HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/HB 7055 (CS/SB 1312)	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	Rulemaking & Regulation Subcommittee and Gaetz; (Governmental Oversight and Accountability)	81 **Y's**	**33 N's**
COMPANION BILLS:	CS/SB 1312	**GOVERNOR'S ACTION:**	Approved

SUMMARY ANALYSIS

CS/HB 7055 passed the House on March 2, 2012. The Senate substituted CS/HB 7055 and considered it in lieu of CS/SB 1312, passing CS/HB 7055 on March 9, 2012. The bill clarifies the ability of elected officials to direct and supervise their appointees in the exercise of administrative authority, responding to an invitation for legislative clarification by the Florida Supreme Court in *Whiley v. Scott.*[1] The bill also repeals or revises a number of statutes containing unnecessary, confusing, or obsolete rulemaking language.

Officers of the executive branch of government implement and enforce the law through administrative departments organized by the Legislature[2] and powers delegated directly by the Legislature. The Legislature has a continuing responsibility to supervise and regulate the exercise of powers allotted or delegated to administrative agencies. The Legislature also is responsible for monitoring delegations of power, such as administrative rulemaking, to determine the continuing need for those delegations.

Rulemaking is the express authority delegated by the Legislature for an administrative agency to adopt policy statements that implement or interpret statute and are generally applicable to the public. Unless otherwise provided by law, rulemaking must be conducted according to the process established in the Administrative Procedure Act (APA).[3] The bill exercises legislative supervision of delegated powers by repealing or revising certain statutory provisions authorizing rulemaking. A number of statutes authorizing rulemaking have proven unnecessary or for other reasons have never been used. Some statutes contain unnecessary, confusing, or obsolete rulemaking language. The bill repeals or revises a number of these provisions. Significantly, the bill:

- Makes findings clarifying the Legislature's intent that non-elected agency heads appointed by and serving at the pleasure of the Governor are subject to his direction and supervision because he is constitutionally accountable to the People of Florida. Codifies this historically-accepted principle because the authority to remove an agency head from office at any time (required by the Florida Constitution and incorporated in general law) necessarily includes the authority to direct and supervise the appointee in the performance of assigned duties; the power to remove entails a capacity to direct.
- Clarifies that laws placing executive branch departments under the direct administration of agency heads appointed by and serving at the pleasure of the Governor, or APA requirements for these appointees to take certain actions, do not imply that those non-elected appointees exercise power insulated from the Governor's direction and supervision.
- Directs the Office of Legislative Services to include repeal of unnecessary or unused rulemaking authority in revisers bill recommendations as part of the ongoing process of statutory revision.
- Repeals certain statutory provisions containing duplicative, redundant, or unused rulemaking authority.

The bill has no anticipated fiscal impact. On April 16, 2012, the Governor approved and signed the bill into law, Chapter 2012-116, Laws of Florida. The law becomes effective on July 1, 2012.

[1] 79 So. 3d 702, 2011 WL 3568804, 2011 Lexis 1900, 36 Fla. L. Weekly S 451 (Fla. 2011).
[2] Section 6, Art. IV, Fla. Const.
[3] Ch. 120, F.S.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

PRESENT SITUATION

1. Administrative Authority: Supervision and Direction of Rulemaking

a. Structure of Executive Branch

The People of Florida possess in themselves all political power of this State[4] and vest that power in three governmental branches: Legislative, Executive, and Judicial.[5] Unlike the U.S. Constitution, the Florida Constitution is not a limited grant of power to the government but a vesting of the People's full and complete[6] political power subject to specific express limitations.[7] Since statehood, each version of the Florida Constitution reflected the 1787 national constitution's philosophy of separated powers, including the established and accepted view that good government requires executive powers of significant strength and energy.[8]

As with every prior version of the state constitution since 1845, the present Florida Constitution vests the supreme executive power in the Governor.[9] This is not the complete executive power because certain executive authority is distributed to the Cabinet Officers (including the Attorney General,[10] Chief Financial Officer,[11] and Commissioner of Agriculture),[12] entities composed of the Governor and two or more Cabinet Officers,[13] or separate entities.[14] [15] Other than those departments or entities directly created in the Constitution, the Legislature has authority to organize the Executive Branch by law into no more than twenty-five departments. The administration of these statutorily-created departments must be placed 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.[16]

The language in Section 6 of Article IV of the Constitution requires the Legislature to *allot* executive branch *functions* among the various departments and place those departments under the *administration* of a specified

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[4] Preamble; Section 1, Art. I, Fla. Const.
[5] Section 3, Art. II; s. 1, Art. III; s. 1, Art. IV; s. 1, Art. V; Fla. Const.
[6] Often referred to as "plenary" power.
[7] *Florida House of Representatives v. Crist,* 999 So. 2d 601, 611 (Fla. 2008).
[8] Alexander Hamilton, *The Federalist, No. 70*, in Michael Lloyd Chadwick (ed.), *The Federalist* (Global Affairs Publishing Company, Washington, D.C., 1987), 380-381.
[9] Section 1(a), Art. IV, Fla. Const.
[10] Section 4(b), Art. IV, Fla. Const.
[11] Section 4(c), Art. IV, Fla. Const.
[12] Section 4(d), Art. IV, Fla. Const.
[13] Section 4(e), (f), (g), Art. IV, Fla. Const.
[14] One example is the Fish and Wildlife Conservation Commission. Section 9, Art. IV, Fla. Const.
[15] The Lt. Governor is also named in Article IV, but no particular authority is distributed to that office. Section 2, Art. IV, Fla. Const.
[16] "Executive departments.—All functions of the executive branch of state government shall be allotted among not more than twenty-five departments, exclusive of those specifically provided for or authorized in this constitution. The administration of each department, unless otherwise provided in this constitution, shall 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, except:
(a) When provided by law, confirmation by the senate or the approval of three members of the cabinet shall be required for appointment to or removal from any designated statutory office.
(b) Boards authorized to grant and revoke licenses to engage in regulated occupations shall be assigned to appropriate departments and their members appointed for fixed terms, subject to removal only for cause." Section 6, Art. IV, Fla. Const. This section has not been amended since its adoption. Section 6, Art. IV, Fla. Const. (historical note).

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officer. The Constitution does not authorize the Legislature to *create* any executive power but only to place the supervision of an executive department under one of the enumerated officers.

The executive branch organization authorized in the Constitution was implemented in 1969.[17] The principle organizational unit is the "department."[18] The Florida Statutes use the term "agency" more broadly; depending on the context in a particular statute, "agency" could mean an officer, official, department, commission, board, or other unit of government.[19] The "head" in charge of a department could be an individual or a board,[20] but a "Secretary" is specifically defined as an individual appointed by the Governor to head a department and is not otherwise named in the Constitution.[21]

Unless otherwise provided by law, agency heads are required to plan, direct, coordinate, and execute the powers, duties, and functions vested in or assigned by statute to the department or other unit of government over which the agency head has responsibility.[22] This includes exercising any delegated authority "…to adopt rules pursuant and limited to the powers, duties, and functions transferred to the department."[23] Under the Constitution, the Legislature may provide by law for approval by the Senate or three members of the Cabinet before appointment to or removal from a statutorily-created office;[24] however, the members of a board authorized to grant and revoke licenses to engage in a regulated program must be appointed for fixed terms and may be removed only for cause.[25] While the appointment of a Secretary to head an agency is subject to Senate approval, no such condition has been generally imposed on the Governor's power to remove an appointed Secretary.[26]

b. Role of the Governor as Chief Executive

1) Historical Development of the Present Constitutional Text

The clear intent of the Constitution is for continuing oversight and responsibility for executive departments to remain under the elected constitutional officers. "Supreme executive power" is vested in the Governor;[27] the identical phrase is used in the state's initial constitution and all versions since 1845.[28] In contrast, the provision authorizing executive branch organization was adopted in 1968 and has never been amended.[29]

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[17] Ch. 69-106, Laws of Florida.
[18] Sections 20.03(2), 20.04(1), F.S.
[19] Section 20.03(11), F.S.
[20] Section 20.03(4), F.S.
[21] Section 20.03(5), F.S.
[22] Section 20.05(1)(a), F.S.
[23] Section 20.05(1)(e), F.S.
[24] Section 6(a), Art. IV, Fla. Const. This provision is generally implemented by statute. Section 20.05(2), F.S. Removal of officials appointed to an office created by the Legislature under Chapter 20, F.S., does not require such approval and is left to the discretion of the appointing authority.
[25] Section 6(b), Art. IV, Fla. Const.
[26] Section 6, Art. IV, Fla. Const.; Section 20.05(2), F.S.
[27] "The supreme executive power shall be vested in a governor, who shall be commander-in-chief of all military forces of the state not in active service of the United States. The governor shall 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. The governor may require information in writing from all executive or administrative state, county or municipal officers upon any subject relating to the duties of their respective offices. The governor shall be the chief administrative officer of the state responsible for the planning and budgeting for the state." Section 1(a), Art. IV, Fla. Const.
[28] "The supreme executive power" is the precise, identical phrase used since the drafting of the State's first constitution: s. 1, Art. III, Fla. Const. (1845) [this version is commonly known as the Constitution of 1838 for the year in which it was drafted]; s. 1, Art. III, Fla. Const. (1861) [this version incorporated the Ordinance of Secession]; s. 1, Art. III, Fla. Const. (1865) [proposed after the Civil War to repeal the Ordinance of Secession, this version never took effect]; s. 1, Art. V, Fla. Const. (1868); s. 1, Art. IV, Fla. Const. (1885); s. 1(a), Art. IV, Fla. Const. (1968).
[29] Section 6, Art. IV, Florida Constitution, and historical notes.

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Section 6, Article IV of the Florida Constitution was part of the proposed Constitution approved by the Legislature in special session during June 24 – July 3, 1968.[30] The process of developing the language in this section began with the Constitution Revision Commission, which was created by general law in 1965[31] to prepare proposed revisions for consideration by the Legislature.

During debate on the Executive Article, the Commission considered Amendment 12, which would have replaced the list of officers eligible to control executive agencies (as originally suggested in the first drafts of the new provision for organizing the executive branch) with the phrase "…as provided by law."[32] In their consideration of this proposal, members of the Commission expressed concern that leaving the designation of those officers with final authority to direct and control agencies solely to the Legislature's discretion could result in laws placing all executive branch departments (not otherwise directed by the Constitution) under non-elected individuals without accountability to properly-elected constitutional officers.[33] Commission members C.W. Young and Robert Ervin stated they understood the new section on executive branch organization was to operate in concert with s. 1(a), Article IV, and that all administrative agencies ultimately must be under the controlling authority of an elected constitutional officer; that officer necessarily would be the Governor unless expressly delegated to one or more other constitutional officers or the Governor and Cabinet.[34] Commission member John E. Mathews, Jr., said the wording of the Florida Constitution supported this view. The U.S. Constitution provides only that "the executive power" is vested in the President, yet when Congress creates an agency within the executive branch, it automatically comes under the control and direction of the President. Commissioner Mathews observed the Florida Constitution contains stronger language, vesting "the supreme executive power" in the Governor. In his opinion, this phrase would be both a guide and a constraint on the Legislature to prevent allocating executive power outside the Governor or other elected Constitutional officers.[35] The Commission rejected proposed Amendment 12.[36]

The final draft submitted by the Commission to the Legislature included the following proposed limitation on executive power to control the reorganized executive branch:

The governor and the cabinet shall exercise with respect to the policies of executive departments those powers provided by law.[37]

This language would have authorized limiting or reallocating executive powers by general law but was expressly rejected by the Legislature[38] before it approved the present version adopted by the People in November, 1968.

2) Governor's Authority to Supervise and Direct Executive Branch Agencies

Just as the Legislature is presumed to understand the meaning and import of the language used in each law passed,[39] the Legislature in 1968 understood the meaning of the language approved in the version of the

[30] The Journal of the Florida House of Representatives: Proceedings at Tallahassee of the Forty-First Legislature (under the Constitution of 1885) – Special Session June 24, 1968 – July 3, 1968, p. 536-574. The final form of the text for s. 6, Art. IV, is found on pages 554-555.
[31] Ch. 65-561, Laws of Florida. Florida Archives, Record Group 001006, Series 727, Carton 1, Folder 1.
[32] Proposed Amendment to Amendment 12 under consideration. *Debate of the Florida Constitution Revision Commission,* Vol. 28 (bound typewritten transcript) (herein *Debate of FCRC*), 1133-1134. [The bound version was organized by topic after completion of the transcript, resulting in some page numbers being out of sequence.]
[33] *Debate of FCRC,* 184-185, 187, 190-192.
[34] *Debate of FCRC,* 184-192.
[35] *Debate of FCRC,* 195.
[36] *Debate of FCRC, 195.*
[37] Section 4(a), Art. IV, final draft of proposed constitution revision, Florida Archives, Record Group 001006, Series 727, Carton 1, Folder 4. This relevant language in this section of the proposed Constitution would be renumbered as section 6 in the final version adopted by the Legislature.
[38] Amendment 700 filed by the House Liaison Committee, Rep. Pettigrew, striking s. 4(a) of proposed Art. IV, adopted on August 30, 1967. Florida Archives, Record Group 001006, Series 727, Carton 4, Folder 10.

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Constitution submitted to the People. In the Constitution's 1) omission of express language permitting legislated limitations on the authority of elected officials to supervise and direct executive agencies, and 2) inclusion of language which authorized only the allotting of executive *functions* among agencies the *administration* of which would be placed under the *supervision* of specified officers, the People and the Legislature both intended the administration of every executive agency to operate under the executive power vested in the Governor and the other elected executive constitutional officers.

The Legislature cannot disregard any word of the Constitution as mere surplusage but must follow the will of the People as stated in the document. When interpreting the Constitution, the main purpose is to determine the intent of the framers and give effect to the objective the language was designed to accomplish.[40] This includes giving full effect to each part of the document[41] and giving words their ordinary and customary meaning absent expressed intent for a different interpretation.[42] Finally, the interpretation given must not lead to an unreasonable or absurd result.[43] Applying these principles shows the language of section 6, Article IV in the Constitution authorizes the Legislature to place the administration of an executive agency under the direct supervision of an individual appointed by and serving at the pleasure of the Governor, but that allotment of supervision appears to flow from and remains subject to the executive power vested in the Governor under s. 1, Article IV, unless the Constitution or statute expressly states otherwise.

An official appointed by the Governor to head an administrative agency is a state officer and exercises a portion of the state sovereign power to execute the particular laws assigned to that agency.[44] The understanding of the Legislature when revising Article IV in 1968 and subsequent decisions of the Florida Supreme Court[45] show the intent when restructuring the executive branch was for the duly elected state officers making the appointments to remain ultimately responsible for the actions of their appointees.

The phrase "supreme executive power" has not been expressly defined in Florida[46] but the construction given to similar phrasing by other states is instructive. The New Hampshire Constitution vests the executive power of the state in a "supreme executive magistrate, who shall be styled the Governor of the State of New Hampshire…"[47] The New Hampshire Supreme Court finds the phrase is not mere verbiage but provides "…such power as will secure an efficient execution of the laws..."[48] The Alabama Constitution vests executive power in a manner similar to Florida's,[49] and the Alabama Supreme Court interprets the phrase as providing such power as necessary for the Governor to perform all duties, including the faithful execution of the laws, as the Constitution requires of the state's highest executive authority.[50]

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[39] *Cason v. Dept. of Management Services*, 944 So. 2d 306, 315 (Fla. 2006).
[40] *Metropolitan Dade County v. City of Miami*, 396 So. 2d 144, 146 (Fla. 1980); *State ex rel. Dade County v. Dickinson*, 230 So. 2d 130 (Fla. 1969); *State ex rel. West v. Gray*, 74 So. 2d 114 (Fla. 1954).
[41] *Advisory Opinion to the Governor-1996 Amendment 5 (Everglades)*, 706 So. 2d 278, 281 (Fla. 1997); *Dept. of Environmental Protection v. Millender*, 666 So. 2d 882, 886 (Fla. 1996).
[42] *Benjamin v. Tandem Healthcare, Inc.*, 998 So. 2d 566, 570 (Fla. 2008).
[43] *City of St. Petersburg v. Briley, Wild & Associates*, 239 So. 2d 817, 822 (Fla. 1970).
[44] "'The term "office" implies a delegation of a portion of the sovereign power to, and possession of it by, the person filling the office; a public office being an agency for the state, and the person whose duty it is to perform the agency being a public officer.'" *State ex rel. Clyatt v. Hocker*, 22 So. 721, 723, 39 Fla. 477, 486 (Fla. 1897).
[45] *Jones v. Chiles*, 638 So. 2d 48, 50 (Fla. 1994).
[46] In *Whiley v. Scott*, --So. 3d--, 2011 WL 3568804, 2011 Lexis 1900, 36 Fla. L. Weekly S 451 (Fla. 2011), the majority of the Florida Supreme Court observed s. 1(a), Art. IV, Fla. Const., did not make the Governor all-powerful: "(t)he phrase 'supreme executive power' is not so expansive, however, and to grant such a reading ignores the fundamental principle that our state constitution is a limitation upon, rather than a grant of, power." The Court, however, does not articulate what power is *limited* by vesting supreme executive power in the Governor.
[47] Art. 41, New Hampshire Constitution, at http://www.nh.gov/constitution/governor.html (last accessed 12/14/2011).
[48] *Opinion of the Justices*, 27 A.3d 859, 866-867, 162 N.H. 160 (2011).
[49] "The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled "The Governor of the State of Alabama." Section 113, Art. 5, Alabama Constitution.
[50] *Riley v. Cornerstone Community Outreach, Inc.*, 57 So. 3d 704, 719-720 (Ala. 2010), quoting with approval *State ex rel. Stubbs v. Dawson*, 86 Kan. 180, 187–88, 119 P. 360, 363 (1911).

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After the People adopted the constitutional reforms in 1968, the Legislature reorganized the executive branch into departments as authorized by new s. 6, Article IV.[51] Some departments are placed expressly under the direct supervision of an elected constitutional officer.[52] Most statutorily-created departments are placed under the direct supervision of a Secretary appointed by the Governor with the consent of the Senate but serving at the pleasure of the Governor.[53] In the context of ss. 1(a) and 6 of Article IV, these organizational statutes demonstrate the Legislature's understanding that the Constitution did not authorize creating administrative power in these appointees which would be unsupervised by any elected official. Defining "agency head" by statute[54] cannot alter the constitutional balance of authority as vested in Article IV of the Constitution.[55] Current law does not define precisely the phrase "serving at the pleasure," but a clear reading of the words shows the Governor has the power to terminate that service whenever the office holder no longer comports with the Governor's expectations and requirements for the position, i.e. those actions that the Governor finds "pleasing." Similar to an at-will employee, the appointee's tenure in office and continued compensation may be ended by the Governor at any time. As observed in the debate about the proposed power of Congress to alter the compensation of judges:

> "'In the general course of human nature, a power over a man's subsistence amounts to a power over his will…'"[56]

By operation of these basic assumptions, an appointee serving at the Governor's pleasure, who intends to retain that position, necessarily will attend to the Governor's directions for discharging those duties and should expect some degree of supervision if the Governor is to diligently exercise his prerogative to remain pleased by the appointee's service. If the constitutional vesting of supreme executive power and the appointment of non-elected officials to direct the administration of statutorily-created executive agencies is reasonably combined with the generally-accepted understanding of "serving at the pleasure," then the Constitution clearly presumes that the Governor may be expected to direct and supervise the appointees serving at the Governor's pleasure.

c. Rulemaking Under Florida's APA

Under the APA, the Legislature has authorized three separate means by which an administrative agency in the executive branch may issue a binding determination of the law placed under its jurisdiction. First is a final order rendered against specific parties after the opportunity for a hearing on notice; these are limited to the facts of the case and the parties named.[57] The second form is a declaratory statement, in which the agency grants a petition and renders an opinion on the applicability of a statute, rule, or order of the agency to the specific set of circumstances presented by a substantially-interested party.[58] The third is rulemaking.

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms.[59] Rulemaking is the creation, development, establishment, or adoption of a rule.[60]

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[51] Ch. 69-106, Laws of Florida, codified as Ch. 20, F.S.
[52] Section 20.121(1), F.S. places the Department of Financial Services under the Chief Financial Officer.
[53] For example, the Department of Business and Professional Regulation. Section 20.165(1), F.S.
[54] Section 120.52(3), F.S.
[55] To do so raises issues under the separation of powers doctrine, s. 3, Art. II, Fla. Const.
[56] Alexander Hamilton, *The Federalist, No. 79*, in Michael Lloyd Chadwick (ed.), *The Federalist* (Global Affairs Publishing Company, Washington, D.C., 1987), 428. As observed by Chief Justice Ellis in his opinion concurring with the result in *State ex rel. Albritton v. Lee*: "'It would be in vain to declare that the different departments of government should be kept separate and distinct, while the legislature possessed a discretionary control over the salaries of the executive and judicial officers. This would be to disregard the voice of experience and the operation of invariable principles of human conduct. A control over a man's living is, in most cases, a control over his actions.'" *State ex rel. Albritton v. Lee*, 134 Fla. 59, 81, 183 So. 782, 790 (1938) (emphasis supplied).
[57] Sections 120.569(2)(l), 120.57, F.S.
[58] Section 120.565, F.S.
[59] Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).

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Rulemaking is a legislative function which may be delegated by the Legislature[61] by general law. To adopt a rule, an agency must have an express grant of authority to implement a specific law by rulemaking.[62] The grant of rulemaking authority itself need not be detailed.[63] The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines sufficient to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[64]

With certain constitutional exceptions limited to exclusive responsibilities, most of which relate to internal administration, executive officers and administrative agencies do not have inherent rulemaking authority.[65] Unless otherwise provided by law, all agencies with delegated rulemaking authority must follow the process and procedure set out in the APA.

The APA provides specific procedures and processes which all agencies[66] must follow before adopting a rule or order or denying a petition to adopt a rule or render an order.[67] The substantive legal authority for an agency's action is contained in other statutes; the APA ensures a uniform procedure to protect the rights of the public when dealing with an agency, including the agency exercise of delegated rulemaking. The APA does not specify any process for internal policy determinations before statutory rulemaking is commenced.[68] With the exception of a general mandate to commence rulemaking within 180 days of the effective date of a new law requiring the promulgation of rules,[69] the APA does not control the initial process an executive agency follows to consider, review, reflect, research, or otherwise choose among alternative approaches to formulate a rule implementing law. In this conceptual phase, elected officers politically accountable to the People could (and do) participate in the policy direction and development by agencies leading to the articulation of policy to be implemented by rulemaking.

Only after a decision is made to initiate rulemaking must the APA process and procedure be followed. Unless the proposal is to repeal an existing rule, the agency must publish a notice of rule development and may schedule workshops to allow public input.[70] The agency head may delegate responsibilities for rule development to a subordinate.[71] Once an internal decision is made, and the agency head approves the adoption of a specific proposed rule, the agency must publish notice of intended rule adoption and the complete text of the proposal.[72] After completing public hearings (if requested),[73] resolving changes requested by the Joint Administrative Procedures Committee (JAPC),[74] providing a statement of estimated regulatory costs (both to those who provided proposed lower cost alternatives to the rule and to the public),[75] or the entry of a final order on a petition challenging the proposed rule,[76] and with the approval of the agency head, the rule

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[60] Section 120.52(17), F.S.
[61] Section 1, Art. III, Fla. Const.; *Southwest Florida Water Management District v. Save the Manatee Club, Inc.,* 773 So. 2d 594 (Fla. 1st DCA 2000); *Dept. of Revenue v. Novoa*, 745 So. 2d 378, 380 (Fla. 1st DCA 1999).
[62] Section 120.52(8) & s. 120.536(1), F.S.
[63] *Save the Manatee Club, Inc.*, supra at 599.
[64] *Sloban v. Florida Board of Pharmacy*,982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001); *Askew v. Cross Key Waterways*, 372 So. 2d 913, 925 (Fla. 1979).
[65] Section 120.54(1)(e), F.S.
[66] "Agency" is defined by s. 120.52(1), F.S.
[67] Defined as taking "agency action." Section 120.52(2), F.S.
[68] *Adam Smith Enterprises, Inc. v. Dept. of Environmental Regulation*, 553 So. 2d 1260, 1265, n. 4 (Fla. 1st DCA 1989).
[69] Section 120.54(1)(b), F.S.
[70] Section 120.54(2), F.S.
[71] Section 120.54(1)(k), F.S.
[72] Section 120.54(3)(a)1., F.S.
[73] Section 120.54(3)(c), F.S.
[74] Sections 120.54(3)(d), 120.545(3)(a), F.S.
[75] Section 120.541, F.S.
[76] Section 120.56, F.S.

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may be filed for adoption with the Department of State.[77] The rule then goes into effect 20 days after filing, a later date if specified in the original notice of rulemaking, or upon ratification by the Legislature.[78]

d. Governors' Direction and Supervision of Rulemaking by Appointed Agency Heads

Florida's Governors historically have used executive orders to direct and supervise the policies implemented by their appointed agency heads pertaining to the exercise of statutorily-created rulemaking authority.

In 1989, Governor Martinez issued an executive order directing both the Department of Environmental Regulation (DER) and the Department of Health and Rehabilitative Services (HRS) to follow a specific policy approach in developing rules pertaining to biohazardous waste. The order further directed DER to adopt its specific rule no later than 4/1/1989.[79]

In 1995, Governor Chiles issued an order directing "agencies supervised by the Governor" to review all their specific rules and submit them for further review by the Governor's Office of Planning and Budget. The order also directed all such agencies immediately to begin repealing all rules defined in the order as obsolete.[80] This was followed by his order directing all agencies to implement the earlier order by commencing the repeal of rules, further directing all agency heads to begin to "overhaul, amend, or repeal" certain rules identified by the earlier reviews reported by their respective agencies.[81] Governor Chiles further created the "Rule of Flexibility" and ordered all agencies to apply the following principle when engaging in rulemaking:

> -This agency will make decisions in a manner that reasonably implements or interprets the policies established by the controlling legislation so that the results reached shall be fair, objective, and defensible without achieving legalistic, ridiculous conclusions.[82]

In 2007 Governor Crist entered an executive order entitled "Establishing Immediate Actions to Reduce Greenhouse Gas Emissions within Florida."[83] He ordered the Secretary of the Department of Environmental Protection to develop rules to set maximum allowable emission standards for electric utilities and to adopt statewide diesel engine idle reduction standards.[84] He also directed the Secretary of the Department of Community Affairs to initiate rulemaking to adopt specific Florida Energy Conservation Standards to increase the efficiency of certain consumer appliances by 15% from current standards and ordered such standards to be implemented by July 1, 2009.[85]

Each of these executive orders demonstrates an understanding of the Governor's authority common to those who held the office: the Governor has authority as the chief executive to direct and supervise non-elected appointees serving at the Governor's pleasure in the administration of their respective agencies. In Chapter 20, F.S., the Legislature has exercised constitutional authority to organize the executive branch by placing the administration of most statutorily-created departments under appointees serving at the pleasure of the Governor. The adoption of the APA established procedures for executive agencies to follow in exercising delegated legislative functions. The Constitution did not authorize the Legislature to create any additional executive power; accordingly, the Legislature could not create a class of non-elected officials exercising executive power independent from any direction or supervision by an elected officer. Consequently, the adoption of the APA neither altered the structure of the executive branch nor constrained the Governor or other elected officer in the exercise of their constitutionally-derived authority.

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[77] Section 120.54(3)(e), F.S.
[78] Section 120.54(3)(e)6., F.S.
[79] EO 89-1, s. 1.
[80] EO 95-74, s. 1.
[81] EO 95-256, s. 1 & 3.
[82] EO 95-256, s. 4.
[83] EO 2007-127.
[84] EO 2007-127, s. 1.
[85] EO 2007-127, s. 2.

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The Legislature has limited the direction and control exerted by administrative superiors when that is its intention. For example, the statutes authorizing rulemaking by various licensing boards restrict oversight of that authority by the agency in which the boards are housed. The Department of Business and Professional Regulation (DBPR) is expressly authorized to challenge rules proposed by its various boards, but the authority does not extend to directing or controlling board rulemaking.[86] The State Surgeon General similarly is expressly limited to challenging rules of the boards under the Department of Health (DOH).[87] In expressly limiting the rulemaking roles of these two agencies, the Legislature understood the import of the language used.[88] However, when rulemaking power is delegated to a statutory office without such express insulation from superiors, the more reasonable implication is that the Legislature did not purposely separate the exercise of rulemaking authority from the ordinary administrative supervision and direction of the executive overseeing such officer.

2. Whiley v. Scott

On August 16, 2011, the Florida Supreme Court decided a petition challenging the Governor's authority to direct and supervise delegated rulemaking by appointed agency heads serving at his pleasure. A brief discussion of the case provides a useful context for the bill.

a. Executive Order 11-01 and OFARR

On January 4, 2011, the Governor issued Executive Order 11-01 addressing agency rulemaking. By its terms the order directed all agencies headed by a gubernatorial appointee to suspend rulemaking and submit pending rules for review by the Governor's office. The order created the Office of Fiscal Accountability and Regulatory Reform ("OFARR") within the Executive Office of the Governor with specific duties pertaining to agency rulemaking, including reviewing proposed rules under specific policy guidelines articulated in the order. With one exception,[89] the order did not purport to alter rulemaking requirements of the APA. The review function of OFARR was identical to that which could be exercised informally by the Governor prior to any initiation of rulemaking by the Governor's appointees; once rulemaking is commenced, however, oversight activity is limited by the statutory time requirements of the APA.

Since its creation OFARR has reviewed over 11,000 administrative rules.[90] The Office has coordinated with other agencies, including those not supervised directly by the Governor,[91] to identify existing rules which should be revised or repealed. OFARR prepared, published, and maintains a comprehensive online report compiling the results of the rule reviews conducted by the participating agencies and identifying numerous statutes affecting agency rulemaking that may be appropriate for revision.[92] OFARR's work appears to be the most transparent gubernatorial review of rules and rulemaking carried out since the adoption of the APA.

b. The Petition and Arguments in *Whiley v. Scott*

[86] Section 455.211, F.S..
[87] Section 456.012, F.S.
[88] *Cason v. Dept. of Management Services*, 944 So. 2d 306, 315 (Fla. 2006).
[89] EO 11-01, s. 1, directed the Department of State to suspend publishing rulemaking notices in the Florida Administrative Weekly. This conflicted with Section 120.55, F.S., which mandates that DOS publish rulemaking notices in the FAW.
[90] Information from website: http://www.floridahasarighttoknow.com/regulation_rulemaking.php (last accessed 12/12/2011).
[91] For example, the boards of the five separate Water Management Districts have separate rulemaking authority under s. 373.044, F.S. The Water Management Districts voluntarily participated in the rule review process and identified a total of 165 of their respective rules which could be repealed as duplicative, obsolete, or otherwise unnecessary for the effective operation of their programs. A complete listing of these rules is maintained by staff of the Rulemaking & Regulation Subcommittee.
[92] Information from website: https://www.myfloridalicense.com/rulereview/reaglist.aspx (last accessed 12/12/2011).

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On March 28, 2011, a petition was filed in the Supreme Court requesting a ruling that the Governor had no power to suspend, direct, supervise, or otherwise interfere with agency rulemaking.[93] The petition alleged the Legislature delegated rulemaking power only to heads of agencies and did not make their actions subject to supervision or direction by any separate elected official, arguing the APA conferred separate power to non-elected appointees independent from supervision and oversight of any elected officer.[94] Petitioners asserted that EO 11-01 transferred to OFARR the ultimate decision to propose and adopt rules[95] and that the Governor's actions intruded on the Legislature's exclusive authority to legislate on the process of exercising delegated rulemaking authority, thus violating the constitutional separation of powers[96]. The Governor filed a response on May 12, 2011, stating petitioner's position misconstrued the supervisory authority within the executive branch (an *intra*-branch matter) as a separation of powers issue (an *inter*-branch matter) and that EO 11-01 and its successor, EO 11-72,[97] appropriately directed initial rulemaking determinations by appointed agency heads who reasonably may be expected to comport with the Governor's desire for OFARR to review rulemaking decisions. The response also articulated the historical and reasonable understanding exemplified by past governors that the Governor may exercise power to direct and supervise the rulemaking powers delegated to the administrative agencies headed by the Governor's appointees.

c. The Majority Decision

In an unsigned opinion in which 5 of 7 Justices concurred, the Supreme Court granted the petition but withheld issuing the requested writ or any relief beyond a declaration of the law.[98] Relying on AGO 81-49, the Court declared that the APA made an agency head responsible for rulemaking delegated to that agency, exclusive of any supervision and direction of the appointing authority, regardless of the nature of the appointment. Where the Legislature placed an agency under the direct supervision of a non-elected official appointed by and serving at the pleasure of the Governor but did not expressly empower the Governor to supervise or direct the actions of the agency head, the Court reasoned that Legislature intended the appointee to exercise rulemaking authority independent of the preferences of the Governor. The majority further declared the power of the Governor to remove an appointed agency head at any time had no bearing on whether the initial policy decisions of the appointee could be directed by the Governor: "the power to remove is not analogous to the power to control."[99] The court also relied on the provision in s. 6, Article IV, that "direct administration" of a department may be placed under such appointees.

d. The Positions in Dissent

In dissent, Chief Justice Canady[100] observed that Florida law imposes no restriction on the authority of the Governor to supervise and direct policy choices made by subordinate executive branch officials with respect to rulemaking. He further stated:

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[93] Petition of Rosalie Whiley v. Hon. Richard Scott in his Official Capacity as Governor, Case No. SC11-592 (herein "Petition"). The request was framed as a petition for writ of *quo warranto,* an original action in the Court challenging whether an official had the power to take certain action. The petitioner alleged EO 11-01 improperly suspended rulemaking for the food stamp program which would have been of benefit to her, eschewing to participate in an existing administrative action challenging the very same rulemaking as well as other remedies available under the APA or through timely court action under the substantive statutes.

[94] Petitioner cited as authority for this position an Attorney General Opinion from 1981, AGO 81-49. In her amicus brief filed in support of the Governor's position the Attorney General pointed out this opinion was limited to its facts and by subsequent enactments and could not be relied upon as a conclusive statement of the constitutional principle. Amicus Brief of Attorney General in Case No. SC11-592, filed May 18, 2011, pages 15-17.

[95] Petition, p. 21.

[96] Section 3, Art. II, Fla. Const.

[97] Issued on April 4, 2011, EO 11-72 corrected certain issues in the first order, notably deleting the provision purporting to suspend publication of rulemaking notices by the Department of State, and superseded EO 11-01.

[98] *Whiley v. Scott*, --So. 3d--, 2011 WL 3568804 (Fla. 2011). By reaching a conclusion but declining to issue any relief, the decision appears to be more in the nature of an advisory opinion under s. 1(c), Art. IV, Fla. Const.

[99] 2011 WL 3568804, at 7.

[100] With the concurrence of Justice Polston.

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- "…(T)he majority's decision insulates discretionary executive policy decisions with respect to rulemaking from the constitutional structure of accountability established by the people of Florida."[101]
- "…(T)he rulemaking process involves certain discretionary policy choices by executive branch officers within the parameters established by the APA and other pertinent statutes."[102]
- "Supreme executive power" does not empower the Governor to order subordinates to violate the law.[103]
- "…(I)f 'supreme executive power' means anything, it must mean that the Governor can supervise and control the policy-making choices—within the range of choices permitted by law—of the subordinate executive branch officers who serve at his pleasure."[104]

Writing separately in dissent, Justice Polston[105] found the petition raised only hypothetical scenarios and articulated no actual violation of the APA.[106] He observed that rulemaking under the APA is a complex but flexible process, allowing room for agency discretion and providing public participation; in this context, the Governor could implement EO 11-72 without violating the APA. Additionally, there was no attempt to suspend statutory time limits for rulemaking. He further stated:

- The Governor "…has the constitutional authority to act as this State's chief administrative officer as well as the constitutional duty to faithfully execute this State's laws and to manage and hold agencies under his charge accountable to State laws, including the APA. (The Supreme) Court has explained that '[t]he Governor is given broad authority to fulfill his duty in taking "care that the laws be faithfully executed."'"[107]
- "Florida law provides no specific process for carrying out the Governor's executive duties with respect to holding his executive agencies accountable in their rulemaking functions."[108]
- "Nothing in the APA prohibits the Governor from performing executive oversight to ensure that the rulemaking process at his agencies results in effective and efficient rules that accord with Florida law."[109]
- Most importantly: "…nothing in the APA prohibits an agency from receiving OFARR's approval before an agency head authorizes the publication of notices of rulemaking activity and the filing of rules for adoption."[110]

e. <u>The Impact of the Opinion</u>

Effectively, the majority opinion interpreted the constitutional provision that the Legislature place the administration of executive departments under appointees serving at the pleasure of the Governor as authorizing the creation of a class of unelected gubernatorial appointees with legislatively-created executive branch power independent of the Governor for as long as they hold office. According to the majority, unless the Legislature expressly grants the Governor the power to participate in rulemaking decisions by appointed agency heads, these appointees must operate completely independent of any direction or supervision by the Governor or any other elected official accountable to the People. Unless the Legislature clarifies the intent of

[101] 2011 WL 3568804, at 8.
[102] 2011 WL 3568804, at 8.
[103] 2011 WL 3568804, at 9.
[104] 2011 WL 3568804, at 9.
[105] With the concurrence of Chief Justice Canady.
[106] If Justice Polston read the factual pleadings accurately, then the Court's decision can be correctly characterized as an advisory opinion.
[107] 2011 WL 3568804, at 13. Together with the first point quoted herein from Chief Justice Canady's dissenting opinion this states in plain terms the basic principles underlying the executive power vested in the Governor by the Constitution and the logical authority to direct and supervise appointees who serve at the Governor's pleasure.
[108] 2011 WL 3568804, at 13.
[109] 2011 WL 3568804, at 13.
[110] 2011 WL 3568804, at 14.

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the relevant statutes, all Florida governors will lack any authority to direct and supervise the policy decisions of their appointees when engaged in agency rulemaking. The Governor acquiesced to the Court's legal conclusion by replacing the relevant Executive Orders with a new one, EO 11-211, making voluntary each appointed agency head's cooperation with OFARR's role in overseeing proposed rulemaking.

3. Administrative Authority: Unused Rulemaking Delegations

Flexibility by an administrative agency to implement a legislatively articulated policy is essential to meet complex issues arising under substantive law.[111] Delegating rulemaking authority to administrative agencies and officers supplies needed flexibility to address issues arising in the administration of a statute, but in making such delegation the Legislature must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[112] If the standards and guidelines included in the statute provide sufficient detail for the agency to implement the statutory policy, additional authority to adopt rules for that program is not necessary. A number of provisions authorizing agency rulemaking have been in statute for more than five years but have never been used. These sections would appear to be unnecessary as the statutory programs have operated without reliance on such provisions.

Other provisions contain obsolete or potentially confusing language. The Legislature has sole authority to revise the Florida Statutes to improve clarity.

In addition, there are a large number of provisions found in the Florida Statutes which authorize agency rulemaking for implementation or administration of a particular program or provision of the law. These are in addition to the affected agency's grant of authority to adopt rules as necessary to implement the entire section, part, or chapter in which the limited grant is located. This situation typically appears when a new program or provision is added to an existing chapter (part or section). Without simultaneous or subsequent reenactment, existing rulemaking authority could be interpreted as not applying to the newly-added program or provision. However, once the Florida Statutes are reenacted (ordinarily in the following year),[113] this concern ends because the grant for the entire chapter or section would clearly apply to the chapter or program as amended and codified in the revised statutes.

The bill repeals or amends the following provisions to improve clarity or strike provisions of rulemaking authority that either are unused, thus unnecessary, or redundant of the agency's existing authority:

CHANGES MADE BY THE BILL

1. Clarification of Authority to Supervise & Direct Agency Rulemaking

The bill takes up the Supreme Court's invitation to clarify the role of the Governor in supervising and directing unelected appointees serving at the pleasure of the Governor. The bill does not directly reverse the majority conclusions in *Whiley*[114] but clarifies that ultimate oversight, direction, and supervision of rulemaking power delegated by the Legislature remains within the authority of elected constitutional officers directly accountable to the People. The bill further clarifies that in organizing the executive branch and adopting the APA, the Legislature did not create a class of unelected appointees serving at the pleasure of the Governor but who

[111] *Askew v. Cross Key Waterways*, 372 So. 2d 913, 924 (Fla. 1979).
[112] *Sloban v. Florida Board of Pharmacy,* 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001); *Askew v. Cross Key Waterways*, 372 So. 2d 913, 925 (Fla. 1979).
[113] Section 11.2421, F.S.
[114] The Legislature cannot directly reverse a court's final decision in a particular case. *Bush v. Schiavo,* 885 So.2d 321, 337 (Fla. 2004). The same principle applies to Congress under the U.S. Constitution: "Having achieved finality, however, a judicial decision becomes the last word of the judicial department with regard to a particular case or controversy, and Congress may not declare by retroactive legislation that the law applicable *to that very case* was something other than what the courts said it was." *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 227, 115 S. Ct. 1447, 1457 (1995) (emphasis in original).

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possess independent, unsupervised, delegated powers. The Legislature did not create a “fourth branch of government” which could frustrate the policy direction of any Governor, present and future.

a. Legislative Findings

The bill makes a number of findings that explain the basis for the approach to gubernatorial direction and supervision of appointees. Leaving basic assumptions unstated can leave the judiciary speculating about the implications that may be derived from silence. By not expressing or acknowledging the reasonable assumption that an appointee serving at the pleasure of the Governor will naturally be submitted to the direction and control of that elected official, existing law is open to an argument that a statutory delegation of power to the appointee intends to exclude the Governor's supervision of its exercise. The bill finds and clarifies certain assumptions behind the existing statutes organizing and assigning powers to executive agencies as well as the historical and constitutional reasoning behind such assumptions. The bill emphasizes the importance of agency decision makers being directly accountable to elected officials for the execution of the law, including the exercise of delegated rulemaking authority. In addition, the bill finds that the APA is procedural and should not be read to implicitly regulate the relationship or accountability between and among executive officers. Finally, the bill adopts relevant findings of the Governor contained in Executive Order 11-211.

The initial and largest portion of the findings address matters fully discussed in parts 1 and 2, above. The bill makes other findings affirming a principal aspect of the separation of powers that legislated definitions of "agency head" cannot alter the executive authority and responsibility vested in the office of the Governor and the cabinet officers. This authority and responsibility include the supervision and oversight by such elected officers of all powers assigned to executive agencies by the constitution or laws of the state. The bill finds that the APA constitutes a procedural law ensuring public participation in agency rulemaking. As a conclusion, the bill finds that the delegation of rulemaking power to agencies and the adoption of the APA are intended to work in harmony with the constitutional distribution of executive authority and not as a general intrusion into the constitutional role and responsibilities of the elected officers.

The bill also adopts and therefore ratifies certain findings contained in Executive Orders 11-01, 11-72, and 11-211. These findings address the Governor's role and responsibilities in ensuring the faithful execution of the laws and overseeing the administration of agencies headed by gubernatorial appointees. They emphasize fiscal accountability, agency expertise, and accountability to the oversight of elected officials. The adopted findings set forth the rationale for and role of the governor's Office of Fiscal Accountability and Regulatory Reform. They also respond to the Court's reasoning in the *Whiley* decision, particularly the uncertainties created by its conclusions and its failure to clearly address certain relevant constitutional principles and judicial and executive precedents.

The bill's final findings address additional aspects of the *Whiley* opinion. The bill finds that the dissenting opinions constituted persuasive arguments informing a correct interpretation of the State Constitution. The findings note that no writ was issued in *Whiley* but that its declaration of law is to be afforded the deference due to an advisory opinion of the Court.

The findings provide the rationale behind the clarifications of law contained in the bill.

b. Legislative Intent and Clarifications of Policy

After affirming that Executive Orders EO 11-72 and EO 11-211 are consistent with law and public policy, the bill amends or creates several sections in chapters 20 and 120, F.S., to clarify the direction and supervision of appointed agency heads by the Governor. In a separate section of legislative intent, the bill expresses what all Governors previously assumed: that placing an agency under the direct supervision of a non-elected agency head appointed by and serving at the pleasure of the Governor is not intended to limit in any way the Governor’s constitutionally-protected authority to direct and supervise the implementation of executive policy by these appointees. The Legislature expressly rejects the concept that non-elected appointees have any

authority implicitly independent from the Governor's direction and supervision. Legislative creation of an agency head serving at the pleasure of the Governor does not enable such officers to act independently from the Governor's directive and supervisory authority.

1) Changes to Chapter 20, F.S.

New s. 20.02(3), F.S., is created and provides that an agency head appointed by and serving at the pleasure of the Governor remains under the oversight, direction, and supervisory authority of the Governor. The definition of "agency head" in s. 20.03(4), F.S., is revised to expressly state that those agency heads appointed by and serving at the pleasure of the Governor remain under the Governor's supervision and direction. The definition of "Secretary" in s. 20.03(5), F.S., is amended by changing "constitution" to "State Constitution" to better conform with the language used elsewhere in the statute. The bill further amends the statute by creating a new definition in s. 20.03(13), F.S., expressly defining the phrase "to serve at the pleasure." In addition to stating the tenure in office is subject to removal by the appointing authority, the definition clarifies that such appointees do not automatically require prior approval from the appointing authority for each exercise of their delegated authority; this prevents any collateral attack on the appointee's actions in the performance of the assigned duties. Finally, s. 20.05(1), F.S., is amended to make the exercise of authority by any agency head subject to the allotment of executive power by the Legislature under Article IV of the Constitution. The bill provides that all agency heads perform their authority in the context of the stated legislative intent.

2) Changes to Chapter 120, F.S.

The bill creates new s. 120.515 to directly address two policies governing the APA. First, the APA is a procedural statute and does not alter the substantive authority of state officers over decisions by their appointees. Second, the new section coordinates with the amendments to Chapter 20 to clarify the APA does not divest any authority to direct or supervise appointed agency heads and, by adhering to the direction and supervision of the appointing authority, the appointee does not delegate or transfer any statutory authority. The bill also amends s. 120.52(3), F.S., confirming that actions taken by agency heads under the APA are official acts and not subject to collateral attack because the appointing authority did not expressly approve an action.

2. Statutory Revision

After revising and clarifying the authority of the Governor or other elected officials to direct and supervise the official actions of agency heads appointed by and serving at the pleasure of the appointing officer, the bill amends s. 11.242(5), F.S. The Office of Statutory Revision is directed to include duplicative, redundant, or unused statutory rulemaking authority among its proposed repeals in revisers bill recommendations. Revisers bills are drafted by the Office and enacted by the Legislature as part of Florida's ongoing process of statutory revision. The Office is already tasked with recommending the deletion of all laws which have expired, become obsolete, and/or had their effect or served their purpose.[115] Duplicative, redundant, and unused rulemaking authority provisions similarly populate the Florida Statutes with unnecessary law, which can be omitted. This provides an annual process for review and repeal of unnecessary rulemaking delegations.

3. Repeal of Unused Rulemaking Authority

The bill amends or repeals numerous delegations of rulemaking authority in statute, as follows:

- Repeals s. 14.34(3), F.S., which authorizes rulemaking by the Executive Office of the Governor pertaining to the Governor's Medal of Merit. The power was created in 2004 and appears to have never been used.

[115] Section 11.242(5)(i).

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- Strikes rulemaking authority from s. 15.16(7), F.S., relating to apostilles, part of the process for validating and verifying documents under international treaties. The Department of State has not found it necessary to adopt rules for implementing the provision and has expressed no objection to the rulemaking repeal.

- Repeals s. 15.18(7), F.S., which authorizes rulemaking by the Secretary of State in support of cultural activities described in s. 15.18, F.S., pertaining to international cultural relations, particularly respecting contracts for professional services and events funded by donations. The Secretary has never adopted rules under this provision, which was last amended in 2002. The Department of State has expressed no objection to the rulemaking repeal.

- Strikes rulemaking authority from s. 16.60(3)(a), F.S., relating to a mediation program in the Office of Attorney General that resolves public records disputes. The Office has never adopted rules under the provision which was last amended in 2000. The Office has expressed no objection to the repeal of rulemaking authority from this section.

- Repeals s. 17.0416(2), F.S., which authorizes rulemaking by the Department of Financial Services to implement the section authorizing the Department to provide services on a fee basis to other public bodies and officers. The Department has not adopted rules under this provision, which was created in 2004. The Department does not object to the repeal of this rulemaking authority.

- Repeals s. 17.59(3), F.S., which authorizes rulemaking by the Chief Financial Officer for the management of safekeeping services authorized by the section. The CFO has not adopted rules under the provision, which was last amended in 2004. The CFO has expressed no objection to the repeal of this rulemaking provision.

- Repeals s. 25.371, F.S. This section provides that court rules override laws. Under Article V of the Florida Constitution, the Supreme Court determined its rulemaking power supersedes general law on matters of practice and procedure in the courts. There is no reason to reduce any other law to such judicial pre-emption. Litigants have the right to assert their substantive rights in each case and argue for enforcement of those rights in the application of court rules. The repeal of this section will allow every Floridian to more fully enforce their substantive rights.

- Repeals s. 28.43, F.S., which authorizes both the Department of Revenue and the Department of Financial Services to adopt rules relating to the funding and budgeting for Court Clerks. Neither Department has adopted rules under this provision, and neither has expressed an objection to repeal of the rulemaking authority.

- Repeals s. 35.07, F.S., relating to the administration of the District Courts of Appeals. Article V of the Florida Constitution provides comprehensive administrative authority to the Chief Justice and the Chief Judge of each court. Each district court has inherent authority to direct its own administration. As a consequence, a delegation of rulemaking power over administration of the courts is unnecessary. The separation of powers does not appear to allow the Legislature to direct by general law the administrative powers possessed by the courts.

- Repeals s. 39.001(11), F.S., which authorizes the Executive Office of the Governor to adopt rules relating to the purposes and intent of proceedings relating to children. The EOG and the Governor's Office of Adoption and Child Protection determined no rules were necessary to implement s. 39.001, F.S., and no rules have been adopted in reliance on the provision. The rulemaking power is unnecessary because it is duplicative of s. 39.012, F.S., authorizing the Department of Children and Family Services (DCF) to make rules to implement the entire chapter.

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- Strikes rulemaking authority from s. 39.0137(2), F.S. The section relates to state application of the federal Indian Child Welfare Act, was created in 2006, and no rules have been adopted using this authority. The rulemaking power is unnecessary because it is duplicative of s. 39.012, F.S., authorizing DCF to make rules to implement the entire chapter.

- Repeals s. 39.824(1), F.S., a 1989 request to the Supreme Court to adopt rules of procedure implementing statutory provisions pertaining to guardians ad litem. The Legislature cannot direct the rulemaking power of the Supreme Court, and the request has long since fulfilled its purpose in comity.

- Strikes rulemaking authority from s. 63.167(3), F.S., relating to the state adoption information center. The provision was last amended in 2003, and no rules appear to have been adopted by DCF in reliance on the provision.

- Repeals s. 88.9051, F.S. relating to the Uniform Interstate Family Support Act. The statute appears to be a vestige of the 1997 version of the Act. Presently, chapter 88 does not contain a definition identifying the department empowered by the section, and no rule relying on the section appears to be in effect.

- Strikes rulemaking authority from s. 97.026, F.S., relating to the availability of elections-related forms in alternate formats and via the internet. The Secretary of State has sufficient rulemaking authority under s. 97.012, F.S., to implement s. 97.026, F.S. No rule appears to have been promulgated in reliance on the language to be stricken. The Department of State (DOS) expressed it does not object to the repeal.

- Strikes rulemaking authority from s. 97.0555, F.S., relating to late voter registration by uniformed servicepersons and their accompanying family members. The Secretary of State has sufficient rulemaking authority under s. 97.012, F.S., to implement s. 97.0555, F.S. No rule appears to have been promulgated in reliance on the language to be stricken. DOS expressed it does not object to the repeal.

- Strikes rulemaking authority from s. 97.061(1), F.S., relating to procedures for registering persons requiring assistance. The Secretary of State has sufficient rulemaking authority under s. 97.012, F.S., to implement s. 97.061, F.S. No rule appears to have been promulgated in reliance on the language to be stricken. DOS has expressed that it does not object to the repeal.

- Repeals s. 101.56062(3), F.S., which authorizes rulemaking relating to standards for an accessible voting system. The Secretary of State has sufficient rulemaking authority under s. 97.012, F.S., to implement s. 101.56062, F.S. No rule appears to have been promulgated in reliance on the language to be repealed. DOS has expressed that it does not object to the repeal.

- Strikes rulemaking authority from s. 103.101, F.S., providing for the presidential preference primary. No rule appears to have been adopted in reliance on the provision. DOS has expressed that it does not intend to adopt rules under this section and does not object to the repeal.

- Strikes rulemaking authority from s. 106.165, F.S., relating to use of closed captioning in electioneering broadcasts. The Division of Elections has sufficient rulemaking authority under s. 106.22(9), F.S., to implement s. 106.165, F.S. No rule appears to have been promulgated by DOS in reliance on the language to be stricken. DOS has expressed that it does not object to the repeal.

- Amends s. 110.1055, F.S., to update and clarify the language. The amendment strikes obsolete and archaic language that may create confusion about the authority of the Department of Management Services (DMS) to make rules implementing amendments to provisions in chapter 110, F.S., that have been enacted since 2002. The amended language will serve as general rulemaking authority to effectuate all of chapter 110, F.S.

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- Repeals s. 110.1099(5), F.S., which authorizes rulemaking relating to education and training opportunities for state employees. DMS has sufficient rulemaking authority under s. 110.1055, F.S., to implement s. 110.1099(5), F.S.

- Repeals s. 110.1228(7), F.S., which authorizes rulemaking relating to participation of small political subdivisions in the state group health plan. DMS has sufficient rulemaking authority under s. 110.1055, F.S., to implement s. 110.1228(7), F.S.

- Strikes rulemaking authority from s. 110.12301(2), F.S., relating to postpayment claims review and dependent eligibility. DMS has sufficient rulemaking authority under s. 110.1055, F.S., to implement s. 110.12301(2), F.S.

- Repeals s. 112.1915(4), F.S., which authorizes rulemaking by the State Board of Education to implement s. 112.1915, F.S., providing a special death benefit for teachers and school administrators. The Board does not appear to have adopted rules under the provision, which has not been amended since 2004. The provision, therefore, does not appear to be necessary.

- Strikes rulemaking authority from s. 118.12, F.S., relating to certification of civil-law notaries and apostilles. DOS has not used the rulemaking authority for implementation of the section and does not object to its repeal.

- Repeals s. 121.085(1), F.S., which authorizes rulemaking for procedures establishing claims of creditable service under the retirement system. No rule appears to have been adopted under this 2000 provision. DMS appears to have sufficient authority under s. 121.031(1), F.S., to administer all provisions of law relating to creditable service as defined in s. 121.021(17), F.S.

- Repeals s. 121.1001(4)(b), F.S., which authorizes rulemaking to implement a 1999 provision to protect pension benefits that may exceed federal benefit limitations. The rulemaking authority in paragraph (4)(b) does not appear to have been used by the Division of Retirement. DMS appears to have sufficient authority under s. 121.031(1), F.S., to administer all provisions of law relating to compliance with federal law affecting pension benefits.

- Repeals s. 121.4503(3), F.S., which authorizes rulemaking relating to the Florida Retirement System Contributions Clearing Trust Fund. DMS does not appear to have utilized the particular provision of rulemaking authority since its enactment in 2002. The State Board of Administration and DMS appear to have sufficient rulemaking authority under s. 121.4501(8), F.S., and s. 121.031(1), F.S., to administer the Contributions Clearing Trust Fund.

- Strikes rulemaking authority from s. 121.5911, F.S., relating to the disability retirement program. DMS does not appear to have utilized the particular provision of rulemaking authority since its enactment in 2002. DMS appears to have sufficient rulemaking authority under s. 121.031(1), F.S., to implement legislative intent expressed in s. 121.5911, F.S.

- Repeals s. 125.902(4), F.S., directing DCF to adopt rules as necessary to implement this section enacted in 2000 pertaining to children's services councils or juvenile welfare board grant applications. DCF does not appear to have adopted rules, indicating that the rulemaking authority is unnecessary.

- Repeals s. 154.503(4), F.S., which authorizes rulemaking by the Department of Health (DOH) to implement the Primary Care for Children and Families Challenge Grant Act, adopted in 1997. DOH does not appear to have adopted rules pursuant to the provision, indicating that the rulemaking authority is unnecessary.

- Strikes rulemaking authority from s. 159.8081(2)(a), F. S., concerning the allocation by the Department of Economic Opportunity (DEO) of bonding authority to finance manufacturing facility projects. No rule appears to have been adopted under this provision which has been in existence more than 14 years.

- Strikes rulemaking authority from s. 159.8083, F. S., concerning the allocation by DEO of bonding authority to finance Florida First Business projects. No rule appears to have been adopted under this provision which has been in existence more than 11 years.

- Repeals s. 159.825(3), F. S., which authorizes rulemaking by the State Board of Administration to administer s. 159.825 governing the terms of certain governmental bonds paying interest that is subject to federal income taxes. No rule appears to have been adopted under this provision, which has been in existence more than 13 years.

- Repeals s. 161.75, F. S., which authorizes rulemaking by the Department of Environmental Protection (DEP) and the Fish and Wildlife Conservation Commission to implement the Oceans and Coastal Resources Act (part IV of ch. 161). No rules appear to have been adopted implementing this part, which is over 6 years old.

- Repeals s. 163.462, F. S., which authorizes rulemaking by the Department of Community Affairs to implement the Community-Based Development Organization Act (ss. 163.455-163.462, F.S.). No rules have been adopted since the 2000 effective date of the Act.

- Repeals s. 163.517(6), F. S., which authorizes rulemaking by the Department of Legal Affairs to implement the section relating to the Safe Neighborhoods Program of matching planning grants and technical assistance. The section has not been amended in 18 years, and no rules have been adopted to implement it.

- Repeals s. 175.341(2), F.S., which authorizes rulemaking by the Division of Retirement to implement its duties for daily oversight, monitoring actuarial soundness, and the statutes pertaining to firefighter pension funds. The Department does not utilize rulemaking in administering either chapter 175, F.S., or chapter 185, F.S., and does not object to repeal of this provision.

- Repeals s. 177.504(2)(e), F.S., which authorizes rulemaking by DEP to administer ss. 177.501-177.510, F.S., the Florida Public Lands Survey Restoration and Perpetuation Act, pertaining to restoring controlling corner monuments established by prior cadastral surveys. No rules have been adopted under this provision, which is over 13 years old.

- Repeals s. 185.23(2), F. S., which authorizes rulemaking by the Division of Retirement to implement its duties for daily oversight, monitoring actuarial soundness, and the statutes pertaining to municipal police officer pension funds. The Department does not utilize rulemaking in administering either chapter 175, F.S., or 185, F.S., and does not object to repeal of this provision.

- Repeals s. 255.25001(2), F.S., which authorizes rulemaking by DMS relating to the efficacy of the state entering into lease-purchase agreements for state-owned office buildings. DMS has never adopted rules under this statute and appears to have adequate authority to address lease-purchase agreements under s. 255.25, F.S.

- Repeals s. 257.34(7), F.S., which authorizes rulemaking by the Division of Library and Information Services of DOS pertaining to the administration of the Florida International Archive and Repository. DOS is able to fully implement the statute without rules and agrees this authority is unnecessary.

- Repeals s. 364.0135(6), F.S., which authorizes rulemaking by DMS pertaining to the promotion of adopting broadband services. DMS has adopted no rules under this statute and sees no need for this authority other than possible contingent changes in public policy.

- Strikes rulemaking authority from s. 366.85, F.S., pertaining to the duties of the Department of Agriculture and Consumer Services for consumer conciliation conferences which may be required pursuant to federal law and preparing lists of energy conservation products or services. The statute provides sufficient guidance, and the Department determined this grant of authority is not necessary.

- Repeals s. 409.5092, F.S., which authorizes rulemaking by DEO pertaining to obtaining permission before "weatherizing" a residence. DEO determined this authority is unnecessary as federal rules apply to this issue.

- Strikes rulemaking authority from s. 501.142, F.S., pertaining to the regulation of refunds in retail sales establishments by the Department of Agriculture and Consumer Services, and the authority to impose sanctions for violating rules of the Department. This rulemaking authority was first created in 2006, was used to adopt rules, and appears unnecessary for the operation of the program. The Department has determined this grant of authority is not necessary.

- Amends s. 985.682(15)(b), F.S., pertaining to the siting of facilities for children committed to the custody, care, or supervision of the Department of Juvenile Justice. The amendment conforms the language of this statute with the repeal of s. 255.25001(2), F.S., in the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None anticipated.
2. Expenditures: None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None anticipated.
2. Expenditures: None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None anticipated.

D. FISCAL COMMENTS: None