

## ENROLLED

CS/HB 7055, Engrossed 1

2012 Legislature

1  
2 An act relating to administrative authority; providing  
3 legislative findings; providing legislative intent;  
4 amending s. 20.02, F.S.; clarifying the authority of  
5 the Governor; amending s. 20.03, F.S.; revising the  
6 definition of the terms "head of the department" and  
7 "secretary"; defining the term "to serve at the  
8 pleasure"; clarifying supervisory powers of appointing  
9 authority; amending s. 20.05, F.S., relating to powers  
10 and duties of department heads; incorporating  
11 constitutional allocation of executive authority;  
12 creating s. 120.515, F.S.; declaring policy regarding  
13 executive authority with respect to the Administrative  
14 Procedure Act; amending s. 120.52, F.S.; revising the  
15 term "agency head" to clarify supervisory powers of  
16 the appointing authority; amending s. 11.242, F.S.;  
17 providing for removal of duplicative, redundant, or  
18 unused rulemaking authority as part of the reviser's  
19 bill process; repealing s. 14.34(3), F.S., relating to  
20 the Governor's Medal of Merit; repealing rulemaking  
21 authority; amending s. 15.16, F.S.; deleting authority  
22 of the Department of State to adopt rules relating to  
23 the issuance of apostilles; repealing s. 15.18(7),  
24 F.S., relating to international and cultural  
25 relations; repealing rulemaking authority of the  
26 Secretary of State with respect to entering into  
27 contracts that are primarily for promotional services  
28 and events; amending s. 16.60, F.S.; deleting

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29 authority of the Attorney General to adopt rules  
30 relating to mediation proceedings; repealing s.  
31 17.0416(2), F.S., relating to the authority to provide  
32 services on a fee basis; repealing rulemaking  
33 authority of the Department of Financial Services with  
34 respect thereto; repealing s. 17.59(3), F.S., relating  
35 to safekeeping services; repealing rulemaking  
36 authority of the Chief Financial Officer for the  
37 proper management and maintenance of the collateral  
38 management service; repealing s. 25.371, F.S.,  
39 relating to the effect of rules adopted by the Supreme  
40 Court on statutory provisions; repealing s. 28.43,  
41 F.S., relating to the adoption of rules in relation to  
42 ss. 28.35, 28.36, and 28.37, relating to duties of the  
43 Florida Clerks of Court Operations Corporation and  
44 clerks of the court; repealing s. 35.07, F.S.,  
45 relating to power of the district courts of appeal to  
46 make rules and regulations; repealing s. 39.001(11),  
47 F.S., relating to rulemaking authority of Executive  
48 Office of the Governor with respect to the protection  
49 of children under chapter 39; amending s. 39.0137,  
50 F.S.; deleting rulemaking authority of the Department  
51 of Children and Family Services with respect to  
52 enforcement of the federal Indian Child Welfare Act  
53 and federal Multi-Ethnic Placement Act of 1994;  
54 repealing s. 39.824(1), F.S.; repealing a provision  
55 requesting the Supreme Court to adopt rules of  
56 juvenile procedure for purposes of pt. XI, ch. 39,

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57 relating to guardians ad litem and guardian advocates;  
58 amending s. 63.167, F.S.; repealing rulemaking  
59 authority of the Department of Children and Family  
60 Services relating to the establishment and operation  
61 of the state adoption information center; repealing s.  
62 88.9051, F.S., relating to authority of the Department  
63 of Revenue to adopt rules to implement the Uniform  
64 Interstate Family Support Act; amending ss. 97.026,  
65 97.0555, and 97.061, F.S.; repealing rulemaking  
66 authority of the Department of State under the  
67 Election Code; repealing s. 101.56062(3), F.S.;

68 repealing rulemaking authority of the department  
69 relating to standards for accessible voting systems;  
70 amending ss. 103.101 and 106.165, F.S.; repealing  
71 rulemaking authority of the department relating to  
72 conduct of the presidential preference primary and use  
73 of closed captioning and descriptive narrative in  
74 television broadcasts; amending s. 110.1055, F.S.,  
75 relating to rulemaking authority of the Department of  
76 Management Services with respect to chapter 110,  
77 relating to state employment; deleting obsolete  
78 language; repealing s. 110.1099(5), F.S.; repealing  
79 rulemaking authority of the department relating to  
80 education and training opportunities for state  
81 employees; repealing s. 110.1228(7), F.S.; repealing  
82 rulemaking authority of the department relating to  
83 participation in the state group health insurance and  
84 prescription drug coverage programs by small counties,

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85 | small municipalities, and district school boards  
86 | located in small counties; amending s. 110.12301,  
87 | F.S.; repealing rulemaking authority of the department  
88 | relating to dependent eligibility verification  
89 | services for the state group insurance program;  
90 | repealing s. 112.1915(4), F.S.; repealing rulemaking  
91 | authority of the State Board of Education relating to  
92 | death benefits for teachers and school administrators;  
93 | amending s. 118.12, F.S.; repealing rulemaking  
94 | authority of the Department of Revenue relating to  
95 | certification of a civil-law notary's authority;  
96 | repealing s. 121.085(1), F.S.; repealing authority of  
97 | the Department of Management Services relating to  
98 | submission of information necessary to establish a  
99 | member's claim of creditable service under the Florida  
100 | Retirement System; repealing s. 121.1001(4)(b), F.S.;  
101 | repealing rulemaking authority of the Division of  
102 | Retirement relating to administration of the Florida  
103 | Retirement System Preservation of Benefits Plan;  
104 | repealing s. 121.4503(3), F.S.; repealing rulemaking  
105 | authority of the Department of Management Services  
106 | relating to the Florida Retirement System  
107 | Contributions Clearing Trust Fund; amending s.  
108 | 121.5911, F.S.; deleting rulemaking authority of the  
109 | department relating to maintaining the qualified  
110 | status of the disability retirement program and the  
111 | Florida Retirement System Pension Plan; repealing s.  
112 | 125.902(4), F.S.; repealing rulemaking authority of

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113 the Department of Children and Family Services  
 114 relating to children's services council or juvenile  
 115 welfare board incentive grants; repealing s.  
 116 154.503(4), F.S.; repealing rulemaking authority of  
 117 the Department of Health relating to the Primary Care  
 118 for Children and Families Challenge Grant Program;  
 119 amending s. 159.8081, F.S.; repealing rulemaking  
 120 authority of the Department of Economic Opportunity  
 121 relating to the manufacturing facility bond pool;  
 122 amending s. 159.8083, F.S.; repealing rulemaking  
 123 authority of the department relating to the Florida  
 124 First Business allocation pool; repealing s.  
 125 159.825(3), F.S.; repealing rulemaking authority of  
 126 the State Board of Administration relating to terms of  
 127 bonds; repealing s. 161.75, F.S.; repealing rulemaking  
 128 authority of the Department of Environmental  
 129 Regulation and the Fish and Wildlife Conservation  
 130 Commission relating to the Oceans and Coastal  
 131 Resources Act; repealing s. 163.462, F.S.; repealing  
 132 rulemaking authority of the Department of Community  
 133 Affairs relating to the Community Redevelopment Act of  
 134 1969; repealing s. 163.517(6), F.S.; repealing  
 135 rulemaking authority of the Department of Legal  
 136 Affairs relating to the Safe Neighborhoods Program;  
 137 repealing s. 175.341(2), F.S.; repealing rulemaking  
 138 authority of the Division of Retirement relating to  
 139 firefighter pensions; repealing s. 177.504(2)(e),  
 140 F.S.; repealing rulemaking authority of the Department

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141 of Environmental Protection relating to the Florida  
 142 Public Land Survey Restoration and Perpetuation Act;  
 143 repealing s. 185.23(2), F.S.; repealing rulemaking  
 144 authority of the Division of Retirement relating to  
 145 municipal police pensions; repealing s. 255.25001(2),  
 146 F.S.; repealing rulemaking authority of the Department  
 147 of Management Services relating to determining whether  
 148 a lease-purchase of a state-owned office building is  
 149 in the best interests of the state; repealing s.  
 150 257.34(7), F.S.; repealing rulemaking authority of the  
 151 Division of Library and Information Services of the  
 152 Department of State relating to the Florida  
 153 International Archive and Repository; repealing s.  
 154 364.0135(6), F.S.; repealing rulemaking authority of  
 155 the Department of Management Services relating to the  
 156 promotion of broadband adoption; amending s. 366.85,  
 157 F.S.; repealing rulemaking authority of the Division  
 158 of Consumer Services of the Department of Agriculture  
 159 and Consumer Services relating to the Florida Energy  
 160 Efficiency and Conservation Act; repealing s.  
 161 409.5092, F.S.; repealing rulemaking authority of the  
 162 Department of Children and Family Services relating to  
 163 permission for weatherization; amending s. 501.142,  
 164 F.S.; repealing rulemaking authority of the Department  
 165 of Agriculture and Consumer Services relating to  
 166 retail sales establishments and authority to sanction  
 167 violations of such rules; amending s. 985.682, F.S.;

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168 conforming a cross-reference; providing an effective  
169 date.

170

171 Be It Enacted by the Legislature of the State of Florida:

172

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

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

181 (2) By Article IV of the State Constitution the people  
182 vested supreme executive power in the Governor and apportioned  
183 specific substantive powers among the other elected officers  
184 designated in that Article, including the Lieutenant Governor,  
185 the Attorney General, the Chief Financial Officer, and the  
186 Commissioner of Agriculture.

187 (3) As noted by Alexander Hamilton: "Energy in the  
188 executive is a leading character in the definition of good  
189 government .... A feeble executive implies a feeble execution of  
190 the government. A feeble execution is but another phrase for a  
191 bad execution: And a government ill executed, whatever it may be  
192 in theory, must be in practice a bad government."

193 (4) Since the framing of Florida's first constitution in  
194 1838, the people have adhered to the principles expressed by Mr.  
195 Hamilton in the vesting of supreme executive power directly in

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196 the Governor but choosing to vest other specific executive  
 197 powers directly in other denominated officials or entities.

198 (5) In uninterrupted consistency with their longstanding  
 199 vesting of the supreme executive power in the Governor, the  
 200 people in 1968 adopted s. 6, Art. IV of the State Constitution,  
 201 generally directing and limiting the Legislature to allot the  
 202 functions of the executive branch among not more than 25  
 203 departments and to place the administration of each department  
 204 under the direct supervision of the Governor, the Lieutenant  
 205 Governor, the Governor and Cabinet, a Cabinet member, or an  
 206 officer or board appointed by and serving at the pleasure of the  
 207 Governor.

208 (6) Each officer of state government is obligated to  
 209 construe the language of the State Constitution consistent with  
 210 its express and clearly implied intent, must give words their  
 211 ordinary and customary meaning unless the context indicates  
 212 otherwise, must construe all parts together to give them their  
 213 full effect, and must not construe the terms of the State  
 214 Constitution to yield an absurd result.

215 (7) Under the authority of s. 6, Art. IV of the State  
 216 Constitution, the Legislature adopted and the Governor signed  
 217 into law chapter 69-106, Laws of Florida, which restructured the  
 218 executive branch into not more than 25 departments and  
 219 designated their direct administration.

220 (8) At the time of adopting chapter 69-106, Laws of  
 221 Florida, the Legislature was informed by the debate in the 41st  
 222 Legislature (under the Constitution of 1885) about the text for  
 223 s. 6, Art. IV for the proposed State Constitution, that the 41st



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224 Legislature expressly considered and expressly rejected  
 225 alternative proposals which would have required general law to  
 226 provide supervisory authority to elected constitutional officers  
 227 over the policies of executive departments, and that in  
 228 submitting the 1968 State Constitution to the people, their  
 229 Legislature intended the proposal to ensure that the  
 230 administration and policies of each executive branch department  
 231 would be under the final authority and control either of the  
 232 Governor or one or more elected constitutional officers.

233 (9) Construing together ss. 1(a) and 6, Art. IV of the  
 234 State Constitution, the Legislature at all times understood that  
 235 these sections create a general legal presumption against the  
 236 creation of a class of unelected, subordinate officers  
 237 exercising executive power independent of the direction and  
 238 supervision of the Governor or one or more specified elected  
 239 constitutional officers.

240 (10) Section 6, Art. IV of the State Constitution has not  
 241 been amended since its ratification by the people on November 5,  
 242 1968.

243 (11) An officer appointed by and serving at the pleasure  
 244 of the Governor to administer a department exercises a portion  
 245 of the sovereign power assigned under the State Constitution to  
 246 the executive branch. Such appointees remain subject to the  
 247 direction and supervision of one or more elected constitutional  
 248 officers who have the ultimate accountability to the people for  
 249 the faithful discharge of such responsibility.

250 (12) Regarding the Governor's accountability for the  
 251 supervision and direction of those appointed officers serving at

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252 the pleasure of the Governor, the Legislature is informed by the  
253 following analysis:

254 (a) As opined by Justice Polston: "(T)he Governor has the  
255 constitutional authority to act as this State's chief  
256 administrative officer as well as the constitutional duty to  
257 faithfully execute this State's laws and to manage and hold  
258 agencies under his charge accountable to State laws, including  
259 the APA. (The Supreme) Court has explained that '[t]he Governor  
260 is given broad authority to fulfill his duty in taking "care  
261 that the laws be faithfully executed."'"

262 (b) As opined by Chief Justice Canady: "(I)f 'supreme  
263 executive power' means anything, it must mean that the Governor  
264 can supervise and direct the policymaking choices – within the  
265 range of choices permitted by law – of the subordinate executive  
266 branch officers who serve at his pleasure."

267 (13) The Legislature has not expressly insulated  
268 discretionary executive policy decisions from the constitutional  
269 structure of accountability to elected officials established in  
270 Article IV of the State Constitution.

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

273 (a) The exercise of delegated quasi-legislative power  
274 within the parameters of Florida's Administrative Procedure Act  
275 and related statutes involves certain discretionary policy  
276 choices by executive branch officers. In authorizing the  
277 exercise of this power, the Legislature has imposed no  
278 restriction on the authority of the Governor or any other  
279 constitutional officer or collegial body to supervise and direct

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280 such policy choices made by subordinate executive branch  
 281 officials in rulemaking.

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

285 (c) As correctly opined by Chief Justice Canady: "Given  
 286 the constitutional structure establishing the power and  
 287 responsibilities of the Governor, it is unjustified to conclude  
 288 ... that by assigning rulemaking power to agency heads, the  
 289 Legislature implicitly divested the Governor of the supervisory  
 290 power with respect to executive officials who serve at his  
 291 pleasure."

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

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

297 (a) That executive branch power may only be exercised  
 298 under the direct or indirect supervision of one or more elected  
 299 constitutional officers; and

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

303 (16) The Administrative Procedure Act is a uniform  
 304 procedural statute ensuring full public access and participation  
 305 in any exercise of delegated legislative authority by executive  
 306 branch entities.

307 (17) The delegation of rulemaking authority by substantive

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308 statute and establishment of uniform procedures under the  
 309 Administrative Procedure Act were intended and made by the  
 310 Legislature to conform and comply with the separation of powers  
 311 required under s. 3, Art. II of the State Constitution, with no  
 312 general intrusion into the role and authority of the elected  
 313 executive branch officers as established in Article IV of the  
 314 State Constitution.

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

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

322 (20) While agency heads and personnel bring expertise to a  
 323 particular subject matter, they are not directly accountable to  
 324 the electorate and do not necessarily have an incentive to take  
 325 a systemic approach to regulatory problems, to budget  
 326 constraints, or to the overall regulatory burden imposed by the  
 327 state on citizens and businesses.

328 (21) The elected constitutional officers have a democratic  
 329 mandate, are directly accountable to the people, and have the  
 330 duty and power to assess the overall legality, efficiency, and  
 331 operation of government within their constitutional and  
 332 statutory jurisdictions.

333 (22) Review and oversight of agency rulemaking is  
 334 encompassed by the Governor's powers and duties under the State  
 335 Constitution to "take care that the laws be faithfully executed"

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336 and to serve as "the chief administrative officer of the state  
337 responsible for the planning and budgeting for the state."

338 (23) The State Constitution and the Florida Statutes  
339 establish that many agencies of state government are  
340 administered by an officer "appointed by and serving at the  
341 pleasure of the governor," and in order to determine whether an  
342 officer shall continue to serve at the Governor's pleasure, it  
343 is necessary for the Governor to set expectations and standards  
344 for that officer and to measure agency performance against those  
345 expectations and standards.

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

351 (25) Upon establishment of OFARR, all agencies under the  
352 direction of the Governor were required to obtain OFARR review  
353 and approval before developing new rules or amending or  
354 repealing existing rules.

355 (a) OFARR's review process has facilitated the Governor's  
356 exercise of the power and duty to serve as the chief executive  
357 and administrative officer of the state.

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

360 (c) OFARR has reviewed thousands of rules and regulations  
361 and helped agencies identify over 1,000 unnecessary and  
362 unauthorized rules and regulations for repeal.

363 (d) Since January 4, 2011, OFARR has reviewed hundreds of

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364 proposed agency rulemaking actions.

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

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

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

376 1. Failed to address and apply the plain meaning of ss. 1  
 377 and 6 of Art. IV of the State Constitution, and thereby may be  
 378 read to restrain the power of the Governor under general law  
 379 with respect to the supervision of agency heads;

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

384 3. Failed to address the precedent set by dozens of  
 385 executive orders issued by prior governors of Florida;

386 4. Failed to address the court's holding that "[t]he  
 387 principles underlying the governmental separation of powers  
 388 antedate our Florida Constitution and were collectively adopted  
 389 by the union of states in our federal constitution," *Chiles v.*  
 390 *Children A, B, C, D, E, & F*, 589 So. 2d 260 (Fla. 1991), and in  
 391 light of that precedent, failed to consider that Executive

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392 Orders 11-01 and 11-72 cannot be meaningfully distinguished from  
 393 similar executive orders issued by the last four presidents of  
 394 the United States and the governors of at least 29 other states;  
 395 and

396 5. Unreasonably relied on a 1983 Attorney General Opinion,  
 397 which the Attorney General distinguished and limited to its  
 398 facts in an *amicus* brief in *Whiley*.

399 (b) The dissenting opinions of two justices in the *Whiley*  
 400 case state the correct interpretation of the State Constitution  
 401 and present persuasive reasoning and arguments in support of  
 402 that interpretation.

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

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

408 Section 2. Executive Orders 11-72 and 11-211 are affirmed  
 409 to be consistent with state law and the public policy of the  
 410 state.

411 Section 3. The Legislature intends that the amendments  
 412 made by this act to ss. 20.02, 20.03, and 20.05, Florida  
 413 Statutes, which apply to the organizational structure of the  
 414 executive branch, and the creation of s. 120.515, Florida  
 415 Statutes, which applies to administrative procedure, are to  
 416 clarify that the placement of an executive department under the  
 417 direct administration of an officer or board appointed by and  
 418 serving at the pleasure of the Governor does not implicitly  
 419 limit or restrict the Governor's prerogative, legal authority,

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420 and constitutional responsibility to direct and supervise the  
 421 execution of the law and the exercise of lawful discretion.

422 Section 4. Subsections (3) through (7) of section 20.02,  
 423 Florida Statutes, are renumbered as subsections (4) through (8),  
 424 respectively, and a new subsection (3) is added to that section  
 425 to read:

426 20.02 Declaration of policy.—

427 (3) The administration of any executive branch department  
 428 or entity placed under the direct supervision of an officer or  
 429 board appointed by and serving at the pleasure of the Governor  
 430 shall remain at all times under the constitutional executive  
 431 authority of the Governor, in accordance with ss. 1(a) and 6,  
 432 Art. IV of the State Constitution and such officer or board  
 433 generally remains subject to oversight, direction, and  
 434 supervision by the Governor.

435 Section 5. Subsections (4) and (5) of section 20.03,  
 436 Florida Statutes, are amended, and subsection (13) is added to  
 437 that section, to read:

438 20.03 Definitions.—To provide uniform nomenclature  
 439 throughout the structure of the executive branch, the following  
 440 definitions apply:

441 (4) "Head of the department" means the individual under  
 442 whom or the board under which direct administration ~~in charge~~ of  
 443 the department is placed by statute. Where direct administration  
 444 of a department is placed under an officer or board appointed by  
 445 and serving at the pleasure of the Governor, that officer or  
 446 board remains subject to the Governor's supervision and  
 447 direction.



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

451 (13) "To serve at the pleasure" means the appointee serves  
 452 in the office until removed by the appointing authority.  
 453 Consistent with the allotment of executive authority under ss. 1  
 454 and 6, Art. IV of the State Constitution, an appointee serving  
 455 at the pleasure of the appointing authority generally remains  
 456 subject to the direction and supervision of the appointing  
 457 authority.

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

460 20.05 Heads of departments; powers and duties.-

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

464 (a) Plan, direct, coordinate, and execute the powers,  
 465 duties, and functions vested in that department or vested in a  
 466 division, bureau, or section of that department; powers and  
 467 duties assigned or transferred to a division, bureau, or section  
 468 of the department must not be construed to limit this authority  
 469 and this responsibility;

470 (b) Have authority, without being relieved of  
 471 responsibility, to execute any of the powers, duties, and  
 472 functions vested in the department or in any administrative unit  
 473 thereof through administrative units and through assistants and  
 474 deputies designated by the head of the department from time to  
 475 time, unless the head of the department is explicitly required

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476 | by law to perform the same without delegation;

477 |       (c) Compile annually a comprehensive program budget

478 | reporting all program and fiscal matters related to the

479 | operation of his or her department, including each program,

480 | subprogram, and activity, and other matters as required by law;

481 |       (d) Reimburse the members of advisory bodies, commissions,

482 | and boards of trustees for their actual and necessary expenses

483 | incurred in the performance of their duties in accordance with

484 | s. 112.061;

485 |       (e) Subject to the requirements of chapter 120, exercise

486 | existing authority to adopt rules pursuant and limited to the

487 | powers, duties, and functions transferred to the department;

488 |       (f) Exercise authority on behalf of the department to

489 | accept gifts, grants, bequests, loans, and endowments for

490 | purposes consistent with the powers, duties, and functions of

491 | the department. All such funds must be deposited in the State

492 | Treasury and appropriated by the Legislature for the purposes

493 | for which they were received by the department;

494 |       (g) If a department is under the direct supervision of a

495 | board, including a board consisting of the Governor and Cabinet,

496 | however designated, employ an executive director to serve at its

497 | pleasure; and

498 |       (h) Make recommendations concerning more effective

499 | internal structuring of the department to the Legislature.

500 | Unless otherwise required by law, such recommendations must be

501 | provided to the Legislature at least 30 days before the first

502 | day of the regular session at which they are to be considered,

503 | when practicable.

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504 Section 7. Section 120.515, Florida Statutes, is created  
 505 to read:

506 120.515 Declaration of policy.—This chapter provides  
 507 uniform procedures for the exercise of specified authority. This  
 508 chapter does not limit or impinge upon the assignment of  
 509 executive power under Article IV of the State Constitution or  
 510 the legal authority of an appointing authority to direct and  
 511 supervise those appointees serving at the pleasure of the  
 512 appointing authority. For purposes of this chapter, adherence to  
 513 the direction and supervision of an appointing authority does  
 514 not constitute delegation or transfer of statutory authority  
 515 assigned to the appointee.

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

518 120.52 Definitions.—As used in this act:

519 (3) "Agency head" means the person or collegial body in a  
 520 department or other governmental unit statutorily responsible  
 521 for final agency action. An agency head appointed by and serving  
 522 at the pleasure of an appointing authority remains subject to  
 523 the direction and supervision of the appointing authority but  
 524 actions taken by the agency head as authorized by statute are  
 525 official acts.

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

530 11.242 Powers, duties, and functions as to statutory  
 531 revision.—The powers, duties, and functions of the Office of

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532 Legislative Services in the operation and maintenance of a  
 533 statutory revision program shall be as follows:

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

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

542 Section 10. Subsection (3) of section 14.34, Florida  
 543 Statutes, is repealed.

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

546 15.16 Reproduction of records; admissibility in evidence;  
 547 electronic receipt and transmission of records; certification;  
 548 acknowledgment.—

549 (7) The Secretary of State may issue apostilles conforming  
 550 to the requirements of the international treaty known as the  
 551 Hague Convention of 1961 and may charge a fee for the issuance  
 552 of apostilles not to exceed \$10 per apostille. The Secretary of  
 553 State has the sole authority in this state to establish, in  
 554 accordance with the laws of the United States, the requirements  
 555 and procedures for the issuance of apostilles. ~~The Department of~~  
 556 ~~State may adopt rules to implement this subsection.~~

557 Section 12. Subsection (7) of section 15.18, Florida  
 558 Statutes, is repealed.

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559 Section 13. Paragraph (a) of subsection (3) of section  
560 16.60, Florida Statutes, is amended to read:

561 16.60 Public records mediation program within the Office  
562 of the Attorney General; creation; duties.—

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

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

570 Section 14. Subsection (2) of section 17.0416, Florida  
571 Statutes, is repealed.

572 Section 15. Subsection (3) of section 17.59, Florida  
573 Statutes, is repealed.

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

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

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

577 Section 19. Subsection (11) of section 39.001, Florida  
578 Statutes, is repealed.

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

581 39.0137 Federal law; rulemaking authority.—

582 (2) ~~The department shall adopt rules no later than July 1,~~  
583 ~~2007, to ensure that the provisions of these federal laws are~~  
584 ~~enforced in this state.~~ The department is encouraged to enter  
585 into agreements with recognized American Indian tribes in order  
586 to facilitate the implementation of the Indian Child Welfare

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587 Act.

588 Section 21. Subsection (1) of section 39.824, Florida  
 589 Statutes, is repealed.

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

592 63.167 State adoption information center.—

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

597 Section 23. Section 88.9051, Florida Statutes, is  
 598 repealed.

599 Section 24. Section 97.026, Florida Statutes, is amended  
 600 to read:

601 97.026 Forms to be available in alternative formats and  
 602 via the Internet.—It is the intent of the Legislature that all  
 603 forms required to be used in chapters 97-106 shall be made  
 604 available upon request, in alternative formats. Such forms shall  
 605 include absentee ballots as alternative formats for such ballots  
 606 become available and the Division of Elections is able to  
 607 certify systems that provide them. ~~The department may, pursuant~~  
 608 ~~to ss. 120.536(1) and 120.54, adopt rules to administer this~~  
 609 ~~section.~~ Whenever possible, such forms, with the exception of  
 610 absentee ballots, shall be made available by the Department of  
 611 State via the Internet. Sections that contain such forms  
 612 include, but are not limited to, ss. 97.051, 97.052, 97.053,  
 613 97.057, 97.058, 97.0583, 97.071, 97.073, 97.1031, 98.075,  
 614 99.021, 100.361, 100.371, 101.045, 101.171, 101.20, 101.6103,

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615 101.62, 101.64, 101.65, 101.657, 105.031, 106.023, and 106.087.

616 Section 25. Section 97.0555, Florida Statutes, is amended  
617 to read:

618 97.0555 Late registration.—An individual or accompanying  
619 family member who has been discharged or separated from the  
620 uniformed services or the Merchant Marine, or from employment  
621 outside the territorial limits of the United States, after the  
622 book-closing date for an election pursuant to s. 97.055 and who  
623 is otherwise qualified may register to vote in such election  
624 until 5 p.m. on the Friday before that election in the office of  
625 the supervisor of elections. Such persons must produce  
626 sufficient documentation showing evidence of qualifying for late  
627 registration pursuant to this section. ~~The Department of State~~  
628 ~~shall adopt rules specifying documentation that is sufficient to~~  
629 ~~determine eligibility.~~

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

632 97.061 Special registration for electors requiring  
633 assistance.—

634 (1) Any person who is eligible to register and who is  
635 unable to read or write or who, because of some disability,  
636 needs assistance in voting shall upon that person's request be  
637 registered under the procedure prescribed by this section and  
638 shall be entitled to receive assistance at the polls under the  
639 conditions prescribed by this section. ~~The department may adopt~~  
640 ~~rules to administer this section.~~

641 Section 27. Subsection (3) of section 101.56062, Florida  
642 Statutes, is repealed.

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

645 103.101 Presidential preference primary.—

646 (5) The state executive committee of each party, by rule  
 647 adopted at least 60 days prior to the presidential preference  
 648 primary election, shall determine the number, and establish  
 649 procedures to be followed in the selection, of delegates and  
 650 delegate alternates from among each candidate's supporters. A  
 651 copy of any rule adopted by the executive committee shall be  
 652 filed with the Department of State within 7 days after its  
 653 adoption and shall become a public record. The Department of  
 654 State shall review the procedures and shall notify the state  
 655 executive committee of each political party of any ballot  
 656 limitations. ~~The Department of State may promulgate rules for~~  
 657 ~~the orderly conduct of the presidential preference primary~~  
 658 ~~ballot.~~

659 Section 29. Section 106.165, Florida Statutes, is amended  
 660 to read:

661 106.165 Use of closed captioning and descriptive narrative  
 662 in all television broadcasts.—Each candidate, political party,  
 663 affiliated party committee, and political committee must use  
 664 closed captioning and descriptive narrative in all television  
 665 broadcasts regulated by the Federal Communications Commission  
 666 that are on behalf of, or sponsored by, a candidate, political  
 667 party, affiliated party committee, or political committee or  
 668 must file a written statement with the qualifying officer  
 669 setting forth the reasons for not doing so. Failure to file this  
 670 statement with the appropriate qualifying officer constitutes a



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671 violation of the Florida Election Code and is under the  
672 jurisdiction of the Florida Elections Commission. ~~The Department~~  
673 ~~of State may adopt rules in accordance with s. 120.54 which are~~  
674 ~~necessary to administer this section.~~

675 Section 30. Section 110.1055, Florida Statutes, is amended  
676 to read:

677 110.1055 Rules and rulemaking authority.—The Department of  
678 Management Services shall have authority to adopt rules as  
679 necessary to effectuate the provisions of this chapter, ~~as~~  
680 ~~amended by this act, and in accordance with the authority~~  
681 ~~granted to the department in this chapter. All existing rules~~  
682 ~~relating to this chapter are statutorily repealed January 1,~~  
683 ~~2002, unless otherwise readopted.~~

684 Section 31. Subsection (5) of section 110.1099, Florida  
685 Statutes, is repealed.

686 Section 32. Subsection (7) of section 110.1228, Florida  
687 Statutes, is repealed.

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

690 110.12301 Competitive procurement of postpayment claims  
691 review services.—The Division of State Group Insurance is  
692 directed to competitively procure:

693 (2) A contingency-based contract for dependent eligibility  
694 verification services for the state group insurance program;  
695 however, compensation under the contract may not exceed  
696 historical claim costs for the prior 12 months for the dependent  
697 populations disenrolled as a result of the vendor's services.  
698 The division may establish a 3-month grace period and hold

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699 subscribers harmless for past claims of ineligible dependents.  
 700 The Department of Management Services shall submit budget  
 701 amendments pursuant to chapter 216 in order to obtain budget  
 702 authority necessary to expend funds from the State Employees'  
 703 Group Health Self-Insurance Trust Fund for payments to the  
 704 vendor as provided in the contract. ~~The Department of Management~~  
 705 ~~Services shall adopt rules providing a process for verifying~~  
 706 ~~dependent eligibility.~~

707       Section 34. Subsection (4) of section 112.1915, Florida  
 708 Statutes, is repealed.

709       Section 35. Section 118.12, Florida Statutes, is amended  
 710 to read:

711       118.12 Certification of civil-law notary's authority;  
 712 apostilles.—If certification of a civil-law notary's authority  
 713 is necessary for a particular document or transaction, it must  
 714 be obtained from the Secretary of State. Upon the receipt of a  
 715 written request from a civil-law notary and the fee prescribed  
 716 by the Secretary of State, the Secretary of State shall issue a  
 717 certification of the civil-law notary's authority, in a form  
 718 prescribed by the Secretary of State, which shall include a  
 719 statement explaining the legal qualifications and authority of a  
 720 civil-law notary in this state. The fee prescribed for the  
 721 issuance of the certification under this section or an apostille  
 722 under s. 15.16 may not exceed \$10 per document. ~~The Department~~  
 723 ~~of State may adopt rules to implement this section.~~

724       Section 36. Subsection (1) of section 121.085, Florida  
 725 Statutes, is repealed.

726       Section 37. Paragraph (b) of subsection (4) of section

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727 121.1001, Florida Statutes, is repealed.

728 Section 38. Subsection (3) of section 121.4503, Florida  
 729 Statutes, is repealed.

730 Section 39. Section 121.5911, Florida Statutes, is amended  
 731 to read:

732 121.5911 Disability retirement program; qualified status;  
 733 rulemaking authority.—It is the intent of the Legislature that  
 734 the disability retirement program for members of the Florida  
 735 Retirement System Investment Plan meet all applicable  
 736 requirements of federal law for a qualified plan. The department  
 737 shall seek a private letter ruling from the Internal Revenue  
 738 Service on the disability retirement program. ~~Consistent with~~  
 739 ~~the private letter ruling, the department shall adopt rules~~  
 740 ~~necessary to maintain the qualified status of the disability~~  
 741 ~~retirement program and the Florida Retirement System Pension~~  
 742 ~~Plan.~~

743 Section 40. Subsection (4) of section 125.902, Florida  
 744 Statutes, is repealed.

745 Section 41. Subsection (4) of section 154.503, Florida  
 746 Statutes, is repealed.

747 Section 42. Paragraph (a) of subsection (2) of section  
 748 159.8081, Florida Statutes, is amended to read:

749 159.8081 Manufacturing facility bond pool.—

750 (2) (a) The first 75 percent of this pool shall be  
 751 available on a first come, first served basis, except that 15  
 752 percent of the state volume limitation allocated to this pool  
 753 shall be available as provided in paragraph (b). Before issuing  
 754 any written confirmations for the remaining 25 percent of this

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755 pool, the executive director shall forward all notices of intent  
756 to issue which are received by the division for manufacturing  
757 facility projects to the Department of Economic Opportunity. The  
758 Department of Economic Opportunity shall decide, after receipt  
759 of the notices of intent to issue, which notices will receive  
760 written confirmations. Such decision shall be communicated in  
761 writing by the Department of Economic Opportunity to the  
762 executive director within 10 days of receipt of such notices of  
763 intent to issue. ~~The Department of Economic Opportunity may~~  
764 ~~develop rules to ensure that allocation of the remaining 25~~  
765 ~~percent is consistent with the state's economic development~~  
766 ~~policy.~~

767 Section 43. Section 159.8083, Florida Statutes, is amended  
768 to read:

769 159.8083 Florida First Business allocation pool.—The  
770 Florida First Business allocation pool is hereby established.  
771 The Florida First Business allocation pool shall be available  
772 solely to provide written confirmation for private activity  
773 bonds to finance Florida First Business projects certified by  
774 the Department of Economic Opportunity as eligible to receive a  
775 written confirmation. Allocations from such pool shall be  
776 awarded statewide pursuant to procedures specified in s.  
777 159.805, except that the provisions of s. 159.805(2), (3), and  
778 (6) do not apply. Florida First Business projects that are  
779 eligible for a carryforward do not lose their allocation  
780 pursuant to s. 159.809(3) on October 1, or pursuant to s.  
781 159.809(4) on November 16, if they have applied for and have  
782 been granted a carryforward by the division pursuant to s.

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783 159.81(1). In issuing written confirmations of allocations for  
784 Florida First Business projects, the division shall use the  
785 Florida First Business allocation pool. If allocation is not  
786 available from the Florida First Business allocation pool, the  
787 division shall issue written confirmations of allocations for  
788 Florida First Business projects pursuant to s. 159.806 or s.  
789 159.807, in such order. For the purpose of determining priority  
790 within a regional allocation pool or the state allocation pool,  
791 notices of intent to issue bonds for Florida First Business  
792 projects to be issued from a regional allocation pool or the  
793 state allocation pool shall be considered to have been received  
794 by the division at the time it is determined by the division  
795 that the Florida First Business allocation pool is unavailable  
796 to issue confirmation for such Florida First Business project.  
797 If the total amount requested in notices of intent to issue  
798 private activity bonds for Florida First Business projects  
799 exceeds the total amount of the Florida First Business  
800 allocation pool, the director shall forward all timely notices  
801 of intent to issue, which are received by the division for such  
802 projects, to the Department of Economic Opportunity, which shall  
803 render a decision as to which notices of intent to issue are to  
804 receive written confirmations. ~~The Department of Economic~~  
805 ~~Opportunity, in consultation with the division, shall develop~~  
806 ~~rules to ensure that the allocation provided in such pool is~~  
807 ~~available solely to provide written confirmations for private~~  
808 ~~activity bonds to finance Florida First Business projects and~~  
809 ~~that such projects are feasible and financially solvent.~~

810 Section 44. Subsection (3) of section 159.825, Florida

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811 Statutes, is repealed.

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

813 Section 46. Section 163.462, Florida Statutes, is

814 repealed.

815 Section 47. Subsection (6) of section 163.517, Florida

816 Statutes, is repealed.

817 Section 48. Subsection (2) of section 175.341, Florida

818 Statutes, is repealed.

819 Section 49. Paragraph (e) of subsection (2) of section

820 177.504, Florida Statutes, is repealed.

821 Section 50. Subsection (2) of section 185.23, Florida

822 Statutes, is repealed.

823 Section 51. Subsection (2) of section 255.25001, Florida

824 Statutes, is repealed.

825 Section 52. Subsection (7) of section 257.34, Florida

826 Statutes, is repealed.

827 Section 53. Subsection (6) of section 364.0135, Florida

828 Statutes, is repealed.

829 Section 54. Section 366.85, Florida Statutes, is amended

830 to read:

831 366.85 Responsibilities of Division of Consumer Services.—

832 The Division of Consumer Services of the Department of

833 Agriculture and Consumer Services shall be the agency

834 responsible for consumer conciliatory conferences, if such

835 conferences are required pursuant to federal law. The division

836 shall also be the agency responsible for preparing lists of

837 sources for energy conservation products or services and of

838 financial institutions offering energy conservation loans, if

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839 such lists are required pursuant to federal law. Notwithstanding  
 840 any provision of federal law to the contrary, the division shall  
 841 not require any manufacturer's warranty exceeding 1 year in  
 842 order for a source of conservation products or services to be  
 843 included on the appropriate list. The lists shall be prepared  
 844 for the service area of each utility and shall be furnished to  
 845 each utility for distribution to its customers. The division  
 846 shall update the lists on a systematic basis and shall remove  
 847 from any list any person who has been disciplined by any state  
 848 agency or who has otherwise exhibited a pattern of  
 849 unsatisfactory work and any person who requests removal from  
 850 such lists. ~~The division is authorized to adopt rules to~~  
 851 ~~implement the provisions of this section.~~

852 Section 55. Section 409.5092, Florida Statutes, is  
 853 repealed.

854 Section 56. Subsections (1) and (3) of section 501.142,  
 855 Florida Statutes, are amended to read:

856 501.142 Retail sales establishments; preemption; notice of  
 857 refund policy; exceptions; penalty.—

858 (1) The regulation of refunds is preempted to the  
 859 Department of Agriculture and Consumer Services notwithstanding  
 860 any other law or local ordinance to the contrary. Every retail  
 861 sales establishment offering goods for sale to the general  
 862 public that offers no cash refund, credit refund, or exchange of  
 863 merchandise must post a sign so stating at the point of sale.  
 864 Failure of a retail sales establishment to exhibit a "no refund"  
 865 sign under such circumstances at the point of sale shall mean  
 866 that a refund or exchange policy exists, and the policy shall be

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867 presented in writing to the consumer upon request. Any retail  
 868 establishment failing to comply with the provisions of this  
 869 section shall grant to the consumer, upon request and proof of  
 870 purchase, a refund on the merchandise, within 7 days of the date  
 871 of purchase, provided the merchandise is unused and in the  
 872 original carton, if one was furnished. Nothing herein shall  
 873 prohibit a retail sales establishment from having a refund  
 874 policy which exceeds the number of days specified herein. ~~The~~  
 875 ~~department may adopt rules pursuant to ss. 120.536(1) and 120.54~~  
 876 ~~to enforce the provisions of this section.~~ However, this  
 877 subsection does not prohibit a local government from enforcing  
 878 the provisions established by this section ~~or department rule.~~

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

883 ~~(a) Issue a notice of noncompliance pursuant to s.~~  
 884 ~~120.695.~~

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

887 (b) ~~(c)~~ Direct the person to cease and desist specified  
 888 activities.

889 Section 57. Paragraph (b) of subsection (15) of section  
 890 985.682, Florida Statutes, is amended to read:

891 985.682 Siting of facilities; study; criteria.—

892 (15)

893 (b) Notwithstanding s. ~~ss.~~ 255.25(1)(b) ~~and 255.25001(2)~~,  
 894 the department may enter into lease-purchase agreements to



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895 provide juvenile justice facilities for the housing of committed  
896 youths contingent upon available funds. The facilities provided  
897 through such agreements shall meet the program plan and  
898 specifications of the department. The department may enter into  
899 such lease agreements with private corporations and other  
900 governmental entities. However, notwithstanding the provisions  
901 of s. 255.25(3)(a), no such lease agreement may be entered into  
902 except upon advertisement for the receipt of competitive bids  
903 and award to the lowest and best bidder except when contracting  
904 with other governmental entities.

905 Section 58. This act shall take effect July 1, 2012.