which he or she was promoted.

152 (c) ~~(b)~~ In extraordinary situations such as when the
153 retention of a career service employee who has permanent status
154 ~~satisfactorily completed at least a 1-year probationary period in~~
155 ~~his or her current position~~ would result in damage to state
156 property, would be detrimental to the best interest of the state,
157 or would result in injury to the employee, a fellow employee, or
158 some other person, the ~~such~~ employee may be suspended or
159 dismissed without 10 days' prior notice, provided that written or
160 oral notice of such action, evidence of the reasons for the
161 action ~~therefor~~, and an opportunity to rebut the charges are
162 furnished to the employee prior to such dismissal or suspension.
163 The ~~Such~~ notice may be delivered to the employee personally or
164 may be sent by certified mail with return receipt requested.
165 Agency compliance with the requirements for ~~foregoing procedure~~
166 ~~requiring~~ notice, evidence, and an opportunity for rebuttal must
167 be substantiated. Any employee who is suspended or dismissed
168 pursuant to ~~the provisions of~~ this paragraph may appeal to the
169 Public Employees Relations Commission as provided in subsection
170 (6). Written notice of ~~any such~~ appeal shall be filed with the
171 commission by the employee within 21 ~~14~~ days after the date on
172 which the notice of suspension, ~~reduction in pay, demotion, or~~
173 dismissal is received by the employee.

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174 (6) The following procedures ~~shall~~ apply to appeals filed
175 pursuant to subsection (5) with the Public Employees Relations
176 Commission, ~~hereinafter referred to as the Commission:~~

177 (a) The commission must conduct a hearing within 60 ~~30~~
178 calendar days after ~~following~~ the filing of a notice of appeal.
179 An ~~No~~ extension of time for the hearing may not exceed 30
180 calendar days, absent exceptional circumstances, and ~~no extension~~
181 ~~of time~~ may not be granted without the consent of all parties.
182 Discovery may be granted only upon the showing of extraordinary
183 circumstances. A party requesting discovery shall demonstrate a
184 substantial need for the information requested and an inability
185 to obtain relevant information by other means. Except where
186 inconsistent with the requirements of this subsection, the
187 provisions of s. 447.503(4) and (5) and chapter 120 apply to
188 proceedings held pursuant to this subsection.

189 (b) A person may represent himself or herself in
190 proceedings before the commission or may be represented by legal
191 counsel or by any individual who qualifies as a representative
192 pursuant to rules adopted by the commission.

193 (c) If the commission finds that cause did not exist for
194 the agency action, the commission shall reverse the decision of
195 the agency head and the employee shall be reinstated with ~~or~~
196 ~~without~~ back pay. If the commission finds that just cause existed
197 for the agency action, the commission shall consider mitigation
198 of the discipline for any appropriate cause or affirm the
199 decision of the agency head. The commission may ~~not~~ reduce the
200 penalty imposed by the agency head, ~~except~~ in the case of law
201 enforcement or correctional officers, firefighters, and
202 professional health care providers and all other career service

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203 employees who have achieved permanent status, if the commission
204 makes specific written findings of mitigation.

205 (d) A recommended order shall be issued by the hearing
206 officer within 30 days after ~~following~~ the hearing. Exceptions to
207 the recommended order must ~~shall~~ be filed within 15 ~~5~~ ~~business~~
208 days after the recommended order is issued. The final order shall
209 be filed by the commission within ~~no later than~~ 30 calendar days
210 after the hearing or after the filing of exceptions or oral
211 arguments if granted.

212 (e) Final orders issued by the commission pursuant to
213 paragraph (d) shall be reviewable as provided in s. 447.504.

214 (7) Other than for law enforcement or correctional
215 officers, firefighters, and professional health care providers,
216 and all other career service employees who have achieved
217 permanent status, each suspension, dismissal, demotion, or
218 reduction in pay must be reviewed without consideration of any
219 other case or set of facts.

220 Section 2. This act shall take effect July 1, 2008.