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The Florida Cabinet in the Age of Aquarias

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Kearney: The Florida Cabinet in the Age of Aquarius
THE FLORIDA CABINET IN THE AGE OF AQUARIUS

*Deborah K. Kearney**

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The stars are in the right place if you're ever going to do this, because all of the incumbents are not going to be affected simply because of term limits. . . . So now's the time.¹

I. INTRODUCTION

From its inception, it was clear that the 1997-98 Florida Constitution Revision Commission would confront the subject of abolishing the Florida Cabinet. Those predicting the forthcoming issues all cited the cabinet system as a likely subject to be considered by the Commission.² At the Commission's organizational session, Governor Reubin Askew advised the Commission not to shy away from taking on important issues such as the Florida Cabinet.³ Governor Claude Kirk's admonition "to make the Governor the Governor . . . [d]emand a leader to lead" rang true with many commissioners.⁴

What seemed equally clear was that the likelihood of Floridians voting to abolish their elected cabinet was remote.⁵ Therefore, in the end, the cabinet system was not abolished. Balancing the importance for success at the polls with the desire to increase governmental accountability, the Commission instead constructed a measure aimed at strengthening the office of governor and, to some degree, streamlining the executive branch. The ballot measure reduced the number of elected executive officers; however, it did not restrict matters from being placed in the hands of a plural executive.

1. *Two members want Cabinet cut down to size*, TAMPA TRIB., Sept. 11, 1997, at Florida/Metro-3 (quoting Fla. State Treasurer Bill Nelson).

2. See Steven J. Uhlfelder & Billy Buzzett, *Constitution Revision Commission: A Retrospective and Prospective Sketch*, 71 FLA. B. J., Apr. 1997, at 24. The Collins Center for Public Policy lists "Reforming the Cabinet system" first among the potential issues likely to be considered by the Constitution Revision Commission. See Collins Center for Public Policy Web Site, *Some Potential Issues for 1998* (visited Nov. 7, 1999) <<http://www.law.fsu.edu/crc/collins/Potential.html>>; see also Stephen T. Maher, *The Florida Cabinet: Is It Time for Remodeling?*, 18 NOVA L. REV. 1123, 1125 (1994).

3. See STATE OF FLA. CONST. REVISION COMM'N, J. OF THE CONST. REVISION COMM'N 1997-98, at 20-21 [hereinafter CRC JOURNAL].

4. *Id.* at 12.

5. See Richard K. Scher, *The Governor and the Cabinet-Executive Policy Making and Policy Management*, in THE FLORIDA PUBLIC POLICY MANAGEMENT SYSTEM: GROWTH AND REFORM 73, 100 (Richard Chackerian, Ed., Fla. Center for Public Management 1994) ("[I]t seems unlikely that future efforts to rid Florida of its Cabinet will prove fruitful. Floridians are used to it. The Legislature, interest and clientele groups, local governments, and the bureaucracies like it. Six of the Cabinet members like it Only the governor, joined perhaps by students of public administration and others interested in a more streamlined governmental structure do not.").

This Article reviews the current status of the Florida Cabinet, then explains the history and evolution of the cabinet from the state's earliest constitution through the constitutional amendments adopted in 1998 with the view toward assisting those who will implement the constitution and those who seek to understand the changes.

A. *What Is the Florida Cabinet?*

Today's cabinet⁶ consists of six independently-elected executive branch officers: the secretary of state, attorney general, comptroller, treasurer, commissioner of agriculture and commissioner of education.⁷ All but one of these officers is assigned, by statute, as the sole officer charged with administering a department.⁸ As the department head, the cabinet member exercises direct supervision over the agency⁹ and does not answer to the governor in the exercise of that power.

While the public generally believes that their governor is responsible for overseeing the administration of the government,¹⁰ there are five departments headed by cabinet members over which the governor has virtually no authority.¹¹ In addition, there are four departments headed collegially by the governor and cabinet¹² and numerous boards and commissions, of which the governor is but one member, which supervise the administration of various executive duties. The Department of Education is headed by the commissioner of education, but the state board of education, comprised of the governor and cabinet, is the chief policymaking body of public education in the state.¹³ The elected

6. See FLA. CONST. art. IV, § 4 (prior to the revisions that take effect in 2003).

7. *Id.*

8. See FLA. CONST. art. IV, § 6 (authorizing the legislature to designate a cabinet officer, among others, as a department head). The constitutional options for department heads include the governor, lieutenant governor, the governor and cabinet, or an officer or board appointed by and serving at the pleasure of the governor. *Id.*

9. *Id.*

10. This has been the case for many decades, when even greater dilution existed. See REPORT OF THE SPECIAL JOINT ECONOMY AND EFFICIENCY COMMITTEE OF THE FLORIDA LEGISLATURE OF NINETEEN-HUNDRED FORTY-THREE 18 (1945); see also FARRIS BRYANT ET AL., THE GOVERNMENT AND POLITICS OF FLORIDA 77 (1957) ("The popular mind ascribes greater power to the Governor than he legally possesses."); Manning J. Dauer & William C. Havard, *The Florida Constitution of 1885—A Critique*, 8 U. FLA. L. REV. 1, 43 (1955) (noting that the governor's position "makes him accountable in the eyes of the public for the complete operation of the executive branch").

11. These include the Department of State (Secretary of State), Department of Legal Affairs (Attorney General), Department of Banking and Finance (Comptroller), Department of Insurance (Treasurer), and Department of Agriculture and Consumer Services (Commissioner of Agriculture).

12. These consist of the Department of Highway Safety and Motor Vehicles, Department of Law Enforcement, Department of Revenue, and Department of Veterans Affairs.

13. See FLA. STAT. § 20.15(1) (1997).

commissioner of education administers the day-to-day operations and shares some of the executive power with the state board of education as a member of the state board.¹⁴

It is this collegial executive decision-making that makes the structure of Florida's executive branch so unique. Unlike a traditional cabinet consisting of advisors to a chief executive, Florida's cabinet officers sit as equals to the governor in many respects. It is an executive branch, run in significant part, by a board of directors, with the governor acting as chairman of the board.¹⁵

The beginning of what developed into this unique cabinet system was marked at 1855, when the Florida Legislature established the Board of Trustees of the Internal Improvement Trust Fund, an ex officio board comprised of the governor and the other elected executive officers of the executive branch.¹⁶ Today, there exists a multitude of ex officio boards and commissions which are administered jointly by the governor and cabinet. Currently, there are some fifteen agencies¹⁷ over which the governor and cabinet, or some combination of them, exercise direct and collegial supervision. It is this ability to assign departments or other significant programs to the governor along with the cabinet that so greatly impinges on gubernatorial power.

B. *What Are the Criticisms of the Florida Cabinet System?*

Those who oppose Florida's cabinet system do so on the basis that it lacks accountability and is not efficient. There are two distinct aspects to their argument. First, by establishing multiple independently-elected officers to exercise the executive power in certain areas, the governor's role as chief executive is weakened. The public looks to the governor as the responsible official, yet the governor is nearly powerless to act in areas under the jurisdiction of one of the other executive officers. However, this situation is not unique among the states. Forty-two other states elect executive officers in addition to the governor and lieutenant governor.¹⁸

14. See FLA. CONST. art. IV, § 4; FLA. CONST. art. IX, § 2; FLA. STAT. § 20.15 (1997); FLA. STAT. § 229 (1997).

15. See Allen Morris, *The Cabinet Team*, FLA. BUS. & OPPORTUNITY, Oct. 1960, at 16.

16. See ALLEN MORRIS & JOAN P. MORRIS, *THE FLORIDA HANDBOOK 1997-1998*, at 667 (1997).

17. These agencies include the Fiscal Accounting and Information Board, State Board of Administration, Division of Bond Finance, Department of Veterans' Affairs, Department of Highway Safety and Motor Vehicles, Department of Law Enforcement, Department of Revenue, State Board of Education, State Board of Career Education, Administration Commission, Florida Land and Water Adjudicatory Commission, Trustees of the Marine Fisheries Commission, Trustees of the Internal Improvement Trust Fund, and Office of Greenways and Trails.

18. See 32 *THE COUNCIL OF STATE GOV., THE BOOK OF THE STATES* (1998-99 ed.)

Second, the governor's authority is further weakened by the assignment of governmental functions, collegially, to these executive officers. Assigning duties to the governor and cabinet not only dilutes the executive authority, but places the governor in the position of having to barter and negotiate, or worse, of failing to put forth initiatives that are not likely to have the support of the majority of the cabinet.¹⁹ Further, this dispersion of authority limits governance in accordance with the ideals of the governor and with campaign promises made.²⁰ It has been called a device for "spreading the heat."²¹

It is confusing to the public that cabinet officers exercise many powers far outside the jurisdiction their titles would suggest. Voters would rarely consider the viewpoints of candidates for the office of state treasurer on topics such as higher education.²² Political commentaries have noted that "[t]he people . . . do not have the vaguest notion that they are voting for a . . . [person] who would have an equal voice" on educational matters.²³ Yet, with the exception of the governor and cabinet sitting as the Clemency Board and as the Administration Commission, the governor's power is no greater than that of any of the six cabinet members.²⁴

In his support of a strong governor, counterbalanced by a strong legislature, Chesterfield Smith, Chairman of the 1966 Constitution Revision Commission, argued that the cabinet is elected by special interests—"the commissioner of agriculture by the agricultural interests; the comptroller by the bankers; the treasurer by the insurance people and the superintendent of public instruction by the teachers. As a result they (the cabinet) speak for them (the special interests groups) and not the people."²⁵

It is also commonly noted that the sheer number of assignments given

19. See Dauer & Harvard, *supra* note 10, at 43-44 (detailing views stated by the Special Joint Economy and Efficiency Committee of the 1943 Florida Legislature).

20. See Carlos Alfonso, *Cabinet Reform Analysis*, CONST. REVISION COMM'N NEWSL., Jan. 1998, at 3.

21. ALLEN MORRIS, *THE FLORIDA HANDBOOK 1995-1996*, at 6 (1995) (quoting Governor Fuller Warren); ALLEN MORRIS & ANN WALDRON, *YOUR FLORIDA GOVERNMENT: 500 QUESTIONS AND ANSWERS 15-16* (1965).

22. See CENTER FOR PRACTICAL POLITICS, *SHOULD FLORIDA REVISE THE CABINET SYSTEM?* 7 (1966) (interviewing Secy. of State Tom Adams and State Rep. Richard Pettigrew).

23. *Id.*

24. The Clemency Board cannot grant clemency without the matter being moved forward by the governor. See FLA. CONST. art. IV, § 8(a) (stating that "the governor may, . . . with the approval of three members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses"). Likewise, unless otherwise provided by statute, "affirmative action by the [administration] commission shall require the approval of the Governor and at least three other members of the commission." See FLA. STAT. § 14.202 (1998).

25. Vance Johnston, *Constitution Reviser Raps Elected Cabinet*, TAMPA TRIB., Nov. 18, 1967, at 1.

the governor and cabinet prevent the members from achieving solid grounding in all of their duties.²⁶ The public understandably is unsure of who to credit for good policies and who to hold accountable for bad ones.²⁷ Even supporters of the cabinet system admit the cabinet is so bogged down with a myriad of functions that cabinet members have insufficient time to devote to their constitutional roles.²⁸

Finally, it has been argued that

[i]n our republican form of government, the traditional concept of checks and balances is designed to impose limits on the chief executive from without . . . from the legislative and judicial arms, not from within the executive branch. To compound the governor's authority with needless checks and balances from within is to deprive the governor of some prerogatives.²⁹

C. *What Are the Benefits of the Cabinet?*

In the past, cabinet members have been among the most vocal supporters of the cabinet system. Secretary of State Tom Adams was a tireless supporter of the cabinet. Among the attributes he found in this system was its ability to provide a public forum in executive decision-making.³⁰ Secretary Adams applauded the "consistency of purpose" and "genuine stability" that the cabinet added in seeing the state through many changes in administration, as well as the assistance it gave to new governors who could partake in this source of experience.³¹

Elected cabinet members, Adams found, are most responsive to the public, whereas appointed administrators owe their allegiance to the person who appointed them.³² The sound decision-making attributed to the cabinet is the result of the "business-like" structure that the cabinet system represents.³³ Comptroller Bud Dickinson found that this "board of directors" style of administration has led to a more stable and conservative

26. See Dauer & Harvard, *supra* note 10, at 5.

27. *WJXT Editorial Comment* (WJXT-Jacksonville television broadcast, May 19, 1964).

28. Malcolm B. Johnson, *Prefers Stronger Cabinet System*, TALLAHASSEE DEMOCRAT, Dec. 6, 1964, at 6A.

29. See *WJXT*, *supra* note 27.

30. See *WJXT Editorial Comment* (WJXT-Jacksonville television broadcast, June 2, 1964) (broadcasting Tom Adams' response to WJXT May 19 Editorial).

31. Tom Adams, *Florida's Cabinet System of Executive Leadership Is Unique*, IN THE CAPITOL (official publication of the Fla. Secy. of St.), Nov. 1963, at 1.

32. Tom Adams, *The Florida Cabinet: Democracy Exemplified*, IN THE CAPITOL (official publication of the Fla. Secy. of St.), Apr. 1966, at 1.

33. Fred O. Dickinson, Jr., *The Florida Cabinet*, 43 FLA. B. J., 337, 378 (1969).

state government.³⁴

Malcolm Johnson, long time editor and political commentator for the Tallahassee Democrat, explained his support of Florida's cabinet system by explaining that "[w]e are spared really bad administration of government by our unique system of electing six independent Cabinet officers. . . ."³⁵ Mr. Johnson claimed that the cabinet system assured a check on the governor's exercise of power, and that the longer terms of cabinet officers provided continuity in the state's governance.³⁶ Mr. Johnson later summed up the belief of many by stating quite simply, that "the cabinet works well."³⁷ And, it is generally agreed that the caliber of elective cabinet officers in Florida has generally been quite high.³⁸

D. *How Was the Issue Addressed?*

The 1998 constitutional revisions to Article IV continue the modern trend toward enhancing the executive powers of the state's governor. The ballot language of Revision 8 describes the changes it makes:³⁹

Merges cabinet offices of treasurer and comptroller into one chief financial officer; reduces cabinet membership to chief financial officer, attorney general, agriculture commissioner; secretary of state and education commissioner eliminated from elected cabinet; secretary of state duties defined by law; changes composition of state board of education from governor and cabinet to board appointed by governor; board appoints education commissioner; defines state board of administration, trustees of internal improvement trust fund, land acquisition trust fund.⁴⁰

It would be inaccurate to suggest that the changes made by Revision 8 "fixed" the criticisms that are made of the system. The ballot proposal fell short of abolishing the cabinet system. In fact, the revisions newly graft

34. *See id.*

35. Malcolm B. Johnson, *A Political Truth Could Go Wrong*, TALLAHASSEE DEMOCRAT, Apr. 3, 1960, at 4.

36. *See id.*

37. Johnson, *supra* note 28, at 6A.

38. *See* Dauer & Harvard, *supra* note 10, at 45.

39. Bear in mind that a statutory limit of 75 words for the ballot summary exists. *See* FLA. STAT. § 101.161(1) (1990). Moreover, the Florida Supreme Court's interpretation required that the chief purpose of the amendment be stated in clear and unambiguous language. *See Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982). This presented a real challenge to the Commission and resulted in a summary clearly lacking in polish and good grammar.

40. Revision 8—Restructuring the State Cabinet, FLA. GENERAL ELECTION BALLOT (Nov. 3, 1998).

into the constitution several areas that are required to be supervised by the governor and cabinet⁴¹ and does not prevent the legislature from establishing others. Three executive officers other than the governor will continue to be elected statewide. Supporters expect the changes to improve government accountability and efficiency. For practical purposes, the amendment should yield fewer agencies being headed by the governor and cabinet and by cabinet officers.

II. HISTORY

The role of the Florida Cabinet has evolved over time. While the system remains a source of controversy and generally a source of some amount of irritation to governors,⁴² it is today somewhat less intrusive into gubernatorial power than it once was, and will be even less so beginning in 2003.

At the birth of the nation, the states created their executive branches as the weakest of the three quite unequal branches of government. The first states revealed their distaste for colonial governors of the crown⁴³ in state constitutions that provided for such a weak executive branch that, in some cases, the governor was a mere agent of the legislature.⁴⁴

A. 1838 Constitution

The first of Florida's six constitutions was written in 1838 and adopted in the election of May 1839 as the document prepared for submission to the United States Congress in the move toward statehood.⁴⁵ The 1838 Constitution provided for a governor who was allowed one four-year term.⁴⁶ The executive branch was rounded out by a secretary of state, state treasurer, and comptroller of public accounts—all elected by joint vote of both houses of the general assembly.⁴⁷ Upon gaining statehood in 1845, this document served as the state's constitution until Florida seceded from the United States in 1861.

41. See CRC JOURNAL, *supra* note 3, at 221.

42. Virtually every governor since WWI has called for executive reorganization. See Daisy Parker & Albert L. Sturm, *The Executive Branch in the Florida Constitution* 14 (1966) (paper prepared for the 1965 Florida Constitution Revision Commission, Institute of Governmental Research, The Florida State University); see also *An Introduction to the Florida Cabinet System*, The Florida Department of State Website (visited May 9, 1999) <<http://www.dos.state.fl.us/cabinet/system.html>>.

43. See Parker & Sturm, *supra* note 42, at 1.

44. See LARRY SABATO, *GOODBYE TO GOOD-TIME CHARLIE: THE AMERICAN GOVERNORSHIP TRANSFORMED* 3 (2d ed. 1983).

45. See FLA. CENTENNIAL COMM'N, *FLORIDA BECOMES A STATE* 69 (1945).

46. See FLA. CONST. of 1838, art. III, § 2.

47. See FLA. CONST. of 1838, art. III, §§ 14, 23.

B. 1861 Constitution

A constitutional convention was called for by the electors in 1860 for the purpose of taking into consideration the position of this state in the Federal Union. An Ordinance of Secession was adopted by the convention on January 10, 1861.⁴⁸

In April 1861 the new constitution was adopted. It was, in most respects, similar to the 1838 Constitution, except that "Confederate States" was substituted for "United States."⁴⁹ Changes were also made to the article relating to the executive branch. Effective in 1865, the governor would be elected for a two-year term, but there was no prohibition on successive terms.⁵⁰ The other executive officers, still elected by joint vote of both legislative houses, would likewise serve two-year terms.⁵¹ Since the confederacy fell before the effective date of these executive branch changes, the two-year terms and the absence of a gubernatorial term limit were never implemented.⁵²

C. 1865 Constitution

At the close of the Civil War, Florida's Provisional Governor, William Marvin, at the direction of President Andrew Johnson, called an election to name delegates to a constitutional convention.⁵³ This 1865 Constitution set the governor's term at four years and contained no limitations on re-election.⁵⁴ The remaining executive officers were to be chosen by popular election for the first time.⁵⁵

The 1865 Constitution was effective for a very short time, as Congress rejected President Johnson's plan for reuniting the states.⁵⁶ Congress

48. See FLA. CONST. of 1861, ordinance of secession.

49. *Id.*

50. See FLA. CONST. of 1861, art. III, § 2.

51. See MORRIS & MORRIS, *supra* note 16, at 667.

52. See *id.*

53. See *id.* at 668.

54. See FLA. CONST. of 1865, art. III, § 2.

55. See FLA. CONST. of 1865, art. III, §§ 15, 23.

56. There appears to be conflicting views as to whether this constitution took effect at all. "The Constitution never became operative, . . . as Congress rejected President Johnson's plan for returning . . . the states of the Confederacy to their pre-war status." MORRIS & MORRIS, *supra* note 16, at 668. To the contrary, Talbot D'Alamberte states the 1865 Constitution "was in effect for only slightly more than two years . . ." TALBOT D'ALEMBERTE, *THE FLORIDA STATE CONSTITUTION, A REFERENCE GUIDE 6* (G. Alan Tarr, series ed., Greenwood Press 1991).

The latter view is supported by the facts that the constitution was adopted on November 7, 1865, and article 17, section 5 of the document called for a general election to be held on November 29, 1865. The Reconstruction Acts were not adopted until 1867-1869. Reconstruction Acts: Mar. 2, 1867, ch. 152, 14 Stat. 428; Mar. 23, 1867, ch. 6, 15 Stat. 2; July 19, 1867, ch. 30, 15 Stat. 14;

adopted the Reconstruction Act of 1867,⁵⁷ placing southern states, including Florida, under martial law.

D. 1868 Constitution

By military order, delegates were elected in November 1867 to write a new constitution for the state; however, after much turmoil, factionalism, and antagonisms among the group, Florida's commanding general selected the drafters from among the delegates.⁵⁸ During this period of Reconstruction, Northern "carpetbaggers" were able to marshal great political strength, supported in large part by black voters and by the disenfranchisement of many white Southerners.

The Constitution of 1868 (often called the Reconstruction, or "Carpetbag" constitution), was the first to speak of a cabinet. This constitution provided for a "highly integrated administrative organization under the governor."⁵⁹ A cabinet composed of eight administrative officers to "assist" the governor was established.⁶⁰ These early cabinet officers were appointed by the governor, subject to Senate confirmation.⁶¹ This constitution concentrated enormous power in the governor.⁶²

E. 1885 Constitution

The end of Reconstruction came in 1876 when home rule was returned to the southern states.⁶³ Florida convened yet another convention to tailor a state constitution. The Constitution of 1885 was a clear response to the carpetbag constitution and its disarming level of executive power⁶⁴ which, to add to the insult of military control, had all too often been exercised in an incompetent and corrupt manner.⁶⁵ The reaction to the Reconstruction

Mar. 11, 1868, ch. 25, 15 Stat. 41; Dec. 22, 1869, ch. 3, 16 Stat. 59.

57. See 15 Stat. 25 (1868).

58. See MORRIS & MORRIS, *supra* note 16, at 668.

59. WILSON K. DOYLE ET AL., *THE GOVERNMENT AND ADMINISTRATION OF FLORIDA* 85 (1954).

60. See FLA. CONST. of 1868, art. V, § 17. (instituting the offices of Secretary of State, Attorney-General, Comptroller, Treasurer, Surveyor-General, Superintendent of Public Instruction, Adjutant-General and Commissioner of Immigration). In 1871, the Surveyor-General and Commissioner of Immigration were consolidated into a Commissioner of Lands and Immigration. Fla. Laws, ch. 1838 (1871-1872).

61. See *id.*

62. For example, the governor could appoint a multitude of county officers. See FLA. CONST. of 1868, art. V, § 19.

63. See D'ALEMBERTE, *supra* note 56, at 7.

64. See DAVID R. COLBURN & RICHARD K. SCHER, *FLORIDA'S GUBERNATORIAL POLITICS IN THE TWENTIETH CENTURY* 102 (1980).

65. D'Alemberte states, "Given the resentment stemming from defeat in the Civil War and the postwar military occupation, there is little chance that the carpetbagger government would have

government was to provide for a very weak governor and dilute the executive power across multiple independent executive officers. The governor was not eligible for re-election after one four-year term.⁶⁶ The administrative officers were subject to popular election⁶⁷ and were not restrained by a term limit. It was this omission of a limit on re-election of cabinet members that made later changes very difficult, as cabinet members developed strong constituencies over lengthy terms while governors came and went every four years.

This 1885 Constitution provided that, in addition to their specific duties, cabinet members could be made responsible to perform further duties as prescribed by law.⁶⁸ In the most exacting terms, the Florida Supreme Court interpreted the state constitution to allow administration by various boards and commissions which included the executive branch officers.⁶⁹ In 1920, the court upheld the validity of rules promulgated by the state livestock sanitary board, which was comprised of the commissioner of agriculture, superintendent of public instruction, state treasurer and two members appointed by the governor.⁷⁰ In that case, the court, in no uncertain terms, held that the legislature had the power to assign additional duties to constitutional officers, and these additional duties may include serving on boards and commissions.⁷¹

The staying power of the 1885 Constitution⁷² should not be considered a testament to an unchanging Florida citizenry. Throughout its tenure, the 1885 Constitution was amended 151 times⁷³ and in later years resembled a patchwork quilt of Florida's organic law.⁷⁴ Efforts to modernize the state

been popular had it been competent and honest. It was neither." D'ALEMBERTE, *supra* note 56, at 8.

66. See FLA. CONST. of 1885, art. IV, § 2.

67. See FLA. CONST. of 1885, art. IV, § 20.

68. Except such language is not included with respect to the Treasurer; however, the Attorney General was to perform "such other *legal* duties" as provided by law. FLA. CONST. of 1885, art. IV, §§ 21, 22, 23, 25, 26.

69. See *Whitaker v. Parsons*, 86 So. 247, 251-52 (Fla. 1920).

70. See *id.* at 251.

71. See *id.*

72. The 1885 Constitution served the state for eighty-three years.

73. See MORRIS & MORRIS, *supra* note 16, at 664. A total of 214 amendments were proposed.

Id.

74. As early as 1955, after the Constitution had been amended only 94 times, the legislature made a finding that amendments

have been adopted at various times through the years without logical relationship to subject matter until at the present time this, our most important guarantee of rights and liberties, has become a puzzle in many of its concepts . . . many sections in the constitution are contradictory in language and vague to such an extent in meaning that there exists a state of confusion resulting in hardships, delays and

constitution were met with resistance from a poorly apportioned legislature with much vested in the status quo.⁷⁵

In 1945, a specially-created joint committee of the legislature reported that there had been, for some thirty years, interest in reorganizing the executive branch "due to the cumbersome, extensive and poorly organized structures which had grown up."⁷⁶ All but five states in the Union had reorganized or were in the process of reorganizing.⁷⁷

In 1955, Governor Collins called for a Florida Constitution Advisory Commission, which was established by the legislature.⁷⁸ While the key issue of the Commission was apportionment of the legislature,⁷⁹ executive branch reform was also a matter within its purview.⁸⁰ Governor Collins caused a flurry of comment upon his address to the Commission when he advised the members that they should not hesitate to review "our entire so-called Cabinet system."⁸¹ Governor Collins noted that much of the system is obsolete, that the duties of cabinet members extend far beyond the original constitutional concept, and that cabinet members are overburdened between administering their assigned departments as well as attending to the functions of all of the ex-officio boards on which they serve.⁸²

The period from the 1950's through the 1980s was one of explosive change in the states' treatment of executive power.⁸³ Unresponsive, indecisive, and ineffective state governments brought to light that "the neglect of problems caused by a fragmented and diffused state government was a greater evil than the potential for executive abuse."⁸⁴

injustices. . . .

S. Con. Res. 555, 1955 Sess. (Fla. 1955).

75. "Redistribution of senate seats threatened . . . [Porkchoppers'] power over state revenues and patronage, the weapons they used to build and maintain their political strength." TOM WAGY, LEROY COLLINS OF FLORIDA, SPOKESMAN OF THE NEW SOUTH 51 (1985). Porkchoppers were legislators from rural, agricultural districts, which districts, because of population shifts, had an inequitably greater amount of power based upon a one person, one vote concept. *See id.* at 51.

76. REP. SPEC. JOINT ECONOMY & EFFICIENCY COMM. OF FLA. LEGIS. OF 1943 (1945).

77. *See id.*

78. The resolution established a 37-member commission composed of the president of the senate, speaker of the house of representatives, 8 house members, 8 senate members, and 5 members appointed by each of the governor, the chief justice of the supreme court and the Florida Bar. *See S. Con. Res. 555, 1955 Sess. (Fla. 1955).*

79. *See WAGY, supra* note 75, at 104.

80. *See id.* at 49.

81. Governor Leroy Collins, Address before Constitution Advisory Commission, Floridian Hotel, Tampa (Oct. 22, 1955) (located at Florida Archives, Series 776, Carton 6).

82. *See id.*

83. *See SABATO, supra* note 44, at 1.

84. *Id.*

The 20th Century brought an era characterized by growth in executive power.⁸⁵ Typically, governors had found they lacked the authority to faithfully execute the laws⁸⁶—Florida being an extreme example.⁸⁷ Legislative abuses led states to place limitations on their legislatures, thereby benefitting the executive branch.⁸⁸ Executive reforms made by states during this period included reducing the number of executive agencies, lengthening gubernatorial terms, and providing staff aids and management controls.⁸⁹ Florida's executive branch, meanwhile, was characterized by an increasing number of executive agencies and the extensive use of cabinet ex-officio boards and commissions.⁹⁰

Florida was, however, undergoing a period of great change, amplified by unprecedented growth and a poorly apportioned legislature. Growing urban areas were not proportionally represented, and their propensity to favor progressive ideas was stilted until the federal courts required reapportionment based on the one person-one vote principal.⁹¹ Once reapportioned, it was now possible to address the issue of modernizing the Florida Constitution. A major issue in this effort was, of course, the structure of the executive branch.

F. 1968 Constitution

In 1965, upon the recommendation of Governor Hayden Burns, the newly-apportioned Florida Legislature created a constitution revision commission and charged it with the duty to submit recommendations for revisions to the state constitution.⁹² In the findings prefatory to the law which established the commission, the legislature expressed the need for members of each branch of state government to make a careful study of the constitution "for the purpose of eliminating obsolete, conflicting and unnecessary provisions as well as for framing an orderly and properly arranged constitution, based upon economic and social changes. . . ."⁹³ The recommendations of the constitution revision commission were submitted to the legislature prior to its 1967 legislative session. The legislature made

85. See Parker & Sturm, *supra* note 42, at 1.

86. See L. VAUGHAN HOWARD & JOHN H. FENTIN, *STATE GOVERNMENTS IN THE SOUTH: FUNCTIONS AND PROBLEMS* 25 (1956).

87. See *id.* at 26 (stating that, in Florida, "obviously the governor is chief executive in name only").

88. See *id.*

89. See Parker & Sturm, *supra* note 42, at 2.

90. See *id.*

91. See *Baker v. Carr*, 369 U.S. 186, 209 (1962); *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964).

92. See 1965 Fla. Laws ch. 65-561.

93. *Id.*

only modest changes to the commission's recommendations regarding the cabinet in Article IV, Section 4.⁹⁴

The 1968 Constitution made many improvements in the operations of the legislative branch⁹⁵ and shortly thereafter the judicial article was brought up-to-date.⁹⁶ This wholesale reform was not extended to the executive branch, but nevertheless the 1968 Constitution made some dramatic changes that strengthened the governor's role. The opportunity for succession to a second term was introduced in 1968.⁹⁷ This made the governor more than a lame duck for the entire tenure. Also introduced in 1968 was the requirement that the functions of government be allotted among no more than twenty-five departments.⁹⁸ In 1968, there were 166 agencies identified as making up the executive branch.⁹⁹ The resulting 1969 reorganization of the executive branch made some improvement with regard to the earlier problems with duplication and dispersion in administering the government.

On the other hand, the 1968 Constitution codified into our organic law what had previously been the statutory-based practice of government by an ex-officio board. Dr. Lance deHaven-Smith, a noted state constitution scholar, has posited that the implementation of Article IV, Section 4 has not been as it was intended.¹⁰⁰ The arguments in favor of the cabinet system were to improve coordination and accountability and to reduce fragmentation among the various entities of the executive branch.¹⁰¹ Instead, he notes, the governor and cabinet are assigned so many tasks that decisions are routinely delegated to aides, adding to the bureaucracy, impeding the desired public forum and accountability, and complicating rather than simplifying decision-making.¹⁰²

94. See FLA. STAT. ANN. art. 4, § 4 (West 1995) (commentary by Talbot "Sandy" D'Alemberte).

95. Of significant importance was the requirement for the appointment of an auditor to be appointed by the legislature. See FLA. CONST. of 1968, art. III, § 2. A complete fiscal analysis by its own staff is "the most effective possible device for holding an administrative accountable to its policies." Dauer & Harvard, *supra* note 10, at 48. Other checks on executive power were introduced, including a merit system for personnel, see FLA. CONST. of 1968, art. III, § 14, and annual, as opposed to biannual legislative sessions which enabled the legislature to assume its appropriate policy-making role. See FLA. CONST. of 1968, art. III, § 3(b).

96. A wholly revised article V was adopted in 1972. See S.J. Res. 52-D, Spec. Sess. (Fla. 1971).

97. See FLA. CONST. of 1968, art. IV, § 5(b).

98. See FLA. CONST. of 1968, art. IV, § 6.

99. See CENTER, *supra* note 22, at 2.

100. See LANCE DEHAVEN-SMITH, FOUNDATIONS OF REPRESENTATIVE DEMOCRACY 35 (The Collins Center and The Florida Institute of Government ed., 1997).

101. See *id.* at 263.

102. See *id.* at 281-82.

G. *Proposals by the 1978 Constitution Revision Commission*

The issue of Florida's cabinet was one of major importance throughout the tenure of the 1977-78 Constitution Revision Commission. One of the Commission's eight proposed revisions would have abolished the cabinet system entirely.¹⁰³ Like all of the 1977-78 Constitution Revision Commission proposals, Revision 4 was not adopted.¹⁰⁴ There are numerous reasons given for the defeat of all of the Commission's proposals.¹⁰⁵ Certainly a contributing factor was that the first revision cycle came only ten years after the wholesale rewrite of the state constitution in 1968. It cannot be ignored, though, that cabinet members with long tenures (actual or prospective) and loyal constituencies vigorously opposed Revision 4. This is in stark contrast to the situation in 1998 where term limits had rendered most sitting cabinet officials ineligible to succeed themselves after the 1998 election.¹⁰⁶

As noted above, the unsuccessful 1978 proposal was a full abolishment of the cabinet system. The only executive officers to run statewide would have been the governor and lieutenant governor, running on a joint ticket.¹⁰⁷ The administrators of all executive agencies would have been appointed by the governor, subject to senate confirmation.¹⁰⁸ As to issues involving the investment of trust funds and agency funds, state bonds, and state lands, the legislature was directed to designate at least one other

103. See Const. Revision Comm'n, proposal 213, at D005 355-57 (Fla. 1978).

104. The vote was 540,979 for and 1,614,630 against. Tabulation of Official Results, Fla. Gen. Election, Nov. 7, 1978 (on file with Florida Department of State, Division of Elections).

105. For example, Governor Chiles mentioned that "[t]here were just too many proposals." CRC JOURNAL, *supra* note 3, June 16, 1997, at 5. Commissioner and Senate President Toni Jennings recommended that the 1997-1998 Commission propose each revision with "a single, easy-to-understand subject instead of coupling things together" to avoid the criticisms made of the revisions proposed by the previous commission which often coupled unrelated subjects. *Id.* at 6. Professor Robert F. Williams suggested that 1978 was a time when "the current negativism about government" was beginning. CRC JOURNAL, *supra* note 3, June 17, 1997, at 18. Steve Uhlfelder Executive Director of the 1978 Commission, stated that in 1978 competition grew between the legislature and the commission. See *id.* at 19. Further, Mr. Uhlfelder believes the 1978 revisions would have been fewer and better received had the commission required more than a majority vote for ballot placement. See *id.* at 20.

106. See *supra* note 1 and accompanying text.

107. See *supra* note 103, proposals 213 & 214, at D005354-57.

108. See FLA. CONST. REVISION COMM'N, PROPOSED REVISION OF THE FLORIDA CONST. 15 (1978) (proposing schedule with Regard to Abolition of Cabinet). This, to some degree, conflicted with article IV, section 6 in the same revision, which provided that "[t]he administration of each department . . . shall be placed by law under the direct supervision of the governor, the lieutenant governor, or an officer or board appointed by and serving at the pleasure of the governor. . . ." FLA. CONST. art. IV, § 6, rev. 4 (proposed 1978). That is, the latter provision would have allowed the legislature to place a department under the supervision of the lieutenant governor, or directly under the governor, thereby not allowing for gubernatorial discretion in appointing someone else.

officer to act with the governor.¹⁰⁹ Power plant siting, dredge and fill permitting, supervision over rules and order of water management districts, and approving developments of regional impact were to have been transferred to a board appointed by the governor.¹¹⁰ The governor was also given the full clemency power.¹¹¹

III. 1998 CHANGES AND THEIR HISTORY

A. *Opening Session*

It did not take long for the issue of cabinet reform to arise with the 1997-98 Constitution Revision Commission. At the Commission's opening session, every former governor who spoke broached the subject. Similar to each of the appointing authorities,¹¹² Governor Chiles expressed his belief that the constitution may, at this time, require only a tune-up, not an overhaul.¹¹³ He did, however, highlight issues that he felt were important for the commission to address such as to "tackle . . . the structure of the Executive Branch of our government . . . and develop a better way for the Governor and Cabinet to serve our people."¹¹⁴ Governor Kirk was far stronger in his urging that the commission deal with the cabinet system:

You have a blessed opportunity to give the now and next Florida the freedoms we all deserve and desire, but have never gotten. No unaccountable Cabinet can lead to or even toward any of the freedoms we pay for every day. Convince yourselves, and then convince our old faint-hearted of the state as well as the new and confused folks of Florida, to make the Governor the Governor. Demand a leader to lead. Give the next governors the responsibility and the appointed control of the Department of Education and of the Office of Attorney General. The rest you can leave with the lobbyists, if you must.¹¹⁵

Governor Askew acknowledged that he had supported the elected cabinet system prior to the adoption of the 1968 Constitution, because prior to

109. See FLA. CONST. art. IV, § 1(g)(1), rev. 4 (proposed 1978).

110. See FLA. CONST., SCHEDULE with Regard to Abolition of Cabinet, subsection (a) (proposed 1978).

111. See FLA. CONST. art. IV, § 8, rev. 4 (proposed 1978).

112. FLA. CONST. art. XI, § 2 (1988) (governor, president of the senate, speaker of the house of representatives, and chief justice of the supreme court).

113. See CRC JOURNAL, *supra* note 3, June 16, 1997, at 5.

114. *Id.*

115. *Id.* at 12.

1968 the Florida Legislature was a weaker body and it was therefore necessary to diffuse executive power to maintain a balance among the branches.¹¹⁶ Now, he finds, both the legislative and judicial branches are strong and the cabinet system prevents the proper balance among the three branches.¹¹⁷ Governor Askew urged the Commission to address this issue, stating:

You do not have an Executive Branch of government that can respond to the people on public policy as a Governor could with a singular voice. One of the things we found in the Legislature, with my predecessor, is that as much as we disagreed, we were diffused and couldn't really get any public forum. The Governor is still the one that has the forum and is the only one that, in effect, can challenge the people. If you really want to have a Governor lead, and not just respond to what the polls say, frankly, you need to give that Governor the authority of the office. And then I think you will find it better than it is now.¹¹⁸

B. *Public Hearings*

Prior to the filing or consideration of any proposals and during the course of twelve public hearings held at the outset of the Commission's tenure, the subject of the Florida Cabinet was addressed by many citizens. It was the position of the League of Women Voters that the cabinet should be appointed by the governor, subject to senate confirmation.¹¹⁹ A key reason for this position was the view that special interests were financing the campaigns of "specialized" cabinet members.¹²⁰ The League further favored a repeal of Section 2 of Article IX, which establishes the governor and cabinet as the state board of education. Their recommendation was for the governor to appoint a separate board of education so that education might serve as the primary interest of the board members.¹²¹ The Chancellor of the State University System made much the same recommendations at a later hearing.¹²²

Former Secretary of State Jessie McCrary supported abolishing the

116. *See id.*

117. *See id.*

118. CRC JOURNAL, *supra* note 3, June 17, 1997, at 21.

119. *See* Mary Knight, Florida League of Women Voters, Presentation at Panama City Public Hearing (July 22, 1997).

120. *Id.*

121. *See id.*

122. *See* Charles B. Reed, Chancellor, State University System, Presentation at Jacksonville Public Hearing (July 29, 1997).

cabinet because it is antiquated, mentioning that both the judicial and legislative branches have been strengthened in recent years, but the weakened executive branch still lingers in the past with no accountability and no uniformity of purpose.¹²³

Other speakers urged that the governor should choose the cabinet;¹²⁴ the elected cabinet system is illogical;¹²⁵ the current system is confusing and dissipates the responsibility and authority of the governor;¹²⁶ and the governor should be allowed to effectively manage the executive branch.¹²⁷ Interesting variations included Congressman McCollum's suggestion that if the cabinet cannot be changed to an all-appointed system, at least the cabinet members should be treated as administrative officers over individual departments and not as executive officers.¹²⁸ Somewhat similarly, Professor Joe Little suggested that an elected cabinet officer stand only as the head of a particular department and function collegially with the governor only in a quasi-adjudicatory role, as opposed to comprising a part of the administration of the executive branch.¹²⁹ One speaker specifically cautioned against electing a banking or insurance commissioner.¹³⁰ Another supported an appointed cabinet, because the chance of having an African-American serve in this position would be enhanced.¹³¹

On the other hand, a number of speakers favored retention of the cabinet system.¹³² Many of the supporters represented environmental interests and saw the cabinet as a helpful resource for the ordinary

123. See Jessie McCrary, representing himself, Presentation at Miami Public Hearing (Aug. 20, 1997).

124. See David A. Newton, representing himself, Presentation at Panama City Public Hearing (July 22, 1997); Eugene Wine, representing himself, Presentation at Miami Public Hearing (Aug. 20, 1997).

125. See Sherlee Aronson, representing herself, Presentation at Pensacola Public Hearing (July 23, 1997).

126. See John Lepke, representing himself, Presentation at Gainesville Public Hearing (July 30, 1997).

127. See Karen Matteson, representing the Chamber of Commerce, Presentation at Tampa Public hearing (Sept. 11, 1997).

128. See Congressman Bill McCollum, Presentation at Orlando Public Hearing (Sept. 4, 1997).

129. See Professor Joe Little, University of Florida College of Law, Presentation at Gainesville Public Hearing (July 30, 1997).

130. See Robert M. Nied, representing himself, Presentation at Jacksonville Public Hearing (July 29, 1997).

131. See Gerald L. White, Sr., representing himself, Presentation at Tampa Public Hearing (Sept. 11, 1997).

132. See State Representative Jerry Melvin, Presentation at Pensacola Public Hearing (July 23, 1997); Marion County Commissioner Randy Harris, Presentation at Gainesville Public Hearing (July 30, 1997); Jack Schifrel, representing himself, Presentation at Fort Lauderdale Public Hearing (Aug. 21, 1997); Clayton Maxwell, representing the Unincorporated Homeowners Association of Lee County, Presentation at Fort Myers Public Hearing (Sept. 12, 1997).

citizen¹³³ and an opportunity for executive decisions to reflect vision and breadth that is often lacking in other forums.¹³⁴ One speaker favored establishing a cabinet position for environmental issues.¹³⁵

Certainly the presentation that most caught the interest of the Commission on this issue, was one made jointly by Comptroller Bob Milligan and Treasurer Bill Nelson.¹³⁶ The two appeared together at the Tampa public hearing and recommended combining the offices of comptroller and treasurer into one chief financial officer. They would then eliminate three of the six cabinet offices, leaving the attorney general as chief legal officer and the “merged” chief financial officer to sit with the governor on such matters as education, law enforcement, environmental policy, state lands, investment of pension funds, issuance of bonds, power plant siting and clemency.¹³⁷

C. Proposals Filed

A number of cabinet-related proposals were filed during the course of the 1997-98 Constitution Revision Commission. They are, briefly, as follows:

Proposal 69 by Commissioner Riley: The commissioner of education is to be appointed in the manner prescribed by law. The education commissioner would exercise the same duties as under current law and would continue to serve on the cabinet.

Proposal 113 by Commissioner Evans-Jones: In the absence of the governor and at the governor’s request, the lieutenant governor shall preside over and have a vote on the cabinet.

Proposal 117 by Commissioner Corr: The state board of education is composed of no more than 7 members appointed by the governor.

Proposal 159 by Commissioner Mathis: Establishes a 2-member cabinet composed of the attorney general and chief fiscal officer (combining the offices of comptroller and

133. See Ellen Peterson, representing the Sierra Club, Presentation at Fort Myers Public Hearing (Sept. 12, 1997).

134. See Linda M. Bremer and Patricia Anderson, representing themselves, Presentation at Jacksonville Public Hearing (July 29, 1997).

135. See Greg Braun, representing the Martin County Audubon Society, Presentation at West Palm Beach Public Hearing (Aug. 22, 1997).

136. See Bob Milligan and Bill Nelson, Presentation at Tampa public hearing (Sept. 11, 1997).

137. *Id.*

treasurer).

Proposal 163 by Commissioner Evans-Jones: Establishes a 4-member cabinet composed of the lieutenant governor, attorney general, chief financial officer and commissioner of education. Requires the governor to appoint a secretary of state and commissioner of agriculture.

Proposal 165 by Commissioner Corr: Establishes a cabinet composed of the attorney general, treasurer (combining the comptroller and treasurer), and other members not to exceed a total of 7, as determined and appointed by the governor or as prescribed by law.

Proposal 166 by Commissioner Riley: Establishes a 7-member state board of education appointed by the governor, subject to senate confirmation. The board appoints the commissioner of education, who continues to serve on the cabinet.

Proposal 168 by Commissioner Corr: Reiterates the 25-department rule of Article IV, § 6. (Later amended to preclude agencies from being headed by the governor and cabinet and then subsequently amended to delete that amendment.)

Proposal 176 by Commissioner Alfonso: Precludes agencies from being headed by the governor and cabinet.

Proposal 182 by Commissioner Riley: Establishes an appointed cabinet and precludes agencies from being headed by the governor and cabinet.

D. *Committee on the Executive*

All proposals relating to cabinet reform were referred to the Committee on the Executive.¹³⁸ The Committee first discussed the subject extensively at its November 12, 1997 meeting. Early on, committee members recognized that the governor's authority is diminished by the cabinet. If the issue was to be addressed, it would have to be done in this arena because the legislature was very unlikely to adjust a structure that operated to its favor.¹³⁹ The Committee also decided to draft its own proposal to substitute

138. This was a 7-member committee chaired by Commissioner Carlos Alfonso. The members were Thomas Barkdull, Chris Corr, Marilyn Evans-Jones, Clay Henderson, Frank Morsani, and James Harold Thompson.

139. "This is part of what keeps them ahead of the game." Commissioner Clay Henderson,

for the several proposals referred to the Committee.¹⁴⁰ The proposal became identified as Committee Substitute to Proposals 159, 163, and 182.¹⁴¹

In managing the issues, the following factors were laid out to ensure a process that considered all of the principal issues: (1) size; (2) authority; (3) ethics; (4) elected versus appointed executive officers; and (5) areas of responsibility.¹⁴² The Committee expressed its desire that a maximum amount of flexibility be considered in the drafting of the ultimate proposal.¹⁴³

1. Size

While a small majority of the committee favored a two-member cabinet as proposed in the Milligan-Nelson recommendation, others proposed a four-member cabinet, retaining the same size or allowing for a flexible number to be determined by the governor.¹⁴⁴ Those favoring the two-member cabinet felt it would enhance accountability¹⁴⁵ and give the governor the authority that most citizens believe the office holds.¹⁴⁶ The committee submitted a proposal to the full Commission that would have established a two-member cabinet of the attorney general and treasurer

Committee on Executive meeting (Nov. 12, 1997) (tape available from the Secretary of the Florida Senate).

140. *See id.*

141. Committee Substitute was proposed by the Committee on the Executive on January 13, 1998. *See Meeting of the Committee on the Executive* (Jan. 13, 1998) (tape available from the Secretary of the Florida Senate). Pursuant to Rule 3.6, a substitute proposal becomes a proposal when it is reached on the calendar and the original proposals is tabled unless a motion to consider the substitute fails. By operation of the rule, Committee Substitute for Proposals 159, 163 and 182 became a proposal when taken up by the Commission on January 26, 1998.

142. *See Meeting of the Committee on the Executive* (Nov. 12, 1997) (tape available from the Secretary of the Florida Senate).

143. Commissioner Frank Morsani reminded the members not to micro-manage and to avoid having to go back and amend the Constitution time after time. *See id.* Commissioner James Harold Thompson suggested to the Committee that issues change in importance over time and that the legislature should be given the latitude to appropriately respond. *See id.* Commissioner Thomas Barkdull stated that “[w]ith the possible spelling out in the constitution of collegial responsibilities for the state board of administration, public lands and pardons, everything else should be left to be established by law.” *Id.*

144. Commissioner Marilyn Evans-Jones filed Proposal 163, which would have established a four-member cabinet comprised of the attorney general, treasurer (merging the current duties of treasurer and comptroller), commissioner of education, and commissioner of agriculture. *See id.* Commissioner Clay Henderson favored the status quo or this Evans-Jones approach. *See id.*

Commissioner Chris Corr filed Proposal 165, which would have established a flexible cabinet size, providing for two elected members, and that the governor could appoint up to five other executive officers. *See id.*

145. *See id.*

146. *See id.*

(combining the constitutional duties of the comptroller and treasurer).¹⁴⁷

2. Authority

Whether or not committee members agreed on other issues and whether or not they expressed concerns about increasing the governor's power, almost all agreed that cabinet determinations should not be made over the objection of the governor.¹⁴⁸ As Commissioner Barkdull explained:

[I]t is possible that the governor and the other two members of the cabinet would be of different political persuasions. The public is entitled to expect that the person they elect as the chief executive officer have more . . . authority than the other members of the cabinet. The governor . . . should not be able to be outvoted by officers that did not run to be the chief executive.¹⁴⁹

Commissioner Henderson addressed the issue of the authority of the cabinet (as opposed to the authority of the governor) and favored following a different path by determining how to remove from cabinet jurisdiction much of their routine or mundane responsibilities, yet retain the system for important issues.¹⁵⁰

The version of the bill that was recommended by the committee contained the following statement: "Affirmative action by the governor and cabinet, sitting in any of its joint capacities, shall require the approval of the governor and at least one member of the cabinet."¹⁵¹

3. Ethics

There appeared to be no disagreement that a cabinet member should not take campaign contributions from industries regulated by a department administered by that cabinet member.¹⁵² Or, expressed differently and more

147. See Committee Substitute for Proposals 159, 163 and 182. Note that this was ultimately changed to a 3-member cabinet by the Commission, *infra* note 196.

148. Only Commissioner Marilyn Evans-Jones consistently expressed her opposition to giving the governor more power even in this regard. See Committee on Executive (Nov. 12, 1997 and Jan. 13, 1999) (tapes available from Secretary of the Florida Senate).

149. *Id.*

150. See Committee on Executive (Nov. 12, 1997) (tape available from Secretary of the Florida Senate). For example, Commissioner Henderson noted that unification of the marine agencies (Revision 5 also proposed by the 1997-1998 CRC) would remove a substantial amount of unnecessary items from cabinet jurisdiction. See Committee on Executive (Dec. 10, 1997) (tape available from Secretary of the Florida Senate).

151. Committee Substitute for Proposals 159, 163, 182. Note, this language was modified when the proposal was amended on March 17, 1998. See *infra* note 203 and accompanying text.

152. See Commissioner Chris Corr, Committee on Executive (Nov. 12, 1997) (tape available

specifically, it was argued that the Treasurer and the Comptroller should not head regulatory departments.¹⁵³ This view was in harmony with General Milligan's emphasis that an officer should not be elected to regulate a particular industry.¹⁵⁴ Since the committee members viewed this as an element of the legislative reorganization that would be required should the measure be adopted, such a prohibition was not included in the substitute proposal.¹⁵⁵

4. Elected vs. Appointed Executive Officers

A number of committee members stated that they favored electing their officials, at least as a general principle; however, the prospect of continuing to elect some executive officers while removing them from cabinet status was only briefly considered. It was suggested by the Executive Director of Common Cause that the issue presented could be broken down into two parts: (1) whether the officers should be appointed or elected, and (2) whether the officers should sit as a collegial body.¹⁵⁶ She argued that addressing the latter issue would make a significant change, whether or not multiple executive officers continued to be elected.¹⁵⁷

5. Areas of Responsibility

Rather than limiting the areas of responsibility that could be placed with the governor and cabinet, the committee came from the opposite direction and focused on preserving certain cabinet jurisdictions that could not be removed from that body. These areas included state bonds, state lands, certain environmental concerns, and clemency.¹⁵⁸

from Secretary of the Florida Senate).

153. *See id.* (detailing Commissioner Marilyn Evans-Jones). At the time the Comptroller headed the Department of Banking and Finance and the Treasurer headed the Department of Insurance.

154. *See* Constitution Revision Commission, Presentation at Tampa Public Hearing (Sept. 11, 1997).

155. *See, e.g., supra* note 142 and accompanying text.

156. *See* Interview with Sally Spener, Committee on Executive (Jan. 13, 1999) (tape available from Secretary of Florida Senate). Common Cause of Florida, along with the League of Women Voters, supported wholesale abolishment of the cabinet, but offered this approach as a possible compromise that would "bring a higher level of accountability." *Id.*

157. *See id.*

158. *See* Committee Substitute for Proposals 159, 163 and 182; *see also* Committee on Executive (Nov. 12, 1997) (tape available from Secretary of the Florida Senate). Later, jurisdiction over the Florida Department of Law Enforcement was added.

6. Miscellaneous

The initial draft of the committee substitute continued to use the term “secretary of state” in some sections that referred to the filing of official documents,¹⁵⁹ even though that position would no longer be otherwise contained in the constitution. The Committee requested that the term be removed as it was recommending abolishment of the constitutional office and determined it should not continue to refer to it in the constitution.¹⁶⁰

In combining the offices of comptroller and treasurer, the language restricting the treasurer from disbursing of state funds except upon order of the comptroller¹⁶¹ was deemed unnecessary. And, such order being unnecessary, the earlier addition of an allowance that the order be in any form and that it may require disbursement by electronic means¹⁶² was likewise relegated to surplusage and stricken.

Prior to the changes made by Revision 8, the state board of administration, which among other things, is responsible for investing the state retirement funds, was comprised of the governor, comptroller and treasurer.¹⁶³ The agency became a constitutional entity in 1942¹⁶⁴ and was retained in 1968, although hidden in the depths of a footnote within the Article XII schedule.¹⁶⁵ The Committee determined that this executive board should be explicitly established in the executive branch article. Since the comptroller and treasurer comprised two of the three members of the board and these offices were being combined into one, a new third member, the attorney general, was added. Like the 1968 reference, the language “saving” the state board for the duration of the life of the motor vehicle fuel tax was included.¹⁶⁶

Revision 8 assigns the governor and cabinet, sitting collegially as the

159. For example, in article IV, § 3(b) “[i]ncapacity to serve as governor may also be established by certificate filed with the secretary of state . . .” and in article IV, § 8 “the governor may, by executive order filed with the secretary of state, suspend collection of fines and forfeitures”

160. See Commissioner Barkdull, Committee on Executive (Jan. 13, 1999) (tape available from Secretary of the Florida Senate). On final adoption, an amendment was adopted to incorporate this terminology through the constitution. See CRC JOURNAL, *supra* note 3, Mar. 23, 1998, Revision 4, Amendment 1, at 227.

161. See FLA. CONST. of 1968, art. IV, § 4(c).

162. This provision was added in 1984 by 1983 House Joint Resolution 435.

163. See FLA. CONST. of 1968, art. XII § 9(c)(5).

164. See S.J. Res. 324, 28th Leg. (Fla. 1941).

165. See FLA. CONST. of 1968, art. XII, § 9(c)(5) (referring to the creation of the State Board of Administration in article IX, section 16 of the Constitution of 1885 and proclaiming the board as continued for the life of article XII, § 9(c)); FLA. CONST. of 1885, article IX, § 16 (appearing as a footnote to FLA. CONST. of 1968, article XII, § 9).

166. See FLA. CONST. art. IV, § 4(e), Revision 8; see also FLA. CONST. of 1968, art. XII, § 9(c)(5).

trustees of the internal improvement trust fund and the land acquisition trust fund. The governor and full cabinet, sitting collegially, are assigned as the trustees of the internal improvement trust fund and the land acquisition trust fund.¹⁶⁷ These two boards have historically been headed by the governor and cabinet in accordance with general law.¹⁶⁸

A schedule was added by the committee for a number of reasons. First, implementation of such a substantial change would require time for the legislature to enact the many necessary changes to general law. Further, all of the cabinet offices were subject to election in the same 1998 election at which Revision 8 was adopted. The Committee felt it illogical and unfair for candidates and the public to undergo the rigors and expense of campaigns for offices that might not exist. Finally, because of the specter of term limits,¹⁶⁹ the Committee wished to address the fact that it had changed the nature of some offices to such a degree that an “incumbent” should not be considered to be running for the same office. The Committee believed that the offices of both the treasurer and the attorney general should be considered newly-created offices.¹⁷⁰

E. *Commission Action*

1. Proposal 168

One of the earliest cabinet-related proposals to reach the stage of Commission deliberation was Proposal 168, which, as filed and passed by the Executive Committee, merely restated and reaffirmed the limit on the number of executive agencies to twenty-five. During deliberations, however, Commissioner Clay Henderson successfully proposed an amendment that struck the language found in Section 6 of Article IV, allowing the Legislature to place administration of an agency under the supervision of the governor and cabinet. In support, Commissioner Henderson quoted the report of the Citizens Commission on Cabinet Reform:

Departments reporting to the Governor and Cabinet are problematic for several reasons: they consume the Governor’s and Cabinet’s time on administrative details, they lack a

167. See FLA. CONST. art. IV, § 4(f), rev. 8.

168. See FLA. STAT. § 253.02(1) (1997).

169. In 1992, by way of an initiative petition, Florida electors added 8-year term limits for a number of state offices, including cabinet offices. See FLA. CONST. art. VI, § 4(b)(4).

170. The full Commission later deleted the attorney general as a newly-created office and Revision 8 as finally adopted limits this consideration only to the chief financial officer. See FLA. CONST. art. XII, § 24, Revision 8.

single, identifiable advocate for their function, they are not directly accountable to a single individual. The department should be headed by a Secretary who serves at the pleasure of the Governor and subject to Senate confirmation.¹⁷¹

This proposal was extraordinarily popular and was unanimously passed on its first consideration by the Commission on a 25-0 vote.¹⁷² In the period between the first and second airing of Proposal 168,¹⁷³ the principal cabinet restructure proposal had been taken up and passed. When heard the second time, Proposal 168 became a bit of a magnet for cabinet amendments. Commissioner Thomas Barkdull proposed an amendment which had the effect of striking the earlier Henderson amendment so that Proposal 168 “would permit collegial responsibility both in the constitution and by statute.”¹⁷⁴ Commissioner Alfonso added a section establishing a State Board of Agriculture, modeled after the similar proposal for an appointed State Board of Education.¹⁷⁵ As amended, the proposal was favorably considered on an 18-5 vote.¹⁷⁶ On its next hearing, Commissioner Barkdull proposed an amendment to create the office of custodian of state records as a statutory office. This was done because the cabinet restructure proposal had eliminated the secretary of state from the constitution, yet referred to a custodian of state records as the entity with which many records would be filed.¹⁷⁷ The proposal was considered and passed on a 28-0 vote.¹⁷⁸ Again, the next day, after adoption of an amendment proposed by the Style and Drafting Committee, the proposal was passed on a vote of 22-6, giving it the requisite three-fifths vote of the commission.¹⁷⁹

On the last day of consideration of proposals before submission to the Style and Drafting Committee for technical review and preparation of ballot language, the proposal was taken up for the purpose of amendment, since the cabinet restructure proposal had just been amended to reestablish the commissioner of agriculture as a cabinet member, and Proposal 168 still contained a section providing for a state board of agriculture.¹⁸⁰ It was the last proposal to be considered at the end of a long and grueling day.

171. Transcript of the 1997-1998 Constitution Revision Commission Proceedings, Jan. 15, 1998, at 69.

172. See CRC JOURNAL, *supra* note 3, Feb. 10, 1998, at 148.

173. Its first hearing was January 15, 1998; its second hearing was February 10, 1998.

174. Transcript of the 1997-1998 Constitution Revision Commission Proceedings, Feb. 10, 1998, at 145.

175. See CRC JOURNAL, *supra* note 3, Feb. 10, 1998, at 169.

176. See *id.* at 170.

177. See CRC JOURNAL, *supra* note 3, Feb. 23, 1998, at 182.

178. See *id.*

179. See CRC JOURNAL, *supra* note 3, Feb. 24, 1998, at 191.

180. See *id.* at 222.

The commission had imposed pressure on itself to limit the number of its recommendations so as not to overwhelm the ballot and the voters.¹⁸¹ Once amended to delete the reference to a state board of agriculture, questions arose whether this proposal was necessary.¹⁸² Commissioner Lowndes noted that the proposal had provided for the establishment of a statutory office of custodian of state records.¹⁸³ It was considered and agreed that this office could be established by general law.¹⁸⁴ The proposal was then defeated by an 18-6 vote.¹⁸⁵

2. Committee Substitute for Proposals 159, 163 and 182

As it came from the Executive Committee, Committee Substitute for Proposals 159, 163 and 182 reduced the number of cabinet members to two—the attorney general and the treasurer (a combination of the duties currently assigned to the comptroller and to the treasurer). The cabinet restructure proposal did not address the state board of education or the education commissioner other than to strike the education commissioner as a cabinet member. According to the proposal at that juncture, the cabinet would continue to serve as the state board of education, but the commissioner of education would no longer serve as a cabinet member.¹⁸⁶

Until this point in the commission's deliberations, the issue of restructure of the public education system had traveled a separate path from cabinet restructure. It became obvious that somewhere along the line, if the two proposals were to move forward, they would need to be harmonized. On January 26, 1998, when the cabinet restructure proposal was first debated, Commissioner Alfonso successfully amended it to include an appointed state board of education.¹⁸⁷ In support, Commissioner Marshall stated that "if we are serious about strengthening the governorship, there's no better place to start than with education. It is the biggest piece, and as far as I'm concerned, the most important piece of

181. *See, e.g.*, Transcript of the 1997-1998 Constitution Revision Commission, Mar. 17, 1998, at 9-14. Here, Rules Committee Chair Thomas Barkdull, speaking on a point of personal privilege, reminded the commissioners that each of the appointing authorities advised to concentrate on a limited number of revisions and that "[t]he success of our work and the acceptance by the people will be in inverse proportion to the length of the ballot." *Id.*

182. *See* Transcript of the 1997-1998 Constitution Revision Commission, Mar. 17, 1998, at 358-364.

183. An amendment that would have required by law the establishment of an office of custodian of state records had earlier been adopted. *See* CRC JOURNAL, *supra* note 3, at 182.

184. *See* Transcripts of the 1997-1998 Const. Revision Comm'n, Mar. 17, 1998, at 361.

185. Pursuant to Rule 5.4 of the 1997-1998 Constitution Revision Commission Rules, 22 votes were necessary for ballot placement.

186. *See* CRC JOURNAL, *supra* note 3, Jan. 26, 1998, at 152.

187. *See id.* at 152.

state government.”¹⁸⁸

Commissioner HT Smith agreed, stating:

We need to do something radical. . . . We need to tell the people of Florida that we are going to change this, we are going to go from worst to first. And we are going to do it by putting professionals in charge, we are going to do it by holding the governor responsible.¹⁸⁹

Commissioner Henderson proposed an amendment, which was not adopted, that would have established an appointed state board of education, with an elected commissioner of education.¹⁹⁰

Commissioner Martha Barnett inquired how this proposal and Proposal 168 would work together and, after significant colloquy, clarified that when read together, the proposals would limit the governor and cabinet sitting collegially to only those boards expressly set out in the constitution and that the legislature could not add other collegial duties.¹⁹¹

Commissioners Butterworth and Thompson added a section ensuring that the Florida Department of Law Enforcement would be administered by the governor and cabinet.¹⁹² Commissioner Thompson successfully amended the term “treasurer” to “chief financial officer.”¹⁹³

Committee Substitute for Proposals 159, 163 and 182 was taken up again on February 24, 1998. Commissioner Henderson spoke against the proposal, giving three principal reasons for his opposition. First, he objected to taking away the ability to elect the education commissioner, particularly as the state spends more on education than any other budget item. Second, the agricultural community had expressed its firm opposition to losing the ability to elect the agriculture commissioner. Third, Commissioner Henderson explained that there is something “special” about the cabinet and that is that it works. “It works to settle disputes on a statewide basis, it helps to elevate issues to a statewide level. . . . [I]t is an institution that has served this state well.”¹⁹⁴

Chair of the Executive Committee, Carlos Alfonso, supported the proposal, arguing that every living governor, liberal, moderate or

188. Transcript of the 1997-1998 Constitution Revision Commission, Jan. 26, 1998, at 115.

189. *Id.* at 122.

190. See CRC JOURNAL, *supra* note 3, Jan. 26, 1998, at 152.

191. See Transcript, *supra* note 188, at 102-04. Note that Proposal 168 later failed to be adopted. See *supra* note 184 and accompanying text.

192. See Transcript, *supra* note 188, at 152.

193. *Id.*

194. Transcript of the 1997-1998 Constitution Revision Commission, Feb. 24, 1998, at 238-39.

conservative is a proponent of the measure.¹⁹⁵ He stated further that while the state had modernized the legislative and judicial branches, our executive system dates back 100 years—to a system that requires the governor to work with six, sometimes opposing, members.¹⁹⁶ The proposal “is a compromise between wholesale abolishment . . . and keeping the system that we have” and it streamlines the system.¹⁹⁷ Commissioner Alfonso argued that the proposal strengthens the importance of education by insulating it from the whims of politics, by better ensuring a professional to head the education department, and by allowing for the full energies of the education commissioner to be devoted to education.¹⁹⁸ Finally, Alfonso urged that this is a proposal “to let the leader of the state that the people pick lead the state.”¹⁹⁹ The proposal passed on a 24-7 vote.²⁰⁰

On its final hearing before being packaged by the Style and Drafting Committee, the proposal was amended to reinsert the commissioner of agriculture as a cabinet member.²⁰¹ While unstated in the floor debate, the agriculture community lobbied hard to retain a cabinet-level agriculture commissioner.²⁰² Because a three-member cabinet sitting with the governor establishes an even-numbered board, it was necessary to amend the language that had required the approval of the governor and one cabinet member on any issue. Therefore, a provision was added requiring that in the event of a tie vote, the prevailing side would be that side on which the governor voted.²⁰³ This adds strength to the governor’s position and came close to incorporating the views of the Committee on the Executive that cabinet determinations should not be made over the objection of the governor.²⁰⁴

High among the considerations applied to virtually every proposal was whether a matter could be determined by the legislature and, if so, if it

195. *See id.* at 239. Commissioner Alfonso noted that although Governor Martinez had not addressed the Commission, the two had talked, whereupon Governor Martinez assured Commissioner Alfonso that his sentiments were in accord. *See id.*

196. *See id.* at 240.

197. *Id.*

198. *See id.* at 240-41.

199. *Id.* at 242.

200. *See FLA. CONST.*, *supra* note 179, at 220.

201. *See id.*

202. “Commission members originally wanted to do away with the elected post of agriculture commissioner, but decided to keep it after intense lobbying by agricultural interests.” Julie Hauserman, *Revision Would Eliminate Three Cabinet Positions*, ST. PETERSBURG TIMES, Oct. 23, 1998, at 4B.

203. CS/Proposal Nos. 159, 163, and 182, § 2 (available from the Secretary of the Florida Senate and from the Florida Archives).

204. *See supra* note 148 and accompanying text.

could be left to the discretion of that body.²⁰⁵ The cabinet restructure revision, therefore, was drafted with a goal of instituting the changes required to be made to the constitution for a more accountable executive branch and leaving enough flexibility for the Legislature to respond to the needs of the state over the passage of time. The Commission included in the revision the requirement of collegial decision-making in the areas of state lands, state bonds, and the state police agency.²⁰⁶ The failure of the Commission to otherwise restrict collegial decision-making did not derive from its support of the concept, but rather from a combination of understanding the rule of unforeseen consequences²⁰⁷ and from its respect for the role of the Legislature.

F. *The Election*

The voters adopted Revision 8 by a margin of 1,943,800 to 1,556,273.²⁰⁸ Probably no one was more surprised nor felt more vindicated than the members of the Constitution Revision Commission. There are a number of reasons for the success of this and the other proposals.²⁰⁹ As to cabinet restructure, the 1992 term limit restriction would operate to limit any sitting cabinet members from seeking reelection for their seats in the 2002 elections. For the first time, cabinet members would not have the incentive to strongly campaign against cabinet restructure.

The voters of Florida in 1998 were a new group, a large number of whom come from other states—states where their governors had the authority to go with the office and who were not hesitant about this type of exercise of gubernatorial power. Also significant is the fact that, from start

205. Professor Robert F. Williams, Distinguished Professor of Law at Rutgers University advised at the opening session: "You might want to consider some sort of a 'constitutionalization impact statement,' to try to force yourselves to think beyond the pros and cons of the policy that you're discussing, but also to think if it's a good idea, do you need it in the Constitution?" CRC JOURNAL, *supra* note 3, June 17, 1997, at 18.

206. FLA. CONST. art. IV, § 4, Revision 8.

207. Professor Williams stated:

Studies have shown that the good things are usually anticipated. The good that you get from putting something in the State Constitution, you usually can predict. But bad things are usually unanticipated. There are things you couldn't imagine or you couldn't predict, hard as you thought about it. So the unanticipated negative consequences of putting something in a State Constitution really ought to be remembered.

See FLA. CONST. REVISION COMM'N, *supra* note 205, at 18.

208. Or, adopted by a margin of 55.5% to 44.5%. *See* Tabulation of Official Results, Fla. Gen. Election (Nov. 3, 1998) (on file at the Florida Department of State, Division of Elections).

209. Of the nine proposals recommended by the 1997-98 Constitution Revision Commission, eight were adopted. Only Revision 10, relating to local government issues failed to be adopted. *Id.*

to end, the Commission carried with it the experiences of the 1978 Commission and worked hard to avoid the pitfalls that befell the revisions proposed in 1978.

The rules of procedure required an extraordinary majority of three-fifths of the Commission (at least 22 of 37 votes) in order to place a proposal on the ballot.²¹⁰ At virtually every commission meeting, reminders were made to limit the number of proposals and to refrain from intruding into matters properly within the auspices of the legislature. The Commission was not successful in entirely avoiding “logrolling;” that is, coupling independent concepts into one revision, but it did refrain from coupling proposals that did not have a common theme as had been done in 1978.

Finally, and perhaps most importantly, unlike the 1978 Commission, the recent Commission was funded in the budget year following its submission of recommendations for the purpose of educating the public about the proposals.²¹¹

IV. CONCLUSION

As earlier expressed, Revision 8 addresses only one of the two principal criticisms of Florida’s cabinet system. It does reduce the number of executive officers that comprise the executive department. However, the Revision does not resolve the issue of the number of executive departments headed collegially by the governor and cabinet and the excessive number of functions assigned to the governor and cabinet.

The Florida Legislature is obviously burdened with the task of reorganizing the executive branch to accommodate the changes in structure.²¹² It is hoped that the Legislature does not stop at this point, but will heed the recommendations of the Citizens Commission on Cabinet Reform that “[t]he time of the . . . highest elected officials of Florida should be reserved for matters of policy.”²¹³

Among the recommendations of the Citizens Commission on Cabinet Reform was that agencies assigned to be administered jointly by the governor and cabinet instead should be assigned to a secretary appointed

210. See Rule 5.4, Subsection 4, Constitution Revision Commission Rules (1997).

211. Florida’s fiscal year begins on July 1. The proposals were submitted on May 5, 1998. The Commission was able to fund travel expenses for commissioners to speak at forums throughout the state up until the time of the November election and to purchase public service announcements explaining the proposals. 1998 House Bill 4201, General Appropriations Act, Line Item 1575, at 360.

212. At the least, providing for how the Departments of Banking and Finance, Insurance, and State will be administered, and making necessary changes regarding the appointment of a commissioner of education.

213. The Citizens Commission on Cabinet Reform, Final Report, Executive Summary (1995).

by the governor.²¹⁴ It was also recommended that the funding decisions made by the governor and cabinet sitting as the administration commission should be placed under the Governor's Office of Planning and Budgeting, and that the rules adopted by the administration commission (the Uniform Rules of Administrative Procedure) be placed in the jurisdiction of the department of management services.²¹⁵ A number of appointments currently made by the cabinet should, according to the Commissioner, be made by the governor, including the Director of the Division of Administrative Hearings, parole commissioners, and members of the Florida Elections Commission.²¹⁶ All of the Citizens Commission's recommendations can be accomplished by amendment to the general law.²¹⁷

The Constitution Revision Commission steadfastly avoided imposing unnecessary structure in the constitution that was within the purview of the legislature. Had significant changes as recommended by the Citizens Commission on Cabinet Reform been implemented, it would have been less likely that the cabinet restructure revision would have gained momentum. Until some of those changes are effectuated, the debate will continue.

214. *See id.*

215. *See id.*

216. *See id.*

217. "The charge of the Commission was to conduct a review of all *statutory* responsibilities and functions performed by the Governor and the Cabinet sitting as a collegial body." *Id.* at 1.