

HB 887

2008

1 A bill to be entitled
2 An act relating to the Career Service System; amending s.
3 110.227, F.S.; revising requirements for disciplining an
4 employee; revising which employees may be suspended or
5 dismissed only for cause; revising criteria for certain
6 rules and procedures for the suspension, reduction in pay,
7 transfer, layoff, demotion, and dismissal of employees in
8 the career service; revising provisions relating to the
9 applicability of layoff procedures; providing that the
10 grievance process shall be available to all career service
11 employees; increasing the amounts of time in which to
12 submit grievances and respond to grievances; revising what
13 written decisions of the agency shall be the final
14 authority for all grievances at the Step Two level;
15 authorizing certain Step Two grievances to be submitted to
16 the Department of Management Services; revising notice
17 requirements; providing for the removal and placement of
18 certain career service employees serving a probationary
19 period; authorizing certain employees to appeal to the
20 Public Employees Relations Commission; increasing the
21 amount of time in which the employee must file an appeal;
22 revising procedures applicable to appeals filed with the
23 commission; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Section 110.227, Florida Statutes, is amended
28 to read:

29 110.227 Suspensions, dismissals, reductions in pay,
 30 demotions, layoffs, transfers, and grievances.--

31 (1) Any employee who has permanent status in the Career
 32 Service System by satisfactorily completing ~~completed~~ at least a
 33 1-year probationary period in a career service ~~his or her~~
 34 ~~current~~ position and has subsequently been continuously employed
 35 thereafter in a career service position may be suspended or
 36 dismissed only for cause. Cause shall include, but is not
 37 limited to, poor performance, negligence, inefficiency or
 38 inability to perform assigned duties, insubordination, violation
 39 of the provisions of law or agency rules, conduct unbecoming a
 40 public employee, misconduct, habitual drug abuse, or conviction
 41 of any crime. The agency head shall ensure that all employees of
 42 the agency have reasonable access to the agency's personnel
 43 manual.

44 (2) The department shall establish rules and procedures
 45 for the suspension, reduction in pay, transfer, layoff,
 46 demotion, and dismissal of employees in the career service.
 47 Except with regard to law enforcement or correctional officers,
 48 firefighters, or professional health care providers, and all
 49 other career service employees who have achieved permanent
 50 status in the Career Service System by satisfactorily completing
 51 a probationary period of at least 1 year and being continuously
 52 employed as a career service employee thereafter, rules
 53 regarding layoff procedures shall not include any system whereby
 54 an a career service employee with greater seniority has the
 55 option of selecting a different position not being eliminated,
 56 but either vacant or already occupied by an employee of less

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57 seniority, and taking that position, commonly referred to as
58 "bumping." For the implementation of layoffs as defined in s.
59 110.107, the department shall develop rules requiring retention
60 of the agency's best employees, upon ~~that~~ consideration of
61 objective measures of ~~be given to~~ comparative merit,
62 demonstrated skills, and the employee's experience. Such rules
63 shall be approved by the Administration Commission prior to
64 their adoption by the department.

65 (3) (a) With regard to law enforcement or correctional
66 officers, firefighters, or professional health care providers,
67 and all other career service employees who have achieved
68 permanent status in the Career Service System by satisfactorily
69 completing a probationary period of at least 1 year and been
70 continuously employed as a career service employee thereafter,
71 when a layoff becomes necessary, such layoff shall be conducted
72 within the competitive area identified by the agency head and
73 approved by the Department of Management Services. Such
74 competitive area shall be established taking into consideration
75 the similarity of work; the organizational unit, which may be by
76 agency, department, division, bureau, or other organizational
77 unit; and the commuting area for the work affected.

78 (b) With regard to law enforcement or correctional
79 officers, firefighters, or professional health care providers,
80 and all other career service employees who have achieved
81 permanent status in the Career Service System by satisfactorily
82 completing a probationary period of at least 1 year and been
83 continuously employed as a career service employee thereafter,
84 layoff procedures shall be developed to establish the relative

85 merit and fitness of employees and shall include a formula for
 86 uniform application among all employees in the competitive area,
 87 taking into consideration the type of appointment, the length of
 88 service, and the evaluations of the employee's performance
 89 within the last 5 years of employment.

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

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

109 (b) Step Two.--If the employee is dissatisfied with the
 110 response of his or her supervisor, the employee may submit the
 111 written grievance to the agency head or his or her designee
 112 within 7 ~~2~~ business days following receipt of the supervisor's

113 written response. The agency head or his or her designee must
 114 meet with the employee to discuss the grievance within 5
 115 business days following receipt of the grievance. The agency
 116 head or his or her designee must respond in writing to the
 117 employee within 5 business days following the meeting. The
 118 written decision of the agency head shall be the final authority
 119 for all grievances filed pursuant to this subsection not
 120 involving an allegation of the agency's failure to comply with
 121 the provisions of the Personnel Rules and Regulations. A claim
 122 of a violation of the provisions of the Personnel Rules and
 123 Regulations entitles the employee to pursue review of the filed
 124 grievance through the Department of Management Services if the
 125 employee is dissatisfied with the agency head's or his or her
 126 designee's decision. Such grievances may not be appealed beyond
 127 Step Two.

128 (5) (a) An A-career service employee who has permanent
 129 status in the Career Service System ~~satisfactorily completed at~~
 130 ~~least a 1-year probationary period in his or her current~~
 131 ~~position~~ and who is subject to a lay off, suspension, reduction
 132 in pay, demotion, involuntary transfer of more than 50 miles by
 133 highway, or dismissal shall receive written notice of such
 134 action at least 10 days prior to the date such action is to be
 135 taken. Subsequent to such notice, and prior to the date the
 136 action is to be taken, the affected employee shall be given an
 137 opportunity to appear before the agency or official taking the
 138 action to answer orally and in writing the charges against him
 139 or her. The notice to the employee required by this paragraph
 140 may be delivered to the employee personally or may be sent by

141 certified mail with return receipt requested. Such actions shall
 142 be appealable to the Public Employees Relations Commission as
 143 provided in subsection (6). Written notice of any such appeal
 144 shall be filed by the employee with the commission within 21 ~~14~~
 145 calendar days after the date on which the notice of lay off,
 146 suspension, reduction in pay, demotion, involuntary transfer of
 147 more than 50 miles by highway, or dismissal is received by the
 148 employee.

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

157 (c) ~~(b)~~ In extraordinary situations such as when the
 158 retention of a career service employee who has permanent status
 159 in the Career Service System ~~satisfactorily completed at least a~~
 160 ~~1-year probationary period~~ in his or her current position would
 161 result in damage to state property, would be detrimental to the
 162 best interest of the state, or would result in injury to the
 163 employee, a fellow employee, or some other person, such employee
 164 may be suspended or dismissed without 10 days' prior notice,
 165 provided that written or oral notice of such action, evidence of
 166 the reasons therefor, and an opportunity to rebut the charges
 167 are furnished to the employee prior to such dismissal or
 168 suspension. Such notice may be delivered to the employee

169 personally or may be sent by certified mail with return receipt
170 requested. Agency compliance with the foregoing procedure
171 requiring notice, evidence, and an opportunity for rebuttal must
172 be substantiated. Any employee who is suspended or dismissed
173 pursuant to the provisions of this paragraph may appeal to the
174 Public Employees Relations Commission as provided in subsection
175 (6). Written notice of any such appeal shall be filed with the
176 commission by the employee within 21 ~~14~~ days after the date on
177 which the notice of suspension, ~~reduction in pay, demotion,~~ or
178 dismissal is received by the employee.

179 (6) The following procedures shall apply to appeals filed
180 pursuant to subsection (5) with the Public Employees Relations
181 Commission, hereinafter referred to as the commission:

182 (a) The commission must conduct a hearing within 60 ~~30~~
183 calendar days following the filing of a notice of appeal. No
184 extension of time for the hearing may exceed 30 calendar days,
185 absent exceptional circumstances, and no extension of time may
186 be granted without the consent of all parties. Discovery may be
187 granted only upon the showing of extraordinary circumstances. A
188 party requesting discovery shall demonstrate a substantial need
189 for the information requested and an inability to obtain
190 relevant information by other means. Except where inconsistent
191 with the requirements of this subsection, the provisions of s.
192 447.503(4) and (5) and chapter 120 apply to proceedings held
193 pursuant to this subsection.

194 (b) A person may represent himself or herself in
195 proceedings before the commission or may be represented by legal

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196 counsel or by any individual who qualifies as a representative
197 pursuant to rules adopted by the commission.

198 (c) If the commission finds that cause did not exist for
199 the agency action, the commission shall reverse the decision of
200 the agency head and the employee shall be reinstated with or
201 without back pay. If the commission finds that just cause
202 existed for the agency action, the commission shall consider
203 mitigation of the discipline for any appropriate cause and
204 affirm the decision of the agency head. The commission may not
205 reduce the penalty imposed by the agency head, except in the
206 case of law enforcement or correctional officers, firefighters,
207 and professional health care providers, and all other career
208 service employees who have achieved permanent status in the
209 Career Service System by satisfactorily completing a
210 probationary period of at least 1 year and been continuously
211 employed as a career service employee thereafter, if the
212 commission makes specific written findings of mitigation.

213 (d) A recommended order shall be issued by the hearing
214 officer within 30 days following the hearing. Exceptions to the
215 recommended order shall be filed within 15 ~~5-business~~ days after
216 the recommended order is issued. The final order shall be filed
217 by the commission no later than 30 calendar days after the
218 hearing or after the filing of exceptions or oral arguments if
219 granted.

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

222 (7) Other than for law enforcement or correctional
223 officers, firefighters, and professional health care providers,

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224 and all other career service employees who have achieved
225 permanent status in the Career Service System by satisfactorily
226 completing a probationary period of at least 1 year and being
227 continuously employed as a career service employee thereafter,
228 each suspension, dismissal, demotion, or reduction in pay must
229 be reviewed without consideration of any other case or set of
230 facts.

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