

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; prohibiting an
13 administrative law judge from engaging in the private
14 practice of law during his or her term of office;
15 requiring the Governor and Cabinet to appoint
16 administrative law judges from nominees recommended by
17 a statewide nominating commission unless otherwise
18 provided; specifying the composition and term lengths
19 of members of the commission; providing that meetings
20 and determinations of the commission are open to the
21 public; specifying term lengths of administrative law
22 judges; prescribing procedures for the commission to
23 review a judge's performance before the expiration of
24 a term; requiring the Governor and Cabinet to take
25 certain action regarding a judge after the

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

30 |
 31 | Be It Enacted by the Legislature of the State of Florida:

32 |
 33 | Section 1. Paragraphs (r) and (w) of subsection (2) of
 34 | 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 | (r) All positions not otherwise exempt under this
 39 | subsection which require as a prerequisite to employment:
 40 | licensure as a physician pursuant to chapter 458, licensure as
 41 | an osteopathic physician pursuant to chapter 459, licensure as a
 42 | chiropractic physician pursuant to chapter 460, including those
 43 | positions which are occupied by employees who are exempted from
 44 | licensure pursuant to s. 409.352; licensure as an engineer
 45 | pursuant to chapter 471, which are supervisory positions; or for
 46 | 12 calendar months, which require as a prerequisite to
 47 | employment that the employee have received the degree of
 48 | Bachelor of Laws or Juris Doctor from a law school accredited by
 49 | the American Bar Association and thereafter membership in The
 50 | Florida Bar, including ~~except for~~ any attorney who serves as an

51 administrative law judge pursuant to s. 120.65 or for hearings
52 conducted pursuant to s. 120.57(1)(a). Unless otherwise fixed by
53 law, the department shall set the salary and benefits for these
54 positions in accordance with the rules established for the
55 Selected Exempt Service.

56 (w) Managerial employees, as defined in s. 447.203(4),
57 confidential employees, as defined in s. 447.203(5), and
58 supervisory employees who spend the majority of their time
59 communicating with, motivating, training, and evaluating
60 employees, and planning and directing employees' work, and who
61 have the authority to hire, transfer, suspend, lay off, recall,
62 promote, discharge, assign, reward, or discipline subordinate
63 employees or effectively recommend such action, including all
64 employees serving as supervisors, administrators, and directors.
65 Excluded are employees also designated as special risk or
66 special risk administrative support ~~and attorneys who serve as~~
67 ~~administrative law judges pursuant to s. 120.65 or for hearings~~
68 ~~conducted pursuant to s. 120.57(1)(a)~~. Additionally, registered
69 nurses licensed under chapter 464, dentists licensed under
70 chapter 466, psychologists licensed under chapter 490 or chapter
71 491, nutritionists or dietitians licensed under part X of
72 chapter 468, pharmacists licensed under chapter 465,
73 psychological specialists licensed under chapter 491, physical
74 therapists licensed under chapter 486, and speech therapists
75 licensed under part I of chapter 468 are excluded, unless

76 otherwise collectively bargained.

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

79 120.65 Administrative law judges.—

80 (1) The Division of Administrative Hearings within the
81 Department of Management Services shall be headed by the a
82 director of the Division of Administrative Hearings. The
83 director ~~who~~ shall be appointed by the Administration Commission
84 and must be a full-time administrative law judge employed by the
85 division ~~and confirmed by the Senate. The director, who shall~~
86 ~~also serve as the chief administrative law judge, and any deputy~~
87 ~~chief administrative law judge must possess the same minimum~~
88 ~~qualifications as the administrative law judges employed by the~~
89 ~~division.~~ The Deputy Chief Judge of Compensation Claims must
90 possess the minimum qualifications established in s. 440.45(2)
91 and shall report to the director. The division is ~~shall be~~ a
92 separate budget entity, and the director shall be its agency
93 head for all purposes. The Department of Management Services
94 shall provide administrative support and service to the division
95 to the extent requested by the director. The division shall not
96 be subject to control, supervision, or direction by the
97 Department of Management Services in any manner, including, but
98 not limited to, personnel, purchasing, transactions involving
99 real or personal property, and budgetary matters.

100 (2) The Governor and Cabinet shall appoint full-time

101 administrative law judges to conduct hearings in accordance with
102 this chapter. A person may not serve as an administrative law
103 judge unless he or she has been a member of The Florida Bar in
104 good standing for the previous 5 years. An administrative law
105 judge may not engage in the private practice of law during his
106 or her term of office.

107 (a)1. Except as provided in paragraph (b), the Governor
108 and Cabinet shall appoint an administrative law judge from a
109 list of three persons nominated by a statewide nominating
110 commission. The statewide nominating commission shall be
111 composed of three members, at least one of whom must be a
112 minority person as defined in s. 288.703, appointed by the
113 Governor; two members appointed by the Attorney General; two
114 members appointed by the Chief Financial Officer; and two
115 members appointed by the Commissioner of Agriculture.

116 2. Beginning July 1, 2017, the Governor and each member of
117 the Cabinet shall appoint one member to serve a 2-year term and
118 appoint the remaining members to serve 4-year terms. Thereafter,
119 each member shall be appointed for a 4-year term. A vacancy
120 occurring on the commission shall be filled by the original
121 appointing authority for the unexpired balance of the term.

122 3. The meetings and determinations of the nominating
123 commission as to the administrative law judges shall be open to
124 the public.

125 (b) Each administrative law judge shall be appointed for a

126 4-year term, but during his or her term of office may be removed
127 by the Governor and Cabinet for cause. Before the expiration of
128 a judge's term of office, the statewide nominating commission
129 shall review the judge's conduct and determine whether the
130 judge's performance is satisfactory. In determining whether a
131 judge's performance is satisfactory, the commission shall
132 consider the extent to which the judge has met the requirements
133 of this chapter. The commission shall report its finding to the
134 Governor and Cabinet no later than 6 months before the
135 expiration of the judge's term of office. The Governor and
136 Cabinet shall review the commission's report and may reappoint
137 the administrative law judge for an additional 4-year term. If
138 the Governor and Cabinet do not reappoint the judge, the
139 Governor and Cabinet shall inform the commission. The judge
140 shall remain in office until the Governor and Cabinet have
141 appointed a successor judge in accordance with this subsection.
142 If a vacancy occurs during a judge's unexpired term, the
143 commission does not find the judge's performance satisfactory,
144 or the Governor and Cabinet do not reappoint the judge, the
145 Governor and Cabinet shall appoint a successor judge for a 4-
146 year term in accordance with paragraph (a).

147 (c) The Governor and Cabinet shall appoint each
148 administrative law judge by June 30, 2018, for a term beginning
149 on July 1, 2018. For the term beginning on July 1, 2018,
150 administrative law judges shall be appointed in the following

151 manner: 8 judges appointed to a 1-year term; 8 judges appointed
152 to a 2-year term; 8 judges appointed to a 3-year term; and 9
153 judges appointed to a 4-year term. Thereafter, each term of
154 office shall be 4 years.

155 (d) The Division of Administrative Hearings shall maintain
156 33 administrative law judges as they existed on June 30, 2017.
157 Each administrative law judge may continue to serve until June
158 30, 2018, and may be appointed for an additional term under the
159 process for reappointments in paragraph (b).

160 (3)(2) The director has the right to appeal actions by the
161 Executive Office of the Governor that affect amendments to the
162 division's approved operating budget or any personnel actions
163 pursuant to chapter 216 to the Administration Commission, which
164 shall decide such issue by majority vote. The appropriations
165 committees may advise the Administration Commission on the
166 issue. If the President of the Senate and the Speaker of the
167 House of Representatives object in writing to the effects of the
168 appeal, the appeal may be affirmed by the affirmative vote of
169 two-thirds of the commission members present.

170 (4)(3) Each state agency as defined in chapter 216 and
171 each political subdivision shall make its facilities available,
172 at a time convenient to the provider, for use by the division in
173 conducting proceedings pursuant to this chapter.

174 ~~(4) The division shall employ administrative law judges to~~
175 ~~conduct hearings required by this chapter or other law. Any~~

CS/CS/HB 1225

2017

176 | ~~person employed by the division as an administrative law judge~~
177 | ~~must have been a member of The Florida Bar in good standing for~~
178 | ~~the preceding 5 years.~~

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