

By the Committee on Judiciary; and 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 provisions governing which employees are
5 subject to certain personnel actions; specifying the
6 requirements for achieving permanent status in the Career
7 Service System; revising criteria for certain rules and
8 procedures for the suspension, reduction in pay, transfer,
9 layoff, demotion, and dismissal of career service
10 employees; revising provisions relating to the
11 applicability of layoff procedures; providing that the
12 grievance process is available to all career service
13 employees; increasing the amounts of time in which to
14 submit grievances and respond to grievances; revising what
15 written decisions of the agency are the final authority
16 for all grievances at the Step Two level; authorizing
17 certain Step Two grievances to be submitted to the
18 Department of Management Services; revising notice
19 requirements; providing for the removal and placement of
20 certain career service employees serving a probationary
21 period; authorizing certain employees to appeal to the
22 Public Employees Relations Commission; increasing the
23 amount of time in which the employee must file an appeal;
24 revising procedures applicable to appeals filed with the
25 commission; providing for mitigation in disciplinary
26 actions; revising which actions must be reviewed without
27 consideration of any other case or set of facts; providing
28 an effective date.
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30 Be It Enacted by the Legislature of the State of Florida:

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

34 110.227 Suspensions, dismissals, reductions in pay,
35 demotions, layoffs, transfers, and grievances.--

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

49 (2) The department shall establish rules and procedures for
50 the suspension, reduction in pay, transfer, layoff, demotion, and
51 dismissal of employees in the career service.

52 (a) Except with regard to law enforcement or correctional
53 officers, firefighters, or professional health care providers,
54 rules regarding layoff procedures shall not include any system
55 whereby a career service employee having ~~with~~ greater seniority
56 has the option of selecting a different position not being
57 eliminated, but either vacant or already occupied by an employee
58 of less seniority, and taking that position, commonly referred to

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59 as "bumping."

60 (b) For the implementation of layoffs as defined in s.
61 110.107, the department shall develop rules requiring retention
62 of the agency's employees based upon objective measures of length
63 of service, ~~that consideration be given to~~ comparative merit,
64 demonstrated skills, and the employee's experience. Such rules
65 must shall be approved by the Administration Commission before
66 ~~prior to~~ their adoption by the department.

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

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

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

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

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

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

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

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

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144 (b) A career service employee who has attained permanent
145 status, but who is serving a probationary period in a position to
146 which he or she has been promoted, may be removed from that
147 promotional position at any time during the probationary period
148 without a showing of cause but must be returned to his or her
149 former position or occupational group and occupational level from
150 which he or she was promoted if the position is available. If the
151 position is no longer available, the agency shall make every
152 effort to retain the employee.

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

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173 | which the notice of suspension, ~~reduction in pay, demotion,~~ or
174 | dismissal is received by the employee.

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

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

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

194 | (c) If the commission finds that cause did not exist for
195 | the agency action, the commission shall reverse the decision of
196 | the agency head and the employee shall be reinstated with ~~or~~
197 | ~~without~~ back pay. If the commission finds that just cause existed
198 | for the agency action, the commission shall consider mitigation
199 | of the discipline for any appropriate cause or affirm the
200 | decision of the agency head. The commission may ~~not~~ reduce the
201 | penalty imposed by the agency head, ~~except~~ in the case of law

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202 enforcement or correctional officers, firefighters, and
203 professional health care providers and all other career service
204 employees who have achieved permanent status, if the commission
205 makes specific written findings of mitigation.

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

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

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

221 Section 2. This act shall take effect January 1, 2009.