

1 A bill to be entitled
 2 An act relating to state employees; amending s. 110.227,
 3 F.S.; providing that certain employees may be disciplined
 4 only for just cause; authorizing progressive discipline
 5 under certain circumstances; revising provisions relating
 6 to rules and procedures for the transfer, layoff, and
 7 discipline of employees in the career service; revising
 8 requirements relating to implementation of layoffs and
 9 revising application of existing provisions prescribing
 10 layoff procedures; revising method by which layoff
 11 procedures shall be developed; revising procedures with
 12 respect to the employee grievance process; revising notice
 13 procedures; revising discipline appeal procedures;
 14 revising powers of the Public Employees Relations
 15 Commission; deleting requirements with respect to certain
 16 review of suspensions, dismissals, demotions, or
 17 reductions in pay; amending s. 1009.265, F.S.; revising
 18 conditions for the use of state employee fee waivers;
 19 providing for determination of space available in a
 20 course; authorizing calculation for state funding
 21 purposes; providing an effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. Section 110.227, Florida Statutes, is amended
 26 to read:

27 110.227 Suspensions, dismissals, reductions in pay,
 28 demotions, layoffs, transfers, and grievances.--

HB 1441

2009

29 (1) Any employee who has satisfactorily completed at least
30 a 1-year probationary period in his or her current position may
31 be disciplined ~~suspended or dismissed~~ only for just cause. Just
32 cause shall include, but is not limited to, poor performance,
33 negligence, inefficiency or inability to perform assigned
34 duties, insubordination, violation of the provisions of law or
35 agency rules, conduct unbecoming a public employee, misconduct,
36 habitual drug abuse, or conviction of any crime. Progressive
37 discipline, consisting of oral or written reprimands,
38 suspensions of up to 30 days, reduction in pay, demotion, and
39 termination of employment, shall be administered as the case may
40 warrant. The agency head shall ensure that all employees of the
41 agency have reasonable access to the agency's personnel manual.

42 (2) (a) The department shall establish rules and procedures
43 for the ~~suspension, reduction in pay,~~ transfer, layoff,
44 ~~demotion,~~ and discipline dismissal of employees in the career
45 service. Except with regard to law enforcement or correctional
46 officers, firefighters, or professional health care providers,
47 rules regarding layoff procedures shall not include any system
48 whereby a career service employee with greater seniority has the
49 option of selecting a different position not being eliminated,
50 but either vacant or already occupied by an employee of less
51 seniority, and taking that position, commonly referred to as
52 "bumping."

53 (b) For the implementation of layoffs as defined in s.
54 110.107, the department shall develop rules requiring retention
55 of the agency's employees based upon objective measures that
56 give consideration to comparative merit, demonstrated skills,

HB 1441

2009

57 | the employee's experience, and the employee's length of service.
58 | Such rules shall be approved by the Administration Commission
59 | before their adoption by the department.

60 | (c) With regard to all career service employees, the
61 | procedural system established for the purpose of retention shall
62 | be based only on objective criteria crediting comparative merit,
63 | demonstrated skills, the employee's experience as reflected by
64 | employee performance appraisals, and length of service in the
65 | Career Service System.

66 | (3) (a) With regard to all career service employees,
67 | including, but not limited to, law enforcement or correctional
68 | officers, firefighters, or professional health care providers,
69 | when a layoff becomes necessary, such layoff shall be conducted
70 | within the competitive area identified by the agency head and
71 | approved by the Department of Management Services. Such
72 | competitive area shall be established taking into consideration
73 | the similarity of work; the organizational unit, which may be by
74 | agency, department, division, bureau, or other organizational
75 | unit; and the commuting area for the work affected.

76 | (b) With regard to all career service employees,
77 | including, but not limited to, law enforcement or correctional
78 | officers, firefighters, or professional health care providers,
79 | layoff procedures shall be developed to establish the length of
80 | service, relative merit, and fitness of employees and shall
81 | include a formula for uniform application among all employees in
82 | the competitive area, taking into consideration the type of
83 | appointment, the length of service, and the evaluations of the
84 | employee's performance within the last 5 years of employment.

HB 1441

2009

85 (4) A grievance process shall be available to career
86 service employees who have satisfactorily completed at least a
87 1-year probationary period in their current positions. A
88 grievance is defined as the dissatisfaction that occurs when an
89 employee believes that any condition affecting the employee is
90 unjust, inequitable, or a hindrance to effective operation.
91 Claims of discrimination and sexual harassment or claims related
92 to layoffs, transfer of more than 50 miles by highway, and
93 discipline other than reprimands ~~suspensions, reductions in pay,~~
94 ~~demotions, and dismissals~~ are not subject to the career service
95 grievance process. The following procedures shall apply to any
96 grievance filed pursuant to this subsection, except that all
97 timeframes may be extended in writing by mutual agreement:

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

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

HB 1441

2009

113 employee within 5 business days following the meeting. The
114 written decision of the agency head shall be the final authority
115 for all grievances filed pursuant to this subsection. Such
116 grievances may not be appealed beyond Step Two.

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

138 (b) In extraordinary situations such as when the retention
139 of a career service employee who has satisfactorily completed at
140 least a 1-year probationary period in his or her current

141 position would result in damage to state property, would be
142 detrimental to the best interest of the state, or would result
143 in injury to the employee, a fellow employee, or some other
144 person, such employee may be suspended or dismissed without 10
145 days' prior notice, provided that written or oral notice of such
146 action, evidence of the reasons therefor, and an opportunity to
147 rebut the charges are furnished to the employee prior to such
148 dismissal or suspension. Such notice may be delivered to the
149 employee personally or may be sent by certified mail with return
150 receipt requested. Agency compliance with the foregoing
151 procedure requiring notice, evidence, and an opportunity for
152 rebuttal must be substantiated. Any employee who is suspended or
153 dismissed pursuant to the provisions of this paragraph may
154 appeal to the Public Employees Relations Commission as provided
155 in subsection (6). Written notice of any such appeal shall be
156 filed with the commission by the employee within 21 days after
157 the date on which the notice of suspension, reduction in pay,
158 demotion, or dismissal is received by the employee.

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

162 (a) The commission must conduct a hearing within 60
163 calendar days following the filing of a notice of appeal. No
164 extension of time for the hearing may exceed 30 calendar days,
165 absent exceptional circumstances, and no extension of time may
166 be granted without the consent of all parties. Discovery may be
167 granted only upon the showing of extraordinary circumstances. A
168 party requesting discovery shall demonstrate a substantial need

169 for the information requested and an inability to obtain
 170 relevant information by other means. Except where inconsistent
 171 with the requirements of this subsection, the provisions of s.
 172 447.503(4) and (5) and chapter 120 apply to proceedings held
 173 pursuant to this subsection.

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

178 (c) If the commission finds that just cause did not exist
 179 for the agency action, the commission shall reverse the decision
 180 of the agency head and the employee shall be reinstated with or
 181 without back pay. If the commission finds that just cause
 182 existed for the agency action, the commission shall affirm the
 183 decision of the agency head. The commission may ~~not~~ reduce the
 184 penalty imposed by the agency head, for all career service
 185 employees, including, but not limited to, except in the case of
 186 law enforcement or correctional officers, firefighters, and
 187 professional health care providers, if the commission makes
 188 specific written findings of mitigation.

189 (d) A recommended order shall be issued by the hearing
 190 officer within 30 days following the hearing. Exceptions to the
 191 recommended order shall be filed within 15 days after the
 192 recommended order is issued. The final order shall be filed by
 193 the commission no later than 45 calendar days after the hearing
 194 or after the filing of exceptions or oral arguments if granted.

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

197 ~~(7) Other than for law enforcement or correctional~~
 198 ~~officers, firefighters, and professional health care providers,~~
 199 ~~each suspension, dismissal, demotion, or reduction in pay must~~
 200 ~~be reviewed without consideration of any other case or set of~~
 201 ~~facts.~~

202 (7)~~(8)~~ A career service employee who is serving a
 203 probationary period in a position to which he or she has been
 204 promoted may be removed from that promotional position at any
 205 time during the probationary period but must be returned to his
 206 or her former position, or a comparable position, if such a
 207 position is vacant. If such a position is not available, before
 208 dismissal, the agency shall make a reasonable effort to retain
 209 the employee in another vacant position. This subsection does
 210 not apply to terminations for cause as described in subsection
 211 (1), nor does it create a right to "bump" an employee from an
 212 occupied position as described in paragraph (2) (a).

213 Section 2. Subsection (1) of section 1009.265, Florida
 214 Statutes, is amended to read:

215 1009.265 State employee fee waivers.--

216 (1) As a benefit to the employer and employees of the
 217 state, ~~subject to approval by an employee's agency head or the~~
 218 ~~equivalent,~~ each state university and community college shall
 219 waive tuition and fees for state employees to enroll for up to 6
 220 credit hours of courses, including distance learning or online
 221 courses, per term on a space-available basis. The employee must
 222 have the approval of his or her supervisor to use the waiver to
 223 take a course or courses during normal work hours. For purposes
 224 of implementing this section, the space available in a course

HB 1441

2009

225 must be determined no later than the end of the drop-add period
226 based on the number of seats or capacity remaining in the
227 course. State employee fee waivers may not be used for
228 dissertation, thesis, directed individualized study, or other
229 one-to-one instruction. Credit hours generated by students using
230 a state employee fee waiver may be included in the calculation
231 of full-time equivalent enrollments for state funding purposes.

232 Section 3. This act shall take effect July 1, 2009.