

STATE OF FLORIDA

**OFFICE OF THE GOVERNOR
EXECUTIVE ORDER NUMBER 11-211
(Superseding Executive Order 11-72;
Office of Fiscal Accountability and Regulatory Reform)**

WHEREAS, government must be held accountable for efficient and effective performance; and

WHEREAS, no person, profession, occupation, or business should be subject to regulation by the State unless regulation is necessary to protect the public from harm or to promote the general welfare; and

WHEREAS, the people of the State of Florida deserve a regulatory process that is efficient, effective, understandable, responsive, and open to the public; and

WHEREAS, State regulations may impose duplicative, obsolete, and unnecessarily burdensome requirements on Florida's citizens and businesses; and

WHEREAS, continual review and assessment of existing and proposed regulations is necessary to ensure that the laws of the State are faithfully executed without unduly burdening the State's economy and imposing needless costs and requirements on citizens, businesses, and local governments; and

WHEREAS, fiscal accountability by all agencies is necessary to ensure integrity in State government; and

WHEREAS, while agency heads and personnel bring expertise to a particular subject matter, they are not directly accountable to the electorate and do not necessarily have an

incentive to take a systemic approach to regulatory problems, to budget constraints, or to the overall regulatory burden imposed by the State on citizens and businesses; and

WHEREAS, the elected Governor has a democratic mandate, is directly answerable to the people, and has the duty and power to assess the overall legality, efficiency, and operation of government;

WHEREAS, at the federal and state levels, chief executives have recognized the need for centralized, democratically accountable oversight and leadership respecting disparate agency rulemaking, as reflected in dozens of executive orders by presidents, governors of other states, and prior governors of Florida; and

WHEREAS, review and oversight of agency rulemaking is encompassed by the Governor's powers and duties under the Constitution of the State of Florida to "take care that the laws be faithfully executed" and to serve as "the chief administrative officer of the state responsible for the planning and budgeting for the state"; and

WHEREAS, the Constitution of the State of Florida and the Florida Statutes establish that many agencies of State government are administered by an officer "appointed by and serving at the pleasure of the governor," and in order to determine whether an officer shall continue to serve at the Governor's pleasure, it is necessary for the Governor to set expectations and standards for that officer, and to measure agency performance against those expectations and standards; and

WHEREAS, pursuant to the Constitution of the State of Florida, the Governor must transact all necessary business with officers of government, and may require information in writing from all executive or administrative State officers upon any subject relating to the duties of their offices; and

WHEREAS, pursuant to section 14.06, Florida Statutes, the Governor is authorized to employ such persons as may be required from time to time to make such investigations as may, in the judgment of the Governor, be necessary or expedient to efficiently conduct the affairs of the State government; and

WHEREAS, Executive Orders 11-01 and 11-72 established the Office of Fiscal Accountability and Regulatory Reform (OFARR) to ensure that agency rules (proposed and existing) are efficient, are not overly burdensome, and faithfully adhere to statutes as enacted by the Legislature; and

WHEREAS, upon establishment of OFARR, all agencies under the direction of the Governor were required to obtain OFARR review and approval before developing new rules or amending or repealing existing rules; and

WHEREAS, OFARR's review process has facilitated the Governor's exercise of the power and duty to serve as the chief executive and administrative officer of the State; and

WHEREAS, the Legislature has determined that OFARR review of existing regulations may exempt an agency from the enhanced biennial review and compliance economic review otherwise mandated by section 120.745, Florida Statutes; and

WHEREAS, OFARR's review process has facilitated the Governor's planning and budgeting for the State; and

WHEREAS, OFARR has reviewed thousands of rules and regulations and helped agencies identify over one thousand unnecessary and unauthorized rules and regulations for repeal; and

WHEREAS, since January 4, 2011, OFARR has reviewed hundreds of proposed agency rulemaking actions; and

WHEREAS, OFARR’s review process has thus far been successful in helping to ensure efficient and effective performance by State government; and

WHEREAS, the Supreme Court of Florida, in the case of *Whiley v. Scott*, No. SC11-592, issued an unsigned opinion joined by five Justices, which held that Executive Orders 11-01 and 11-72 “impermissibly suspended agency rulemaking to the extent that [they] included a requirement that [OFARR] must first permit an agency to engage in the rulemaking which has been delegated by the Florida Legislature”; and

WHEREAS, the majority opinion in *Whiley*:

- (1) failed to address and apply the plain meaning of the first and sixth sections of Article IV of the Constitution of the State of Florida, and thereby unreasonably restrains the power of the Governor with respect to the supervision of agency heads;
- (2) failed to address the implications of the Court’s precedent in *Jones v. Chiles*, 638 So. 2d 48 (Fla. 1994), which recognized the proper scope of executive power under the Constitution of the State of Florida;
- (3) failed to address the persuasive caselaw from the United States Supreme Court and the highest courts of other states;
- (4) failed to address the precedent set by dozens of executive orders issued by prior governors of Florida;
- (5) failed to address the Court’s holding that “[t]he principles underlying the governmental separation of powers antedate our Florida Constitution and were collectively adopted by the union of states in our federal constitution,” *Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 263 (Fla. 1991), and in light of that

precedent, failed to consider that Executive Orders 11-01 and 11-72 cannot be meaningfully distinguished from similar executive orders issued by the last four presidents of the United States and the governors of at least twenty-nine other states;

(6) relied on a 1983 Opinion of the Attorney General Opinion, which the Attorney General distinguished and limited to its facts in an amicus brief in *Whiley*; and

WHEREAS, the dissenting opinions of two Justices in the *Whiley* case state the correct interpretation of the Constitution of the State of Florida and present persuasive reasoning and arguments in support of that interpretation; and

WHEREAS, notwithstanding the above, the majority opinion in *Whiley* is to be afforded the deference due a judgment of the Supreme Court of the State of Florida.

NOW, THEREFORE, I, RICK SCOTT, as Governor of Florida, by virtue of the authority vested in me by Article IV of the Florida Constitution, and all other applicable laws, do hereby promulgate the following Executive Order, to take immediate effect:

Section 1. Pursuant to the Governor's inherent constitutional powers and sections 14.06 and 120.745, Florida Statutes, OFARR, created by Executive Order 11-01, shall continue to operate within the Executive Office of the Governor. OFARR, as my designee, to the extent permitted by law, including without limitation chapter 120, Florida Statutes, shall have the following responsibilities and delegated powers, which I deem necessary to executing my responsibilities as the chief executive and administrative officer of the State and to making such investigations as are necessary and expedient to conduct the affairs of State government:

1. Review proposed and existing agency rules and regulations to ensure that they do not:

- a. unnecessarily restrict entry into a profession or occupation;
 - b. adversely affect the availability of professional or occupational services to the public;
 - c. unreasonably affect job creation or job retention;
 - d. place unreasonable restrictions on individuals attempting to find employment;
 - e. impose unjustified costs on business;
 - f. impose an unjustified overall cost and economic impact, including indirect cost to consumers; or
 - g. contravene statutory rulemaking directives.
2. Analyze, or review the agency's analysis of, the impact of proposed and existing rules on matters of public health, public safety, public welfare, job creation, and other matters that may have an impact on the creation, expansion, or retention of business interests in the State.
 3. Make recommendations for altering or simplifying proposed or existing regulations or regulatory processes of State agencies.
 4. Require agencies to prepare a statement of estimated regulatory costs analyzing the economic impact of agency rules, including an analysis of the effect of such rules on the creation and retention of jobs within the State.
 5. Work with other appropriate State officials and entities to identify rules and regulations, particularly those relating to small businesses, that have an adverse or disproportionate impact on business, and make recommendations for actions that would alleviate those effects.

6. Review actions taken by State agencies to improve program performance, meet program standards, and promote economy and efficiency. Identify the most successful actions taken by agencies and set such activities as benchmarks for other agencies. Recommend actions where no actions are currently being taken to address performance and efficiency.
7. Using the agencies' measurements related to the core agency functions necessary to implement each agency's statutory duties, design performance metrics that agencies should meet, and measure expectations against results annually.

Section 2. Pursuant to the Governor's constitutional power to "require information in writing from all executive or administrative state ... officers upon any subject relating to the duties of their respective offices," I hereby direct all agencies headed by an officer serving at the pleasure of the Governor to submit in writing to OFARR all proposed rulemaking notices, along with the complete text of any proposed rule or amendment, and to make this written submission at least one week prior to the time such notices will otherwise be submitted for official publication. Such agencies shall also submit any other written documentation required by OFARR at such times as required by OFARR, consistent with law, including without limitation, chapter 120, Florida Statutes.

Section 3. For State agencies not under the direction of the Governor, OFARR shall make itself available to conduct analyses of existing rules or proposed rulemaking, rule amendment, or rule repeal, as requested by agency heads.

Section 4. For each agency headed by an official serving at the pleasure of the Governor, the agency head shall designate a Fiscal Accountability Officer and a Regulatory Reform Officer. The Fiscal Accountability Officer shall be responsible for coordinating agency efforts

regarding fiscal accountability and performance accountability. The Regulatory Reform Officer shall be responsible for coordinating agency efforts regarding the evaluation and reduction of regulatory burdens. Both officers shall serve as liaisons between the agency and OFARR. Each agency shall provide to OFARR, in writing and in a timely manner, the names of its Fiscal Accountability Officer and Regulatory Reform Officer and any change in such designations.

Section 5. For each agency headed by an official serving at the pleasure of the Governor, the agency head is directed to:

1. Identify the following:
 - a. actions taken by the agency to evaluate program performance, meet program standards, and promote economy and efficiency;
 - b. all types of measurements collected by the agency to evaluate those actions;
 - c. methods of capturing the measurements used by the agency; and
 - d. actions taken by the agency to improve program performance, meet program standards, and promote economy and efficiency.
2. Review and evaluate the measurements identified in 1.b. above. Identify which measurements relate to the agency's core functions necessary to implement the agency's statutory duties.
3. Report the above information as directed by OFARR within sixty days of this Order.
4. Consider OFFAR's recommendations and proposed benchmarks relating to program performance, program standards, and economy and efficiency.

Section 6. Consistent with Executive Order 11-01, and in order (i) to reduce the regulatory burden on the citizens of Florida, (ii) to determine whether existing rules and regulations remain justified and necessary, and (iii) to determine whether such existing rules and regulations are duplicative or unnecessarily burdensome, each agency headed by an official serving at the pleasure of the Governor shall, beginning July 1, 2013, and by July 1 of each successive year, submit to OFARR in writing an annual review of existing rules and regulations, along with recommendations as to whether any rules and regulations should be modified or eliminated.

For any rule or regulation that an agency identifies as duplicative, unnecessarily burdensome, or no longer necessary, the agency shall coordinate with OFARR to pursue the repeal or amendment of such rule or regulation in a timely and orderly manner.

Each agency is further directed to identify any legislative mandates that require the agency to continue to impose rules that the agency believes have a negative impact on business, job creation, or job retention in Florida.

Section 7. No later than July 1, 2012, and on July 1 of each successive year, each agency headed by an official serving at the pleasure of the Governor shall submit to OFARR in writing an annual regulatory plan that shall identify and describe each rule that the agency expects to begin promulgating during the next twelve-month period. OFARR may describe and require other information to be included in this submission.

Section 8. The recommendations of OFARR shall constitute the strongly held views of the Governor regarding agency regulatory matters, and agency performance in light of OFARR's recommendations and benchmarks will be factors in the Governor's continual evaluation of his Administration.

Section 9. This Order supersedes Executive Order 11-72.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, the Capitol, this 19th day of October, 2011.


GOVERNOR

ATTEST:


SECRETARY OF STATE

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DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA