

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1225 Division of Administrative Hearings  
**SPONSOR(S):** Oversight, Transparency & Administration Subcommittee; Fitzenhagen  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1352

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	12 Y, 3 N, As CS	Whittaker	Harrington
2) Government Operations & Technology Appropriations Subcommittee	9 Y, 4 N	Keith	Topp
3) Government Accountability Committee			

### SUMMARY ANALYSIS

Administrative law judges (ALJs) preside over disputes arising under the Administrative Procedure Act and other state laws in which the substantial interests of a person are determined by an agency and which involve a disputed issue of material fact. Each ALJ is employed by the Division of Administrative Hearings (DOAH), which is headed by a director who also serves as chief ALJ. The director must be appointed by the Administration Commission and confirmed by the Senate. ALJs are not specifically exempt from the Career Service System; therefore, they are classified as Career Service employees.

The bill requires the director of DOAH to be a full-time ALJ employed by DOAH. The bill also removes the requirement for the director to be confirmed by the Senate.

The bill requires full-time ALJs to be appointed by the Governor from a list of three individuals nominated by a statewide nominating commission. The bill specifies the composition of the commission and the process by which the members of the commission must be appointed. The bill also establishes a process by which the Governor must appoint or reappoint ALJs and specifies the length of ALJs' terms of office. The bill requires DOAH to maintain the 33 ALJ positions as they exist on June 30, 2017, and allows each ALJ to continue to serve until June 30, 2018. Each ALJ currently serving may be appointed under the reappointment process.

Lastly, the bill repeals the provisions that exclude attorneys who serve as ALJs from the Career Service exemption, thereby classifying ALJs as Selected Exempt employees.

The bill will have an insignificant fiscal impact on expenditures of the Division of Administrative Hearings and the state. The bill does not appear to have a fiscal impact on local governments.

The bill has an effective date of July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

###### Administrative Law Judges

Administrative law judges (ALJs) preside over disputes arising under the Administrative Procedure Act (APA)<sup>1</sup> and other state laws in which the substantial interests of a person are determined by an agency<sup>2</sup> and which involve a disputed issue of material fact.<sup>3</sup> When a state agency proposes to take some action that is adverse to a person, the affected person is normally entitled to request an administrative hearing to determine the matter.<sup>4</sup>

Each ALJ is employed by the Division of Administrative Hearings (DOAH) and must have been a member of The Florida Bar in good standing for the preceding 5 years.<sup>5</sup> DOAH is administratively housed under the Department of Management Services (DMS); however, DOAH is not subject to the control, supervision, or direction of DMS. The head of DOAH is a director who also serves as chief ALJ. The director must be appointed by the Administration Commission<sup>6</sup> and confirmed by the Senate. The director and any deputy chief ALJ must possess the same minimum qualifications as the ALJs employed by DOAH.<sup>7</sup>

Currently, when a vacancy occurs for an ALJ, a posting is made on PeopleFirst, the human resources website for the state of Florida. Applications are screened by DOAH through an internal committee process. The internal committee members are appointed by the chief judge, and the chief judge heads the committee. Committee member opinions carry significant weight regarding which candidates to select, but the ultimate decision is made by the chief judge.<sup>8</sup>

###### Career Service System

Chapter 110, F.S., establishes the state's personnel management system. The system must provide means to recruit, select, train, develop, and maintain an effective and responsible workforce and must

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<sup>1</sup> Chapter 120, F.S.

<sup>2</sup> The term "agency" means the following officers or governmental entities if acting pursuant to powers other than those derived from the Constitution:

(a) The Governor; each state officer and state department, and each departmental unit described in s. 20.04, F.S.; the Board of Governors of the State University System; the Commission on Ethics; the Fish and Wildlife Conservation Commission; a regional water supply authority; a regional planning agency; a multicounty special district, but only if a majority of its governing board is comprised of nonelected persons; educational units; and each entity described in chs. 163, 373, 380, and 582, F.S., and s. 186.504, F.S.

(b) Each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county.

(c) Each officer and governmental entity in the state having jurisdiction in one county or less than one county, to the extent they are expressly made subject to this chapter by general or special law or existing judicial decisions.

This definition does not include a municipality or legal entity created solely by a municipality; a legal entity or agency created in whole or in part pursuant to part II of ch. 361, F.S.; a metropolitan planning organization created pursuant to s. 339.175, F.S.; a separate legal or administrative entity created pursuant to s. 339.175, F.S., of which a metropolitan planning organization is a member; an expressway authority pursuant to ch. 348, F.S. or any transportation authority or commission under ch. 343, F.S., or ch. 349, F.S.; or a legal or administrative entity created by an interlocal agreement pursuant to s. 163.01(7), F.S., unless any party to such agreement is otherwise an agency pursuant to this definition. Section 120.52(1), F.S.

<sup>3</sup> Section 120.65(4), F.S.

<sup>4</sup> DOAH, *Representing Yourself Before the Division of Administrative Hearings*, <https://www.doah.state.fl.us/ALJ/RepYourself.pdf> (last visited March 11, 2017).

<sup>5</sup> Section 120.65(4), F.S.

<sup>6</sup> The Administration Commission is part of the Executive Office of the Governor and is comprised of the Governor and Cabinet. Section 14.202, F.S.

<sup>7</sup> Section 120.65(1), F.S.

<sup>8</sup> Telephone conversation with DOAH staff, March 15, 2017.

include policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, benefits, discipline, discharge, employee performance evaluations, affirmative action, and other related activities.<sup>9</sup>

DMS is charged with establishing and maintaining a classification and compensation program addressing Career Service, Selected Exempt Service, and Senior Management Service positions.<sup>10</sup> The classification of a position determines the types of benefits assigned to the position and the compensation and collective bargaining status of the position. A position must be classified as Career Service unless it is specifically exempted by statute.<sup>11</sup>

A Career Service employee who has satisfactorily completed at least a one-year probationary period may only be suspended or dismissed for cause. Cause includes poor performance, negligence, inefficiency or inability to perform assigned duties, insubordination, violation of the provisions of law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or conviction of any crime.<sup>12</sup> Career Service employees that have completed the probationary period are also entitled to a grievance process<sup>13</sup> and have the right to appeal a suspension, reduction in pay, demotion, involuntary transfer of more than 50 miles by highway, or dismissal.<sup>14</sup>

Selected Exempt Service is a separate system of personnel administration for positions that are exempt from the Career Service System.<sup>15</sup> Employees in the Selected Exempt Service serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the agency head.<sup>16</sup> The Selected Exempt Service provides greater pay and benefits overall than are provided for Career Service employees, but less pay and benefits overall than are provided for the Senior Management Service.<sup>17</sup>

Current law exempts from the Career Service System all positions that require as a prerequisite to employment the receipt of a Bachelor of Laws or Juris Doctor degree from a law school accredited by the American Bar Association and thereafter membership in The Florida Bar. However, attorneys who serve as ALJs within DOAH are specifically excluded from this exemption; therefore, they are classified as Career Service employees.<sup>18</sup>

### **Effect of the Bill**

The bill requires the director of DOAH to be a full-time ALJ employed by DOAH. The bill also removes the requirement for the director to be confirmed by the Senate.

In addition, the bill requires full-time ALJs to be appointed by the Governor and prohibits an ALJ from engaging in the private practice of law during his or her term of office. The Governor must appoint an ALJ from a list of three individuals nominated by a statewide nominating commission.

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<sup>9</sup> Section 110.105(1), F.S.

<sup>10</sup> Section 110.2035(1), F.S.

<sup>11</sup> Section 110.205(1), F.S.

<sup>12</sup> Section 110.227(1), F.S.

<sup>13</sup> Section 110.227(4), F.S.

<sup>14</sup> Section 110.227(5) and (6), F.S.

<sup>15</sup> Section 110.602, F.S.

<sup>16</sup> Section 110.604, F.S.

<sup>17</sup> See s. 110.603, F.S.

<sup>18</sup> Section 110.205(2)(r), F.S.

The commission must be composed of the following members:

- Three members appointed by the Governor, at least one of whom must be a minority person as defined in s. 288.703, F.S.;
- Two members appointed by the Attorney General;
- Two members appointed by the Chief Financial Officer; and
- Two members appointed by the Commissioner of Agriculture.

Beginning July 1, 2017, the Governor and each member of the Cabinet must appoint one member to serve a two-year term and appoint the remaining members to serve four-year terms. Thereafter, each member must be appointed for a four-year term. If a vacancy occurs on the commission, it must be filled by the original appointing authority for the unexpired balance of the term.

The bill requires the meetings and determinations of the commission as to the ALJs to be open to the public.

The bill requires each ALJ to be appointed for a four-year term, but authorizes the Governor to remove an ALJ during his or her term of office for cause.

Prior to the expiration of an ALJ's term of office, the commission must review the judge's conduct and determine whether the ALJ's performance is satisfactory. In determining whether an ALJ's performance is satisfactory, the commission must consider the extent to which the ALJ has met the requirements of the APA. The commission must report its findings to the Governor at least six months before the ALJ's term expires. The Governor must review the commission's report and may reappoint the ALJ for an additional four-year term. If the Governor does not reappoint the ALJ, the Governor must inform the commission. The ALJ must remain in office until the Governor appoints a successor. If a vacancy occurs during an ALJ's unexpired term, if the commission does not find the ALJ's performance satisfactory, or if the Governor does not reappoint the ALJ, the Governor must appoint a successor judge for a four-year term in accordance with the process described above.

The Governor must appoint each ALJ by June 30, 2018, for a term beginning on July 1, 2018. For the term beginning on July 1, 2018, ALJs must be appointed in the following manner:

- Eight ALJs appointed to a one-year term;
- Eight ALJs appointed to a two-year term;
- Eight ALJs appointed to a three-year term; and
- Nine ALJs appointed to a four-year term.

Thereafter, each term of office must be four years.

The bill requires DOAH to maintain the 33 ALJ positions as they exist on June 30, 2017, and allows each ALJ to continue to serve until June 30, 2018. Each ALJ currently serving may be appointed under the reappointment process.

Lastly, the bill repeals the provisions that exclude attorneys who serve as ALJs from the Career Service exemption for other attorney positions, thereby classifying ALJs as Selected Exempt employees.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 110.205, F.S., related to Career Service; exemptions.

Section 2. Amends s. 120.65, F.S., related to ALJs.

Section 3. Provides an effective date of July 1, 2017.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will have an insignificant fiscal impact to expenditures of the Division of Administrative Hearings. Provisions of the bill reclassify ALJs as Select Exempt employees, creating minor changes to currently received benefits. The impact associated with reclassifying current ALJs as Select Exempt is estimated to cost approximately \$1,600, which can be absorbed within current resources.

The bill creates a statewide nominating commission to review and report on ALJs, but is silent as to who will provide for the cost of any of the commission's expenses. However, administrative expenses for the newly created statewide nominating commission, for review and compilation of reports, will likely be insignificant.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 20, 2017, the Oversight, Transparency and Administration Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The strike all amendment includes the following changes:

- Clarifies that ALJs are exempt from the career service system.
- Removes the prohibition that certain attorneys who appear before ALJs may not serve on the statewide nominating commission.

This analysis is drafted to the committee substitute as approved by the Oversight, Transparency and Administration Subcommittee.