

CHAPTER 98-196

Committee Substitute for Senate Bill No. 1144

An act relating to the rulemaking authority of the Department of Management Services and other agencies (RAB); creating s. 110.224, F.S.; requiring a review and performance planning system; requiring the department to adopt rules to implement a review and performance planning system to assess employee performance; amending s. 110.1095, F.S.; directing the department to provide technical assistance; requiring annual review of state training programs; requiring agencies to develop and implement training programs; directing the department to adopt rules for training programs; amending s. 110.207, F.S.; prohibiting positions from being filled before they have been classified; amending s. 110.227, F.S.; directing the department to adopt a grievance procedure for career service employees; requiring a grievance process to be available for career service employees; defining the term “grievance”; authorizing the adoption of rules for the grievance process; amending s. 216.262, F.S.; providing rulemaking authority; detailing use and value of prerequisites; providing an effective date.

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

Section 1. Section 110.224, Florida Statutes, is created to read:

110.224 Review and performance planning system.—A review and performance planning system shall be established as a basis for improving the performance of the state’s workforce, to provide documentation in support of recommendations for salary increases, promotions, demotions, reassignments, or dismissals; to inform employees of strong and weak points in the employee’s performance, improvements expected, and current and future training needs; and to assist in determining the order of layoff and reemployment.

(1) Upon original appointment, promotion, demotion, or reassignment, each career service employee must be given a statement of the work expectations and performance standards applicable to the position. The statement may be included in the position description or in a separate document. An employee will not be required to meet work expectations or performance standards that have not been furnished in writing to the employee.

(2) Each employee’s performance must be reviewed at least annually, and the employee must receive an oral and written assessment of his or her performance. The assessment may include a plan of corrective action for improvement of the employee’s performance based on the work expectations or performance standards applicable to the position.

(3) The department may adopt rules to administer the review and performance planning system which establish procedures for performance evaluation, procedures to be followed in case of failure to meet performance standards, review periods, and forms.

Section 2. Section 110.1095, Florida Statutes, is amended to read:

110.1095 Supervisory and management training and continuing education for executive branch agencies.—The department shall represent the public interest in the improvement of administration by providing training programs for all executive branch agencies, except the State University System, aimed at improving managerial, administrative, and technical skills.

(1) The department shall establish a basic supervisory skills training program that provides a standard set of fundamental supervisory skills to ensure that all persons filling supervisory or managerial positions in state government are instructed in basic supervisory functions. The program shall be designed so that a person who is hired or promoted into a supervisory position attends the training within 6 months after the date that he or she is hired or promoted into such position; when there are extenuating circumstances, this period may be extended up to 6 months.

(2) The department shall provide technical assistance to agencies for the development and evaluation of training programs and shall establish a continuing education program for supervisors and managers to ensure that persons filling such positions update their skills on a regular and continuing basis.

(3) The department shall annually review, monitor for compliance, and evaluate all state training programs developed pursuant to this section. The department may adopt rules establishing procedures for the annual review, monitoring, evaluation, oversight of state training programs, and agency reporting requirements.

(4) Each agency is responsible for the development, implementation, administration, and evaluation of agency training programs for supervisors and managers.

Section 3. Subsection (1) of section 110.207, Florida Statutes, is amended to read:

110.207 Classification plan.—

(1) The department shall establish and maintain a uniform classification plan applicable to all positions in the career service and shall be responsible for the overall coordination, review, and maintenance of the plan. No action may be taken to fill any position until it has been classified in accordance with the classification plan.

(a) The department shall develop class specifications necessary for the establishment of new classes or for the revision of existing classes and shall adopt the appropriate class title and class code for each class. Such class specifications, titles, and codes shall not constitute rules within the meaning of s. 120.52.

(b) The department shall be responsible for conducting periodic studies and surveys to assure that the classification plan is maintained on a current basis.

(c) The department may review in a postaudit capacity the action taken by an employing agency in classifying or reclassifying a position.

(d) The department shall effect a classification change on any classification or reclassification action taken by an employing agency if the action taken by the agency was not based on the duties and responsibilities officially assigned the position as they relate to the concepts and allocation factors contained in the official class specifications adopted by the department.

(e) Any action taken by the department in regard to the classification or reclassification of a position which affects a department headed by a Cabinet officer or by the Governor and Cabinet may be reviewed by the Administration Commission, and the decision of the department may be changed by a majority vote of the Administration Commission.

(f) In cooperation and consultation with the employing agencies, the department shall adopt rules necessary to govern the administration of the classification plan. Such rules shall be approved by the Administration Commission prior to their adoption by the department.

(g) In consultation with the Executive Office of the Governor, the department shall facilitate the statewide planning of the career service broadbanding compensation and classification system.

1. Upon approval by the Executive Office of the Governor, the department shall begin developing the broadbanding system to ensure agency flexibility and accountability on a statewide basis, and shall have the authority to determine system modifications necessary to permit use by all agencies. The proposed structure shall address all issues raised in the January 1997 report on the "Review of the Department of Transportation Model Classification Plan" submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The Department of Management Services shall provide alternatives for a rate funding formula that will not exceed the statewide cost under the current formula and will ensure that agencies are able to effectively recruit and retain employees. The Department of Transportation shall continue to use the model system it developed under the provision of s. 334.0445 until July 1, 1999.

2. Once the Executive Office of the Governor has approved a statewide broadbanding compensation and classification system, state agencies will come under the uniform personnel system based on an implementation schedule developed by the Department of Management Services and approved by the Executive Office of the Governor.

Section 4. Section 110.227, Florida Statutes, is amended to read:

110.227 Suspensions, dismissals, reductions in pay, demotions, layoffs, ~~and transfers, and grievances.~~—

(1) Any employee who has permanent status in the career service may only be suspended or dismissed for cause. Cause shall include, but not be limited to, 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. Each agency head shall ensure that all employees of the agency are completely familiar with the agency's established procedures on disciplinary actions and grievances.

(2) The department shall establish rules and procedures for the suspension, reduction in pay, transfer, layoff, demotion, and dismissal of employees in the career service. Such rules shall be approved by the Administration Commission prior to their adoption by the department.

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

(b) Layoff procedures shall be developed to establish the relative merit and fitness of employees and shall include a formula for uniform application among all employees in the competitive area, taking into consideration the type of appointment, the length of service, and the evaluations of the employee's performance within the last 5 years of employment.

(4) Any permanent career service employee subject to reduction in pay, transfer, layoff, or demotion from a class in which he or she has permanent status in the Career Service System shall be notified in writing by the agency prior to its taking such action. The notice may be delivered to the employee personally or may be sent by certified mail with return receipt requested. Such actions shall be appealable to the Public Employees Relations Commission, pursuant to s. 447.208 and rules adopted by the commission.

(5)(a) Any permanent career service employee who is subject to suspension or dismissal shall receive written notice of such action at least 10 days prior to the date such action is to be taken. Subsequent to such notice, and prior to the date the action is to be taken, the affected employee shall be given an opportunity to appear before the agency or official taking the action to answer orally and in writing the charges against him or her. The notice to the employee required by this paragraph may be delivered to the employee personally or may be sent by certified mail with return receipt requested. An employee who is suspended or dismissed shall be entitled to a hearing before the Public Employees Relations Commission or its designated agent pursuant to s. 447.208 and rules adopted by the commission.

(b) In extraordinary situations such as when the retention of a permanent career service employee would result in damage to state property, would be detrimental to the best interest of the state, or would result in injury to the employee, a fellow employee, or some other person, such employee may be suspended or dismissed without 10 days' prior notice, provided that written or oral notice of such action, evidence of the reasons therefor, and an opportunity to rebut the charges are furnished to the employee prior to such dismissal or suspension. Such notice may be delivered

to the employee personally or may be sent by certified mail with return receipt requested. Agency compliance with the foregoing procedure requiring notice, evidence, and an opportunity for rebuttal must be substantiated. Any employee who is suspended or dismissed pursuant to the provisions of this paragraph shall be entitled to a hearing before the Public Employees Relations Commission or its designated agent pursuant to s. 447.208, except that such hearing shall be held no more than 20 days after the filing of the notice of appeal by the employee.

(6) A grievance process shall be available to career service employees. A grievance is defined as the dissatisfaction that occurs when an employee thinks or feels that any condition affecting the employee is unjust, inequitable, or a hindrance to effective operation, or creates a problem, except that an employee shall not have the right to file a grievance against performance evaluations unless it is alleged that the evaluation is based on factors other than the employee's performance. Claims of discrimination and sexual harassment, suspensions, reductions in pay, transfers, layoffs, demotions, and dismissals are not subject to the career-service grievance process.

(7) The department shall adopt rules for administration of the grievance process for career-service employees. Such rules shall establish agency grievance procedures, eligibility, filing deadlines, forms, and review and evaluation governing the grievance process.

Section 5. Paragraphs (e), (f), and (g) of subsection (1) and subsection (3) of section 216.262, Florida Statutes, are amended to read:

216.262 Authorized positions.—

(1)

(e) An individual employed by a state agency or by the judicial branch may not fill more than a total of one full-time equivalent established position, receive compensation simultaneously from any appropriation other than appropriations for salaries, or receive compensation simultaneously from more than one state agency unless approved by the Department of Management Services, or otherwise delegated to the agency head, or by the Chief Justice, respectively, during each fiscal year. The Department of Management Services may adopt uniform rules applicable to the executive branch agencies to implement its responsibilities under this paragraph.

(f) Perquisites may not be furnished by a state agency or by the judicial branch unless approved by the Department of Management Services, or otherwise delegated to the agency head, or by the Chief Justice, respectively, during each fiscal year. Whenever a state agency or the judicial branch is to furnish perquisites, the Department of Management Services or the agency head to which the approval has been delegated or the Chief Justice, respectively, must approve the kind and monetary value of such perquisites before they may be furnished. Perquisites may be furnished only when in the best interest of the state due to the exceptional or unique requirements of the position. The value of a perquisite may not be used to compute an employee's base rate of pay or regular rate of pay unless required by the Fair Labor Standards Act. Permissible perquisites include, but are not limited to,

moving expenses, clothing, use of vehicles and other transportation, domestic services, groundskeeping services, telephone services, medical services, housing, utilities, and meals. The Department of Management Services may adopt uniform rules applicable to the executive branch agencies to implement its responsibilities under this paragraph, which rules may specify additional perquisites, establish additional criteria for each kind of perquisite, provide the procedure to be used by executive agencies in applying for approvals, and establish the required justification.

(g) If goods and services are to be sold to officers and employees of a state agency or of the judicial branch rather than being furnished as perquisites, the kind and selling price thereof shall be approved by the Department of Management Services, unless otherwise delegated to the agency head, or by the Chief Justice, respectively, during each fiscal year before such sales are made. The selling price may be deducted from any amounts due by the state to any person receiving such things. The amount of cash so deducted shall be faithfully accounted for. This paragraph does not apply to sales to officers or employees of items generally sold to the public and does not apply to meals which may be provided without charge to volunteers under a volunteer service program approved by the Department of Management Services. The goods and services may include, but are not limited to, medical services, long-term and short-term rental housing, and laundry and transportation services. The Department of Management Services may adopt uniform rules applicable to the executive branch agencies to implement its responsibilities under this paragraph, which rules may specify other items that may be approved, the required justification for proposed sales, and the manner in which agencies will apply for approvals.

(3) No full-time position shall be filled by more than the equivalent of one full-time officer or employee, except when extenuating circumstances exist. Extenuating circumstances will be as provided for in rules to be adopted by the Department of Management Services or by the Chief Justice, respectively.

Section 6. This act shall take effect upon becoming a law.

Became a law without the Governor's approval May 24, 1998.

Filed in Office Secretary of State May 22, 1998.