

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1658

INTRODUCER: Environment and Natural Resources Committee and Senators Bean and Rodrigues

SUBJECT: Executive Appointments

DATE: February 1, 2022 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carroll</u>	<u>Rogers</u>	<u>EN</u>	Fav/CS
2.	<u>Carroll</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1658 revises the appointment criteria for the executive director of the Department of Law Enforcement, the secretary of the Department of Environmental Protection, and the executive director of the Department of Veterans' Affairs.

II. Present Situation:

Structure of the Executive Branch of the State of Florida

The Florida Constitution creates the structure of all branches of the 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 the removal from any

¹ The Florida Constitution also creates the office of the Lieutenant Governor but does not specify the powers of that office, instead requiring the Lieutenant Governor to perform such duties pertaining to the office of the Governor as are assigned by the Governor. Art. IV, s. 2, FLA. CONST.

² Art. IV, s. 6, FLA. CONST.

³ *Id.*

designated statutory office must require confirmation by the Senate or the approval of three members of the Cabinet.⁴

Cabinet

The Florida Cabinet has existed in some form since 1868.⁵ The 1868 Constitution created a Cabinet that consisted of executive officers appointed by the Governor and confirmed by the Senate.⁶ The 1885 Florida Constitution created six independently elected administrative officers to assist the Governor in governing the executive branch.⁷ The following officers comprised the cabinet under the 1885 Constitution:

- Secretary of State,
- Attorney General,
- Comptroller,
- Treasurer,
- Superintendent of Public Instruction, and
- Commissioner of Agriculture.

The Cabinet largely remained in this form until 2003. In 1998, the Constitution Revision Commission⁸ placed Amendment 8, “Restructuring the Florida Cabinet,” on the ballot.⁹ 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 Education¹⁰ 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.¹¹ 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. The Attorney General is the chief state legal officer. The Commissioner of Agriculture supervises all matters pertaining to agriculture except as otherwise provided by law.¹²

The Governor and Cabinet meet as a collegial body.¹³ The Florida Constitution specifies that when a tie vote occurs, the side on which the Governor voted is deemed to prevail.¹⁴ Florida law

⁴ Art. IV, s. 6(a), FLA. CONST.

⁵ 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) available at <https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=2445&context=lr> (last visited Feb. 1, 2022).

⁶ *Id.*

⁷ Art. IV, s. 20, FLA. CONST. (1885).

⁸ The Constitution Revision Commission meets every 20 years to examine the state constitution, hold public hearings, and proposed revisions. Art. IV, s. 2, FLA. CONST.

⁹ Amendment 8, Florida Department of State, <https://dos.elections.myflorida.com/initiatives/fulltext/pdf/11-4.pdf> (last visited Feb. 1, 2022).

¹⁰ The Commissioner of Education was formerly known as the Superintendent of Public Instruction.

¹¹ Art. IV, s. 4, FLA. CONST.

¹² *Id.*

¹³ 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. 1, 2022).

¹⁴ Art. IV, s. 4(a), FLA. CONST.

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.”¹⁵

Department Head Appointments Requiring Unanimous Cabinet Approval

Three departments – Department of Law Enforcement¹⁶ (FDLE), Department of Environmental Protection¹⁷ (DEP), and Department of Veterans’ Affairs¹⁸ (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.¹⁹ 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

The 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.²⁰ 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.²¹ The executive director serves at the pleasure of the Governor and Cabinet.²² 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 crimes while protecting Florida’s citizens and visitors.”²³

FDLE is composed of seven Regional Operating Centers²⁴ and the following programs are established in law:

- Criminal Justice Investigations and Forensic Science,
- Criminal Justice Information,
- Criminal Justice Professionalism, and
- Florida Capitol Police.²⁵

¹⁵ Section 14.2001, F.S.

¹⁶ Section 20.201, F.S.

¹⁷ Section 20.255, F.S.

¹⁸ Section 20.37, F.S.

¹⁹ 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. 1, 2022).

²⁰ Ch. 69-106, Laws of Fla.

²¹ Section 20.201(1), F.S.; see also Art. IV, s. 4(g), FLA. CONST.

²² *Id.*

²³ FDLE, *Statement of Agency Organization and Operation*, available at <https://www.fdle.state.fl.us/About-Us/Documents/StatementofAgencyOrg.aspx> (last visited Feb. 1, 2022).

²⁴ 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. 1, 2022).

²⁵ *Id.*; see also section 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.

Department of Environmental Protection

DEP was created in 1993 by the Florida Environmental Reorganization Act of 1993,²⁶ replacing the Department of Environmental Regulation and the Department of Natural Resources.²⁷ Since the department's creation, the head of DEP has been a secretary²⁸ appointed by the Governor, with the concurrence of three members of the Cabinet, subject to Senate confirmation.²⁹ The secretary serves at the pleasure of the Governor.³⁰

DEP is the state's lead agency for environmental management and stewardship.³¹ DEP is divided into three primary program areas:

- Land and recreation programs, which acquire land for preservation and recreation;
- Regulatory programs, which oversee permitting and compliance activities that protect air and water quality and manage waste cleanups; and
- Ecosystems restoration programs, which protect and improve water quality and aquatic resources.³²

DEP has six administrative districts involved in regulatory matters of water management, water resource management, wetlands, and air resources.³³ DEP has nine divisions, which direct the district offices and bureaus in matters of interpretation and applicability of DEP's rules and programs.³⁴ The divisions are:

- Administrative Services,
- Air Resource Management,
- Water Resource Management,
- Environmental Assessment and Restoration,
- Waste Management,
- Recreation and Parks,
- State Lands,
- Water Restoration Assistance, and
- Law Enforcement.³⁵

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.³⁶ The amendment also specified that the head of the DVA is the Governor and Cabinet.³⁷ Thereafter, the Legislature established the DVA in statute and required

²⁶ Ch. 93-213, Laws of Fla.

²⁷ *Id.*

²⁸ 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.

²⁹ Section 20.255(1), F.S.

³⁰ *Id.*

³¹ DEP, *About DEP*, <https://floridadep.gov/about-dep> (last visited Jan 12, 2022).

³² *Id.*

³³ Section 20.255(d), F.S.

³⁴ Section 20.255(e), F.S.

³⁵ *Id.*

³⁶ Art. IV, s. 11, FLA. CONST.

³⁷ *Id.*

the executive 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.³⁸

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.³⁹

III. Effect of Proposed Changes:

Section 1 amends s. 20.201, F.S., to provide that the director of the Department of Law Enforcement is appointed by the Governor subject to a majority vote of the Governor and Cabinet, with the Governor on the prevailing side.

Section 2 amends s. 20.255, F.S., to provide that, notwithstanding the statutory requirement that the Senate must confirm the appointment of a secretary appointed by the Governor to serve as head of a department, the secretary of the Department of Environmental Protection shall be appointed by the Governor with the concurrence of three members of the Cabinet or subject to confirmation by the Senate.

The bill provides that upon appointment, the Governor shall notify the Cabinet and the President of the Senate in writing that he or she will seek either the concurrence of three members of the Cabinet or confirmation of the appointee by the Senate. If the Governor chooses the former, such concurrence must be obtained at the first scheduled meeting of the Cabinet following the appointment. The bill provides that if the concurrence is not obtained at such meeting, the appointee may be held over until his or her successor is appointed and qualified for a maximum of 30 days from the date of the Cabinet meeting at which the appointment was considered.

The bill provides that 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 appointment was considered. The bill also provides that if the Governor seeks confirmation of the appointee by the Senate, s. 114.05, F.S., applies. That section governs the issuance of a letter of appointment, confirmation by the Senate, and refusal or failure to confirm.

Section 3 amends s. 20.37, F.S., to provide that the executive director of Veterans' Affairs is appointed by the Governor subject to a majority vote of the Governor and Cabinet, with the Governor on the prevailing side.

Section 4 provides that the bill will take effect upon becoming law.

³⁸ Section 20.37(1), F.S.

³⁹ *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 20.201, 20.255, and 20.37 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environment and Natural Resources on January 31, 2022:

Revises the appointment criteria for the executive director of the Department of Law Enforcement, the secretary of the Department of Environmental Protection, and the executive director of the Department of Veterans' Affairs.

- B. **Amendments:**

None.