

Part I of ch. 110, F.S., covers such areas as education and training opportunities for state employees; personnel pilot projects; productivity improvement and personnel audits of executive branch agencies; use of telephone voice mail systems; employee security checks; employee wage deductions; paid holidays; sick leave pool; terminal pay for accumulated sick leave; sexual harassment policy; employee long-term-care plan; state group insurance program; prescription drug program; health insurance; meritorious service awards program; termination or transfer of employees aged 65 years or older; state officers' and employees' child care services; other-personal-services (OPS) temporary employment; adoption benefits; pretax benefits program; the Florida State Employees' Charitable Campaign contribution program; and state employee leasing.

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

The terms "career service" and "career service employee" are not defined in the statutes. 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 this chapter and granted probationary status will attain permanent status in a class upon successful completion of the designated probationary period for the class. The statutes provide that an employee classified as a "permanent career service employee" may only be suspended or dismissed for cause. 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.

Part III of ch. 110, F.S., establishes the SMS, which is a separate system of personnel administration for positions in the executive branch, the duties and responsibilities of which are primarily and essentially policymaking or managerial in nature. The DMS is charged with adopting rules that provide for a system for employing, promoting, or reassigning managers which is responsive to organizational or program needs. Employees in the SMS serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotions, transfer, or other personnel action at the discretion of the agency head. The number of positions included in the SMS cannot exceed 1 percent of the total full-time equivalent positions in the career service.

Part IV of ch. 110, F.S., addresses volunteers by setting forth the responsibilities of departments and agencies utilizing volunteers. Volunteers recruited, trained, or accepted by any state department or agency are not subject to any provisions of law relating to state employment nor to any collective bargaining agreement between the state and any employees' association or union.

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

Florida's Career Service System: Florida's Career Service System, as found in ch. 110, F.S., has been in place since 1979, and has been amended several times during the course of its existence. Over time, the system has been criticized.

Florida TaxWatch has worked for a number of years in a bi-partisan effort to modernize the Career Service System. In 1986, Florida TaxWatch recommended legislation to create a performance-based compensation and personnel system coupled with increased public management authority and accountability. Florida TaxWatch has indicated that: "A thorough, major overhaul of Florida's Career Service is required if Florida is to keep pace with productivity in the private sector. This requires...:

- Meaningful management and supervisory authority and accountability for public service results and unit costs...
- An inviting, challenging workplace and culture that provides employees with opportunities for career growth and mobility...
- Compensation that is competitive with the private sector for recruitment/retention/promotion purposes...
- Compensation/career advancement tied to the application of good performance measures and outcome performance (individuals and groups)...
- An ability by managers to reward meritorious performance by employees and to sanction unacceptable, under-performance...
- A flexible compensation benefits system (defined contribution retirement option)."¹

In 1991, the Commission for Government by the People (commission), created by then Governor Chiles, reported that Florida's Career Service System, like many other civil service systems, has become a "straight jacket" on managers. The commission further stated that the career service system was designed for an "Industrial Era government of clerks and manual laborers; it long ago became obsolete. Its job classification system is too rigid; its pay system does not reward high performers; and its 'bumping' system during layoffs makes it difficult to slim down state government without virtually destroying it . . . [W]e urge the Legislature to . . . create an entirely new personnel system to replace Career Service."

One of the most vocal critics of the Career Service System is the Florida Council of 100. The council, in its report titled "Modernizing Florida's Civil Service System: Moving from Protection to Performance," November 2000, identified numerous problems with state government, including "slower implementation of technology, lack of long-term planning, inefficient use of capital, insufficient flexibility for managers, improper budget incentives, and even at times 'over-management' by past legislatures." More particularly, the council found that

¹ Florida Tax Watch, *Modernizing Florida's Civil Service: A Necessary Beginning for Meaningful Change*, January 2001.

chief among the constraints to effective and efficient government performance is the state's Career Service System as found in ch. 110, F.S., and ch. 60K, F.A.C. "The system makes managing human resources cumbersome, is de-motivating for managers, and damages the reputation of all state employees." In addition, the council enumerates four ways the current career service employment practices damage productivity:

1. Terms of employment constrain hiring and firing. . . . In the private sector, employees can be hired and dismissed "at will" – within the bounds of numerous statutory guidelines designed to ensure fairness and the absence of discrimination.
2. Seniority as the principal retention criterion sacrifices performance. . . . This use of seniority creates the grounds for the practice of "bumping," in which a longer-tenured employee whose position has been eliminated can take the job of a more recently hired employee occupying an equivalent or lower title in the same job classification The bumped employee may be out of work, regardless of performance – unless s/he has "permanent" status, in which case s/he can bump someone else in turn, propagating the disruption and lowering productivity further.
3. Compensation system does not adequately differentiate employees by performance. . . . In Florida's state government, legislative allocations dictate how employees will receive compensation. In most years – though not all – Career Service employees receive an across-the-board salary adjustment The across-the-board adjustment as a management tool has the effect of rewarding under-performing workers and neglecting the high-performing ones.
4. Tight control of daily activities inhibits responsiveness and problem solving. . . . [H]aving to abide by cumbersome, work-increasing rules deadens personal initiative and cooperation and fosters an attitude of indifference among employees.

The Florida Council of 100 was formed in 1961 at the request of Governor Farris Bryant. It is a private, non-profit, non-partisan association whose members represent a cross-section of key business leaders in Florida. The Civil Service Reform Task Force was established in 1999 to review Florida's human resources management system and to propose improvements.

In his "Recommended Budget" for the State of Florida for the fiscal year ending June 30, 2002, Governor Jeb Bush suggested changes to the Career Service System. The electronic version of the budget recommendations highlighted the Governor's priorities as: a smaller, more efficient government with a reduced infrastructure which does more with less; performance pay; the implementation of portable retirement plans; a reduction in the number of boards, councils and commissions; consolidation of multiple information technology operations into an enterprise organization; and pursuit of purchasing, facility and travel economies which produce value and avoid expense.

Public Employees Relations Commission: The Public Employees Relations Commission (PERC) was established in 1974 to provide statutory implementation of Article I, s. 6, Fla. Const., The PERC is currently composed of a chair and two full-time commissioners appointed by the Governor and confirmed by the Senate. The PERC is housed within the Department of

Management Services for administrative purposes, but is not subject to control, supervision, or direction by the department. The 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. The 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.

III. Effect of Proposed Changes:

The bill revises the changes made to the Career Service System by the 2001 legislation, as follows:

- Requires the DMS to develop rules requiring retention of the agency's employees based on objective measures of length of service, comparative merit, demonstrated skills, and the employee's experience. The rules must be approved by the Administration Commission (Governor and Cabinet) prior to the taking of any actions.
- Provides that suspension or dismissal for a career service employee may be imposed only for cause to a person who has achieved permanent status following completion of a one-year probationary period.
- Provides that a career service employee who has attained permanent status, but who is serving a probationary period in a position which he or she has been promoted, may be removed from that promotional position at any time during the probationary period without a showing of cause and must be returned to his or her former position if the position is available. If the position is no longer available, the agency shall make every effort to retain the employee.
- Increases the timeframes for filing and responding to grievances from seven to 14 calendar days at Step 1; changes the length of time a supervisor must meet with the employee to discuss the grievance and to provide a written response from five to seven business days; and changes the timeframes for an employee to file the grievance to the agency head at Step 2 from two to seven business days.
- Lifts the prohibition on grievance appeals beyond Step 2.
- Includes career service employees with permanent status who are subject to a lay off or an involuntary transfer of more than 50 miles by highway in those persons who can participate in the grievance process.
- Changes the time in which a written notice of appeal must be filed from 14 to 21 days after the date when the notice of suspension or dismissal is received by the employee.
- Changes the length of time in which the PERC is to conduct a hearing from 30 to 60 calendar days after the filing of a notice of appeal.

- Authorizes the PERC to consider mitigation of a disciplinary action imposed by an agency, modifies the basis for the action as “just” cause as opposed to “cause”, and requires reinstatement with back pay if the decision of the agency is reversed.
- Changes the time in which an exception to the recommended order may be filed from five to 15 days after the recommended order is issued.
- Requires that PERC disciplinary actions not consider any other set of facts in reaching its decision.

The bill is effective January 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The potential for PERC to order the reinstatement of back pay in disciplinary actions may have some fiscal effect on individuals.

C. Government Sector Impact:

There will be additional workload to the agencies and to the Public Employees Relations Commission for the additional actions now covered by the expanded workforce and the lifting of the level two cap on appeals. The bill makes the reinstatement of pay for prevailing employee parties non-discretionary.

On April 2, 2008, the Department of Management Services issued an amended bill analysis for CS/SB 2202. That analysis indicated that based on inquiries to agencies of the State Personnel System, the bill would result in a need of 74 new positions. This number does not include legal staff that also may be required. The agency estimated the cost to be \$4.5 million for fiscal year 2008-2009 and \$4.2 million for subsequent years.

In addition, according to DMS, the estimated workload projected to be generated by allowing career service grievances to be appealed to DMS would require an increase of four labor relations positions. Increased administrative costs for the agencies and DMS costs would be due to:

- Additional grievances to be reviewed and processed.
- If processed and maintained by the People First System, programming costs to update the system.
- Increased costs due to extensions in the timeframes for the grievance, appeals and hearing process;
- Back pay for employees if PERC mitigates disciplinary actions by agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires that the Administration Commission (the Governor and Cabinet) approve the rules on the development of objective retention criteria before their adoption by the Department of Management Services.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on April 1, 2008:

The committee substitute:

- Removes from the original bill the reinstatement of “bumping” for Career Service employees not otherwise classified as law enforcement, firefighters, correctional officers, or professional health care providers;
- Provides that only in cases where the position is available will a permanent status career service employee who is in a probationary status be removed without cause and returned to his or her former position. It provides that if the position is no longer available, the agency will make every effort to retain the employee;
- Changes the effective date of the bill from July 1, 2008, to January 1, 2009.

- B. **Amendments:**

None.