

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1295 Executive Appointments
SPONSOR(S): Judiciary Committee, State Affairs Committee, Gregory
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 1658

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) State Affairs Committee	15 Y, 7 N, As CS	Roth	Williamson
2) Judiciary Committee	14 Y, 7 N, As CS	Padgett	Kramer

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 – Florida 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.

CS/CS/HB 1295 amends ss. 20.201 and 20.37, F.S., to revise the appointment requirements for the executive director of FDLE, commonly referred to as the Commissioner, 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 Governor and Cabinet consisting of at least three affirmative votes, with the Governor 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, consisting of at least three affirmative votes, with the Governor on the prevailing side.

The bill amends s. 20.255, F.S., to revise the appointment procedure for the Secretary of the Department of Environmental Protection to require that the appointment either have the approval of all three members of the Cabinet or be confirmed by the Senate. Upon making an appointment, the Governor must, in writing, notify the Cabinet and the President of the Senate whether he or she will seek the concurrence of three members the Cabinet or confirmation by the Senate.

If the Governor seeks the concurrence of the Cabinet, such concurrence must be obtained at the first scheduled Cabinet meeting following the appointment. If three Cabinet members do not concur, the appointee may continue in the job until his or her successor is appointed and qualified, but may not serve for longer than 30 days following the date of the Cabinet meeting at which the appointment was considered. An appointee who does not receive the concurrence of three members of the Cabinet is not eligible for appointment to the same office for one year after the date of the Cabinet meeting at which the initial appointment was considered.

The bill does not appear to have a fiscal impact on the state or local governments.

The bill is effective upon becoming a law.

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 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 The Florida Constitution also creates the office of the Lieutenant Governor. The Lieutenant Governor is required to “perform such duties pertaining to the office of the governor as shall be assigned by the governor, except when otherwise provided by law, and such other duties as may be prescribed by law.” Art. IV, s. 2, Fla. Const.

² Art. IV, s. 6, Fla. Const.

³ *Id.*

⁴ Art. IV, s. 6(a), Fla. Const.

⁵ Art. 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 Art. IV, s. 20, Fla. Const. (1885); 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, 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 – Florida Department of Law Enforcement²⁴ (FDLE), Department of Environmental Protection²⁵ (DEP), and Department of Veterans’ Affairs²⁶ (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.²⁷ 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.²⁸ 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.²⁹ The executive director, commonly known as the Commissioner, serves at the pleasure of the Governor and Cabinet.³⁰ 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

¹³ *Id.*

¹⁴ The Constitution Revision Commission meets every 20 years to examine the Constitution, hold public hearings, and propose revisions to constitution. Art. XI, s. 2, Fla. Const.

¹⁵ Amendment 8, Florida Department of State, <https://dos.elections.myflorida.com/initiatives/fu11text/pdf/11-4.pdf> (last visited Feb. 23, 2022).

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

¹⁷ Art. 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 Feb. 23, 2022).

²² Art. IV, s. 4(a), Fla. Const.

²³ S. 14.2001, F.S.

²⁴ S. 20.201, F.S.

²⁵ S. 20.255, F.S.

²⁶ S. 20.37, F.S.

²⁷ See Kent Perez, *The New Constitutional Cabinet “Florida’s Four,”* Fla. B.J., Apr. 2008 at 62, <https://www.floridabar.org/the-florida-bar-journal/the-new-constitutional-cabinet-floridas-four> (last visited Feb. 23, 2022).

²⁸ Ch. 69-106, Laws of Fla.

²⁹ S. 20.201(1), F.S.; see also Art. IV, s. 4(g), Fla. Const.

³⁰ *Id.*

prevent, investigate, and solve crimes while protecting Florida's citizens and visitors."³¹ FDLE is composed of seven Regional Operating Centers³² and the following programs are established in law:

- Criminal Justice Investigations and Forensic Science.
- Criminal Justice Information.
- Criminal Justice Professionalism.
- Florida Capitol Police.³³

In 2018, the Constitution Revision Commission placed Revision 5 on the ballot, which passed and became a part of the Florida Constitution.³⁴ The Revision, among other things, amended the Florida Constitution to require that the Office of Domestic Security and Counterterrorism (Office) be created within FDLE.³⁵ The Office provides support for prosecutors and federal, state, and local law enforcement agencies that investigate or analyze information related to terrorism or attempted acts of terrorism.³⁶

Department of Environmental Protection

DEP was created in 1993 by the Florida Environmental Reorganization Act of 1993,³⁷ replacing the Department of Environmental Regulation and the Department of Natural Resources.³⁸ Since the department's creation, the head of DEP has been a Secretary³⁹ appointed by the Governor, with the concurrence of three members of the Cabinet, subject to Senate confirmation.⁴⁰ The Secretary serves at the pleasure of the Governor.⁴¹

DEP's mission is to "protect, conserve, and manage Florida's natural resources and enforce the State of Florida's environmental laws."⁴² Section 20.255, F.S., establishes the following divisions within DEP:

- Division of Administrative Services.
- Division of Air Resource Management.
- Division of 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.⁴³ The amendment also specified that the head of the DVA is the Governor and Cabinet.⁴⁴ Thereafter, the Legislature established the DVA in statute and required the executive director to be appointed by the Governor, with the approval of three members of the Cabinet, subject to

³¹ FDLE, *Statement of Agency Organization and Operation*, <https://www.fdle.state.fl.us/About-Us/Documents/StatementofAgencyOrg.aspx> (last visited Feb. 23, 2022).

³² The Regional Operating Centers report to "a Regional Director (Special Agent in Charge) instead of headquarters." FDLE, *About Us*, <https://www.fdle.state.fl.us/About-Us/General-Information.aspx> (last visited Feb. 23, 2022).

³³ *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.

³⁴ See Revision 5, Fla. Dept. of State, <https://dos.elections.myflorida.com/initiatives/fulltext/pdf/11-24.pdf> (last visited Feb. 23, 2022).

³⁵ Art. IV, s. (4)(g), Fla. Const.

³⁶ *Id.*

³⁷ Ch. 93-213, Laws of Fla.

³⁸ *Id.*

³⁹ 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. S. 20.03(5), F.S.

⁴⁰ S. 20.255(1), F.S.

⁴¹ *Id.*

⁴² 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 Feb. 23, 2022).

⁴³ Art. IV, s. 11, Fla. Const.

⁴⁴ *Id.*

confirmation by the Senate. The executive director serves at the pleasure of the Governor and Cabinet.⁴⁵

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.

Effect of Proposed Changes

CS/CS/HB 1295 revises the appointment requirements for the executive director of FDLE and DVA in the following ways:

- Amends s. 20.201, F.S., to remove 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 Governor and Cabinet consisting of at least three affirmative votes, with the Governor on the prevailing side.
- Amends s. 20.37, F.S., to remove 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.

The bill amends s. 20.255, F.S., to revise the appointment procedure for the Secretary of the Department of Environmental Protection to require that the appointment either have the approval of all three members of the Cabinet or be confirmed by the Senate. Upon making an appointment, the Governor must, in writing, notify the Cabinet and the President of the Senate whether he or she will seek the concurrence of three members the Cabinet or confirmation by the Senate.

If the Governor seeks the concurrence of the Cabinet, such concurrence must be obtained at the first scheduled Cabinet meeting following the appointment. If three Cabinet members do not concur, the appointee may continue in the job until his or her successor is appointed and qualified, but may not serve for longer than 30 days following the date of the Cabinet meeting at which the appointment was considered. An appointee who does not receive the concurrence of three members of the Cabinet is not eligible for appointment to the same office for one year after the date of the Cabinet meeting at which the initial appointment was considered.

The bill is effective upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 20.201, F.S., relating to Department of Law Enforcement.

Section 2: Amends s. 20.255, F.S., relating to Department of Environmental Protection.

Section 3: Amends s. 20.37, F.S., relating to Department of Veterans' Affairs.

Section 4: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

⁴⁵ S. 20.37(1), F.S.
STORAGE NAME: h1295c.JDC
DATE: 2/23/2022

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:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

There is no rule-making authority nor is there a need for rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 20, 2022, the State Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment made conforming changes by replacing references to “executive director” of DHSMV with “secretary.”

On February 23, 2022, the Judiciary Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment made the following changes to CS/HB 1295:

- Removed the requirement that the Attorney General be on the prevailing side of a vote to concur in the Governor’s appointment of the executive director of FDLE.
- Removed provisions of the bill revising the appointment process for the head of the Department of Highway Safety and Motor Vehicles and removed conforming changes resulting from such revision.
- Authorized the Governor to seek concurrence of the Cabinet *or* confirmation from the Senate for an appointment of the Secretary of the Department of Environmental Protection.

This analysis is drafted to the committee substitute as adopted by the Judiciary Committee.