

1 A bill to be entitled
2 An act relating to the Division of Administrative
3 Hearings; amending s. 110.205, F.S.; revising
4 positions at the division that are exempt from the
5 Career Service System; amending s. 120.65, F.S.;
6 requiring the Administration Commission to select from
7 full-time administrative law judges employed with the
8 division in appointing a division director; removing
9 the requirement that the division director is subject
10 to Senate confirmation; deleting provisions regarding
11 minimum qualifications of the division director and
12 deputy chief administrative law judges; requiring the
13 Governor to appoint administrative law judges;
14 prohibiting an administrative law judge from engaging
15 in the private practice of law during his or her term
16 of office; requiring the Governor to appoint
17 administrative law judges from nominees recommended by
18 a statewide nominating commission unless otherwise
19 provided; specifying the composition and term lengths
20 of members of the commission; providing that meetings
21 and determinations of the commission are open to the
22 public; specifying term lengths of administrative law
23 judges; prescribing procedures for the commission to
24 review a judge's performance before the expiration of
25 a term; requiring the Governor to take certain action

26 | regarding a judge after the commission's review;
27 | providing for initial appointments of administrative
28 | law judges and staggered terms; providing transitional
29 | provisions; providing an effective date.

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

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33 | Section 1. Paragraphs (j), (r), and (w) of subsection (2)
34 | of section 110.205, Florida Statutes, are amended to read:

35 | 110.205 Career service; exemptions.—

36 | (2) EXEMPT POSITIONS.—The exempt positions that are not
37 | covered by this part include the following:

38 | (j) The appointed secretaries and the State Surgeon
39 | General, assistant secretaries, deputy secretaries, and deputy
40 | assistant secretaries of all departments; attorneys who serve as
41 | administrative law judges pursuant to s. 120.65; the executive
42 | directors, assistant executive directors, deputy executive
43 | directors, and deputy assistant executive directors of all
44 | departments; the directors of all divisions and those positions
45 | determined by the department to have managerial responsibilities
46 | comparable to such positions, which positions include, but are
47 | not limited to, program directors, assistant program directors,
48 | district administrators, deputy district administrators, the
49 | Director of Central Operations Services of the Department of
50 | Children and Families, the State Transportation Development

51 Administrator, the State Public Transportation and Modal
52 Administrator, district secretaries, district directors of
53 transportation development, transportation operations,
54 transportation support, and the managers of the offices of the
55 Department of Transportation specified in s. 20.23(3)(b). Unless
56 otherwise fixed by law, the department shall set the salary and
57 benefits of these positions and the positions of county health
58 department directors and county health department administrators
59 of the Department of Health in accordance with the rules of the
60 Senior Management Service.

61 (r) All positions not otherwise exempt under this
62 subsection which require as a prerequisite to employment:
63 licensure as a physician pursuant to chapter 458, licensure as
64 an osteopathic physician pursuant to chapter 459, licensure as a
65 chiropractic physician pursuant to chapter 460, including those
66 positions which are occupied by employees who are exempted from
67 licensure pursuant to s. 409.352; licensure as an engineer
68 pursuant to chapter 471, which are supervisory positions; or for
69 12 calendar months, which require as a prerequisite to
70 employment that the employee have received the degree of
71 Bachelor of Laws or Juris Doctor from a law school accredited by
72 the American Bar Association and thereafter membership in The
73 Florida Bar, ~~except for any attorney who serves as an~~
74 ~~administrative law judge pursuant to s. 120.65 or for hearings~~
75 ~~conducted pursuant to s. 120.57(1)(a).~~ Unless otherwise fixed by

76 law, the department shall set the salary and benefits for these
77 positions in accordance with the rules established for the
78 Selected Exempt Service.

79 (w) Managerial employees, as defined in s. 447.203(4),
80 confidential employees, as defined in s. 447.203(5), and
81 supervisory employees who spend the majority of their time
82 communicating with, motivating, training, and evaluating
83 employees, and planning and directing employees' work, and who
84 have the authority to hire, transfer, suspend, lay off, recall,
85 promote, discharge, assign, reward, or discipline subordinate
86 employees or effectively recommend such action, including all
87 employees serving as supervisors, administrators, and directors.
88 Excluded are employees also designated as special risk or
89 special risk administrative support ~~and attorneys who serve as~~
90 ~~administrative law judges pursuant to s. 120.65 or for hearings~~
91 ~~conducted pursuant to s. 120.57(1)(a)~~. Additionally, registered
92 nurses licensed under chapter 464, dentists licensed under
93 chapter 466, psychologists licensed under chapter 490 or chapter
94 491, nutritionists or dietitians licensed under part X of
95 chapter 468, pharmacists licensed under chapter 465,
96 psychological specialists licensed under chapter 491, physical
97 therapists licensed under chapter 486, and speech therapists
98 licensed under part I of chapter 468 are excluded, unless
99 otherwise collectively bargained.

100 Section 2. Subsections (1) through (4) of section 120.65,

101 Florida Statutes, are amended to read:

102 120.65 Administrative law judges.—

103 (1) The Division of Administrative Hearings within the
 104 Department of Management Services shall be headed by the a
 105 director of the Division of Administrative Hearings. The
 106 director ~~who~~ shall be appointed by the Administration Commission
 107 and must be a full-time administrative law judge employed by the
 108 division and confirmed by the Senate. The director, who shall
 109 ~~also serve as the chief administrative law judge, and any deputy~~
 110 ~~chief administrative law judge must possess the same minimum~~
 111 ~~qualifications as the administrative law judges employed by the~~
 112 ~~division.~~ The Deputy Chief Judge of Compensation Claims must
 113 possess the minimum qualifications established in s. 440.45(2)
 114 and shall report to the director. The division is ~~shall be~~ a
 115 separate budget entity, and the director shall be its agency
 116 head for all purposes. The Department of Management Services
 117 shall provide administrative support and service to the division
 118 to the extent requested by the director. The division shall not
 119 be subject to control, supervision, or direction by the
 120 Department of Management Services in any manner, including, but
 121 not limited to, personnel, purchasing, transactions involving
 122 real or personal property, and budgetary matters.

123 (2) The Governor shall appoint full-time administrative
 124 law judges to conduct hearings in accordance with this chapter.
 125 A person may not serve as an administrative law judge unless he

126 or she has been a member of The Florida Bar in good standing for
127 the previous 5 years. An administrative law judge may not engage
128 in the private practice of law during his or her term of office.

129 (a)1. Except as provided in paragraph (b), the Governor
130 shall appoint an administrative law judge from a list of three
131 persons nominated by a statewide nominating commission. The
132 statewide nominating commission shall be composed of three
133 members, at least one of whom must be a minority person as
134 defined in s. 288.703, appointed by the Governor; two members
135 appointed by the Attorney General; two members appointed by the
136 Chief Financial Officer; and two members appointed by the
137 Commissioner of Agriculture.

138 2. Beginning July 1, 2017, the Governor and each member of
139 the Cabinet shall appoint one member to serve a 2-year term and
140 appoint the remaining members to serve 4-year terms. Thereafter,
141 each member shall be appointed for a 4-year term. A vacancy
142 occurring on the commission shall be filled by the original
143 appointing authority for the unexpired balance of the term.

144 3. The meetings and determinations of the nominating
145 commission as to the administrative law judges shall be open to
146 the public.

147 (b) Each administrative law judge shall be appointed for a
148 4-year term, but during his or her term of office may be removed
149 by the Governor for cause. Before the expiration of a judge's
150 term of office, the statewide nominating commission shall review

151 the judge's conduct and determine whether the judge's
152 performance is satisfactory. In determining whether a judge's
153 performance is satisfactory, the commission shall consider the
154 extent to which the judge has met the requirements of this
155 chapter. The commission shall report its finding to the Governor
156 no later than 6 months before the expiration of the judge's term
157 of office. The Governor shall review the commission's report and
158 may reappoint the administrative law judge for an additional 4-
159 year term. If the Governor does not reappoint the judge, the
160 Governor shall inform the commission. The judge shall remain in
161 office until the Governor has appointed a successor judge in
162 accordance with this subsection. If a vacancy occurs during a
163 judge's unexpired term, the commission does not find the judge's
164 performance satisfactory, or the Governor does not reappoint the
165 judge, the Governor shall appoint a successor judge for a 4-year
166 term in accordance with paragraph (a).

167 (c) The Governor shall appoint each administrative law
168 judge by June 30, 2018, for a term beginning on July 1, 2018.
169 For the term beginning on July 1, 2018, administrative law
170 judges shall be appointed in the following manner: 8 judges
171 appointed to a 1-year term; 8 judges appointed to a 2-year term;
172 8 judges appointed to a 3-year term; and 9 judges appointed to a
173 4-year term. Thereafter, each term of office shall be 4 years.

174 (d) The Division of Administrative Hearings shall maintain
175 33 administrative law judges as they existed on June 30, 2017.

176 Each administrative law judge may continue to serve until June
177 30, 2018, and may be appointed for an additional term under the
178 process for reappointments in paragraph (b).

179 ~~(3)~~⁽²⁾ The director has the right to appeal actions by the
180 Executive Office of the Governor that affect amendments to the
181 division's approved operating budget or any personnel actions
182 pursuant to chapter 216 to the Administration Commission, which
183 shall decide such issue by majority vote. The appropriations
184 committees may advise the Administration Commission on the
185 issue. If the President of the Senate and the Speaker of the
186 House of Representatives object in writing to the effects of the
187 appeal, the appeal may be affirmed by the affirmative vote of
188 two-thirds of the commission members present.

189 ~~(4)~~⁽³⁾ Each state agency as defined in chapter 216 and
190 each political subdivision shall make its facilities available,
191 at a time convenient to the provider, for use by the division in
192 conducting proceedings pursuant to this chapter.

193 ~~(4) The division shall employ administrative law judges to~~
194 ~~conduct hearings required by this chapter or other law. Any~~
195 ~~person employed by the division as an administrative law judge~~
196 ~~must have been a member of The Florida Bar in good standing for~~
197 ~~the preceding 5 years.~~

198 Section 3. This act shall take effect July 1, 2017.