

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SJR 2506

SPONSOR: Senator Lee

SUBJECT: Constitutional Amendments or Revisions; Requirements for State Budget Planning, Spending, and Accountability

DATE: March 25, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubinas	Rubinas	EE	Fav/1 amendment
2.	Herring	Coburn	AP	Favorable
3.			RC	
4.				
5.				
6.				

I. Summary:

This Joint Resolution puts before the voters at the next general election proposed changes to Section 19 of Article III of the State Constitution. Specifically it proposes to:

- Limit the amount of non-recurring general revenue that may be used to fund the recurring costs of state programs to 3 percent of total general revenue (approximately \$700 million). This limitation may be waived by a 3/5 vote of the Legislature.

- Require the Joint Legislative Budget Commission to issue a long-range fiscal plan, which will establish fiscal goals, including workload and revenue estimates. Agency legislative budget requests will be required to be consistent with the long-range fiscal plan and to be developed according to budget instructions issued by the Commission. (Currently the Appropriations Committees and Executive Office of the Governor develop budget instructions.)

- Establish the Joint Legislative Budget Commission in the Florida Constitution to operate essentially as it does now; however, the membership and quorum requirements are reduced. The Joint Legislative Budget Commission will be required to publicly review agencies' independent assessment of their needs and agency performance measures.

- Create a Government Efficiency Task Force in 2007, and every 4 years thereafter, composed of legislators and private sector appointees, to make recommendations to improve government and reduce costs.

- Require state planning to be long-range (and updated every 2 years as is done now), with statewide strategic goals and objectives, and to be consistent with the long-range fiscal plan. The Joint Legislative Budget Commission will provide planning policies and goals.

II. Present Situation:

Current laws, joint rules, and practice are described below in "Effect of Proposed Changes."

Section 19 of Article III of the State Constitution was originally proposed in 1992 by the Taxation and Budget Reform Commission. It was approved by the voters on November 4, 1992. The Taxation and Budget Reform Commission is a constitutional revision body, established by Section 6 of Article XI of the Florida Constitution in 1988.

The Taxation and Budget Reform Commission adopted a Resolution to support and explain its findings and intent. The following excerpts from that Resolution, are the best evidence of the drafters.

[(a)] ANNUAL BUDGETING:

. . . The Commission also found that the principal documents in the budgeting process, legislative budget requests, the governor's recommended budget, and appropriation bills should be accompanied by detailed data reflecting the annualized costs of the budget. The data should show the total costs for the entire year, as opposed to partial-year costs for phased-in programs, which operate for less than 12 months in the initial year of existence. All state agency Legislative Budget Requests should also be accompanied by data which reflect the non-recurring costs (one-time expenditures) of the budget request.

[(c)] APPROPRIATION REVIEW PROCESS:

The Commission found that each year the Conference Committee Report on the General Appropriation Bill ... contains appropriations which were not subject to a rigorous review process that allows for the proper evaluation of the merit of the project or program. In addition, appropriations sometimes appear on the Conference Committee Report ... that did not appear in either the House or Senate version of the General Appropriation Bill. Therefore, the Commission intends that the Legislature require each department or agency budget request to be reviewed by the appropriate subcommittee of the appropriations committee of each house. The Commission further intends that each department or agency should submit its planning document ... to be reviewed by the appropriate subcommittee of the appropriations committee and the appropriate substantive committee of each house of the Legislature. The budget requests shall be compared to the major issues in each department's or agency's planning document. The review shall include a comparison of the major issues in the Governor's Recommended Budget for the department or agency. "Major issues" shall include all substantial projects, programs, functions, and expenditures proposed in the Governor's Recommended Budget, in the agency or department planning document, or by legislative initiative. The review should also include public testimony from a variety of executive bodies and the general public regarding the proper level of funding for the department or agency in order to carry out its mission....

[(f)] TRUST FUNDS:

The Commission found that over 50% of the Approved Budget for fiscal year 1990- 91 was from trust funds. Trust funds are defined for the purposes of Florida

government as essentially segregated accounts earmarked for receipt of certain revenues. In the last ten years, the percentage of trust fund appropriations has increased from 48% to 60% of the state budget and the percentage of the General Revenue Fund appropriations has decreased from 52% to 38%. . . .

It is not the Commission's intent that the purpose for which a trust fund was established be eliminated. Rather, it is the Commission's intent to provide for a more transparent budget by simply moving the funds from "trust funds" into the General Revenue Fund, where the funds can be more easily monitored according to generally accepted principles of accounting. The Legislature should require the modification of the state's accounting system accordingly to allow for the use of the segregated accounts to receive the earmarked monies. The purposes for which monies are earmarked may be amended by the Legislature. The Commission therefore intends that existing trust funds, with certain exceptions, terminate within four years or less, as determined by the legislature. . . .

It is the intent of the Commission to reduce the number of trust funds in order to place most of the revenue of the state in the General Revenue Fund where it is more visible. It would result in the legislature having more flexibility in establishing and funding the priorities of the state as those priorities change over time. . . .

[(g)] BUDGET STABILIZATION FUND:

The Commission found that Florida is one of 38 states with a "rainy day" or budget stabilization fund, known currently as the Working Capital Fund.... Florida requires approximately \$30 million to be available each day to pay for the General Revenue Fund expenditures. Thus, the recent practice of maintaining a "rainy day" Working Capital Fund of approximately \$150 million would pay for only 5 days of Florida's General Revenue expenditures in the event of an emergency. In addition, Florida's Working Capital Fund has a statutory cap of 10% of the previous fiscal year's net revenue collections, but no statutory floor. Thus, the fund could be virtually empty in any one year, leaving no money in the fund for emergencies or revenue shortfalls.... [M]ost experts recommend that states hold at least 5% of their budget in reserve as a "rainy day fund." . . .

It is the overall intent of the Commission that the State of Florida have a permanent financial reserve for difficult economic times or other exigent circumstances, without sacrificing important goals of the State in the meantime. It is not the intent of the Commission that this Budget Stabilization Fund be used as any sort of an "escape hatch" from poor fiscal planning. The Legislature is still under a duty to make appropriations based on anticipated general revenue; the Legislature may not rely on the Budget Stabilization Fund to provide monies that the legislature could have anticipated would be deficient in general revenue.

[(h)] STATE PLANNING DOCUMENT AND FUNCTIONAL PLAN PROCESSES:

The Commission found that the state's statutory integrated planning and budgeting system (the State Comprehensive Plan), had not netted the results intended, principally because it "lacked quantifiable, measurable goals and specific timeframes," there was no established procedure for review and revision, and there were no procedures for tracking whether goals were met. The Commission intended:

... that the Governor be required to report to the Legislature on the progress in achieving the goals of the state planning document and to recommend any necessary revisions to the state planning document every two years. It is the Commission's intent that the term "state planning document" be read to mean the State Comprehensive Plan or any subsequent planning documents adopted by the Legislature. It is not the Commission's intent to constitutionalize a particular planning document, but to require some type of state-wide planning document to provide priorities and guidance for funding the growth of the State. Further, the Commission intends that the Legislature prescribe a method for the biennial review and revision of the state planning document. Each department and agency of the state should likewise be required to develop a planning document, known as a functional or strategic plan or any subsequent name, consistent with the state planning document. By the term "agency planning document," it is the Commission's intent to encompass both the current system of Agency Strategic Plans and any subsequent plans required by the legislature for the strategic management and budgetary planning of the agencies and departments. It is further the intent of the Commission that such agency planning documents be reviewed by the Governor to ensure consistency with the state planning document. The Commission intends that [the] Legislature shall review and revise the agency planning documents.

It is further intended that, in implementing these constitutional requirements, the Legislature look to the local government comprehensive planning concepts that have been relatively successfully developed to date and to existing regional plans, in order to create a state comprehensive plan and to maintain its currency in terms of measurable goals and specific timeframes. It is the intent of the Commission that the agency planning documents directly relate to and derive from this reconstituted state plan and local and regional plans and that all of these plans reflect the known or anticipated budgetary impacts of the plans on a time-phased basis.

...The Commission intends that "quality management" shall mean that productivity and performance measures should be an integral part of the budget process in order to provide a means of tracking the state budget expenditures, measuring goal accomplishment, eliminating duplication, promoting efficiency, and increasing public confidence in government....

III. Effect of Proposed Changes:

Subsection (a) of Section 19 of Article III

Subsection (a) is amended to limit the amount of non-recurring general revenue that may be used to fund the recurring costs of state programs to 3% of total general revenue (approximately \$700 million). This limitation may be waived by a 3/5 vote of the Legislature. No similar limitation currently exists. Both the 2002-2003 and the 2003-2004 General Appropriations Acts included over \$1 billion of non-recurring general revenue moneys appropriated for recurring items. The initial Governor's recommended budget for 2004-2005 included approximately \$1.6 billion of non-recurring general revenue moneys for recurring items.

The amendment also proposes to require each agency to submit a legislative budget request based on the long-range fiscal plan (required in Section 19(c) of Article III, described below)

adopted by the Joint Legislative Budget Commission (established in Section 19(j) of Article III, described below).

The amendment proposes to expand the meanings of “department” and “agency” to include the judicial branch for the entirety of Section 19 of Article III, rather than for only subsections (a) and (h) of Section 19 of Article III. The amendment deletes outdated language referring to a date that has passed.

Subsection (c) of Section 19 of Article III

Subsection (c) is amended to require the Joint Legislative Budget Commission to issue a long-range fiscal plan, which will establish fiscal goals, including workload and revenue estimates. Currently, the State of Florida does not have, and has not had, a long-range fiscal plan.

The amendment allows the Commission to request official estimates from the consensus estimating conferences. The current statutory creation of, and requirements for, the consensus conferences are found in ss. 216.133 through 216.137, F.S.

The amendment requires the Commission, in consultation with the Governor, to issue instructions to agencies for their legislative budget requests. These instructions are currently developed jointly by the Governor and the appropriations chairs. “Legislative budget instructions” are currently defined by s. 216.011(1)(x), F.S., as “the annual set of instructions developed to assist agencies in submitting budget requests to the Legislature and to generate information necessary for budgetary decisionmaking.”

Under the amendment, each agency will be required to submit its budget request to the Governor and the Legislature by September 15 each year. This is the same date currently set in s. 216.023, F.S. It would require agency budget requests to include rank-ordered lists of items that could be reviewed and possibly cut in the event of a projected revenue shortfall. Currently s. 216.221, F.S. sets out 17 guidelines for reductions that may be necessary to address projected deficits in the General Revenue Fund.

The amendment requires agency legislative budget requests to be consistent with the long-range fiscal plan and to be developed according to budget instructions issued by the Joint Legislative Budget Commission. Currently the Appropriations Committees and Executive Office of the Governor develop budget instructions pursuant to the provisions of s. 216.023, F.S. In addition, the amendment requires the Joint Legislative Budget Commission to publicly review agencies' independent assessment of their needs and agency performance measures.

Further, the amendment requires the Governor to submit his recommended balanced budget 40 days before session. The current statutory submission date is 45 days before session. S. 216.162, F.S.

Under the amendment, the Legislature is authorized to set by law the process for budget amendments to be approved without the concurrence of the full Legislature. Currently, s. 216.177, F.S., allows the Governor and Chief Justice to submit proposed adjustments to the current-year budget, with legislative review and objection procedures.

The amendment repeals the requirement that general law require agencies to submit planning documents and related budget requests to the Legislature, and that the Legislature compare the major issues included by the agencies to the Governor's recommended budget.

Subsection (f) of Section 19 of Article III

Subsection (f) is amended to remove the requirement to recreate state trust funds every 4 years after they have been initially created and subsequently re-created one time. The practical effect of this provision will be to end the requirement to re-create existing trust funds, which have now been re-created by the Legislature 3 times each since 1994. It will reduce the number of trust fund re-create bills the Legislature must consider by about 75 a year. The amendment also deletes outdated language referring to a date that has passed.

Subsection (g) of Section 19 of Article III

Subsection (g) is amended to remove expired language on the phase-in of the Budget Stabilization Fund during the period from 1995 to 1999. The current constitutional requirement to maintain a balance in the Budget Stabilization Fund equal to no less than 5 percent, and no more than 10 percent, of the last completed fiscal year's net collections for the General Revenue Fund is continued unchanged.

Subsection (h) of Section 19 of Article III

Subsection (h) is amended to require state planning to be long-range (and updated every 2 years as is done now), with statewide strategic goals and objectives, and to be consistent with the long-range fiscal plan. The amendment authorizes the Joint Legislative Budget Commission to provide planning policies and goals for incorporation into the state planning document. The long-range state planning document and the long-range fiscal plan will be linked by requiring the long-range state planning document to include projections of future needs and resources that are consistent with the long-range fiscal plan. The current State Comprehensive Plan is set out in detail as Chapter 187, F.S.

The amendment also repeals:

- The requirement for agency planning documents to include rank-ordered lists of items that could be cut in the event of a projected revenue shortfall. This information would be required to be presented in agency budget requests by Section 19(c) of Article III, described above.
- The requirement for a separate quality management and accountability program.
- Outdated language referring to a date that has passed.

Subsection (i) of Section 19 of Article III

Subsection (i) creates a Government Efficiency Task Force in 2007, and every 4 years thereafter, composed of legislators and private sector appointees, to make recommendations to improve government and reduce costs. The Task Force will be staffed by as provided in law, with

assistance from the private sector permitted, and will be required to complete its work in one year.

Subsection (j) of Section 19 of Article III

Subsection (j) establishes the Joint Legislative Budget Commission in the Constitution to operate in a manner consistent with the way the Commission operates currently; however, the membership and quorum requirements are reduced. The current statutory Legislative Budget Commission is created in s. 11.90, F.S.

The amendment reduces the Commission membership to 5 Senators and 5 Representatives from the current 7 Senators and 7 Representatives. Under the amendment, the President Pro Tempore and the Speaker Pro Tempore will be mandatory members and will serve as chair and vice chair in alternate years. Current law assigns this duty to the chairs of the appropriations committees. The appropriations chairs, under the amendment, will be mandatory members of the Commission.

The joint rules of the Legislature will continue to govern the Commission. The amendment requires the Commission to convene at least quarterly at the call of the presiding officers. Current law provides for the chair and vice chair to convene meetings at least quarterly.

Under the amendment, a quorum consists of a majority of the members from each house (3 of the 5 Senators and 3 of the 5 Representatives). Current law, s. 11.90, F.S., provides that a quorum consists of a majority of the members from each house plus one member from either house (4 of the 7 Senators, 4 of the 7 Representatives, and one Senator or Representative). Action by the Commission will require a majority vote of the members present from each house. Members will continue to be allowed to attend by teleconference.

Finally, the amendment allows the Legislature to assign other powers and duties to the Commission by general law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

The joint resolution provides that trust funds shall terminate not longer than four years after the effective date of the act authorizing the initial creation of the trust fund.

D. Other Constitutional Issues:

Adoption of this Joint Resolution directly addresses concerns regarding whether the Legislature may delegate to a subset of its members the authority currently exercised by the Legislative Budget Commission, presiding officers, and appropriations chairs over mid-year adjustments to the current-year budget. The Florida Constitution provides that "no money shall be drawn from the treasury except in pursuance of appropriation made by law," art. VII, § 1(c), Fla. Const., and that "provision shall be made by law for raising sufficient revenue to defray the expenses of the state for each fiscal period." Art. VII, § 1(d), Fla. Const.

The Florida Supreme Court has repeatedly held that, under the doctrine of separation of powers, the legislature may not delegate the power to enact laws or to declare what the law shall be to any other branch. Any attempt by the legislature to abdicate its particular constitutional duty is void. *Pursley v. City of Fort Myers*, 87 Fla. 428, 432, 100 So. 366, 367 (1924); *Bailey v. Van Pelt*, 78 Fla. 337, 350, 82 So. 789, 793 (1919).

The Florida Supreme Court, in *Chiles v. Children A, B, C, D, E, and F*, 589 So. 2d 260 (Fla. 1991), stated that "fundamental and primary policy decisions shall be made by members of the legislature who are elected to perform those tasks, and administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program." The Court went on to cite with approval s. 216.292, F.S., which "provides for limited transfers within budget entities under specific circumstances." Further, "[t]he constitution specifically provides for the legislature alone to have the power to appropriate state funds. More importantly, only the legislature, as the voice of the people, may determine and weigh the multitude of needs and fiscal priorities of the State of Florida. The legislature must carry out its constitutional duty to establish fiscal priorities in light of the financial resources it has provided." In discussing the Legislature's authority to delegate when a revenue deficit is projected, the Court stated the "[t]he legislature can delegate functions so, long as there are sufficient guidelines to assure that the legislative intent is clearly established and can be directly followed . . ."

[Note that portions of *Chiles v. Children A, B, C, D, E, and F* have arguably been reversed by the 1992 amendments to Sections 1 and 13 of Article IV of the State Constitution, which was placed on the ballot by the 1992 Taxation and Budget Reform Commission. Specifically it was the Commission's intent "that the Governor and Cabinet continue to establish reductions to be made in the event of a revenue shortfall and use the Budget Stabilization Fund for that purpose . . ." Any portions of *Chiles* called into question by the 1992 amendments would not affect this analysis.]

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the general election. Costs for advertising vary depending upon the length of the amendment; however, the cost per amendment is estimated to be approximately \$35,000.

There will be indeterminate costs associated with meetings of the government efficiency task force for member travel and per diem and, if meetings are held outside Tallahassee, for appropriate staff.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This joint resolution is linked to Senate Bill 2508.

VIII. Amendments:

#1 by Ethics and Elections:
Technical; inserts missing bill number.