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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
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The Committee on Governmental Oversight and Accountability  
(Young) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

110.205 Career service; exemptions.—

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

(j) The appointed secretaries and the State Surgeon



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11 General, assistant secretaries, deputy secretaries, and deputy  
12 assistant secretaries of all departments; attorneys who serve as  
13 administrative law judges pursuant to s. 120.65; the executive  
14 directors, assistant executive directors, deputy executive  
15 directors, and deputy assistant executive directors of all  
16 departments; the directors of all divisions and those positions  
17 determined by the department to have managerial responsibilities  
18 comparable to such positions, which positions include, but are  
19 not limited to, program directors, assistant program directors,  
20 district administrators, deputy district administrators, the  
21 Director of Central Operations Services of the Department of  
22 Children and Families, the State Transportation Development  
23 Administrator, the State Public Transportation and Modal  
24 Administrator, district secretaries, district directors of  
25 transportation development, transportation operations,  
26 transportation support, and the managers of the offices of the  
27 Department of Transportation specified in s. 20.23(3)(b). Unless  
28 otherwise fixed by law, the department shall set the salary and  
29 benefits of these positions and the positions of county health  
30 department directors and county health department administrators  
31 of the Department of Health in accordance with the rules of the  
32 Senior Management Service.

33 (r) All positions not otherwise exempt under this  
34 subsection which require as a prerequisite to employment:  
35 licensure as a physician pursuant to chapter 458, licensure as  
36 an osteopathic physician pursuant to chapter 459, licensure as a  
37 chiropractic physician pursuant to chapter 460, including those  
38 positions which are occupied by employees who are exempted from  
39 licensure pursuant to s. 409.352; licensure as an engineer



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40 pursuant to chapter 471, which are supervisory positions; or for  
41 12 calendar months, which require as a prerequisite to  
42 employment that the employee have received the degree of  
43 Bachelor of Laws or Juris Doctor from a law school accredited by  
44 the American Bar Association and thereafter membership in The  
45 Florida Bar, ~~except for any attorney who serves as an~~  
46 ~~administrative law judge pursuant to s. 120.65 or for hearings~~  
47 ~~conducted pursuant to s. 120.57(1)(a)~~. Unless otherwise fixed by  
48 law, the department shall set the salary and benefits for these  
49 positions in accordance with the rules established for the  
50 Selected Exempt Service.

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



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69 therapists licensed under chapter 486, and speech therapists  
70 licensed under part I of chapter 468 are excluded, unless  
71 otherwise collectively bargained.

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

74 120.65 Administrative law judges.—

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

93 (2) The chief administrative law judge shall appoint full-  
94 time administrative law judges to conduct hearings in accordance  
95 with this chapter. A person may not serve as an administrative  
96 law judge unless he or she has been a member of The Florida Bar  
97 in good standing for the previous 5 years. An administrative law



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98 judge may not engage in the private practice of law during his  
99 or her term of office.

100 (a)1. Except as provided in paragraph (b), the chief  
101 administrative law judge shall appoint an administrative law  
102 judge from a list of three persons nominated by a statewide  
103 nominating commission. The statewide nominating commission shall  
104 be composed of three members, at least one of whom must be a  
105 minority person as defined in s. 288.703, appointed by the  
106 Governor; two members appointed by the Attorney General; two  
107 members appointed by the Chief Financial Officer; and two  
108 members appointed by the Commissioner of Agriculture.

109 2. Beginning July 1, 2017, the Governor and each member of  
110 the Cabinet shall appoint one member of the statewide nominating  
111 commission to serve a 2-year term and appoint the remaining  
112 members to serve 4-year terms. Thereafter, each member shall be  
113 appointed for a 4-year term. A vacancy occurring on the  
114 commission shall be filled by the original appointing authority  
115 for the unexpired balance of the term.

116 3. The meetings and determinations of the statewide  
117 nominating commission as to the administrative law judges shall  
118 be open to the public.

119 4. The statewide nominating commission shall be  
120 administratively housed within the division.

121 (b) Each administrative law judge shall be appointed for an  
122 8-year term, but during his or her term of office may be removed  
123 by the chief administrative law judge for cause. Before the  
124 expiration of a judge's term of office, the statewide nominating  
125 commission shall review the judge's conduct and determine  
126 whether the judge's performance is satisfactory. In determining



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127 whether a judge's performance is satisfactory, the commission  
128 shall consider the extent to which the judge has met the  
129 requirements of this chapter. The commission shall report its  
130 finding to the chief administrative law judge no later than 6  
131 months before the expiration of the judge's term of office. The  
132 chief administrative law judge shall review the commission's  
133 report and may reappoint the administrative law judge for an  
134 additional 8-year term. If the chief administrative law judge  
135 does not reappoint the judge, the chief administrative law judge  
136 shall inform the commission. The judge shall remain in office  
137 until the chief administrative law judge has appointed a  
138 successor judge in accordance with this subsection. If a vacancy  
139 occurs during a judge's unexpired term, the commission does not  
140 find the judge's performance satisfactory, or the chief  
141 administrative law judge does not reappoint the judge, the chief  
142 administrative law judge must appoint a successor judge for an  
143 8-year term in accordance with paragraph (a).

144 (c) The chief administrative law judge shall appoint each  
145 administrative law judge by June 30, 2018, for a term beginning  
146 on July 1, 2018. For the term beginning on July 1, 2018,  
147 administrative law judges shall be appointed in the following  
148 manner: eight judges appointed to a 2-year term, eight judges  
149 appointed to a 4-year term, eight judges appointed to a 6-year  
150 term, and nine judges appointed to an 8-year term. Thereafter,  
151 each term of office shall be 8 years. Nothing herein limits a  
152 chief administrative law judge's ability to reappoint an  
153 administrative law judge to additional terms in accordance with  
154 this subsection.

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 additional terms under the  
159 process for reappointments in paragraphs (b) and (c).

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 each  
171 political subdivision shall make its facilities available, at a  
172 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~~  
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.

180  
181 ===== T I T L E A M E N D M E N T =====

182 And the title is amended as follows:

183 Delete everything before the enacting clause  
184 and insert:



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185                                   A bill to be entitled  
186           An act relating to the Division of Administrative  
187           Hearings; amending s. 110.205, F.S.; revising  
188           positions at the division that are exempt from the  
189           Career Service System; amending s. 120.65, F.S.;  
190           requiring the chief administrative law judge to  
191           appoint administrative law judges; prohibiting an  
192           administrative law judge from engaging in the private  
193           practice of law during his or her term of office;  
194           requiring the chief administrative law judge to  
195           appoint administrative law judges from nominees  
196           recommended by a statewide nominating commission;  
197           specifying the composition and term lengths of members  
198           of the commission; providing that meetings and  
199           determinations of the commission be open to the  
200           public; providing that the commission be  
201           administratively housed within the division;  
202           specifying term lengths of administrative law judges;  
203           prescribing procedures for the commission to review a  
204           judge's performance before the expiration of a term;  
205           requiring the chief administrative law judge to take  
206           certain action regarding a judge after the  
207           commission's review; providing for initial  
208           appointments of administrative law judges and  
209           staggered terms; providing transitional provisions;  
210           providing an effective date.