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# THE MYTH OF THE CABINET SYSTEM: THE NEED TO RESTRUCTURE FLORIDA'S EXECUTIVE BRANCH\*

JOSEPH W. LANDERS, JR.\*\*

CLAUDE Kirk became Florida's thirty-sixth Governor in 1966, the beneficiary of a bitter split between Democrats Haydon Burns and Robert King High. Kirk, a colorful and unpredictable Republican from Palm Beach, had a stormy four years, partly because of his periodic sniping at the six Democratic Cabinet members. The enmity was mutual; they called him "Claudius Maximus" and he called them the "six dwarfs." The first Republican governor since Reconstruction, Kirk openly ridiculed the Cabinet system. But he was neither the first nor the only governor to be critical of Florida's shared executive power.

## I. FLAWED SYSTEM

Reubin Askew, as a member of the state Legislature and candidate for Governor, was a strong Cabinet supporter.<sup>1</sup> By the time he was in his second term as Governor, however, Askew told members of Florida's 1978 Constitution Revision Commission that the Cabinet was an outmoded system that diluted the power of the executive, lacked accountability, and was "government by committee."<sup>2</sup> LeRoy Collins, considered like Askew to be among the greatest of Florida's Governors, expressed similar feelings when he said the Cabinet had become a system of "little Governors," each of whom placed their interests above those of the state.<sup>3</sup>

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\* An earlier version of this Article was published in the November 1991 issue of *Florida Trend*. Joseph W. Landers, Jr., *Right-Sizing Starts at the Top*, FLA. TREND, Nov. 1991, at 28.

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1. Telephone interview with Reubin O'D. Askew, former Governor of the State of Florida (Aug. 19, 1991).

2. Reubin O'D. Askew, Address before the Constitution Revision Commission, Orlando, Florida (Sept. 1, 1977) (on file at the Law Library Archives, Florida State University College of Law).

3. DAVID R. COLBURN & RICHARD R. SCHER, *FLORIDA'S GUBERNATORIAL POLITICS IN THE TWENTIETH CENTURY* 126 (1980). For a comprehensive account of the various problems that Florida Governors have experienced with their Cabinets, see *id.* at 122-27.

Almost fifty years ago, in 1943, the Joint Economy and Efficiency Committee of the Florida Legislature compiled a report highly critical of Florida's Cabinet system.<sup>4</sup> That report stated:

The Governor, charged by the Constitution as Florida's chief executive, has no direct authority over the Cabinet or the activities in the several departments headed by these cabinet members. Only through his prestige, personality and party leadership can the Governor assume the responsibility vested in him by the Constitution but also denied him by that same instrument in providing for the election of cabinet officials.<sup>5</sup>

Florida history scholars have denounced the Cabinet system. David Colburn and Richard Scher concluded that "the Cabinet and governing board system have bred decentralization of authority, dispersion of responsibility, and an incoherent administrative structure."<sup>6</sup> The late Manning J. Dauer, noted University of Florida political scientist, observed that "[e]xecutive responsibility in Florida is very hard to pin down"<sup>7</sup> and noted that Florida has "a Governor whose powers are quite limited."<sup>8</sup> Dr. Daisy Parker Flory observed that "[a]n uncoordinated, unintegrated executive structure, lacking central control and responsible direction, composed of units often performing duplicating and overlapping functions and services, has inevitably resulted under the cabinet system."<sup>9</sup> Douglas St. Angelo observed that "Florida comes uniquely close to possessing a plural executive" and concluded that "[i]n a nation where it is customary to distribute political power across the landscape, Florida almost scatters it randomly across its sandy soil."<sup>10</sup>

On the other hand, public support for the Cabinet system has always been strong. The 1978 Constitution Revision Commission recommended elimination of the Cabinet and placed the proposal before

4. FLORIDA'S STATE GOVERNMENTAL STRUCTURE—REPORT OF THE SPECIAL JOINT ECONOMY AND EFFICIENCY COMMITTEE OF THE FLORIDA LEGISLATURE OF 1943—PART I—THE REORGANIZATION OF FLORIDA GOVERNMENT vii-viii (Pub. Admin. Clearing Serv. of the Univ. of Fla. ed., 1950).

5. *Id.* at 5.

6. COLBURN & SCHER, *supra* note 3, at 122.

7. Manning J. Dauer, *Florida: The Different State*, in THE CHANGING POLITICS OF THE SOUTH 92, 118 (William C. Havard ed., 1972).

8. *Id.* at 119.

9. Daisy Parker, An Examination of the Florida Executive 228 (1959) (unpublished Ph.D. dissertation, University of Virginia) (on file at Fla. Dep't of State, Div. of Archives, Tallahassee, Fla.) Dr. Parker is an eminent retired professor of government from Florida State University.

10. Douglas St. Angelo, *Florida*, in THE POLITICAL LIFE OF THE UNITED STATES 164 (Allen Rosenthal & Maureen Meakley eds., 1984).

the voters.<sup>11</sup> The resulting proposed constitutional amendment to abolish the Cabinet was roundly defeated.<sup>12</sup>

How can it be that respected scholars and popular governors can feel so strongly about a policy with which the general public disagrees? The answer, it seems, lies in the myth of the Cabinet system.

The myth is that Florida has a unique collective governing body that in biweekly, open meetings, in direct response to its citizens, sets and carries out the policies of the executive branch of the State. The reality is that, collectively, the Governor and Cabinet head only about one-fourth of the executive branch,<sup>13</sup> that increasingly the aides to the Cabinet officers and Governor dominate the process, that the executive is illogically split between the Governor and six political competitors, and that executive authority and accountability are severely hamstrung.

Ironically, support for the Cabinet system seems to be inversely proportional to one's understanding of it. The less one knows about it, the more the support; the more one knows, the stronger the belief that it is an anachronism standing in the way of effective leadership and management of the State. Unfortunately, most Floridians have no understanding of the Cabinet system and the structure of the executive branch. To debunk the myth, one must understand the Florida Cabinet and how it works.

The Cabinet consists of six constitutional officers elected statewide every four years.<sup>14</sup> Their terms are concurrent with the Governor's, but they are elected independently of the Governor.<sup>15</sup> The officers are the Secretary of State, Attorney General, Comptroller, Treasurer, Commissioner of Agriculture, and Commissioner of Education.<sup>16</sup> The Governor does not appoint Cabinet officers, they are not the Governor's Cabinet, and the Governor is not a member of the Cabinet. Governor Askew pointedly educated Attorney General Robert L. Shevin at a 1971 meeting of the Governor and Cabinet in the following exchange:

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11. See REPORT OF THE FLORIDA CONSTITUTION REVISION COMMISSION, REVISION 4 (1978) [hereinafter REPORT].

12. See COLBURN & SCHER, *supra* note 3, at 126. Florida voters rejected each amendment proposed by the 1978 Constitution Revision Commission.

13. See *infra* notes 21-41 and accompanying text.

14. Article IV, § 4(a) of the *Florida Constitution* provides:

There shall be a cabinet composed of a secretary of state, an attorney general, a comptroller, a treasurer, a commissioner of agriculture and a commissioner of education. In addition to the powers and duties specified herein, they shall exercise such powers and perform such duties as may be prescribed by law.

15. See FLA. CONST. art. IV, § 5.

16. *Id.* § 4(a).

"I'd like to address the Cabinet on this," began Shevin.

"Would you like to address me too?" interrupted Askew.

"I was including you in the Cabinet, Governor," replied Shevin.

"But I'm not a member of the Cabinet," said Askew.<sup>17</sup>

Cabinet officers serve in several capacities. Most significantly, each officer serves as head of a particular department of the executive branch. In an equally important role, the officers sit collectively with the Governor, like a board of directors, as the head of several other departments in the executive branch.

The 1968 revision to the *Florida Constitution* restricted the number of executive departments to twenty-five,<sup>18</sup> a vast improvement over the prior version, under which more than 150 departments, commissions, boards, and advisory bodies existed.<sup>19</sup> There are now twenty-five departments in Florida's government.<sup>20</sup> The Governor controls only thirteen—barely half.<sup>21</sup> The six Cabinet members are the legal heads of their own individual departments, and, as such, are not subject to gubernatorial control. The Governor shares control over six other departments with the Cabinet officers; his vote is only one in seven. These departments are Law Enforcement, General Services, Highway Safety and Motor Vehicles, Natural Resources, Revenue, and Veterans Affairs.<sup>22</sup> Also, the Governor and Cabinet sit as the Trustees of the Internal Improvement Trust Fund (as managers of state lands),<sup>23</sup> the Administration Commission,<sup>24</sup> the Board of Administration,<sup>25</sup> the Board of Education,<sup>26</sup> the Executive Clemency Board (Pardon Board),<sup>27</sup> the Elections Canvassing Commission,<sup>28</sup> and the Land and Water Adjudicatory Commission.<sup>29</sup> The Governor and Cabinet collectively make final decisions on siting power plants,<sup>30</sup> transmission

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17. ALLEN MORRIS, *THE FLORIDA HANDBOOK 1991-1992*, at 6 (1991) (citing Tom Raum, *Governor Askew Insists He's Not Cabinet Member*, TALLAHASSEE DEMOCRAT, July 8, 1971, at A10).

18. FLA. CONST. art. IV, § 6.

19. See generally MORRIS, *supra* note 17, at 4.

20. *Id.* at 7.

21. *Id.* at 7-8.

22. *Id.* at 7.

23. FLA. STAT. § 253.02 (1991).

24. *Id.* § 14.202.

25. FLA. CONST. art. XII, § 9; FLA. STAT. § 20.28 (1991) (including only the Governor, Treasurer, and Comptroller).

26. FLA. CONST. art. XII, § 9; FLA. STAT. § 229.012 (1991).

27. FLA. CONST. art. IV, § 8; FLA. STAT. § 940.03 (1991).

28. FLA. STAT. § 102.111 (1991).

29. *Id.* § 380.07.

30. *Id.* §§ 403.501-.519.

lines,<sup>31</sup> high speed rail lines,<sup>32</sup> magnetic levitation transportation corridors,<sup>33</sup> and hazardous waste management facilities.<sup>34</sup> In addition, the Governor and Cabinet have statutory duties pertaining to approving the state comprehensive plan<sup>35</sup> and establishing areas of critical state concern.<sup>36</sup> As an appellate body, they decide issues ranging from developments of regional impact<sup>37</sup> and local comprehensive plans<sup>38</sup> to hearing budget appeals from property appraisers<sup>39</sup> and sheriffs<sup>40</sup> to deciding certain matters pertaining to marine fisheries.<sup>41</sup>

Being independently elected, and not appointed by the Governor, Cabinet officers are not beholden to the Governor. And, being politicians, they have no reason to support the Governor unless it suits their political needs. They each have their own political constituency and may even be political competitors of the Governor and each other.

This structure makes it extremely difficult for the Governor to govern. Although the *Florida Constitution* establishes the Governor as the "supreme executive power"<sup>42</sup> and directs the Governor to "take care that the laws be faithfully executed,"<sup>43</sup> the Governor cannot impose policies, programs, philosophy, and management style throughout the executive branch. A governor may be elected based on an array of factors—Republican or Democrat; liberal or conservative; fiscal and social policies; positions on the environment, crime, and education; and personal character. Once in office, however, those campaign proposals and philosophies cannot be uniformly and comprehensively implemented.

For example, education is the most costly and, some would say, the most important function of government. But a Florida governor plays only a minor role in setting and implementing education policy. The Commissioner of Education is elected independently. The Board of Education, consisting of the Governor and six Cabinet members, affords the Governor only one vote.<sup>44</sup>

31. *Id.* §§ 403.52-.539.

32. *Id.* §§ 341.321-.386.

33. *Id.* §§ 341.401-.422.

34. *Id.* §§ 403.78-.7893.

35. *Id.* ch. 187.

36. *Id.* § 380.05.

37. *Id.* § 380.06.

38. *Id.* §§ 163.3161-.3243.

39. *Id.* § 195.087(1).

40. *Id.* § 30.49(4),(5).

41. *Id.* §§ 370.026-.027. The Governor and Cabinet must approve all Marine Fisheries Commission rules related to the regulation of marine life.

42. FLA. CONST. art. IV, § 1.

43. *Id.*

44. See *supra* note 26 and accompanying text; see also Jon C. Moyle, *Why We Should*

Statewide, the responsibilities for crime and law enforcement are spread among the Attorney General;<sup>45</sup> the Department of Law Enforcement;<sup>46</sup> the Marine Patrol and Highway Patrol, also headed by agencies under the Governor and Cabinet;<sup>47</sup> the Game and Fresh Water Fish Commission, a constitutionally independent department;<sup>48</sup> and the Department of Corrections, the sole agency headed by the Governor.<sup>49</sup>

The principal environmental responsibilities are fragmented between the Department of Environmental Regulation and Department of Community Affairs under the Governor, the Department of Natural Resources under the Governor and Cabinet, and the Game and Fresh Water Fish Commission whose members are appointed by the Governor. In addition, the Department of Environmental Regulation exercises general supervisory authority over five regional water management districts whose board members are appointed by the Governor and whose decisions are appealable to the Governor and Cabinet.<sup>50</sup>

A chief plank in Governor Lawton Chiles' platform was his promise to "right size" and decentralize Florida's government,<sup>51</sup> yet he can directly accomplish this in only about half of the executive branch—those departments under his control.

The problem of accountability is just as troubling.<sup>52</sup> Who is held responsible for what? The Governor is generally perceived as the head of the executive branch of government although he has less than total authority over that branch. The Governor is always at risk of being blamed for failures caused by elements beyond his control.

On the other hand, the Governor, as well as Cabinet members, may escape accountability for departments they collectively head. Candidates for Cabinet offices run almost exclusively on issues concerning the departments they will head, and that is generally the basis for their

*Abolish Florida's Elected Cabinet*, 6 FLA. ST. U. L. REV. 591, 596-97 (1978) (arguing in favor of abolition of Florida's Cabinet system).

45. FLA. STAT. § 16.01 (1991).

46. *Id.* § 20.201.

47. *See id.* § 20.24, ch. 321 (highway patrol); *id.* §§ 259.501(16), 370.06(7), 370.021(5) (marine patrol).

48. FLA. CONST. art. IV, § 9; FLA. STAT. § 20.325 (1991).

49. *See* FLA. STAT. § 20.315, ch. 945 (1991).

50. *See id.* § 373.069 (creating water management districts); *id.* § 373.073(2) (giving appointment power to Governor); *id.* § 373.114 (allowing for appeal to Governor and Cabinet).

51. *See The Year for Right-Sizing Florida's Government*, TALLAHASSEE DEMOCRAT, Mar. 13, 1991, at A2.

52. *See generally* William L. Boyd, *The Case for an Appointed Cabinet*, 52 FLA. B.J. 640 (Oct. 1978). Despite the headline, Boyd's article argued the case for an *elected* Cabinet.

election. In campaigns for Attorney General, the issues are crime and law and order; the Commissioner of Education candidate promises education reform; the Treasurer and Insurance Commissioner candidate pledges to lower insurance rates; and so on. Other than the obligatory pledge to be a strong environmentalist, it is rare indeed when one of these candidates includes Cabinet issues as part of the standard stump speech. Television and radio ads focus on the "line" responsibilities of the office sought. The average citizen stepping into the polling booth has no idea that the person he is voting for in a Cabinet race is also serving as one of the collegial heads of the departments of General Services, Highway Safety and Motor Vehicles, Revenue, Natural Resources, and so on. Thus, Cabinet officers in the public perception are elected to be head of a specific department, yet they are not held accountable for the departments they collectively head. Witness the handling of the indictment, conviction, and imprisonment of two recent executive directors of the Department of Natural Resources.<sup>53</sup> Both individuals initially obtained their jobs by 4-3 votes of the Governor and Cabinet, and their selections at the time were the subject of intense political infighting. However, no one was held accountable for their corrupt deeds. Their convictions were not issues in succeeding gubernatorial campaigns, nor were they issues in any of the Cabinet races. Former Governor Fuller Warren described the Cabinet as a way of "spreading the heat."<sup>54</sup> He might have added it is also a way to escape the heat.

A reasonable premise is that the departments that Cabinet officers are elected to head are important enough to warrant one hundred percent of their attention. For example, who would argue that the educational problems in this state are such that they do not require the full attention of the Commissioner of Education? The same could be said about the Attorney General, our chief legal officer; our Treasurer, who is also the Insurance Commissioner; or our Comptroller, who, in addition to his fiscal responsibilities, also regulates banks.

What time Cabinet officers have left from their primary duties is spent dealing with the departments they collectively head. The Gover-

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53. In January 1979, Harmon Shields, the then-Executive Director of the Florida Department of Natural Resources, was suspended by the Governor and Cabinet who learned that Shields was under investigation by the Federal Bureau of Investigation for suspicion of soliciting kick-backs in the State land acquisitions program. Shields was ultimately indicted, convicted, and served a prison term at the Federal Correctional Institution in Tallahassee. Shields' successor, Dr. Elton Gissendanner, resigned from office in June 1987 after being charged with accepting a bribe in return for influencing the Florida Marine Patrol on behalf of a drug dealer. Gissendanner pled no contest to obstruction of justice and served a prison term.

54. MORRIS, *supra* note 17, at 6.



nor and Cabinet meet twice a month, on an average, and they spend limited time with their Cabinet aides in preparation for Cabinet meetings where they must set policies and take final action with regard to these departments. Usually Cabinet meetings take the better part of a day. But, at most, each Cabinet officer likely spends far less than half his time on Cabinet duties, and this time and attention is in turn diffused among six departments, numerous "quasi departments,"<sup>55</sup> and several appellate responsibilities. The question arises, do these constitutional officers truly have sufficient "extra" time to properly run an additional half-dozen departments as well as serve on an array of other commissions and appellate boards?

Management experts would hardly cite the Cabinet system as a model for efficient government. Through the years, these highest elected officials in the state have spent hours debating everything from whether to authorize the purchase of a mule<sup>56</sup> to the shell size allowable for the taking of green turtles.<sup>57</sup> Several years ago the Governor and Cabinet spent a day and a half trying to decide the design for the state license plate. They finally gave up and let the Department of Highway Safety and Motor Vehicles staff decide. Sitting as the Trustees of the Internal Improvement Trust Fund, the Governor and Cabinet have fostered considerable overlapping between the Department of Natural Resources and the Department of Environmental Regulation. In their role as trustees of sovereign submerged lands, the Governor and Cabinet, in many instances, virtually duplicate the role of the Department of Environmental Regulation, resulting in months and sometimes years of delay and additional costs to the applicant. The Environmental Efficiency Study Commission, in its February 1, 1988, final report to the Legislature, recommended that the administering of the sovereign submerged land responsibilities be removed from the Governor and Cabinet and placed in the water management districts.<sup>58</sup>

The inefficiency of the Cabinet system is also borne out in the interplay between the Cabinet aides and the Cabinet departments. In 1967,

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55. See *supra* notes 23-29 and accompanying text.

56. MORRIS, *supra* note 17, at 3.

57. *Id.* at 7.

58. STAFF OF ENVIRONMENTAL EFFICIENCY STUDY COMM'N, A FINAL REPORT TO THE LEGISLATURE OF FLORIDA AND THE PEOPLE OF FLORIDA 12 (Feb. 1, 1988). The Florida Legislature created the Environmental Efficiency Study Commission to:

submit to the legislature a final report that clearly identifies duplication and inefficiencies in the administration of state and local environmental and public health laws and rules and to make specific recommendations that would eliminate the duplication and inefficiencies and promote the efficient enforcement and administration of environmental and public health laws.

six Cabinet aides to Democratic Cabinet officers began meeting privately and quietly in the basement of the old Capitol to discuss ways to deal with the unpredictable Governor Kirk. Since then, the number of aides and aides' meetings has grown exponentially and become institutionalized through practice, not legislation.

Now held in the Cabinet room itself in the lower level of the new Capitol, the Cabinet aides sessions—chaired by a Cabinet aide, not a gubernatorial aide—have become virtual “mini” Cabinet meetings that sometimes last longer than actual Cabinet meetings. It is here that aides debate department agenda items, expound their philosophies, and direct department staff. A collection of lawyers, lobbyists, opponents, and proponents plead their causes at these meetings, which have become a virtual prerequisite to appearing before the Governor and Cabinet the following week. After the aides meet and before the Governor and Cabinet convene, the aides brief their principals and recommend how they should vote.

An obvious effect of this never-ending process is that the managers hired to run the day-to-day operations of the Cabinet departments have little time to actually manage. Top staff in these departments are absorbed with the agenda process—drafting agenda items, participating in numerous internal staff meetings, deliberating agenda items, explaining the agenda at Cabinet aides' meetings, and attending lengthy Cabinet meetings. This continual process of attempting to satisfy the informational requirements and requests of seven bosses and their numerous aides sharply reduces the time these executive directors and other top department managers have to run the agency. One top Cabinet agency official estimated that the entire Cabinet process consumed “hundreds of man-hours per meeting” and probably a third of his time.<sup>59</sup>

In dollars, the cost is substantial. The highest paid Cabinet aides make \$70,000 yearly. The combined salaries and benefits of the numerous aides and their support staffs approach \$2 million annually. An economist using a multiplier would substantially increase this amount when considering that departments under the Governor and Cabinet employ full-time Cabinet liaisons and additional personnel throughout department ranks to keep the Cabinet machinery operating. Department agendas are commonly several inches thick and are reproduced by the score—thus adding considerably to the cost of this bureaucratic web.

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59. Confidential interview with current Cabinet department executive (Aug. 1991) (notes on file with author).

There is no logic or rationale as to how the Florida executive branch is currently structured. The Constitution establishes six statewide elected Cabinet officials. Why not seven? Why not three? Why not ten?

Why are the Departments of Transportation, Corrections, and Commerce under the Governor, yet the Departments of Natural Resources, General Services, Law Enforcement, and Revenue are under the Governor and Cabinet?

We have an appointed head of the Department of Environmental Regulation and an elected head of the Department of Agriculture. Which department has a greater impact on the citizens of the state?

Should we elect a Commissioner of Transportation and appoint the head of the Department of State?

Is there something unique about certain departments that lends them to being headed by a collective body?

Should all agencies be headed by a collective body?

If the collective form of management is optimal, should we not put all twenty-five departments of government under the Governor and Cabinet and let them meet all week?

Should insurance rates or banks be regulated by individual Cabinet officers when determining the size of docks is a collective responsibility?

If it does make sense to have only part of the executive branch headed by collective bodies, should we first try to determine the importance of the departments and then pick, say, the top five or ten and put them under the Governor and Cabinet?

Should we elect twenty-five statewide constitutional officers to run each of the departments?

If the Cabinet system in Florida results in a weak executive branch, a lack of accountability, poor management, wasted money, and is illogical, why does it still exist? The primary reasons are that it is vestigial, hardly anyone understands it, and it is to the definite benefit of the incumbent Cabinet officers to perpetuate the system.

## II. A HISTORICAL OVERVIEW

The first harbinger of our Cabinet system appeared in 1855, when the Legislature established the Governor and four "departmental officers" as the trustees of a fund known as the Internal Improvement Fund.<sup>60</sup> This fund was created as a depository for monies received

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60. See Parker, *supra* note 9, at 12-13; see also Ira W. McCollum, *The Florida Cabinet System—A Critical Analysis*, 43 FLA. B.J. 156, 158-61 (Mar. 1969) (reviewing the origins of the Florida Cabinet system). McCollum concludes that the Florida Cabinet system arose as an effort to prevent the establishment of a strong executive branch. *Id.*

from selling land the state obtained from the federal government for internal improvement purposes.<sup>61</sup> The first mention of Cabinet officers was in the 1868 *Constitution*, but rather than being elected, they were appointed by the Governor and confirmed by the Senate.<sup>62</sup> The 1885 *Constitution* eliminated the word "Cabinet," but established six "administrative officers" who were to be elected and who came to be known as the "Cabinet."<sup>63</sup> In subsequent years, the Legislature began vesting these Cabinet officers with additional duties beyond those established in the *Constitution*, and began establishing collective responsibilities. By 1968 the Governor and Cabinet, in various combinations, served on thirty-five different boards and commissions.<sup>64</sup> This scheme had become so unmanageable that reorganization of the executive branch was a priority of the 1968 Constitution Revision Commission. This focus on reorganization led to changes in the *Constitution* that same year that required consolidation of the executive branch into no more than twenty-five departments.<sup>65</sup> In the revised *Constitution* the word "Cabinet" was reinstated and certain specific line responsibilities were established for Cabinet officers.<sup>66</sup>

Curiously, however, no collective responsibilities are established in the *Constitution*, although it does give the Legislature very broad authority in structuring the executive branch.<sup>67</sup> Limited only by the establishment of Cabinet duties in the *Constitution*, the Legislature can put any or all departments under the Governor and Cabinet, or it can put all departments under the Governor, the Lieutenant Governor, or even individual Cabinet officers.<sup>68</sup> Hence, after these 1968 constitutional changes, the Legislature took on the task of reorganizing the executive branch. At the time, Florida had a Democratically controlled Legislature and a Republican Governor. The dividing up of the departments in the executive branch was the result of a political compromise between this Democratic Legislature and Republican Governor.<sup>69</sup> It had nothing to do with logic or management analysis; rather, it was the result of political compromises and historical precedent.

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61. See Parker, *supra* note 9, at 12-13.

62. *Id.* at 14-15; see also Moyle, *supra* note 44, at 593.

63. McCollum, *supra* note 60, at 158-59.

64. *Id.* at 166-67.

65. FLA. CONST. art. IV, § 6; see also 26 FLA. STAT. ANN. 98 commentary (West 1970) (annot. to FLA. CONST. art. IV, § 6).

66. See 26 FLA. STAT. ANN. 98 commentary (West 1970) (annot. to FLA. CONST. art. IV, § 6).

67. See FLA. CONST. art. IV, § 6.

68. See *id.*

69. Telephone interview with Richard Pettigrew, former Speaker, Fla. H.R. (Aug. 7, 1991) (notes on file with author).

The parceling of departments stands today much as it was established in 1968.<sup>70</sup>

### III. TOWARD ABOLITION OF THE CABINET

We have six elected officials who regularly promote and extol the virtues of the Cabinet system—and well they should, because Cabinet positions increasingly serve as stepping stones for attempts at higher office. Politically, it is a good way station—a visible statewide elected office from which to plan one's next higher political office. Since 1960, every Secretary of State except one has run for either Governor, Lieutenant Governor, or the U.S. Senate. Since the mid-sixties every Attorney General has run for either Governor or the U.S. Senate. In the last decade, the Treasurer has twice run for the U.S. Senate. Interestingly, these attempts by Cabinet officers for political promotion have almost never succeeded.

The 1978 Constitution Revision Commission tried to eliminate the Cabinet. It voted overwhelmingly to place on the ballot a constitutional amendment abolishing the Cabinet.<sup>71</sup> The proposal would have eliminated all Cabinet offices and consolidated the executive under the Governor.<sup>72</sup> The voters overwhelmingly rejected this amendment. Its defeat probably can be attributed to the lack of understanding of the Cabinet system, the fact that most citizens are reluctant to abolish elected positions, and the historical reality that the large majority of proposed constitutional amendments, of any kind, are defeated. Hence there is little hope that the voters will choose to eliminate the Cabinet any time in the near future.

However, there are other options. The Legislature by statute determines the collective responsibilities of the Governor and Cabinet and specifies certain duties of individual Cabinet officers.<sup>73</sup> The Governor has the authority, and indeed the responsibility, to propose to the Legislature improvements in the executive branch.<sup>74</sup> Article IV, section 1 of the *Florida Constitution* directs the Governor to "propose such reorganization of the executive department as will promote efficiency and economy, and recommend measures in the public interest."<sup>75</sup>

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70. *See id.*

71. *See* REPORT, *supra* note 11.

72. *Id.*

73. *See generally* FLA. STAT. ch. 14 (1991) (relating to the Governor); ch. 15 (relating to the Secretary of State); ch. 16 (relating to the Attorney General); ch. 17 (relating to the Comptroller); ch. 18 (relating to the Treasurer); ch. 19 (relating to the Commissioner of Agriculture); ch. 229 (relating to the Commissioner of Education).

74. *See* FLA. CONST. art. IV, § 1.

75. *Id.*

Changes, however, must be made within constitutional limitations, which means the six elected officers must continue to have certain narrowly prescribed responsibilities. Beyond this, however, the Legislature has no restrictions.

Using this authority, the Legislature could abolish all collective responsibilities of the Governor and Cabinet. The Departments of Revenue, General Services, Natural Resources, Highway Safety and Motor Vehicles, Veterans Affairs, and Law Enforcement could be removed from the Cabinet and placed under the Governor. This new organizational scheme might engender further restructuring, such as combining the Department of Environmental Regulation and the Department of Natural Resources. Next, the departments presently under the individual Cabinet officers could be pared and restructured to retain only those responsibilities specifically described in the *Constitution*.<sup>76</sup> Thus, the Department of Insurance could be removed from the Treasurer and put under the Governor, and the same could be done with the Department of Banking. Florida has been criticized as the only state with an elected banking commissioner.<sup>77</sup> In 1986 the Senate Governmental Operations Committee issued a staff report recommending that "the structure for the regulation of banking and securities be placed under an appointed official or officials."<sup>78</sup>

The Governor and Cabinet have other collective responsibilities in addition to heading departments. Some of these duties involve "original" jurisdiction—siting power plants<sup>79</sup> and transmission lines,<sup>80</sup> for example—while others, such as the Land and Water Adjudicatory Commission, are appellate in nature.<sup>81</sup> A number of states have state-wide appointed commissions, some full-time, which handle similar major responsibilities.<sup>82</sup> Florida has a full-time Public Service Commission, which was originally elected and is now an appointed body, to regulate utilities statewide.<sup>83</sup>

With regard to these remaining collective responsibilities, however, an initial question must be answered: Is it necessary for them to be

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76. See generally *id.* § 4.

77. See Laurie Hollman, *Is it Time to Unseat our Entrenched Cabinet System*, FLORIDA TREND, June 1986, at 19.

78. STAFF OF FLA. S. COMM. ON GOVTL. OPS., A REVIEW OF THE REGULATION OF BANKING AND SECURITY IN FLORIDA 8 (Mar. 1986) (on file with comm.).

79. See FLA. STAT. §§ 403.501-.519 (1991).

80. See *id.* §§ 403.52-.539.

81. See *id.* § 380.07. The 1972 Environmental Land and Water Management Act, while still in bill form, established this Commission as an appointed body. However, one of several political compromises made to obtain support for this landmark environmental legislation resulted in the Governor and Cabinet filling this role. See Ch. 72-317, 1972 Fla. Laws 1162.

82. See generally BOOK OF THE STATES 41 (1988).

83. See FLA. STAT. § 350.01 (1991).

handled by a collective body? Elected or appointed? Florida's Administrative Procedure Act provides a framework for ensuring due process of law for decisions made within the executive branch.<sup>84</sup> Aggrieved parties can take their case to a hearing officer who, after holding a formal administrative hearing, renders a recommended order to the designated department head who then makes the final decision.<sup>85</sup> At that point the latitude of the department head has already been greatly restricted because the facts have been determined by the hearing officer, and the remaining matters are issues of law.<sup>86</sup>

The increased use and legal significance of this administrative process particularly curtails the appellate role played by the Governor and Cabinet; in effect the Governor and Cabinet duplicate the appellate role of a district court of appeal. The Legislature could decide that these administrative appellate bodies are no longer needed and abolish them,<sup>87</sup> or it could retain them through a statewide appointed commission or board. One means of achieving this could be by expanding the scope of responsibilities of the existing Environmental Regulation Commission.<sup>88</sup>

These changes, or similar ones, would substantially strengthen the authority of the Governor as chief executive. The large majority of the executive branch would be consolidated with the Governor. The wasted time and money associated with the Governor and Cabinet functioning collectively would be eliminated, freeing the Governor for more pressing duties. Cabinet officers could also now devote their full time to the responsibilities of the office for which they were elected. Surely the education problems in this state are such to warrant a full-time Commissioner of Education. To level the playing field even more, the terms of Cabinet officers could be limited to two—the same as the Governor.<sup>89</sup> In time, with its collective duties eliminated and its role diminished, the Cabinet might be more susceptible to eventual abolition by the voters.

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84. See generally *id.* ch. 120.

85. See *id.* § 120.57(1)(b)10.

86. See *id.*

87. One reason the Legislature may be reticent about diminishing the role of the Cabinet is that historically the Cabinet has served as the next rung on the political ladder for some of the legislators. The present Cabinet consists of three former state senators (Education Commissioner Betty Castor, Comptroller Gerald Lewis, and Agriculture Commissioner Bob Crawford) and one former state representative (Treasurer Tom Gallagher).

88. See FLA. STAT. § 403.804 (1991).

89. See FLA. CONST. art. IV, § 5(b) (establishing consecutive gubernatorial limit of two terms).

Even without legislative action restructuring the executive branch, the Governor could strengthen his position by acting unilaterally pursuant to article IV, section 2 of the *Constitution*, which states: "There shall be a lieutenant governor. He shall perform such duties pertaining to the office of governor as shall be assigned to him by the governor, except when otherwise provided by law, and such other duties as may be prescribed by law."<sup>90</sup>

Using the constitutional provision, the Governor could free himself for the more important responsibilities of the office. Absent any specific statutory limitations, the Governor could assign the Lieutenant Governor to chair Cabinet meetings, either on an as-needed basis or permanently.<sup>91</sup>

No other state has an executive branch that even resembles ours in Florida.<sup>92</sup> There is no precedent at the federal level. One can imagine the President having control of only half of the executive and having to compete with other nationally elected officials for control of the remainder of the executive branch. Many of the factors that led to our present-day fragmented executive no longer exist. The Legislature now meets annually; there is no need for the Governor and Cabinet to be a "mini" Legislature during the off year when the Legislature does not meet. The advent of the Administrative Procedure Act has stabilized decision-making within the executive branch and ensured citizen access and due process.<sup>93</sup> The Public Records Act,<sup>94</sup> the Sunshine law,<sup>95</sup> and a vigilant press afford additional protection against potential executive abuses.

Reacting to federal mandate, Florida reformed its legislative branch in the mid-sixties. That branch is now considered by many political scientists to be one of the best in the nation. In 1972, Florida reformed its judicial branch. It is time to take the last step by reforming the executive branch. Florida is now the fourth largest state. By the end of this century it is predicted to be the third largest. As we move into the twenty-first century, we can no longer afford a diluted and fragmented executive branch. Florida needs a strong, effective chief executive officer who can truly manage and direct the executive branch—and who can be held accountable.

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90. *Id.* § 2.

91. No such statutory limitation currently exists.

92. See generally DAVID C. SAFFELL, *STATE POLITICS* 41 (1984).

93. See generally Patricia A. Dore, *Access to Florida Administrative Proceedings*, 13 FLA. ST. U. L. REV. 965 (1986).

94. See FLA. STAT. §§ 119.01-.16 (1991).

95. See *id.* § 286.011.



