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LEGISLATIVE ACTION

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| Senate | . | House |
| Comm: RCS | . | |
| 03/02/2012 | . | |
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The Committee on Budget (Gaetz) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Legislative findings.—The Legislature finds
that:

(1) For the preservation of liberty and the protection of individual rights, the people of the State of Florida adopted a republican form of government delegating and limiting sovereign power to be exercised by their representatives in three separate, but equal, branches: the legislative branch, the executive branch, and the judicial branch.

(2) By Article IV of the State Constitution the people



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14 vested supreme executive power in the Governor and apportioned
15 specific substantive powers among the other elected officers
16 designated in that Article, including the Lieutenant Governor,
17 the Attorney General, the Chief Financial Officer, and the
18 Commissioner of Agriculture.

19 (3) As noted by Alexander Hamilton: "Energy in the
20 executive is a leading character in the definition of good
21 government A feeble executive implies a feeble execution of
22 the government. A feeble execution is but another phrase for a
23 bad execution: And a government ill executed, whatever it may be
24 in theory, must be in practice a bad government."

25 (4) Since the framing of Florida's first constitution in
26 1838, the people have adhered to the principles expressed by Mr.
27 Hamilton in the vesting of supreme executive power directly in
28 the Governor but choosing to vest other specific executive
29 powers directly in other denominated officials or entities.

30 (5) In uninterrupted consistency with their longstanding
31 vesting of the supreme executive power in the Governor, the
32 people in 1968 adopted s. 6, Article IV of the State
33 Constitution, generally directing and limiting the Legislature
34 to allot the functions of the executive branch among not more
35 than 25 departments and to place the administration of each
36 department under the direct supervision of the Governor, the
37 Lieutenant Governor, the Governor and Cabinet, a Cabinet member,
38 or an officer or board appointed by and serving at the pleasure
39 of the Governor.

40 (6) Each officer of state government is obligated to
41 construe the language of the State Constitution consistent with
42 its express and clearly implied intent, must give words their



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43 ordinary and customary meaning unless the context indicates
44 otherwise, must construe all parts together to give them their
45 full effect, and must not construe the terms of the State
46 Constitution to yield an absurd result.

47 (7) Under the authority of s. 6, Article IV of the State
48 Constitution, the Legislature adopted and the Governor signed
49 into law chapter 69-106, Laws of Florida, which restructured the
50 executive branch into not more than 25 departments and
51 designated their direct administration.

52 (8) At the time of adopting chapter 69-106, Laws of
53 Florida, the Legislature was informed by the debate in the 41st
54 Legislature (under the Constitution of 1885) about the text for
55 s. 6, Article IV for the proposed State Constitution, that the
56 41st Legislature expressly considered and expressly rejected
57 alternative proposals which would have required general law to
58 provide supervisory authority to elected constitutional officers
59 over the policies of executive departments, and that in
60 submitting the 1968 State Constitution to the people, their
61 Legislature intended the proposal to ensure that the
62 administration and policies of each executive branch department
63 would be under the final authority and control either of the
64 Governor or one or more elected constitutional officers.

65 (9) Construing together ss. 1(a) and 6, Article IV of the
66 State Constitution, the Legislature at all times understood that
67 these sections create a general legal presumption against the
68 creation of a class of unelected, subordinate officers
69 exercising executive power independent of the direction and
70 supervision of the Governor or one or more specified elected
71 constitutional officers.



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72 (10) Section 6, Article IV of the State Constitution has
73 not been amended since its ratification by the people on
74 November 5, 1968.

75 (11) An officer appointed by and serving at the pleasure of
76 the Governor to administer a department exercises a portion of
77 the sovereign power assigned under the State Constitution to the
78 executive branch. Such appointees remain subject to the
79 direction and supervision of one or more elected constitutional
80 officers who have the ultimate accountability to the people for
81 the faithful discharge of such responsibility.

82 (12) Regarding the Governor's accountability for the
83 supervision and direction of those appointed officers serving at
84 the pleasure of the Governor, the Legislature is informed by the
85 following analysis:

86 (a) As opined by Justice Polston: "(T)he Governor has the
87 constitutional authority to act as this State's chief
88 administrative officer as well as the constitutional duty to
89 faithfully execute this State's laws and to manage and hold
90 agencies under his charge accountable to State laws, including
91 the APA. (The Supreme) Court has explained that '[t]he Governor
92 is given broad authority to fulfill his duty in taking "care
93 that the laws be faithfully executed."'"

94 (b) As opined by Chief Justice Canady: "(I) f 'supreme
95 executive power' means anything, it must mean that the Governor
96 can supervise and direct the policymaking choices - within the
97 range of choices permitted by law - of the subordinate executive
98 branch officers who serve at his pleasure."

99 (13) The Legislature has not expressly insulated
100 discretionary executive policy decisions from the constitutional



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101 structure of accountability to elected officials established in
102 Article IV of the State Constitution.

103 (14) Pertaining to the exercise of delegated rulemaking
104 authority, the Legislature is informed by the following:

105 (a) The exercise of delegated quasi-legislative power
106 within the parameters of Florida's Administrative Procedure Act
107 and related statutes involves certain discretionary policy
108 choices by executive branch officers. In authorizing the
109 exercise of this power, the Legislature has imposed no
110 restriction on the authority of the Governor or any other
111 constitutional officer or collegial body to supervise and direct
112 such policy choices made by subordinate executive branch
113 officials in rulemaking.

114 (b) Florida law provides no specific process for carrying
115 out the Governor's executive duties with respect to holding his
116 executive agencies accountable in their rulemaking functions.

117 (c) As correctly opined by Chief Justice Canady: "Given the
118 constitutional structure establishing the power and
119 responsibilities of the Governor, it is unjustified to conclude
120 ... that by assigning rulemaking power to agency heads, the
121 Legislature implicitly divested the Governor of the supervisory
122 power with respect to executive officials who serve at his
123 pleasure."

124 (d) A Governor's actions are presumed to be in accord with
125 the duties of that office.

126 (15) A statutory definition of "agency head" is neither
127 intended nor effective to change the fundamental general
128 principles of Article IV of the State Constitution:

129 (a) That executive branch power may only be exercised under



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130 the direct or indirect supervision of one or more elected
131 constitutional officers; and

132 (b) That the supervision of any executive agency not
133 expressly allocated to one or more particular constitutional
134 officers remains under the Governor's supreme executive power.

135 (16) The Administrative Procedure Act is a uniform
136 procedural statute ensuring full public access and participation
137 in any exercise of delegated legislative authority by executive
138 branch entities.

139 (17) The delegation of rulemaking authority by substantive
140 statute and establishment of uniform procedures under the
141 Administrative Procedure Act were intended and made by the
142 Legislature to conform and comply with the separation of powers
143 required under s. 3, Article II of the State Constitution, with
144 no general intrusion into the role and authority of the elected
145 executive branch officers as established in Article IV of the
146 State Constitution.

147 (18) Continual review and assessment of existing and
148 proposed regulations is reasonably necessary to ensure that the
149 laws of the state are faithfully executed without unduly
150 burdening the state's economy and imposing needless costs and
151 requirements on citizens, businesses, and local governments.

152 (19) Fiscal accountability by all agencies is reasonably
153 necessary to ensure integrity in state government.

154 (20) While agency heads and personnel bring expertise to a
155 particular subject matter, they are not directly accountable to
156 the electorate and do not necessarily have an incentive to take
157 a systemic approach to regulatory problems, to budget
158 constraints, or to the overall regulatory burden imposed by the



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159 state on citizens and businesses.

160 (21) The elected constitutional officers have a democratic
161 mandate, are directly accountable to the people, and have the
162 duty and power to assess the overall legality, efficiency, and
163 operation of government within their constitutional and
164 statutory jurisdictions.

165 (22) Review and oversight of agency rulemaking is
166 encompassed by the Governor's powers and duties under the State
167 Constitution to "take care that the laws be faithfully executed"
168 and to serve as "the chief administrative officer of the state
169 responsible for the planning and budgeting for the state."

170 (23) The State Constitution and the Florida Statutes
171 establish that many agencies of state government are
172 administered by an officer "appointed by and serving at the
173 pleasure of the governor," and in order to determine whether an
174 officer shall continue to serve at the Governor's pleasure, it
175 is necessary for the Governor to set expectations and standards
176 for that officer and to measure agency performance against those
177 expectations and standards.

178 (24) Executive Orders 11-01 and 11-72 established the
179 Office of Fiscal Accountability and Regulatory Reform (OFARR) to
180 ensure that agency rules (proposed and existing) are efficient,
181 are not overly burdensome, and faithfully adhere to statutes as
182 enacted by the Legislature.

183 (25) Upon establishment of OFARR, all agencies under the
184 direction of the Governor were required to obtain OFARR review
185 and approval before developing new rules or amending or
186 repealing existing rules.

187 (a) OFARR's review process has facilitated the Governor's



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188 exercise of the power and duty to serve as the chief executive
189 and administrative officer of the state.

190 (b) OFARR's review process has facilitated the Governor's
191 planning and budgeting for the state.

192 (c) OFARR has reviewed thousands of rules and regulations
193 and helped agencies identify over 1,000 unnecessary and
194 unauthorized rules and regulations for repeal.

195 (d) Since January 4, 2011, OFARR has reviewed hundreds of
196 proposed agency rulemaking actions.

197 (e) OFARR's review process has thus far been successful in
198 helping to ensure efficient and effective performance by state
199 government.

200 (26) The Supreme Court of Florida, in the case of *Whiley v.*
201 *Scott*, No. SC11-592, issued an unsigned opinion joined by five
202 Justices, which held that Executive Orders 11-01 and 11-72
203 "impermissibly suspended agency rulemaking to the extent that
204 [they] included a requirement that [OFARR] must first permit an
205 agency to engage in the rulemaking which has been delegated by
206 the Florida Legislature."

207 (a) The majority opinion in *Whiley*:

208 1. Failed to address and apply the plain meaning of ss. 1
209 and 6 of Article IV of the State Constitution, and thereby may
210 be read to restrain the power of the Governor under general law
211 with respect to the supervision of agency heads;

212 2. Failed to address the implications of the court's
213 precedent in *Jones v. Chiles*, 638 So. 2d 48 (Fla. 1994), which
214 recognized the proper scope of executive power under the State
215 Constitution;

216 3. Failed to address the precedent set by dozens of



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217 executive orders issued by prior governors of Florida;

218 4. Failed to address the court's holding that "[t]he
219 principles underlying the governmental separation of powers
220 antedate our Florida Constitution and were collectively adopted
221 by the union of states in our federal constitution," Chiles v.
222 Children A, B, C, D, E, & F, 589 So. 2d 260 (Fla. 1991), and in
223 light of that precedent, failed to consider that Executive
224 Orders 11-01 and 11-72 cannot be meaningfully distinguished from
225 similar executive orders issued by the last four presidents of
226 the United States and the governors of at least 29 other states;
227 and

228 5. Unreasonably relied on a 1983 Attorney General Opinion,
229 which the Attorney General distinguished and limited to its
230 facts in an amicus brief in Whiley.

231 (b) The dissenting opinions of two justices in the Whiley
232 case state the correct interpretation of the State Constitution
233 and present persuasive reasoning and arguments in support of
234 that interpretation.

235 (c) The Supreme Court withheld the writ sought by Whiley.

236 (d) Notwithstanding the above, the majority opinion in
237 Whiley is to be afforded the deference due an advisory opinion
238 of the Supreme Court of Florida because no writ or other final
239 order was entered beyond a mere declaration of law.

240 Section 2. Executive Orders 11-72 and 11-211 are affirmed
241 to be consistent with state law and the public policy of the
242 state.

243 Section 3. The Legislature intends that the amendments to
244 ss. 20.02, 20.03, and 20.05, Florida Statutes, made by this act,
245 which apply to the organizational structure of the executive



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246 branch, and the creation of s. 120.515, Florida Statutes, and
247 the amendment to s. 120.52, Florida Statutes, made by this act,
248 which apply to administrative procedure, are to clarify that the
249 placement of an executive department under the direct
250 administration of an officer or board appointed by and serving
251 at the pleasure of the Governor does not implicitly limit or
252 restrict the Governor's prerogative, legal authority, and
253 constitutional responsibility to direct and supervise the
254 execution of the law and the exercise of lawful discretion and
255 are intended to abolish any implication that unelected agency
256 heads have statutory authority independent from the direction
257 and supervision of the Governor, except as may be clearly,
258 expressly and specifically provided by general law.

259 Section 4. Subsections (3) through (7) of section 20.02,
260 Florida Statutes, are renumbered as subsections (4) through (8),
261 respectively, and a new subsection (3) is added to that section
262 to read:

263 20.02 Declaration of policy.—

264 (3) Unless otherwise expressly provided in this chapter,
265 the administration of any executive branch department or entity
266 placed under the direct supervision of an officer or board
267 appointed by and serving at the pleasure of the Governor shall
268 remain at all times under the constitutional executive authority
269 of the Governor, in accordance with ss. 1(a) and 6, Art. IV of
270 the State Constitution, and, except as may be expressly and
271 specifically provided by law, such officer or board is subject
272 to oversight, direction, and supervision by the Governor.

273 Section 5. Subsections (4) and (5) of section 20.03,
274 Florida Statutes, are amended, and subsection (13) is added to



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275 that section, to read:

276 20.03 Definitions.—To provide uniform nomenclature
277 throughout the structure of the executive branch, the following
278 definitions apply:

279 (4) "Head of the department" means the individual under
280 whom or the board under which direct administration ~~in charge~~ of
281 the department is placed by statute. Where direct administration
282 of a department is placed under an officer or board appointed by
283 and serving at the pleasure of the Governor, that officer or
284 board remains subject to the Governor's supervision and
285 direction.

286 (5) "Secretary" means an individual who is appointed by the
287 Governor to head a department and who is not otherwise named in
288 the State Constitution.

289 (13) "To serve at the pleasure" means the appointee serves
290 in the office until removed by the appointing authority.
291 Consistent with the allotment of executive authority under ss. 1
292 and 6, Art. IV of the State Constitution, an appointee serving
293 at the pleasure of the appointing authority remains subject to
294 the direction and supervision of the appointing authority and
295 does not exercise any executive power independent therefrom,
296 except as is clearly, expressly, and specifically provided by
297 law. Unless otherwise expressly provided by law, the exercise of
298 statutory authority by such appointee does not require the
299 approval of the appointing authority and may not be invalidated
300 by a contrary directive from the appointing authority.

301 Section 6. Subsection (1) of section 20.05, Florida
302 Statutes, is amended to read:

303 20.05 Heads of departments; powers and duties.—



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304 (1) Each head of a department, subject to the allotment of
305 executive power under Article IV of the State Constitution, and
306 except as otherwise provided by law, must:

307 (a) Plan, direct, coordinate, and execute the powers,
308 duties, and functions vested in that department or vested in a
309 division, bureau, or section of that department; powers and
310 duties assigned or transferred to a division, bureau, or section
311 of the department must not be construed to limit this authority
312 and this responsibility;

313 (b) Have authority, without being relieved of
314 responsibility, to execute any of the powers, duties, and
315 functions vested in the department or in any administrative unit
316 thereof through administrative units and through assistants and
317 deputies designated by the head of the department from time to
318 time, unless the head of the department is explicitly required
319 by law to perform the same without delegation;

320 (c) Compile annually a comprehensive program budget
321 reporting all program and fiscal matters related to the
322 operation of his or her department, including each program,
323 subprogram, and activity, and other matters as required by law;

324 (d) Reimburse the members of advisory bodies, commissions,
325 and boards of trustees for their actual and necessary expenses
326 incurred in the performance of their duties in accordance with
327 s. 112.061;

328 (e) Subject to the requirements of chapter 120, exercise
329 existing authority to adopt rules pursuant and limited to the
330 powers, duties, and functions transferred to the department;

331 (f) Exercise authority on behalf of the department to
332 accept gifts, grants, bequests, loans, and endowments for



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333 purposes consistent with the powers, duties, and functions of
334 the department. All such funds must be deposited in the State
335 Treasury and appropriated by the Legislature for the purposes
336 for which they were received by the department;

337 (g) If a department is under the direct supervision of a
338 board, including a board consisting of the Governor and Cabinet,
339 however designated, employ an executive director to serve at its
340 pleasure; and

341 (h) Make recommendations concerning more effective internal
342 structuring of the department to the Legislature. Unless
343 otherwise required by law, such recommendations must be provided
344 to the Legislature at least 30 days before the first day of the
345 regular session at which they are to be considered, when
346 practicable.

347 Section 7. Section 120.515, Florida Statutes, is created to
348 read:

349 120.515 Declaration of policy.—This chapter provides
350 uniform procedures for the exercise of specified authority. This
351 section does not limit or impinge upon the assignment of
352 executive power under Article IV of the State Constitution or
353 the legal authority of an appointing authority to direct and
354 supervise those appointees serving at the pleasure of the
355 appointing authority. For purposes of this chapter, adherence to
356 the direction and supervision of an appointing authority does
357 not constitute delegation or transfer of statutory authority
358 assigned to the appointee.

359 Section 8. Subsection (3) of section 120.52, Florida
360 Statutes, is amended to read:

361 120.52 Definitions.—As used in this act:



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362 (3) "Agency head" means the person or collegial body in a
363 department or other governmental unit statutorily responsible
364 for final agency action. While an agency head appointed by and
365 serving at the pleasure of an appointing authority remains
366 subject to the direction and supervision of the appointing
367 authority, actions taken by the agency head as authorized by
368 statute are official acts.

369 Section 9. Paragraphs (j) and (k) of subsection (5) of
370 section 11.242, Florida Statutes, are redesignated as paragraphs
371 (k) and (l), respectively, and a new paragraph (j) is added to
372 that subsection to read:

373 11.242 Powers, duties, and functions as to statutory
374 revision.—The powers, duties, and functions of the Office of
375 Legislative Services in the operation and maintenance of a
376 statutory revision program shall be as follows:

377 (5) In carrying on the work of statutory revision and in
378 preparing the Florida Statutes for publication:

379 (j) All statutes and laws, or parts thereof, which grant
380 duplicative, redundant, or unused rulemaking authority, shall be
381 omitted through the process of reviser's bills duly enacted by
382 the Legislature. Rulemaking authority shall be deemed unused if
383 the provision has been in effect for more than 5 years and no
384 rule has been promulgated in reliance thereon.

385 Section 10. Subsection (3) of section 14.34, Florida
386 Statutes, is repealed.

387 Section 11. Subsection (7) of section 15.16, Florida
388 Statutes, is amended to read:

389 15.16 Reproduction of records; admissibility in evidence;
390 electronic receipt and transmission of records; certification;



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391 acknowledgment.-

392 (7) The Secretary of State may issue apostilles conforming
393 to the requirements of the international treaty known as the
394 Hague Convention of 1961 and may charge a fee for the issuance
395 of apostilles not to exceed \$10 per apostille. The Secretary of
396 State has the sole authority in this state to establish, in
397 accordance with the laws of the United States, the requirements
398 and procedures for the issuance of apostilles. ~~The Department of
399 State may adopt rules to implement this subsection.~~

400 Section 12. Subsection (7) of section 15.18, Florida
401 Statutes, is repealed.

402 Section 13. Paragraph (a) of subsection (3) of section
403 16.60, Florida Statutes, is amended to read:

404 16.60 Public records mediation program within the Office of
405 the Attorney General; creation; duties.-

406 (3) The Office of the Attorney General shall:

407 (a) Employ one or more mediators to mediate disputes
408 involving access to public records. A person may not be employed
409 by the department as a mediator unless that person is a member
410 in good standing of The Florida Bar. ~~The Office of the Attorney
411 General may adopt rules of procedure to govern its mediation
412 proceedings.~~

413 Section 14. Subsection (2) of section 17.0416, Florida
414 Statutes, is repealed.

415 Section 15. Subsection (3) of section 17.59, Florida
416 Statutes, is repealed.

417 Section 16. Section 25.371, Florida Statutes, is repealed.

418 Section 17. Section 28.43, Florida Statutes, is repealed.

419 Section 18. Section 35.07, Florida Statutes, is repealed.



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420 Section 19. Subsection (11) of section 39.001, Florida
421 Statutes, is repealed.

422 Section 20. Subsection (2) of section 39.0137, Florida
423 Statutes, is amended to read:

424 39.0137 Federal law; rulemaking authority.-

425 (2) ~~The department shall adopt rules no later than July 1,~~
426 ~~2007, to ensure that the provisions of these federal laws are~~
427 ~~enforced in this state.~~ The department is encouraged to enter
428 into agreements with recognized American Indian tribes in order
429 to facilitate the implementation of the Indian Child Welfare
430 Act.

431 Section 21. Subsection (1) of section 39.824, Florida
432 Statutes, is repealed.

433 Section 22. Subsection (3) of section 63.167, Florida
434 Statutes, is amended to read:

435 63.167 State adoption information center.-

436 (3) The department shall ensure equitable distribution of
437 referrals to licensed child-placing agencies, ~~and may promulgate~~
438 ~~rules as necessary for the establishment and operation of the~~
439 ~~state adoption information center.~~

440 Section 23. Section 88.9051, Florida Statutes, is repealed.

441 Section 24. Section 97.026, Florida Statutes, is amended to
442 read:

443 97.026 Forms to be available in alternative formats and via
444 the Internet.-It is the intent of the Legislature that all forms
445 required to be used in chapters 97-106 shall be made available
446 upon request, in alternative formats. Such forms shall include
447 absentee ballots as alternative formats for such ballots become
448 available and the Division of Elections is able to certify



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449 systems that provide them. ~~The department may, pursuant to ss.~~
450 ~~120.536(1) and 120.54, adopt rules to administer this section.~~
451 Whenever possible, such forms, with the exception of absentee
452 ballots, shall be made available by the Department of State via
453 the Internet. Sections that contain such forms include, but are
454 not limited to, ss. 97.051, 97.052, 97.053, 97.057, 97.058,
455 97.0583, 97.071, 97.073, 97.1031, 98.075, 99.021, 100.361,
456 100.371, 101.045, 101.171, 101.20, 101.6103, 101.62, 101.64,
457 101.65, 101.657, 105.031, 106.023, and 106.087.

458 Section 25. Section 97.0555, Florida Statutes, is amended
459 to read:

460 97.0555 Late registration.—An individual or accompanying
461 family member who has been discharged or separated from the
462 uniformed services or the Merchant Marine, or from employment
463 outside the territorial limits of the United States, after the
464 book-closing date for an election pursuant to s. 97.055 and who
465 is otherwise qualified may register to vote in such election
466 until 5 p.m. on the Friday before that election in the office of
467 the supervisor of elections. Such persons must produce
468 sufficient documentation showing evidence of qualifying for late
469 registration pursuant to this section. ~~The Department of State~~
470 ~~shall adopt rules specifying documentation that is sufficient to~~
471 ~~determine eligibility.~~

472 Section 26. Subsection (1) of section 97.061, Florida
473 Statutes, is amended to read:

474 97.061 Special registration for electors requiring
475 assistance.—

476 (1) Any person who is eligible to register and who is
477 unable to read or write or who, because of some disability,



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478 needs assistance in voting shall upon that person's request be
479 registered under the procedure prescribed by this section and
480 shall be entitled to receive assistance at the polls under the
481 conditions prescribed by this section. ~~The department may adopt~~
482 ~~rules to administer this section.~~

483 Section 27. Subsection (3) of section 101.56062, Florida
484 Statutes, is repealed.

485 Section 28. Subsection (5) of section 103.101, Florida
486 Statutes, is amended to read:

487 103.101 Presidential preference primary.—

488 (5) The state executive committee of each party, by rule
489 adopted at least 60 days prior to the presidential preference
490 primary election, shall determine the number, and establish
491 procedures to be followed in the selection, of delegates and
492 delegate alternates from among each candidate's supporters. A
493 copy of any rule adopted by the executive committee shall be
494 filed with the Department of State within 7 days after its
495 adoption and shall become a public record. The Department of
496 State shall review the procedures and shall notify the state
497 executive committee of each political party of any ballot
498 limitations. ~~The Department of State may promulgate rules for~~
499 ~~the orderly conduct of the presidential preference primary~~
500 ~~ballot.~~

501 Section 29. Section 106.165, Florida Statutes, is amended
502 to read:

503 106.165 Use of closed captioning and descriptive narrative
504 in all television broadcasts.—Each candidate, political party,
505 affiliated party committee, and political committee must use
506 closed captioning and descriptive narrative in all television



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507 broadcasts regulated by the Federal Communications Commission
508 that are on behalf of, or sponsored by, a candidate, political
509 party, affiliated party committee, or political committee or
510 must file a written statement with the qualifying officer
511 setting forth the reasons for not doing so. Failure to file this
512 statement with the appropriate qualifying officer constitutes a
513 violation of the Florida Election Code and is under the
514 jurisdiction of the Florida Elections Commission. ~~The Department~~
515 ~~of State may adopt rules in accordance with s. 120.54 which are~~
516 ~~necessary to administer this section.~~

517 Section 30. Section 110.1055, Florida Statutes, is amended
518 to read:

519 110.1055 Rules and rulemaking authority.—The Department of
520 Management Services shall have authority to adopt rules as
521 necessary to effectuate the provisions of this chapter, ~~as~~
522 ~~amended by this act, and in accordance with the authority~~
523 ~~granted to the department in this chapter. All existing rules~~
524 ~~relating to this chapter are statutorily repealed January 1,~~
525 ~~2002, unless otherwise readopted.~~

526 Section 31. Subsection (5) of section 110.1099, Florida
527 Statutes, is repealed.

528 Section 32. Subsection (7) of section 110.1228, Florida
529 Statutes, is repealed.

530 Section 33. Subsection (2) of section 110.12301, Florida
531 Statutes, is amended to read:

532 110.12301 Competitive procurement of postpayment claims
533 review services.—The Division of State Group Insurance is
534 directed to competitively procure:

535 (2) A contingency-based contract for dependent eligibility



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536 verification services for the state group insurance program;
537 however, compensation under the contract may not exceed
538 historical claim costs for the prior 12 months for the dependent
539 populations disenrolled as a result of the vendor's services.
540 The division may establish a 3-month grace period and hold
541 subscribers harmless for past claims of ineligible dependents.
542 The Department of Management Services shall submit budget
543 amendments pursuant to chapter 216 in order to obtain budget
544 authority necessary to expend funds from the State Employees'
545 Group Health Self-Insurance Trust Fund for payments to the
546 vendor as provided in the contract. ~~The Department of Management~~
547 ~~Services shall adopt rules providing a process for verifying~~
548 ~~dependent eligibility.~~

549 Section 34. Subsection (4) of section 112.1915, Florida
550 Statutes, is repealed.

551 Section 35. Section 118.12, Florida Statutes, is amended to
552 read:

553 118.12 Certification of civil-law notary's authority;
554 apostilles.—If certification of a civil-law notary's authority
555 is necessary for a particular document or transaction, it must
556 be obtained from the Secretary of State. Upon the receipt of a
557 written request from a civil-law notary and the fee prescribed
558 by the Secretary of State, the Secretary of State shall issue a
559 certification of the civil-law notary's authority, in a form
560 prescribed by the Secretary of State, which shall include a
561 statement explaining the legal qualifications and authority of a
562 civil-law notary in this state. The fee prescribed for the
563 issuance of the certification under this section or an apostille
564 under s. 15.16 may not exceed \$10 per document. ~~The Department~~



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565 ~~of State may adopt rules to implement this section.~~

566 Section 36. Subsection (1) of section 121.085, Florida
567 Statutes, is repealed.

568 Section 37. Paragraph (b) of subsection (4) of section
569 121.1001, Florida Statutes, is repealed.

570 Section 38. Subsection (3) of section 121.4503, Florida
571 Statutes, is repealed.

572 Section 39. Section 121.5911, Florida Statutes, is amended
573 to read:

574 121.5911 Disability retirement program; qualified status;
575 rulemaking authority.—It is the intent of the Legislature that
576 the disability retirement program for members of the Florida
577 Retirement System Investment Plan meet all applicable
578 requirements of federal law for a qualified plan. The department
579 shall seek a private letter ruling from the Internal Revenue
580 Service on the disability retirement program. ~~Consistent with~~
581 ~~the private letter ruling, the department shall adopt rules~~
582 ~~necessary to maintain the qualified status of the disability~~
583 ~~retirement program and the Florida Retirement System Pension~~
584 ~~Plan.~~

585 Section 40. Subsection (4) of section 125.902, Florida
586 Statutes, is repealed.

587 Section 41. Subsection (4) of section 154.503, Florida
588 Statutes, is repealed.

589 Section 42. Paragraph (a) of subsection (2) of section
590 159.8081, Florida Statutes, is amended to read:

591 159.8081 Manufacturing facility bond pool.—

592 (2) (a) The first 75 percent of this pool shall be available
593 on a first come, first served basis, except that 15 percent of



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594 the state volume limitation allocated to this pool shall be
595 available as provided in paragraph (b). Before issuing any
596 written confirmations for the remaining 25 percent of this pool,
597 the executive director shall forward all notices of intent to
598 issue which are received by the division for manufacturing
599 facility projects to the Department of Economic Opportunity. The
600 Department of Economic Opportunity shall decide, after receipt
601 of the notices of intent to issue, which notices will receive
602 written confirmations. Such decision shall be communicated in
603 writing by the Department of Economic Opportunity to the
604 executive director within 10 days of receipt of such notices of
605 intent to issue. ~~The Department of Economic Opportunity may~~
606 ~~develop rules to ensure that allocation of the remaining 25~~
607 ~~percent is consistent with the state's economic development~~
608 ~~policy.~~

609 Section 43. Section 159.8083, Florida Statutes, is amended
610 to read:

611 159.8083 Florida First Business allocation pool.—The
612 Florida First Business allocation pool is hereby established.
613 The Florida First Business allocation pool shall be available
614 solely to provide written confirmation for private activity
615 bonds to finance Florida First Business projects certified by
616 the Department of Economic Opportunity as eligible to receive a
617 written confirmation. Allocations from such pool shall be
618 awarded statewide pursuant to procedures specified in s.
619 159.805, except that the provisions of s. 159.805(2), (3), and
620 (6) do not apply. Florida First Business projects that are
621 eligible for a carryforward do not lose their allocation
622 pursuant to s. 159.809(3) on October 1, or pursuant to s.



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623 159.809(4) on November 16, if they have applied for and have
624 been granted a carryforward by the division pursuant to s.
625 159.81(1). In issuing written confirmations of allocations for
626 Florida First Business projects, the division shall use the
627 Florida First Business allocation pool. If allocation is not
628 available from the Florida First Business allocation pool, the
629 division shall issue written confirmations of allocations for
630 Florida First Business projects pursuant to s. 159.806 or s.
631 159.807, in such order. For the purpose of determining priority
632 within a regional allocation pool or the state allocation pool,
633 notices of intent to issue bonds for Florida First Business
634 projects to be issued from a regional allocation pool or the
635 state allocation pool shall be considered to have been received
636 by the division at the time it is determined by the division
637 that the Florida First Business allocation pool is unavailable
638 to issue confirmation for such Florida First Business project.
639 If the total amount requested in notices of intent to issue
640 private activity bonds for Florida First Business projects
641 exceeds the total amount of the Florida First Business
642 allocation pool, the director shall forward all timely notices
643 of intent to issue, which are received by the division for such
644 projects, to the Department of Economic Opportunity, which shall
645 render a decision as to which notices of intent to issue are to
646 receive written confirmations. ~~The Department of Economic~~
647 ~~Opportunity, in consultation with the division, shall develop~~
648 ~~rules to ensure that the allocation provided in such pool is~~
649 ~~available solely to provide written confirmations for private~~
650 ~~activity bonds to finance Florida First Business projects and~~
651 ~~that such projects are feasible and financially solvent.~~



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652 Section 44. Subsection (3) of section 159.825, Florida
653 Statutes, is repealed.

654 Section 45. Section 161.75, Florida Statutes, is repealed.

655 Section 46. Section 163.462, Florida Statutes, is repealed.

656 Section 47. Subsection (6) of section 163.517, Florida
657 Statutes, is repealed.

658 Section 48. Subsection (2) of section 175.341, Florida
659 Statutes, is repealed.

660 Section 49. Paragraph (e) of subsection (2) of section
661 177.504, Florida Statutes, is repealed.

662 Section 50. Subsection (2) of section 185.23, Florida
663 Statutes, is repealed.

664 Section 51. Subsection (2) of section 255.25001, Florida
665 Statutes, is repealed.

666 Section 52. Subsection (7) of section 257.34, Florida
667 Statutes, is repealed.

668 Section 53. Subsection (6) of section 364.0135, Florida
669 Statutes, is repealed.

670 Section 54. Section 366.85, Florida Statutes, is amended to
671 read:

672 366.85 Responsibilities of Division of Consumer Services.—
673 The Division of Consumer Services of the Department of
674 Agriculture and Consumer Services shall be the agency
675 responsible for consumer conciliatory conferences, if such
676 conferences are required pursuant to federal law. The division
677 shall also be the agency responsible for preparing lists of
678 sources for energy conservation products or services and of
679 financial institutions offering energy conservation loans, if
680 such lists are required pursuant to federal law. Notwithstanding



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681 any provision of federal law to the contrary, the division shall
682 not require any manufacturer's warranty exceeding 1 year in
683 order for a source of conservation products or services to be
684 included on the appropriate list. The lists shall be prepared
685 for the service area of each utility and shall be furnished to
686 each utility for distribution to its customers. The division
687 shall update the lists on a systematic basis and shall remove
688 from any list any person who has been disciplined by any state
689 agency or who has otherwise exhibited a pattern of
690 unsatisfactory work and any person who requests removal from
691 such lists. ~~The division is authorized to adopt rules to~~
692 ~~implement the provisions of this section.~~

693 Section 55. Section 409.5092, Florida Statutes, is
694 repealed.

695 Section 56. Paragraphs (d) and (e) of subsection (4) of
696 section 411.01, Florida Statutes, are amended to read:

697 411.01 School readiness programs; early learning
698 coalitions.—

699 (4) OFFICE OF EARLY LEARNING OF THE DEPARTMENT OF
700 EDUCATION.—

701 (d) The Office of Early Learning shall:

702 1. Be responsible for the prudent use of all public and
703 private funds in accordance with all legal and contractual
704 requirements.

705 2. Provide final approval and every 2 years review early
706 learning coalitions and school readiness plans.

707 3. Establish a unified approach to the state's efforts
708 toward enhancement of school readiness. In support of this
709 effort, the Office of Early Learning shall adopt specific system



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710 support services that address the state's school readiness
711 programs. An early learning coalition shall amend its school
712 readiness plan to conform to the specific system support
713 services adopted by the Office of Early Learning. System support
714 services shall include, ~~but are not limited to:~~

- 715 a. Child care resource and referral services;
- 716 b. Warm-Line services;
- 717 c. Eligibility determinations;
- 718 ~~d. Child performance standards;~~
- 719 ~~e. Child screening and assessment;~~
- 720 ~~f. Developmentally appropriate curricula;~~
- 721 ~~d.g.~~ Health and safety requirements requiring compliance
722 with applicable licensure requirements of the Department of
723 Children and Family Services; and
- 724 ~~e.h.~~ Statewide data system requirements.; ~~and~~
- 725 ~~i. Rating and improvement systems.~~

726 4. Safeguard the effective use of federal, state, local,
727 and private resources to achieve the highest possible level of
728 school readiness for the children in this state.

729 5. Adopt a rule establishing criteria for the expenditure
730 of funds designated for the purpose of funding activities to
731 improve the quality of child care within the state but only as
732 necessary to comply in accordance with s. 658G of the federal
733 Child Care and Development Block Grant Act.

734 6. Provide technical assistance to early learning
735 coalitions in a manner determined by the Office of Early
736 Learning based upon information obtained by the office from
737 various sources, including, but not limited to, public input,
738 government reports, private interest group reports, office



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739 monitoring visits, and coalition requests for service.

740 7. In cooperation with the early learning coalitions,
741 coordinate with the Child Care Services Program Office of the
742 Department of Children and Family Services to minimize
743 duplicating interagency activities, health and safety
744 monitoring, and acquiring and composing data pertaining to child
745 care training and credentialing.

746 8. Develop and adopt performance standards and outcome
747 measures for school readiness programs. The performance
748 standards must address the age-appropriate progress of children
749 in the development of school readiness skills. The performance
750 standards for children from birth to 5 years of age in school
751 readiness programs must be integrated with the performance
752 standards adopted by the Department of Education for children in
753 the Voluntary Prekindergarten Education Program under s.
754 1002.67.

755 9. Adopt a standard contract that must be used by the
756 coalitions when contracting with school readiness providers.

757 (e) The Office of Early Learning may adopt rules under ss.
758 120.536(1) and 120.54 to administer the provisions of law
759 conferring duties upon the office, including, but not limited
760 to, rules governing the administration of system support
761 services of school readiness programs, the collection of data,
762 the approval of early learning coalitions and school readiness
763 plans, the provision of a method whereby an early learning
764 coalition may serve two or more counties, ~~the award of~~
765 ~~incentives to early learning coalitions, child performance~~
766 ~~standards, child outcome measures,~~ the issuance of waivers, and
767 the implementation of the state's Child Care and Development



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768 Fund Plan as approved by the federal Administration for Children
769 and Families.

770 Section 57. Subsection (7) of section 411.01013, Florida
771 Statutes, is repealed.

772 Section 58. Subsection (3) of section 411.0103, Florida
773 Statutes, is repealed.

774 Section 59. Subsection (3) of section 411.0104, Florida
775 Statutes, is repealed.

776 Section 60. Subsections (1) and (3) of section 501.142,
777 Florida Statutes, are amended to read:

778 501.142 Retail sales establishments; preemption; notice of
779 refund policy; exceptions; penalty.—

780 (1) The regulation of refunds is preempted to the
781 Department of Agriculture and Consumer Services notwithstanding
782 any other law or local ordinance to the contrary. Every retail
783 sales establishment offering goods for sale to the general
784 public that offers no cash refund, credit refund, or exchange of
785 merchandise must post a sign so stating at the point of sale.
786 Failure of a retail sales establishment to exhibit a "no refund"
787 sign under such circumstances at the point of sale shall mean
788 that a refund or exchange policy exists, and the policy shall be
789 presented in writing to the consumer upon request. Any retail
790 establishment failing to comply with the provisions of this
791 section shall grant to the consumer, upon request and proof of
792 purchase, a refund on the merchandise, within 7 days of the date
793 of purchase, provided the merchandise is unused and in the
794 original carton, if one was furnished. Nothing herein shall
795 prohibit a retail sales establishment from having a refund
796 policy which exceeds the number of days specified herein. ~~The~~



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797 ~~department may adopt rules pursuant to ss. 120.536(1) and 120.54~~
798 ~~to enforce the provisions of this section.~~ However, this
799 subsection does not prohibit a local government from enforcing
800 the provisions established by this section ~~or department rule.~~

801 (3) The department may enter an order doing one or more of
802 the following if the department finds that a person has violated
803 or is operating in violation of any of the provisions of this
804 section or the ~~rules or~~ orders issued under this section:

805 ~~(a) Issue a notice of noncompliance pursuant to s. 120.695.~~

806 (a) ~~(b)~~ Impose an administrative fine not to exceed \$100 for
807 each violation.

808 (b) ~~(c)~~ Direct the person to cease and desist specified
809 activities.

810 Section 61. Paragraph (b) of subsection (15) of section
811 985.682, Florida Statutes, is amended to read:

812 985.682 Siting of facilities; study; criteria.—

813 (15)

814 (b) Notwithstanding s. ~~ss.~~ 255.25(1)(b) and ~~255.25001(2)~~,
815 the department may enter into lease-purchase agreements to
816 provide juvenile justice facilities for the housing of committed
817 youths contingent upon available funds. The facilities provided
818 through such agreements shall meet the program plan and
819 specifications of the department. The department may enter into
820 such lease agreements with private corporations and other
821 governmental entities. However, notwithstanding the provisions
822 of s. 255.25(3)(a), no such lease agreement may be entered into
823 except upon advertisement for the receipt of competitive bids
824 and award to the lowest and best bidder except when contracting
825 with other governmental entities.



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826 Section 62. This act shall take effect July 1, 2012.

827

828 ===== T I T L E A M E N D M E N T =====

829 And the title is amended as follows:

830 Delete everything before the enacting clause

831 and insert:

832 A bill to be entitled

833 An act relating to administrative authority; providing

834 legislative findings; providing legislative intent;

835 amending s. 20.02, F.S.; clarifying the authority of

836 the Governor; amending s. 20.03, F.S.; revising the

837 definition of the terms "head of the department" and

838 "secretary"; defining the term "to serve at the

839 pleasure"; clarifying supervisory powers of appointing

840 authority; amending s. 20.05, F.S., relating to powers

841 and duties of department heads; incorporating

842 constitutional allocation of executive authority;

843 creating s. 120.515, F.S.; declaring policy regarding

844 executive authority with respect to the Administrative

845 Procedure Act; amending s. 120.52, F.S.; revising the

846 term "agency head" to clarify supervisory powers of

847 the appointing authority; amending s. 11.242, F.S.;

848 providing for removal of duplicative, redundant, or

849 unused rulemaking authority as part of the reviser's

850 bill process; repealing s. 14.34(3), F.S., relating to

851 the Governor's Medal of Merit; repealing rulemaking

852 authority; amending s. 15.16, F.S.; deleting authority

853 of the Department of State to adopt rules relating to

854 the issuance of apostilles; repealing s. 15.18(7),



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855 F.S., relating to international and cultural
856 relations; repealing rulemaking authority of the
857 Secretary of State with respect to entering into
858 contracts that are primarily for promotional services
859 and events; amending s. 16.60, F.S.; deleting
860 authority of the Attorney General to adopt rules
861 relating to mediation proceedings; repealing s.
862 17.0416(2), F.S., relating to the authority to provide
863 services on a fee basis; repealing rulemaking
864 authority of the Department of Financial Services with
865 respect thereto; repealing s. 17.59(3), F.S., relating
866 to safekeeping services; repealing rulemaking
867 authority of the Chief Financial Officer for the
868 proper management and maintenance of the collateral
869 management service; repealing s. 25.371, F.S.,
870 relating to the effect of rules adopted by the Supreme
871 Court on statutory provisions; repealing s. 28.43,
872 F.S., relating to the adoption of rules in relation to
873 ss. 28.35, 28.36, and 28.37, relating to duties of the
874 Florida Clerks of Court Operations Corporation and
875 clerks of the court; repealing s. 35.07, F.S.,
876 relating to power of the district courts of appeal to
877 make rules and regulations; repealing s. 39.001(11),
878 F.S., relating to rulemaking authority of Executive
879 Office of the Governor with respect to the protection
880 of children under chapter 39; amending s. 39.0137,
881 F.S.; deleting rulemaking authority of the Department
882 of Children and Family Services with respect to
883 enforcement of the federal Indian Child Welfare Act



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884 and federal Multi-Ethnic Placement Act of 1994;
885 repealing s. 39.824(1), F.S.; repealing a provision
886 requesting the Supreme Court to adopt rules of
887 juvenile procedure for purposes of pt. XI, ch. 39,
888 relating to guardians ad litem and guardian advocates;
889 amending s. 63.167, F.S.; repealing rulemaking
890 authority of the Department of Children and Family
891 Services relating to the establishment and operation
892 of the state adoption information center; repealing s.
893 88.9051, F.S., relating to authority of the Department
894 of Revenue to adopt rules to implement the Uniform
895 Interstate Family Support Act; amending ss. 97.026,
896 97.0555, and 97.061, F.S.; repealing rulemaking
897 authority of the Department of State under the
898 Election Code; repealing s. 101.56062(3), F.S.;
899 repealing rulemaking authority of the department
900 relating to standards for accessible voting systems;
901 amending ss. 103.101 and 106.165, F.S.; repealing
902 rulemaking authority of the department relating to
903 conduct of the presidential preference primary and use
904 of closed captioning and descriptive narrative in
905 television broadcasts; amending s. 110.1055, F.S.,
906 relating to rulemaking authority of the Department of
907 Management Services with respect to chapter 110,
908 relating to state employment; deleting obsolete
909 language; repealing s. 110.1099(5), F.S.; repealing
910 rulemaking authority of the department relating to
911 education and training opportunities for state
912 employees; repealing s. 110.1228(7), F.S.; repealing



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913 rulemaking authority of the department relating to
914 participation in the state group health insurance and
915 prescription drug coverage programs by small counties,
916 small municipalities, and district school boards
917 located in small counties; amending s. 110.12301,
918 F.S.; repealing rulemaking authority of the department
919 relating to dependent eligibility verification
920 services for the state group insurance program;
921 repealing s. 112.1915(4), F.S.; repealing rulemaking
922 authority of the State Board of Education relating to
923 death benefits for teachers and school administrators;
924 amending s. 118.12, F.S.; repealing rulemaking
925 authority of the Department of Revenue relating to
926 certification of a civil-law notary's authority;
927 repealing s. 121.085(1), F.S.; repealing authority of
928 the Department of Management Services relating to
929 submission of information necessary to establish a
930 member's claim of creditable service under the Florida
931 Retirement System; repealing s. 121.1001(4)(b), F.S.;
932 repealing rulemaking authority of the Division of
933 Retirement relating to administration of the Florida
934 Retirement System Preservation of Benefits Plan;
935 repealing s. 121.4503(3), F.S.; repealing rulemaking
936 authority of the Department of Management Services
937 relating to the Florida Retirement System
938 Contributions Clearing Trust Fund; amending s.
939 121.5911, F.S.; deleting rulemaking authority of the
940 department relating to maintaining the qualified
941 status of the disability retirement program and the



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942 Florida Retirement System Pension Plan; repealing s.
943 125.902(4), F.S.; repealing rulemaking authority of
944 the Department of Children and Family Services
945 relating to children's services council or juvenile
946 welfare board incentive grants; repealing s.
947 154.503(4), F.S.; repealing rulemaking authority of
948 the Department of Health relating to the Primary Care
949 for Children and Families Challenge Grant Program;
950 amending s. 159.8081, F.S.; repealing rulemaking
951 authority of the Department of Economic Opportunity
952 relating to the manufacturing facility bond pool;
953 amending s. 159.8083, F.S.; repealing rulemaking
954 authority of the department relating to the Florida
955 First Business allocation pool; repealing s.
956 159.825(3), F.S.; repealing rulemaking authority of
957 the State Board of Administration relating to terms of
958 bonds; repealing s. 161.75, F.S.; repealing rulemaking
959 authority of the Department of Environmental
960 Regulation and the Fish and Wildlife Conservation
961 Commission relating to the Oceans and Coastal
962 Resources Act; repealing s. 163.462, F.S.; repealing
963 rulemaking authority of the Department of Community
964 Affairs relating to the Community Redevelopment Act of
965 1969; repealing s. 163.517(6), F.S.; repealing
966 rulemaking authority of the Department of Legal
967 Affairs relating to the Safe Neighborhoods Program;
968 repealing s. 175.341(2), F.S.; repealing rulemaking
969 authority of the Division of Retirement relating to
970 firefighter pensions; repealing s. 177.504(2)(e),



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971 F.S.; repealing rulemaking authority of the Department
972 of Environmental Protection relating to the Florida
973 Public Land Survey Restoration and Perpetuation Act;
974 repealing s. 185.23(2), F.S.; repealing rulemaking
975 authority of the Division of Retirement relating to
976 municipal police pensions; repealing s. 255.25001(2),
977 F.S.; repealing rulemaking authority of the Department
978 of Management Services relating to determining whether
979 a lease-purchase of a state-owned office building is
980 in the best interests of the state; repealing s.
981 257.34(7), F.S.; repealing rulemaking authority of the
982 Division of Library and Information Services of the
983 Department of State relating to the Florida
984 International Archive and Repository; repealing s.
985 364.0135(6), F.S.; repealing rulemaking authority of
986 the Department of Management Services relating to the
987 promotion of broadband adoption; amending s. 366.85,
988 F.S.; repealing rulemaking authority of the Division
989 of Consumer Services of the Department of Agriculture
990 and Consumer Services relating to the Florida Energy
991 Efficiency and Conservation Act; repealing s.
992 409.5092, F.S.; repealing rulemaking authority of the
993 Department of Children and Family Services relating to
994 permission for weatherization; amending s. 411.01,
995 F.S.; limiting rulemaking authority of the Office of
996 Early Learning relating to school readiness programs
997 and early learning coalitions; repealing s.
998 411.01013(7), F.S.; repealing rulemaking authority of
999 the office relating to the prevailing market rate



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1000 schedule; repealing s. 411.0103(3), F.S.; repealing
1001 rulemaking authority of the office relating to the
1002 Teacher Education and Compensation Helps (TEACH)
1003 scholarship program; repealing s. 411.0104(3), F.S.;
1004 repealing rulemaking authority of the office relating
1005 to Early Head Start collaboration grants; amending s.
1006 501.142, F.S.; repealing rulemaking authority of the
1007 Department of Agriculture and Consumer Services
1008 relating to retail sales establishments and authority
1009 to sanction violations of such rules; amending s.
1010 985.682, F.S.; conforming a cross-reference; providing
1011 an effective date.