

By the Committees on Judiciary; and Governmental Oversight and Accountability; and Senator Young

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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 chief administrative law judge to
7 appoint administrative law judges; prohibiting an
8 administrative law judge from engaging in the private
9 practice of law during his or her term of office;
10 requiring the chief administrative law judge to
11 appoint administrative law judges from nominees
12 recommended by a statewide nominating commission;
13 specifying the composition and term lengths of members
14 of the commission; providing that meetings and
15 determinations of the commission be open to the
16 public; providing that the commission be
17 administratively housed within the division;
18 specifying term lengths of administrative law judges;
19 prescribing procedures for the commission to review a
20 judge's conduct and performance before the expiration
21 of a term; requiring the chief administrative law
22 judge to take certain action regarding a judge after
23 the commission's review or in the event of a vacancy;
24 providing for initial appointments of administrative
25 law judges and for staggered terms; providing
26 transitional provisions; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Paragraphs (j), (r), and (w) of subsection (2)
31 of section 110.205, Florida Statutes, are amended to read:

32 110.205 Career service; exemptions.—

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

35 (j) The appointed secretaries and the State Surgeon
36 General, assistant secretaries, deputy secretaries, and deputy
37 assistant secretaries of all departments; attorneys who serve as
38 administrative law judges pursuant to s. 120.65; the executive
39 directors, assistant executive directors, deputy executive
40 directors, and deputy assistant executive directors of all
41 departments; the directors of all divisions and those positions
42 determined by the department to have managerial responsibilities
43 comparable to such positions, which positions include, but are
44 not limited to, program directors, assistant program directors,
45 district administrators, deputy district administrators, the
46 Director of Central Operations Services of the Department of
47 Children and Families, the State Transportation Development
48 Administrator, the State Public Transportation and Modal
49 Administrator, district secretaries, district directors of
50 transportation development, transportation operations,
51 transportation support, and the managers of the offices of the
52 Department of Transportation specified in s. 20.23(3)(b). Unless
53 otherwise fixed by law, the department shall set the salary and
54 benefits of these positions and the positions of county health
55 department directors and county health department administrators
56 of the Department of Health in accordance with the rules of the
57 Senior Management Service.

58 (r) All positions not otherwise exempt under this

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59 subsection which require as a prerequisite to employment:
60 licensure as a physician pursuant to chapter 458, licensure as
61 an osteopathic physician pursuant to chapter 459, licensure as a
62 chiropractic physician pursuant to chapter 460, including those
63 positions which are occupied by employees who are exempted from
64 licensure pursuant to s. 409.352; licensure as an engineer
65 pursuant to chapter 471, which are supervisory positions; or for
66 12 calendar months, which require as a prerequisite to
67 employment that the employee have received the degree of
68 Bachelor of Laws or Juris Doctor from a law school accredited by
69 the American Bar Association and thereafter membership in The
70 Florida Bar, ~~except for any attorney who serves as an~~
71 ~~administrative law judge pursuant to s. 120.65 or for hearings~~
72 ~~conducted pursuant to s. 120.57(1)(a).~~ Unless otherwise fixed by
73 law, the department shall set the salary and benefits for these
74 positions in accordance with the rules established for the
75 Selected Exempt Service.

76 (w) Managerial employees, as defined in s. 447.203(4),
77 confidential employees, as defined in s. 447.203(5), and
78 supervisory employees who spend the majority of their time
79 communicating with, motivating, training, and evaluating
80 employees, and planning and directing employees' work, and who
81 have the authority to hire, transfer, suspend, lay off, recall,
82 promote, discharge, assign, reward, or discipline subordinate
83 employees or effectively recommend such action, including all
84 employees serving as supervisors, administrators, and directors.
85 Excluded are employees also designated as special risk or
86 special risk administrative support ~~and attorneys who serve as~~
87 ~~administrative law judges pursuant to s. 120.65 or for hearings~~

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88 ~~conducted pursuant to s. 120.57(1)(a).~~ Additionally, registered
89 nurses licensed under chapter 464, dentists licensed under
90 chapter 466, psychologists licensed under chapter 490 or chapter
91 491, nutritionists or dietitians licensed under part X of
92 chapter 468, pharmacists licensed under chapter 465,
93 psychological specialists licensed under chapter 491, physical
94 therapists licensed under chapter 486, and speech therapists
95 licensed under part I of chapter 468 are excluded, unless
96 otherwise collectively bargained.

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

99 120.65 Administrative law judges.—

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

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117 real or personal property, and budgetary matters.

118 (2) The chief administrative law judge shall appoint full-
119 time administrative law judges to conduct hearings in accordance
120 with this chapter. A person may not serve as an administrative
121 law judge unless he or she has been a member of The Florida Bar
122 in good standing for the previous 5 years. An administrative law
123 judge may not engage in the private practice of law during his
124 or her term of office.

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

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

141 3. The meetings and determinations of the statewide
142 nominating commission as to the administrative law judges shall
143 be open to the public.

144 4. The statewide nominating commission shall be
145 administratively housed within the division.

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146 (b) Each administrative law judge shall be appointed for a
147 4-year term, but during his or her term of office may be removed
148 by the chief administrative law judge for cause. Before the
149 expiration of a judge's term of office, the statewide nominating
150 commission shall review the judge's conduct and determine
151 whether the judge's performance is satisfactory. In determining
152 whether a judge's performance is satisfactory, the commission
153 shall consider the extent to which the judge has met the
154 requirements of this chapter. The commission shall report its
155 finding to the chief administrative law judge no later than 6
156 months before the expiration of the judge's term of office. The
157 chief administrative law judge shall review the commission's
158 report and may reappoint the administrative law judge for an
159 additional 4-year term. If the chief administrative law judge
160 does not reappoint the judge, the chief administrative law judge
161 shall inform the commission. The judge shall remain in office
162 until the chief administrative law judge has appointed a
163 successor judge in accordance with this subsection. If a vacancy
164 occurs during a judge's unexpired term, the commission does not
165 find the judge's performance satisfactory, or the chief
166 administrative law judge does not reappoint the judge, the chief
167 administrative law judge must appoint a successor judge for a 4-
168 year term in accordance with paragraph (a).

169 (c) The chief administrative law judge shall appoint each
170 administrative law judge by June 30, 2018, for a term beginning
171 on July 1, 2018. For the term beginning on July 1, 2018,
172 administrative law judges shall be appointed in the following
173 manner: eight judges appointed to a 1-year term, eight judges
174 appointed to a 2-year term, eight judges appointed to a 3-year

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175 term, and nine judges appointed to a 4-year term. Thereafter,
176 each term of office shall be 4 years. Nothing herein limits a
177 chief administrative law judge's ability to reappoint an
178 administrative law judge to additional terms in accordance with
179 this subsection.

180 (d) The Division of Administrative Hearings shall maintain
181 33 administrative law judges as they existed on June 30, 2017.
182 Each administrative law judge may continue to serve until June
183 30, 2018, and may be appointed for additional terms under the
184 process for reappointments in paragraphs (b) and (c).

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

195 (4)~~(3)~~ Each state agency as defined in chapter 216 and each
196 political subdivision shall make its facilities available, at a
197 time convenient to the provider, for use by the division in
198 conducting proceedings pursuant to this chapter.

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

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