

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; prohibiting certain
21 attorneys from serving on the commission; providing
22 that meetings and determinations of the commission are
23 open to the public; specifying term lengths of
24 administrative law judges; prescribing procedures for
25 the commission to review a judge's performance before

26 | the expiration of a term; requiring the Governor to
 27 | take certain action regarding a judge after the
 28 | commission's review; providing for initial
 29 | appointments of administrative law judges and
 30 | staggered terms; providing transitional provisions;
 31 | providing an effective date.

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

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 35 | Section 1. Paragraph (r) of subsection (2) of section
 36 | 110.205, Florida Statutes, is amended to read:

37 | 110.205 Career service; exemptions.—

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

40 | (r) All positions not otherwise exempt under this
 41 | subsection which require as a prerequisite to employment:
 42 | licensure as a physician pursuant to chapter 458, licensure as
 43 | an osteopathic physician pursuant to chapter 459, licensure as a
 44 | chiropractic physician pursuant to chapter 460, including those
 45 | positions which are occupied by employees who are exempted from
 46 | licensure pursuant to s. 409.352; licensure as an engineer
 47 | pursuant to chapter 471, which are supervisory positions; or for
 48 | 12 calendar months, which require as a prerequisite to
 49 | employment that the employee have received the degree of
 50 | Bachelor of Laws or Juris Doctor from a law school accredited by

51 the American Bar Association and thereafter membership in The
 52 Florida Bar, ~~except for any attorney who serves as an~~
 53 ~~administrative law judge pursuant to s. 120.65 or for hearings~~
 54 ~~conducted pursuant to s. 120.57(1)(a)~~. Unless otherwise fixed by
 55 law, the department shall set the salary and benefits for these
 56 positions in accordance with the rules established for the
 57 Selected Exempt Service.

58 Section 2. Subsections (1) through (4) of section 120.65,
 59 Florida Statutes, are amended to read:

60 120.65 Administrative law judges.—

61 (1) The Division of Administrative Hearings within the
 62 Department of Management Services shall be headed by the a
 63 director of the Division of Administrative Hearings. The
 64 director ~~who~~ shall be appointed by the Administration Commission
 65 and must be a full-time administrative law judge employed by the
 66 division and confirmed by the Senate. The director, who shall
 67 ~~also serve as the chief administrative law judge, and any deputy~~
 68 ~~chief administrative law judge must possess the same minimum~~
 69 ~~qualifications as the administrative law judges employed by the~~
 70 ~~division~~. The Deputy Chief Judge of Compensation Claims must
 71 possess the minimum qualifications established in s. 440.45(2)
 72 and shall report to the director. The division is ~~shall be~~ a
 73 separate budget entity, and the director shall be its agency
 74 head for all purposes. The Department of Management Services
 75 shall provide administrative support and service to the division

76 | to the extent requested by the director. The division is ~~shall~~
77 | not ~~be~~ subject to control, supervision, or direction by the
78 | Department of Management Services in any manner, including, but
79 | not limited to, personnel, purchasing, transactions involving
80 | real or personal property, and budgetary matters.

81 | (2) The Governor shall appoint full-time administrative
82 | law judges to conduct hearings in accordance with this chapter.
83 | A person may not serve as an administrative law judge unless he
84 | or she has been a member of The Florida Bar in good standing for
85 | the previous 5 years. An administrative law judge may not engage
86 | in the private practice of law during his or her term of office.

87 | (a)1. Except as provided in paragraph (b), the Governor
88 | shall appoint an administrative law judge from a list of three
89 | persons nominated by a statewide nominating commission. The
90 | statewide nominating commission shall be composed of three
91 | members, at least one of whom must be a minority person as
92 | defined in s. 288.703, appointed by the Governor; two members
93 | appointed by the Attorney General; two members appointed by the
94 | Chief Financial Officer; and two members appointed by the
95 | Commissioner of Agriculture.

96 | 2. Beginning July 1, 2017, the Governor and each member of
97 | the Cabinet shall appoint one member to serve a 2-year term and
98 | appoint the remaining members to serve 4-year terms. Thereafter,
99 | each member shall be appointed for a 4-year term. A vacancy
100 | occurring on the commission shall be filled by the original

101 appointing authority for the unexpired balance of the term.

102 3. An attorney who appears before any administrative law
103 judge more than 4 times a year may not serve on the statewide
104 nominating commission. The meetings and determinations of the
105 nominating commission as to the administrative law judges shall
106 be open to the public.

107 (b) Each administrative law judge shall be appointed for a
108 4-year term, but during his or her term of office may be removed
109 by the Governor for cause. Before the expiration of a judge's
110 term of office, the statewide nominating commission shall review
111 the judge's conduct and determine whether the judge's
112 performance is satisfactory. In determining whether a judge's
113 performance is satisfactory, the commission shall consider the
114 extent to which the judge has met the requirements of this
115 chapter. The commission shall report its finding to the Governor
116 no later than 6 months before the expiration of the judge's term
117 of office. The Governor shall review the commission's report and
118 may reappoint the administrative law judge for an additional 4-
119 year term. If the Governor does not reappoint the judge, the
120 Governor shall inform the commission. The judge shall remain in
121 office until the Governor has appointed a successor judge in
122 accordance with this subsection. If a vacancy occurs during a
123 judge's unexpired term, the commission does not find the judge's
124 performance satisfactory, or the Governor does not reappoint the
125 judge, the Governor shall appoint a successor judge for a 4-year

126 term in accordance with paragraph (c).

127 (c) The Governor shall appoint each administrative law
128 judge by June 30, 2018, for a term beginning on July 1, 2018.
129 For the term beginning on July 1, 2018, administrative law
130 judges shall be appointed in the following manner: 8 judges
131 appointed to a 1-year term; 8 judges appointed to a 2-year term;
132 8 judges appointed to a 3-year term; and 9 judges appointed to a
133 4-year term. Thereafter, each term of office shall be 4 years.

134 (d) The division shall maintain the 33 administrative law
135 judge positions in existence as of June 30, 2017. Each
136 administrative law judge may continue to serve until June 30,
137 2018. This subsection does not prohibit an administrative law
138 judge serving before July 1, 2018, from being appointed to serve
139 as an administrative law judge pursuant to paragraph (c).

140 (3)(2) The director has the right to appeal actions by the
141 Executive Office of the Governor that affect amendments to the
142 division's approved operating budget or any personnel actions
143 pursuant to chapter 216 to the Administration Commission, which
144 shall decide such issue by majority vote. The appropriations
145 committees may advise the Administration Commission on the
146 issue. If the President of the Senate and the Speaker of the
147 House of Representatives object in writing to the effects of the
148 appeal, the appeal may be affirmed by the affirmative vote of
149 two-thirds of the commission members present.

150 (4)(3) Each state agency as defined in chapter 216 and

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151 each political subdivision shall make its facilities available,
152 at a time convenient to the provider, for use by the division in
153 conducting proceedings pursuant to this chapter.

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

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