

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1537 Executive Branch
SPONSOR(S): State Affairs Committee, Gregory
TIED BILLS: **IDEN./SIM. BILLS:** SB 1674

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) State Affairs Committee	15 Y, 7 N, As CS	Toliver	Williamson
2) Judiciary Committee			
3) Appropriations Committee			

SUMMARY ANALYSIS

The executive power of Florida's Government is distributed among four public officials: the Governor and the three members of the Cabinet. The Florida Cabinet consists of the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.

Three departments – Department of Law Enforcement (FDLE), Department of Environmental Protection, and Department of Veterans' Affairs (DVA) – require the Governor and three members of the Cabinet to approve the appointment of the department's secretary or executive director and requires Senate confirmation of such appointment.

The Department of Highway Safety and Motor Vehicles (DHSMV) was created in 1969 with the head of DHSMV being the Governor and Cabinet. The Governor and Cabinet appoint an executive director.

The bill revises the appointment requirements for the executive director of FDLE and DVA. It removes the requirement that the appointment of the executive director of FDLE have the approval of all three members of the Cabinet and instead makes the appointment subject to a majority vote of the Cabinet, with the Governor and Attorney General on the prevailing side. The bill also removes the requirement that the appointment of the executive director of DVA have the approval of all three members of the Cabinet and instead makes the appointment subject to a majority vote of the Governor and Cabinet, with the Governor on the prevailing side. In addition, the bill revises the appointment procedure for the Secretary of Environmental Protection to remove the requirement that the appointment have the approval of all three members of the Cabinet and instead makes the appointment subject to a majority vote of the Governor and Cabinet, with the Governor on the prevailing side. In each instance, the bill maintains the requirement that the Senate confirm the executive director or secretary.

The bill places DHSMV directly under the Governor, removing the Governor and Cabinet as the joint head of that department, and requires the Governor to appoint a secretary, subject to Senate confirmation.

Finally, the bill directs the Office of Program Policy Analysis and Government Accountability to contract for a comprehensive review of FDLE. The review must make recommendations regarding FDLE's scope of services, including identifying any service that should be expanded, consolidated, eliminated, or transferred to another entity. The contractor must submit its report by January 1, 2022, to the Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, the President of the Senate, and the Speaker of the House of Representatives.

Subject to appropriation, the bill might have a negative fiscal impact associated with the contracted study of FDLE.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Structure of the Executive Branch of Florida Government

The Florida Constitution creates the structure of all branches of Florida Government. Article IV of the Florida Constitution establishes the executive branch and delineates its structure. The executive power is divided among four public officials: the Governor and the three members of the Florida Cabinet.¹ Article IV also requires that all functions of the executive branch of state government be allotted among not more than 25 departments, not including those provided for or authorized in the constitution itself.² The administration of each department must be placed by law under the direct supervision of the Governor, the Lieutenant Governor, the Governor and Cabinet, a Cabinet member, or an officer or board appointed by and serving at the pleasure of the Governor.³ The Legislature may provide by law that an appointment to or removal from any designated statutory office must require confirmation by the Senate or the approval of three members of the Cabinet.⁴

Governor

The Florida Constitution states that the “supreme executive power shall be vested in a governor” and that he or she is the chief administrative officer of the state.⁵ The Governor must take care that the laws be faithfully executed, commission all officers of the state and counties, and transact all necessary business with the officers of government.⁶ The Governor is also responsible for the planning and budgeting for the state.⁷

The Governor is the commander-in-chief of all military forces of the state not in active service of the United States and he or she has the power to call out the militia to preserve the public peace, execute the laws of the state, suppress insurrection, or repel invasion.⁸

Cabinet

The Florida Cabinet has existed in some form from 1868 to today.⁹ The 1868 Constitution created a Cabinet that consisted of executive officers appointed by the Governor and confirmed by the Senate.¹⁰ It is the 1885 Florida Constitution, however, that gave the body the form that is still recognizable today: independently elected public officers heading specific parts of the executive branch.¹¹ The 1885 Florida Constitution created six administrative officers to assist the Governor in governing the executive branch.¹² The following officers comprised the cabinet under the 1885 Constitution:

- Secretary of State.
- Attorney General.
- Comptroller.
- Treasurer.
- Superintendent of Public Instruction.

¹ Article IV, FLA. CONST.; The Florida Constitution also creates the office of the Lieutenant Governor but does not specify his or her powers but instead requires the Lieutenant Governor perform such duties pertaining to the office of Governor as are assigned by the Governor. *See* Article IV, s. 2, FLA. CONST.

² Article IV, s. 6, FLA. CONST.

³ *Id.*

⁴ Article IV, s. 6(a), FLA. CONST.

⁵ Article IV, s. 4, FLA. CONST.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *See* Joseph W. Landers, Jr, *The Myth of the Cabinet System: The Need to Restructure Florida’s Executive Branch*, 19 Fla. St. U L. Rev. 1089 (1992).

¹⁰ *Id.*

¹¹ Article IV, s. 20, FLA. CONST. (1868); *see also* Talbot D’Alemberte, *The Florida State Constitution: A Reference Guide* (1991).

¹² *Id.*

- Commissioner of Agriculture.¹³

The Cabinet largely remained in this form until 2003. In 1998, the Constitution Revision Commission¹⁴ placed Amendment 8, Restructuring the Florida Cabinet, on the ballot.¹⁵ The amendment reduced the Cabinet to three members by merging the cabinet offices of the treasurer and comptroller into a new position entitled the Chief Financial Officer (CFO) and removed the Secretary of State and the Commissioner of Education¹⁶ from the Cabinet. The amendment passed and became effective on January 7, 2003. The current Cabinet consists of the CFO, Attorney General, and the Commissioner of Agriculture.¹⁷ The CFO serves as the chief fiscal officer of the state and settles and approves accounts against the state, and keeps all state funds and securities.¹⁸ The Attorney General is the chief state legal officer.¹⁹ The Commissioner of Agriculture supervises all matters pertaining to agriculture except as otherwise provided by law.²⁰

The Governor and Cabinet meet as a collegial body.²¹ The Florida Constitution specifies that when a tie vote occurs, the side on which the Governor voted is deemed to prevail.²² Florida law further specifies that when a tie vote occurs and the side the Governor votes on prevails, the vote satisfies the requirement that the action taken be by “majority” or “simple majority.”²³

Department Head Appointments requiring Unanimous Cabinet Approval

Three departments – Department of Law Enforcement (FDLE), Department of Environmental Protection (DEP), and Department of Veterans’ Affairs (DVA) – require the Governor and three members of the Cabinet to approve the appointment of the department’s secretary or executive director. This requirement existed prior to the Cabinet reorganization in 2003. With the six member Cabinet that existed prior to 2003, the three Cabinet member approval requirement, when added with the Governor’s choice, would have been a majority.²⁴ However, the reduction of the Cabinet to three members in 2003 means that the Cabinet vote in these instances must be unanimous.

Florida Department of Law Enforcement

FDLE was created in 1969, replacing the Bureau of Law Enforcement, with the head of the agency being the Governor and Cabinet.²⁵ Since its creation, the executive director of FDLE has been appointed by the Governor, with the approval of three members of the Cabinet, subject to Senate confirmation.²⁶ The executive director serves at the pleasure of the Governor and Cabinet.²⁷

FDLE’s mission is to “promote public safety and strengthen domestic security by providing services in partnership with local, state, and federal criminal justice agencies to prevent, investigate, and solve

¹³ *Id.*

¹⁴ The Constitution Revision Commission meets every 20 years to examine the constitution of the state, hold public hearings, and propose revisions to constitution. Article XI, s. 2, FLA. CONST.

¹⁵ Amendment 8, FLORIDA DEPARTMENT OF STATE, *available at* <https://dos.elections.myflorida.com/initiatives/fulltext/pdf/11-4.pdf> (last visited March 21, 2021).

¹⁶ The Commissioner of Education was formerly known as the Superintendent of Public Instruction.

¹⁷ Article IV, s. 4, FLA. CONST.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ See Edwin Bayo & Kent Perez, *Florida’s Cabinet System: Y2K and Beyond*, Fla. B.J., Nov. 2000 at 68, *available at* <https://www.floridabar.org/the-florida-bar-journal/floridas-cabinet-system-y2k-and-beyond/> (last visited March 22, 2021).

²² Article IV, s. 4(a), FLA. CONST.

²³ Section 14.2001, F.S.

²⁴ See Kent Perez, *The New Constitutional Cabinet “Florida’s Four,”* Fla. B.J., Apr. 2008 at 62, *available at* <https://www.floridabar.org/the-florida-bar-journal/the-new-constitutional-cabinet-floridas-four/> (last visited March 22, 2021).

²⁵ Chapter 69-106386, L.O.F.

²⁶ Section 20.201(1), F.S.; *see also* Article IV, s. 4(g), FLA. CONST.

²⁷ *Id.*

crimes while protecting Florida's citizens and visitors.”²⁸ FDLE is composed of seven Regional Operating Centers (ROCs)²⁹ and the following programs are established in law:

- Criminal Investigations and Forensic Science.
- Criminal Justice Information.
- Criminal Justice Professionalism.
- Florida Capitol Police.³⁰

In 2018, the Constitution Revision Commission placed Revision 5 on the ballot, which passed and became a part of the Florida Constitution.³¹ The Revision, among other things, amended the Florida Constitution to require that the Office of Domestic Security and Counterterrorism (office) be created within FDLE.³² The office provides support for prosecutors and federal, state, and local law enforcement agencies that investigate or analyze information related to attempts or acts of terrorism or that prosecute terrorism, and must perform any other duties provided by law.³³

Department of Environmental Protection

DEP was created in 1993 by the Florida Environmental Reorganization Act of 1993,³⁴ replacing the Department of Environmental Regulation and the Department of Natural Resources.³⁵ Since the department's creation, the head of DEP has been a secretary³⁶ appointed by the Governor, with the concurrence of three members of the Cabinet, subject to Senate confirmation.³⁷ The secretary serves at the pleasure of the Governor.³⁸

DEP's mission is to “protect, conserve, and manage Florida's natural resources and enforce the State of Florida's environmental laws.”³⁹ Section 20.255, F.S., establishes the following divisions within DEP:

- Division of Administrative Services.
- Division of Air Resource Management.
- Division Water Resource Management.
- Division of Environmental Assessment and Restoration.
- Division of Waste Management.
- Division of Recreation and Parks.
- Division of State Lands.
- Divisions of Water Restoration Assistance.
- Division of Law Enforcement.

Department of Veterans' Affairs

In 1988, a constitutional amendment was adopted that required the Legislature to create the DVA in law and prescribe its duties.⁴⁰ The amendment also specified that the head of the DVA is the Governor and Cabinet.⁴¹ Thereafter, the Legislature established the DVA in statute and required the executive

²⁸ FDLE, Statement of Agency Organization and Operation, *available at* <https://www.fdle.state.fl.us/About-Us/Documents/StatementofAgencyOrg.aspx> (last visited March 21, 2021).

²⁹ The Regional Operating Centers report to “a Regional Director (Special Agent in Charge) instead of headquarters.” FDLE, About Us, *available at* <https://www.fdle.state.fl.us/About-Us/General-Information.aspx> (last visited March 21, 2021).

³⁰ *Id.*; see also s. 20.201(2), F.S., establishing four programs within FDLE: Criminal Justice Investigations and Forensic Science Program; Criminal Justice Information Program; Criminal Justice Professionalism Program; and Capitol Police.

³¹ See Revision 5, FLORIDA DEPARTMENT OF STATE, *available at* <https://dos.elections.myflorida.com/initiatives/fulltext/pdf/11-24.pdf> (last visited March 21, 2021).

³² Article IV, s. (4)(g), FLA. CONST.

³³ *Id.*

³⁴ Chapter 93-213, L.O.F.

³⁵ *Id.*

³⁶ The term “secretary” means an individual who is appointed by the Governor to head a department and who is not otherwise named in the State Constitution. Section 20.03(5), F.S.

³⁷ Section 20.255(1), F.S.

³⁸ *Id.*

³⁹ DEP, Statement of Agency Organization and Operation, *available at* https://floridadep.gov/sites/default/files/DEP_Statement_of_Agency_Organization_and_Operation.pdf (last visited March 22, 2021).

⁴⁰ Article IV, s. 11, FLA. CONST.

⁴¹ *Id.*

director be appointed by the Governor, with the approval of three members of the Cabinet, subject to confirmation by the Senate. The executive director serves at the pleasure of the Governor and Cabinet.⁴²

Section 20.37, F.S., establishes the Division of Administration and Public Information and within that division, the Bureau of Information and Research. It also establishes the Division of Veterans' Benefits and Assistance with the following bureaus created within the division:

- Bureau of Veteran Claims Services.
- Bureau of Veteran Field Services.
- Bureau of State Approving for Veterans' Training.

Department of Highway Safety and Motor Vehicles

The Department of Highway Safety and Motor Vehicles (DHSMV) was created in 1969 when the Legislature merged the Department of Motor Vehicles and the Department of Public Safety.⁴³ Since 1969, the head of DHSMV has been the Governor and Cabinet.⁴⁴ The Governor and Cabinet appoint an executive director.⁴⁵

The mission of DHSMV is to provide "Highway Safety and Security through Excellence in Service, Education, and Enforcement."⁴⁶ DHSMV partners with county tax collectors and local, state, and federal law enforcement agencies to promote a safe driving environment and coordinates with its partners to issue driver licenses and identification cards, facilitate motor vehicle transactions, and provide services related to consumer protection and public safety.⁴⁷ Section 20.42, F.S., establishes the Division of the Florida Highway Patrol and the Division of Motorist Services within DHSMV.

The Office of Program Policy Analysis and Government Accountability

The Office of Program Policy Analysis and Government Accountability (OPPAGA) is the research arm of the Legislature. OPPAGA provides data, evaluative research, and objective analyses to assist legislative budget and policy deliberations, and conducts research as directed by state law, the presiding officers, or the Joint Legislative Auditing Committee.⁴⁸

Effect of the Bill

The bill revises the appointment requirements for the executive director of FDLE and DVA in the following ways:

- Removes the requirement that the appointment of the executive director of FDLE have the approval of all three members of the Cabinet and instead makes the appointment subject to a majority vote of the Cabinet consisting of at least three affirmative votes, with the Governor and Attorney General on the prevailing side.
- Removes the requirement that the appointment of the executive director of DVA have the approval of all three members of the Cabinet and instead makes the appointment subject to a majority vote of the Governor and Cabinet, consisting of at least three affirmative votes, with the Governor on the prevailing side.

In both instances, the bill maintains the requirement that the executive directors are subject to Senate confirmation.

⁴² Section 20.37(1), F.S.

⁴³ Chapter 69-106, L.O.F.

⁴⁴ Section 20.24(1), F.S.

⁴⁵ See s. 20.03(6), F.S., stating that the chief administrative employee or officer of a department headed by a board or by the Governor and the Cabinet is an "executive director."

⁴⁶ DHSMV, Statement of Agency Organization and Operation, *available at* <https://www.flhsmv.gov/pdf/department/orgstatement.pdf> (last visited March 22, 2021).

⁴⁷ *Id.*

⁴⁸ The Office of Program Policy Analysis and Government Accountability, *See About OPPAGA*, *available at* <https://oppaga.fl.gov/About> (last visited March 21, 2021)

The bill also revises the appointment procedure for the Secretary of Environmental Protection to remove the requirement that the appointment have the approval of all three members of the Cabinet and instead makes the appointment subject to a majority vote of the Governor and Cabinet, consisting of at least three affirmative votes, with the Governor on the prevailing side. The bill maintains the requirement that the Secretary be subject to Senate confirmation.

The bill places DHSMV directly under the Governor, removing the Governor and Cabinet as the joint head of the department, and requires the Governor to appoint a secretary, subject to Senate confirmation.

Finally, subject to an appropriation, the bill requires OPPAGA to contract for a comprehensive review of FDLE. The contractor must have experience reviewing large, statewide, or federal law enforcement agencies. The contractor must determine whether the programs, functions, and services provided by FDLE are consistent with its mission and must review each program, function, or service, identifying the number of users, cost, and effectiveness by geographical location. As part of its review, the contractor must make recommendations regarding FDLE's scope of services, including, but not limited to, identifying any service that should be expanded, consolidated, eliminated, or transferred to another agency or entity.

The contractor must investigate and make specific findings and recommendations on:

- FDLE's crime laboratories and forensic analysis processes, including:
 - The accreditation and qualifications of the crime laboratories and employees.
 - The number and type of forensic analyses performed.
 - The average length of time for each type of forensic analysis to be completed.
 - Whether there is an existing backlog on forensic analysis.
 - A comparison to crime laboratories in similar jurisdictions in scope of service, accreditation, and sample processing time.
 - Whether any of the forensic analyses performed by FLDE should be transferred to another state or local agency, and if there are barriers to transferring such duties to another agency.
- Any programs operated by FDLE that are limited to a given geographic service area including the following:
 - Identification of the number of users, cost, and effectiveness of the programs; and
 - A determination as to whether the programs should be expanded statewide, eliminated, or transferred to another state or local agency, and whether barriers exist any such transfer

The contract must identify:

- Each accreditation earned by FDLE and whether any additional accreditation is recommended.
- The number and types of cases investigated by FDLE and a determination as to whether criminal charges were filed as a result of the investigation.
- The number of cases involving cybersecurity and related technology issues that were investigated by FDLE and a determination as to whether criminal charges were filed as a result of such investigations.
- Any responsibilities of FDLE that can be transferred to another state or local agency, resulting in improved efficiency or accountability.

The bill requires FDLE to provide the contractor with access to any and all information requested by the contractor to complete its review. Information or records obtained by the contractor that are otherwise exempt or confidential and exempt retain their exempt or confidential and exempt status, and the contractor may not disclose any such information or records.

The contractor must submit its report by January 1, 2022, to the Governor, the Attorney General, the CFO, the Commissioner of Agriculture, the President of the Senate, and the Speaker of the House of Representatives.

B. SECTION DIRECTORY:

Section 1 amends s. 20.201, F.S., relating to the Department of Law Enforcement.

Section 2 amends s. 20.24, F.S., relating to the Department of Highway Safety and Motor Vehicles.

Section 3 amends s. 20.255, F.S., relating to the Department of Environmental Protection.

Section 4 amends s. 20.37, F.S., relating to the Department of Veterans' Affairs.

Section 5 amends s. 206.27, F.S., relating to records and files of the Department of Highway Safety and Motor Vehicles as public records.

Section 6 amends s. 207.021, F.S., relating to information conferences; settlement or compromise of taxes, penalties, or interest.

Section 7 amends s. 316.545, F.S., relating to the unlawful weight and load; special fuel and motor fuel tax enforcement; inspection; penalty; review.

Section 8 amends s. 320.275, F.S., relating to the automobile dealers industry advisory board.

Section 9 amends s. 322.125, F.S., relating to the medical advisory board.

Section 10 amends s. 397.333, F.S., relating to the statewide drug policy advisory council.

Section 11 amends s. 943.0313, F.S., relating to the domestic security oversight council.

Section 12 amends s. 943.06, F.S., relating to the criminal and juvenile justice information systems council.

Section 13 creates an unnumbered section of law relating to a review of the Department of Law Enforcement.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Subject to an appropriation, the bill directs OPPAGA to contract for a review of FDLE. The cost of contracting with an entity for such a review will likely have a negative fiscal impact on state government expenditures.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not create, alter, or expand rulemaking authority for any agency.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2021, the State Affairs Committee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from HB 1537 in that it:

- Required the secretary of Environmental Protection be appointed by the Governor subject to a majority vote of the Governor and Cabinet consisting of at least three affirmative votes, with the Governor on the prevailing side.
- Removed the portions of HB 1537 that dissolved the Administration Commission and the Florida Land and Water Adjudicatory Commission and reassigned the duties, powers, and functions thereof to various state agencies.
- Removed legislative intent.

This analysis is drafted to the committee substitute adopted by the State Affairs Committee.