

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER

1 Committee/Subcommittee hearing bill: Government Accountability
2 Committee

3 Representative Fitzenhagen offered the following:

4
5 **Amendment (with title amendment)**

6 Remove line 765 and insert:

7 Section 12. Paragraphs (r) and (w) of subsection (2) of
8 section 110.205, Florida Statutes, are amended to read:

9 110.205 Career service; exemptions.—

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

12 (r) All positions not otherwise exempt under this
13 subsection which require as a prerequisite to employment:
14 licensure as a physician pursuant to chapter 458, licensure as
15 an osteopathic physician pursuant to chapter 459, licensure as a
16 chiropractic physician pursuant to chapter 460, including those

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17 | positions which are occupied by employees who are exempted from
18 | licensure pursuant to s. 409.352; licensure as an engineer
19 | pursuant to chapter 471, which are supervisory positions; or for
20 | 12 calendar months, which require as a prerequisite to
21 | employment that the employee have received the degree of
22 | Bachelor of Laws or Juris Doctor from a law school accredited by
23 | the American Bar Association and thereafter membership in The
24 | Florida Bar, including ~~except for~~ any attorney who serves as an
25 | administrative law judge pursuant to s. 120.65 or for hearings
26 | conducted pursuant to s. 120.57(1)(a). Unless otherwise fixed by
27 | law, the department shall set the salary and benefits for these
28 | positions in accordance with the rules established for the
29 | Selected Exempt Service.

30 | (w) Managerial employees, as defined in s. 447.203(4),
31 | confidential employees, as defined in s. 447.203(5), and
32 | supervisory employees who spend the majority of their time
33 | communicating with, motivating, training, and evaluating
34 | employees, and planning and directing employees' work, and who
35 | have the authority to hire, transfer, suspend, lay off, recall,
36 | promote, discharge, assign, reward, or discipline subordinate
37 | employees or effectively recommend such action, including all
38 | employees serving as supervisors, administrators, and directors.
39 | Excluded are employees also designated as special risk or
40 | special risk administrative support ~~and attorneys who serve as~~
41 | ~~administrative law judges pursuant to s. 120.65 or for hearings~~

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42 ~~conducted pursuant to s. 120.57(1)(a).~~ Additionally, registered
43 nurses licensed under chapter 464, dentists licensed under
44 chapter 466, psychologists licensed under chapter 490 or chapter
45 491, nutritionists or dietitians licensed under part X of
46 chapter 468, pharmacists licensed under chapter 465,
47 psychological specialists licensed under chapter 491, physical
48 therapists licensed under chapter 486, and speech therapists
49 licensed under part I of chapter 468 are excluded, unless
50 otherwise collectively bargained.

51 Section 13. Subsections (1) through (4) of section 120.65,
52 Florida Statutes, are amended to read:

53 120.65 Administrative law judges.—

54 (1) The Division of Administrative Hearings within the
55 Department of Management Services shall be headed by the a
56 director of the Division of Administrative Hearings. The
57 director ~~who~~ shall be appointed by the Administration Commission
58 and must be a full-time administrative law judge employed by the
59 division and confirmed by the Senate. The director, who shall
60 ~~also serve as the chief administrative law judge, and any deputy~~
61 ~~chief administrative law judge must possess the same minimum~~
62 ~~qualifications as the administrative law judges employed by the~~
63 ~~division.~~ The Deputy Chief Judge of Compensation Claims must
64 possess the minimum qualifications established in s. 440.45(2)
65 and shall report to the director. The division is ~~shall be~~ a
66 separate budget entity, and the director shall be its agency

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67 head for all purposes. The Department of Management Services
68 shall provide administrative support and service to the division
69 to the extent requested by the director. The division shall not
70 be subject to control, supervision, or direction by the
71 Department of Management Services in any manner, including, but
72 not limited to, personnel, purchasing, transactions involving
73 real or personal property, and budgetary matters.

74 (2) The Governor and Cabinet shall appoint full-time
75 administrative law judges to conduct hearings in accordance with
76 this chapter. A person may not serve as an administrative law
77 judge unless he or she has been a member of The Florida Bar in
78 good standing for the previous 5 years. An administrative law
79 judge may not engage in the private practice of law during his
80 or her term of office.

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

90 2. Beginning July 1, 2018, the Governor and each member of
91 the Cabinet shall appoint one member to serve a 2-year term and

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92 appoint the remaining members to serve 4-year terms. Thereafter,
93 each member shall be appointed for a 4-year term. A vacancy
94 occurring on the commission shall be filled by the original
95 appointing authority for the unexpired balance of the term.

96 3. The meetings and determinations of the nominating
97 commission as to the administrative law judges shall be open to
98 the public.

99 (b) Each administrative law judge shall be appointed for a
100 4-year term, but during his or her term of office may be removed
101 by the Governor and Cabinet for cause. Before the expiration of
102 a judge's term of office, the statewide nominating commission
103 shall review the judge's conduct and determine whether the
104 judge's performance is satisfactory. In determining whether a
105 judge's performance is satisfactory, the commission shall
106 consider the extent to which the judge has met the requirements
107 of this chapter. The commission shall report its finding to the
108 Governor and Cabinet no later than 6 months before the
109 expiration of the judge's term of office. The Governor and
110 Cabinet shall review the commission's report and may reappoint
111 the administrative law judge for an additional 4-year term. If
112 the Governor and Cabinet do not reappoint the judge, the
113 Governor and Cabinet shall inform the commission. The judge
114 shall remain in office until the Governor and Cabinet have
115 appointed a successor judge in accordance with this subsection.
116 If a vacancy occurs during a judge's unexpired term, the

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117 commission does not find the judge's performance satisfactory,
118 or the Governor and Cabinet do not reappoint the judge, the
119 Governor and Cabinet shall appoint a successor judge for a 4-
120 year term in accordance with paragraph (a).

121 (c) The Governor and Cabinet shall appoint each
122 administrative law judge by June 30, 2019, for a term beginning
123 on July 1, 2019. For the term beginning on July 1, 2019,
124 administrative law judges shall be appointed in the following
125 manner: 8 judges appointed to a 1-year term; 8 judges appointed
126 to a 2-year term; 8 judges appointed to a 3-year term; and 8
127 judges appointed to a 4-year term. Thereafter, each term of
128 office shall be 4 years.

129 (d) The Division of Administrative Hearings shall maintain
130 32 administrative law judges as they existed on June 30, 2018.
131 Each administrative law judge may continue to serve until June
132 30, 2019, and may be appointed for an additional term under the
133 process for reappointments in paragraph (b).

134 (3)-(2) The director has the right to appeal actions by the
135 Executive Office of the Governor that affect amendments to the
136 division's approved operating budget or any personnel actions
137 pursuant to chapter 216 to the Administration Commission, which
138 shall decide such issue by majority vote. The appropriations
139 committees may advise the Administration Commission on the
140 issue. If the President of the Senate and the Speaker of the
141 House of Representatives object in writing to the effects of the

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142 appeal, the appeal may be affirmed by the affirmative vote of
143 two-thirds of the commission members present.

144 ~~(4)-(3)~~ Each state agency as defined in chapter 216 and
145 each political subdivision shall make its facilities available,
146 at a time convenient to the provider, for use by the division in
147 conducting proceedings pursuant to this chapter.

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

153 Section 14. This act shall take effect July 1, 2018.

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155 **T I T L E A M E N D M E N T**

156 Remove lines 52-53 and insert:

157 F.S.; conforming cross-references; amending s. 110.205, F.S.;

158 revising positions at the division that are exempt from the

159 Career Service System; amending s. 120.65, F.S.; requiring the

160 Administration Commission to select from full-time

161 administrative law judges employed with the division in

162 appointing a division director; removing the requirement that

163 the division director is subject to Senate confirmation;

164 deleting provisions regarding minimum qualifications of the

165 division director and deputy chief administrative law judges;

166 prohibiting an administrative law judge from engaging in the

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Bill No. CS/HB 941 (2018)

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167 private practice of law during his or her term of office;
168 requiring the Governor and Cabinet to appoint administrative law
169 judges from nominees recommended by a statewide nominating
170 commission unless otherwise provided; specifying the composition
171 and term lengths of members of the commission; providing that
172 meetings and determinations of the commission are open to the
173 public; specifying term lengths of administrative law judges;
174 prescribing procedures for the commission to review a judge's
175 performance before the expiration of a term; requiring the
176 Governor and Cabinet to take certain action regarding a judge
177 after the commission's review; providing for initial
178 appointments of administrative law judges and staggered terms;
179 providing transitional provisions; providing an effective date.