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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/23/2010	.	
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The Committee on Governmental Oversight and Accountability
(Dean) recommended the following:

Senate Amendment

Delete lines 2246 - 2430
and insert:

(1) An ~~Any~~ employee who has satisfactorily completed at least a 1-year probationary period in the ~~his or her~~ current position to which he or she has been appointed may be suspended or dismissed only for cause. Cause includes ~~shall include~~, but is not limited to, poor performance, negligence, inefficiency or inability to perform assigned duties, insubordination, violation of ~~the provisions of~~ law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or conviction



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13 of any crime. The agency head shall ensure that all employees of
14 the agency have reasonable access to the agency's personnel
15 policies and procedures manual.

16 (2)~~(a)~~ The department shall establish rules and procedures
17 for the suspension, reduction in pay, transfer, layoff,
18 demotion, and dismissal of employees in the Civil career
19 Service.

20 (a) Except with regard to law enforcement or correctional
21 officers, firefighters, or professional health care providers,
22 rules regarding layoff procedures may ~~shall~~ not include any
23 provision system whereby a civil career service employee with
24 greater seniority has the option of selecting a different
25 position not being eliminated, but either vacant or already
26 occupied by an employee who has ~~of~~ less seniority, and taking
27 that position, commonly referred to as "bumping."

28 (b) For the purpose of requesting voluntary transfers and
29 promotions, the department shall adopt rules that provide
30 procedures for employees who have satisfactorily completed a 6-
31 month probationary period to request a transfer, reassignment,
32 or promotion which an agency must give first consideration to if
33 a requested position becomes available.

34 (c)~~(b)~~ For the implementation of layoffs ~~as defined in s.~~
35 ~~110.107~~, the department shall develop rules requiring retention
36 of the agency's employees based upon objective measures that
37 give consideration to comparative merit, demonstrated skills,
38 the employee's experience, and the employee's length of service.
39 ~~Such rules shall be approved by the Administration Commission~~
40 ~~before their adoption by the department.~~

41 (3)~~(a)~~ With regard to law enforcement or correctional



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42 officers, firefighters, or professional health care providers;
43 ~~when~~

44 (a) If a layoff becomes necessary, such layoff shall be
45 conducted within the competitive area identified by the agency
46 head and approved by the department of Management Services. Such
47 competitive area shall be established taking into consideration
48 the similarity of work; the organizational unit, which may be by
49 agency, department, division, bureau, or other organizational
50 unit; and the commuting area for the affected work affected.

51 ~~(b) With regard to law enforcement or correctional~~
52 ~~officers, firefighters, or professional health care providers,~~
53 Layoff procedures shall be developed to establish the relative
54 merit and fitness of employees and must shall include a formula
55 for uniform application among all employees in the competitive
56 area, taking into consideration the type of appointment, the
57 length of service, and the evaluations of the employee's
58 performance within the last 5 years of employment. Based on such
59 factors, a list shall be created to serve as both a layoff and a
60 call-back list.

61 1. Those at the bottom of the list will be laid off in the
62 rising order of placement on the list while those who are to be
63 retained shall be retained in a descending order of placement on
64 the list.

65 2. Employees who are laid off may be recalled during the
66 subsequent 2 years as positions become available. Recall of such
67 employees to the class from which they were laid off must be in
68 the descending order such that persons higher on the list shall
69 be given priority over a person lower on the list.

70 (4) A grievance process shall be available to civil career



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71 service employees who have satisfactorily completed at least a
72 1-year probationary period in their current positions or who
73 were promoted after completing a probationary period in a prior
74 position. The grievance process may not displace the grievance
75 procedure required under s. 447.401. A grievance ~~is defined as~~
76 ~~the dissatisfaction that~~ occurs when an employee believes that
77 any condition affecting the employee is unjust, inequitable, or
78 a hindrance to the effective performance of his or her job
79 duties ~~operation~~. Claims of discrimination and sexual harassment
80 or claims related to suspensions, reductions in pay, demotions,
81 and dismissals are not subject to the civil ~~career~~ service
82 grievance process. The following procedures ~~shall~~ apply to any
83 grievance filed pursuant to this subsection, except that all
84 timeframes may be extended in writing by mutual agreement:

85 (a) *Step One.*—The employee must ~~may~~ submit a signed,
86 written grievance on a form provided by the agency to his or her
87 supervisor within 14 calendar days following the occurrence of
88 the event giving rise to the grievance. The supervisor must meet
89 with the employee to discuss the grievance and provide a written
90 response to the employee within 7 business days following
91 receipt of the grievance.

92 (b) *Step Two.*—If the employee is dissatisfied with the
93 response of his or her supervisor, the employee must ~~may~~ submit
94 the written grievance to the agency head or ~~his or her~~ designee
95 within 7 business days following receipt of the supervisor's
96 written response. The agency head's ~~head or his or her~~ designee
97 may ~~must~~ meet with the employee to discuss the grievance within
98 5 business days following receipt of the grievance. The agency
99 head or his or her designee must respond in writing to the



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100 employee within 5 business days following receipt of the
101 grievance ~~the meeting~~. The written decision of the agency head
102 or designee is ~~shall be the~~ final and binding authority for all
103 grievances filed pursuant to this subsection. Such grievances
104 may not be appealed beyond Step Two.

105 (5) ~~(a)~~ A civil ~~career~~ service employee who has
106 satisfactorily completed at least a 1-year probationary period
107 in his or her current position, or who has been promoted from
108 such a position, and who is subject to a layoff, suspension,
109 reduction in pay, demotion, involuntary transfer of more than 50
110 miles by highway, or dismissal shall receive written notice of
111 such action at least 10 calendar days before ~~prior to~~ the date
112 such action is ~~to be~~ taken.

113 (a) Subsequent to such notice, and before ~~prior to~~ the date
114 the action is ~~to be~~ taken, the affected employee shall be given
115 an opportunity to appear before a designated agency official to
116 rebut ~~the agency or official taking the action to answer orally~~
117 ~~and in writing~~ the charges against him or her. The notice ~~to the~~
118 ~~employee required by this paragraph~~ may be delivered to the
119 employee personally or may be sent by certified mail with return
120 receipt requested. Such actions are ~~shall be~~ appealable to the
121 Public Employees Relations Commission as provided in subsection
122 (6). Written notice of ~~any~~ such appeal shall be filed by the
123 employee with the commission within 21 calendar days after the
124 date on which the notice of suspension, reduction in pay,
125 demotion, involuntary transfer of more than 50 miles by highway,
126 or dismissal is received by the employee. Merit status that was
127 attained in a previous position does not give rise to appeal
128 rights under this section.



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129 (b) In extraordinary situations such as when the retention
130 of a civil career service employee may ~~who has satisfactorily~~
131 ~~completed at least a 1-year probationary period in his or her~~
132 ~~current position would~~ result in damage to state property, may
133 ~~would~~ be detrimental to the best interest of the state, or may
134 ~~would~~ result in harm ~~injury~~ to the employee, a fellow employee,
135 or some other person, such employee may be suspended or
136 dismissed without 10 calendar days' prior notice ~~if, provided~~
137 ~~that~~ written or oral notice of such action, including evidence
138 ~~of~~ the reasons therefor, and an opportunity to rebut the charges
139 are furnished to the employee before ~~prior to~~ such dismissal or
140 suspension. Such notice may be delivered to the employee
141 personally or may be sent by certified mail with return receipt
142 requested. ~~Agency compliance with the foregoing procedure~~
143 ~~requiring notice, evidence, and an opportunity for rebuttal must~~
144 ~~be substantiated.~~ Any employee who is suspended or dismissed
145 pursuant to ~~the provisions of~~ this paragraph may appeal to the
146 Public Employees Relations Commission as provided in subsection
147 (6). Written notice of any such appeal shall be filed with the
148 commission by the employee within 21 calendar days after the
149 date on which the notice of suspension, ~~reduction in pay,~~
150 ~~demotion,~~ or dismissal is received by the employee.

151 (6) The following procedures ~~shall~~ apply to appeals filed
152 pursuant to subsection (5) with the Public Employees Relations
153 Commission, ~~hereinafter referred to as the commission:~~

154 (a) The commission must conduct a hearing within 60
155 calendar days following the filing of a notice of appeal. An ~~No~~
156 extension of time for the hearing may not exceed 30 calendar
157 days, absent exceptional circumstances, and ~~no extension of time~~



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158 may not be granted without the consent of all parties. Discovery
159 may be granted only upon the showing of extraordinary
160 circumstances. A party requesting discovery must ~~shall~~
161 demonstrate a substantial need for the information requested and
162 an inability to obtain relevant information by other means.
163 Except where inconsistent with the requirements of this
164 subsection, the provisions of s. 447.503(4) and (5) and chapter
165 120 apply to proceedings held pursuant to this subsection.

166 (b) A person may represent himself or herself in
167 proceedings before the commission or may be represented by legal
168 counsel or by an ~~any~~ individual who qualifies as a
169 representative pursuant to rules adopted by the commission.

170 (c) If the commission finds that cause did not exist for
171 the agency action, the commission shall reverse the decision of
172 the agency head and the employee shall be reinstated with or
173 without back pay. If the commission finds that cause existed for
174 the agency action, the commission shall affirm the decision of
175 the agency head. The commission may not reduce the penalty
176 imposed by the agency head, ~~except in the case of law~~
177 ~~enforcement or correctional officers, firefighters, and~~
178 ~~professional health care providers,~~ if the commission makes
179 specific written findings of mitigation.

180 (d) A recommended order shall be issued by the hearing
181 officer within 30 days following the hearing. Exceptions to the
182 recommended order must ~~shall~~ be filed within 15 days after the
183 recommended order is issued. The final order shall be filed by
184 the commission within ~~no later than~~ 45 calendar days after the
185 hearing or after the filing of exceptions or oral arguments if
186 granted.



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187 (e) Final orders issued by the commission pursuant to
188 paragraph (d) are ~~shall be~~ reviewable as provided in s. 447.504.

189 ~~(7) Other than for law enforcement or correctional~~
190 ~~officers, firefighters, and professional health care providers,~~
191 ~~each suspension, dismissal, demotion, or reduction in pay must~~
192 ~~be reviewed without consideration of any other case or set of~~
193 ~~facts.~~

194 ~~(7)-(8)~~ A civil career service employee who is serving a
195 probationary period in a position to which he or she has been
196 promoted may be removed from that promotional position at any
197 time during the probationary period for inefficiency or
198 inability to perform assigned duties but must be returned to his
199 or her former position, or a comparable position, if such a
200 position is vacant. If such a position is not available, before
201 dismissal, the agency shall make a reasonable effort to retain
202 the employee in another vacant position. This subsection does
203 not apply to other dismissals ~~terminations~~ for cause as
204 described in subsection (1), nor does it create a right to
205 "bump" an employee from an occupied position as described in
206 paragraph (2) (a). An employee who is removed from a promotional
207 position under this subsection does not have grievance rights
208 under subsection (4) or appeal rights under subsection (5) due
209 to their probationary status.

210 (8) Employees of the Department of Law Enforcement are
211