

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill expands the current rulemaking authority of the Department of Management Services (DMS) by allowing it to adopt regulations to permit agencies to utilize bumping procedures in layoffs for all permanent status Career Service System employees.

Safeguard individual liberty – The bill authorizes DMS to implement rules regarding layoffs, which include a bumping system, and imposes a requirement on DMS to adopt rules governing layoffs, which require retention of an agency's "best employees" and "consideration of objective measures." Further, the bill allows an employee to pursue a review by DMS of a grievance he or she has filed regarding the Personnel Rules and Regulations if the employee is unhappy with an agency head's decision.

B. EFFECT OF PROPOSED CHANGES:

Background

Florida has a civil service system for public employees not deemed to be executive or managerial. The State Constitution mandates such a system be created by the Legislature¹ and authorizes a system for the collective bargaining of wages, hours, and terms of conditions of employment by public employees with their public employer.²

Career Service System

Part II of chapter 110, F.S., establishes the Career Service System. It 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 System;
- Determine guidelines for employee recruitment and selection to be used by employing agencies;
- Adopt rules and procedures for the suspension, reduction in pay, transfer, layoff, demotion, and dismissal of employees; and
- 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.³

DMS, however, is prohibited from adopting layoff⁴ rules, which include a "bumping" system, except with regard to law enforcement or correctional officers, firefighters, or professional health care providers. "Bumping" is defined to mean "any system whereby a career service employee with greater seniority has the option of selecting a different position not being eliminated, but either vacant or already occupied by an employee of less seniority, and taking that position."⁵ DMS must develop rules that mandate agencies to consider "comparative merit, demonstrated, skills, and the employee's experience."⁶

¹ Section 14, Art. III of the State Constitution.

² Section 6, Art. I of the State Constitution.

³ See s. 110.201, F.S.

⁴ Section 110.107(23), F.S., defines "layoff" to mean "termination of employment due to a shortage of funds or work, or a material change in the duties or organization of an agency, including the outsourcing or privatization of an activity or function previously performed by career service employees."

⁵ Section 110.227(2), F.S.

⁶ *Id.*

Current law does not define the terms “career service” and “career service employee.” 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 chapter 110, F.S., and granted probationary status will attain permanent status in a class upon successful completion of the designated probationary period for the class.

Current law provides that an employee classified as a “permanent career service employee” only may be suspended or dismissed for cause.⁷ 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.⁸

The Career Service System was last amended in 2001.

Senior Management Service System

Part III of chapter 110, F.S., establishes the Senior Management Service System (SMS), which is a separate system of personnel administration for positions in the executive branch. The duties and responsibilities are primarily and essentially policymaking or managerial in nature.⁹ 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.¹⁰

Selected Exempt Service System

Part V of chapter 110, F.S., creates the Selected Exempt Service System (SES). The SES is a separate system of personnel administration that includes those positions that are exempt from the Career Service System. DMS is required to designate all positions included in the SES as managerial/policymaking, professional, or nonmanagerial/nonpolicymaking.¹¹ 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.¹²

The Public Employees Relations Commission

The Public Employees Relations Commission (PERC) was established in 1974. PERC currently is composed of a chair and two full-time commissioners appointed by the Governor and confirmed by the Senate.¹³ PERC is housed within DMS for administrative purposes, but is not subject to its control, supervision, or direction.¹⁴

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; and
- Process charges of unfair labor practices as well as charges relating to a public employee or employee organization.

⁷ Section 110.227(1), F.S.

⁸ *Id.*

⁹ Section 110.402, F.S.

¹⁰ Section 110.403, F.S.

¹¹ Section 110.602, F.S.

¹² Section 110.604, F.S.

¹³ Section 447.205, F.S.

¹⁴ Section 447.205(3), F.S.

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.¹⁵

Effect of Bill

The bill revises the changes made to the Career Service System by the 2001 Legislature.

The bill reinstates the practice of "bumping" for Career Service System employees not otherwise classified as law enforcement, firefighters, correctional officer, or professional health care providers. It further requires DMS to develop rules regarding layoffs that employ "objective measures" and require agencies to retain their "best employees," based on merit, skill, and experience.

The bill also provides that suspension or dismissal for a Career Service System employee may be imposed only for cause to a person who has achieved permanent status following completion of a one-year probationary period. It provides that layoff procedures apply to all Career Service System employees.

The bill provides that a permanent career service employee who is promoted is subject to the one year probationary period and may be removed from that position without cause, but is entitled to return to his or her former position (or the equivalent level of his or her former position) if such action is taken.

The bill provides a grievance process to all employees including those on probationary status. It revises the timeframes for the filing a grievance and meeting about a claim from 7 and 5 days to 14 and 7 days, respectively. It also permits the grieving party to appeal an unsatisfactory result above the level of the agency head if the grievance involves an allegation of the agency's failure to comply with the provisions of the Personnel Rules and Regulations.

The bill expands the entitlements and requirements provided to include employees who are subject to a lay off and those who are involuntarily transferred more than 50 miles by highway. It increases the timeframe for an employee to provide a written notice of appeal of an extraordinary action from 14 to 21 calendar days. In addition, it requires PERC to conduct a hearing within 60 days (current law requires 30 days) following the filing of such notice.

The bill requires PERC to consider mitigation of a disciplinary action imposed by an agency and modifies the basis for the action as "just" cause as opposed to "cause." It also requires that PERC disciplinary actions not consider any other set of facts in reaching its decision.

The bill requires that "if the commission finds that just cause existed for the agency action, the commission shall consider mitigation of the discipline for any appropriate cause *and* affirm the decision of the agency head." The phrase appears internally inconsistent because it grants the commission the authority to consider mitigation, but then requires an affirmation of the agency's ruling on the issue. This inconsistency could be cured by using the word "or" instead of "and" so that the required action of the committee is a choice between the two conflicting options.

C. SECTION DIRECTORY:

Section 1 amends s. 110.227, F.S., to revise requirements regarding suspensions, dismissals, reductions in pay, demotions, layoffs, transfers, and grievances.

Section 2 provides an effective date of July 1, 2008.

¹⁵ See s. 447.207, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

There will be an additional workload to the agencies and to PERC for the additional actions now covered by the expanded workforce and the lifting of the level two cap on appeals. DMS conducted an informal survey of state agencies. Those results indicated the bill would produce the workload equivalent of 74 new positions for the Human Resource offices to manage what it believes to be an additional workload. DMS estimated the recurring cost to be approximately \$4.2 million.¹⁶

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill increases the rulemaking authority provided to DMS. Under existing law, DMS is granted rulemaking authority and is required to "establish rules and procedures for the suspension, reduction in pay, transfer, layoff, demotion, and dismissal of employees in the career service." Further, current law instructs that the aforementioned rules adopted by DMS may not include a "bumping" system, except with regard to "law enforcement or correctional officers, firefighters, or professional health care providers." The bill expands the department's rulemaking authority by creating an exception to the rule against bumping for "all other career service employees who have achieved permanent status in the Career Service System" in addition to the exception already provided.

¹⁶ Department of Management Services Bill Analysis for HB 887, March 28, 2008, at 4 (on file with the Committee on State Affairs).

Additionally, current law requires DMS to develop rules that instruct agencies to consider comparative merit, demonstrated skills, and the employee's experience during the implementation of layoffs. The bill requires DMS to promulgate rules for the implantation of layoffs that will require agencies to retain their "best employees" based on "consideration of objective measures" of the aforementioned factors. Under both current statute and the bill, the Administration Commission must approve the rules considered by DMS before they may be fully adopted by the department.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 132-133 and 146-147 provide rights and requirements to employees who are subject to an "involuntary transfer of more than 50 miles by highway." However, the phrase is unclear because it does not state from where the "50 miles by highway" should be measured.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 2, 2008, the Committee on State Affairs adopted a strike-all amendment and reported the bill favorable with amendment.

The bill authorized DMS to reinstate bumping for all Career Service System employees not otherwise classified as law enforcement, firefighters, or correctional officers, or professional health care providers. The strike-all amendment removes the language, which reinstates bumping for those not already provided for by current law.

The bill requires DMS to develop rules regarding layoffs that employ "objective measures" and require agencies to retain their "best employees," based on "comparative merit, demonstrated skills, and the employee's experience." The strike-all amendment removes the references to "best" employees and requires "length of service" to also be considered among the objective measures.

The bill provides that a permanent career service employee who is promoted is subject to the one year probationary period and may be removed from that position without cause, but is entitled to return to his or her former position (or the equivalent level of his or her former position) if such action is taken. The strike-all amendment adds to the provision that such action must be taken if the former position or an equivalent position is available. The amendment further requires that if a position is not available an agency should make every effort to retain the employee.

The strike-all amendment changes the effective date from July 1, 2008 to January 1, 2009.