The Florida Senate

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Committee on Judiciary Senator John Grant, Chairman

REVIEW OF THE STATE COURT SYSTEM'S PERFORMANCE BASED BUDGETING PROGRAMS

SUMMARY

The judicial branch is one of the last segments of Florida Government to implement the provisions of performance-based program budgeting. As a separate branch of government with significant constitutional responsibilities, the judicial branch was distinguished from the executive branch in the method of application of performance-based budgeting.

The court established internal committees to recommend the method of implementation of performance-based budgeting and performance accountability for both the District Courts of Appeal and the Trial Courts. These committees recommended the division of court functions into those areas that implement constitutionally mandated functions of the courts, referred to as inherent or core functions, and those areas that implement specific programs of the court, referred to as integrated or court functions. The committees proposed that the inherent or core functions should be reported on by performance indicators which would not include standards for future performance. The court functions or integrated functions would be reported to the Legislature as programs with performance measures or standards for future performance.

In compliance with section 6 of Chapter 94-249, Laws of Florida, the Chief Justice recommended two programs for the Supreme Court (Mediator Regulation and Public Education), one program for the District Courts of Appeal(Appellate Mediation), and seven programs for the Trial Courts (Custody Evaluations, Guardian ad Litem, Indigency Examinations, Juvenile Alternative Sanctions Coordination, Guardianship Monitoring, Neighborhood and Community Justice Centers, and Truancy Programs). These programs comprise only 4.3% of the total court budget.

Recognizing that there is a need for the court to carry out the constitutional duties of the judicial branch and understanding that the voters, in implementing section 19 of Article III of the Florida Constitution, were directing government to provide greater accountability for the expenditure of funds, it is recommended that the court provide performance indicators for all programs of the court and that the Legislature amend section 6 of Chapter 94-249, Laws of Florida, to require the court to provide only performance indicators through 2004. The programs of the court for performance reporting should include the Supreme Court, the District Courts of Appeal, the Trial Courts, the Office of State Courts Administrator, and the Judicial Qualifications Commission.

BACKGROUND

In 1992 voters approved an amendment to the *Florida Constitution* which was proposed by the Taxation and Budget Reform Commission to improve public confidence in government. The amendment reformed government planning and budgeting processes to provide greater public accountability and review of the expenditure of tax dollars. Revisions made by the amendment included constitutionally mandating a state planning process.

As a result of the amendment the constitution provides for two aspects of state planning. First, by setting out a process for a state plan and creation of agency plans and second, by requiring the Legislature to develop a quality management and accountability program. General law must provide a state planning document and must establish requirements for agency planning documents which are consistent with the state planning document. Additionally, general law is to provide for biannual review of the state planning document and the state and agency planning documents are to remain subject to review and revision by the Legislature. The quality management and accountability program is to be established by general law for the purpose of ensuring productivity and efficiency in the executive, legislative, and judicial branches. For purposes of the

planning subsection, the definition of agency or department includes the judicial branch.

The requirements of subsection (h) of section 19 of Article III of the Florida Constitution cannot be read independent of other constitutional requirements and powers of each branch of government. Section 3 of Article II, provides that the power of state government is to be divided into the legislative, executive and judicial branches and that no person from one branch may exercise the powers of another unless the constitution expressly provides that authority. This separation of powers as it applies to the courts has been expressed by the courts through common law discussion of the inherent powers doctrine.

"Inherent power [of the court] arises from the fact of the court's creation or from the fact that it is a court. It is essential to its being and dignity and does not require an express grant to confer it." *Florida State Bar Association et al*, 40 So.2d 902, 905, (Fla. 1949), J. Terrell.

"The courts are not simply another agency of the state or county government but are a coequal branch of government. As such, they have the inherent power to protect themselves in the performance of assigned duties and functions." *Chief Judge of the Eighth Judicial Circuit v. Board of Commissioners of Bradford County*, 401 So.2d 1330, 1332 (Fla. 1981), J. Boyd and J. Overton.

"... the legislature cannot, short of constitutional amendment, reallocate the balance of power expressly delineated in the constitution among the three coequal branches . . . This court has an independent duty and authority as a constitutional coequal and coordinated branch of the government of the State of Florida to guarantee the rights of the people to have access to a functioning and efficient judicial system. *Chiles v. Children A., B, C, D, E, and F*, 589 So.2d 260, 268, (Fla. 1991), J. Barkett.

"Every court has inherent power to do all things that are reasonably necessary for the administration of justice within its jurisdiction, subject to valid laws and constitutional provisions. The doctrine of inherent judicial power as it relates to the practice of compelling the expenditure of funds by the executive and legislative branches of government has developed as a way of responding to inaction or inadequate action that amounts to a threat to the courts' ability to make effective their jurisdiction. The doctrine exists because it is crucial to the survival of the judiciary as an independent, functioning and coequal branch of government." *Rose v. Palm Beach Cty.*, 361 So.2d 135, 137, (Fla. 1978), J. Boyd.

However, the court in *Rose* went on to state "[t]he doctrine of inherent power should be invoked only in situations of clear necessity. The courts' zeal in the protection of their prerogatives must not lead them to invade areas of responsibility confided to the other two branches." Id at 138.

IMPLEMENTATION OF SECTION 19(h) OF ARTICLE III

Over the several years following passage of section 19 of Article III, the Legislature implemented many of the provisions of the section. The planning provisions were implemented for state agencies through amendments to the state comprehensive plan and revisions to statutes requiring agency strategic plans. While attempts were made in 1994 and 1995 to include the judiciary in the strategic planning process the 1994 act was vetoed and the 1995 act did not pass the Legislature. In 1994 the quality management and accountability program was implemented in Chapter 94-249, Laws of Florida. That 1994 act adopted performance based budgeting requirements and provided a schedule for implementation for state agencies and the judiciary.

STATE AND AGENCY PLANNING

In 1995, the court on its own initiative amended the Florida Rules of Judicial Administration to charge the Judicial Management Council with the development of a strategic plan for the judicial branch. Rule 2.125, *Fla. R. Jud. Admin*. The strategic plan, entitled *Taking Bearings, Setting Course: The Long-Range Strategic Plan for the Florida Judicial Branch,* was published in June 1998. This plan provides for court planning on three levels similar to that performed by the executive agencies. The long-range strategic plan provides for a 20-year horizon with periodic updates.[1] The operational plan defines a two-year planning period to identify a more specific short term agenda.[2] Finally, the court will

[1]Judicial Management Council, *Taking Bearings, Setting Course: The Long-Range Strategic Plan for the Florida Judicial Branch*, 1998, p. 4.

[2]Id., p.4.

provide for implementation plans as short-term action plans which are project, area and task specific.[3]

PERFORMANCE-BASED PROGRAM BUDGETING

Chapter 94-249, Laws of Florida, recognized in whereas clauses that the "judicial branch must independently carry out [its] mandates provided by the Florida Constitution, but nonetheless should endeavor to develop performance measures to evaluate certain functions of the . . . judicial [branch] to encourage efficient performance of [its] duties for the benefit of the public, ..." The act specifically provides that as used in the act "state agency" does not include the judicial branch but for purposes of the act "judicial branch" means "all officers, employees, and offices of the Supreme Court, district courts of appeal, circuit courts, county courts, Justice Data Center, and the Judicial Qualifications Commission." The judiciary was not included in the act's general schedule of implementation, but section 6 of the bill established a separate judicial schedule. The judicial implementation required the Chief Justice to "submit to the Legislature a list of programs that the Chief Justice of the Supreme Court recommends could operate under a performance-based program budget." Section 6 of the bill provided the programs recommended were to be submitted to the Legislature by January 15, 2000 and measures for the programs are to be submitted by September 1, 2000. The section then provided "the legislature, in consultation with the judicial branch, will develop statutory procedures for evaluating the effectiveness of such programs."

The performance-based budgeting process for the judicial branch is distinguishable from the process set out for the executive branch in several fundamental ways. As a state agency moves into the performance-based budgeting process chapter 94-249, Laws of Florida, requires the agency to obtain input on the identification of programs and performance measures from the legislative appropriations and substantive committees. The agency must also obtain approval of the Executive Office of the Governor and in developing performance measures, must additionally seek input from the Office of Program Policy Analysis and Government Accountability. In contrast the courts are not required to consult with any entity during the development of programs or measures. The two processes are also distinguishable in the evaluation process. State agencies are to be evaluated by the Office of Program Policy Analysis and Government Accountability. The act requires the Legislature and the courts to "consult" to develop an evaluation process.

The court's implementation of the judicial branch performance based budgeting provisions began in October of 1997 with the formation of a committee to review the District Courts of Appeal. A trial court performance and accountability committee was formed in December of 1998. Both committees made recommendations to the Chief Justice during 1999 and the Chief Justice's recommendations were forwarded to the Legislature on January 15, 2000 as required by law.

METHODOLOGY

The 1992 constitutional amendment and the reports of the Tax and Budget Reform Commission, which proposed the amendment, were reviewed along with the provisions of Chapter 94-249, Laws of Florida as well as the strategic plan of the courts to assist in developing the background of this report. The Committee on District Court of Appeal Performance and Accountability Report and Recommendations (hereinafter the District Court of Appeal report) and the Committee on Trial Court Performance and Accountability Report and Recommendations (hereinafter the Trial Court Report) were reviewed for the analysis of the process used by the court in determining those programs to recommend for performance-based budgeting and in evaluating the selected programs. In addition, staff attended meetings of the Committee on Trial Court Performance and Accountability (hereinafter Trial Court Committee) and discussed the process used by the committee and the proposed programs with members of the Trial Court Committee and staff of the Office of State Courts Administrator.

FINDINGS

The Chief Justice, in accordance with recommendations from the Trial Court Committee and the Committee on District Court of Appeal Performance and Accountability (hereinafter the District Courts of Appeal Committee), has divided the judicial branch's duties into two distinct categories. The first category is labeled either *core function* or *inherent functions* and comprises those duties of the courts which fulfill the constitutional mission of the courts or flow from the constitution. The second

[3]Id., p. 5.

category, referred to as *court programs* or *integrated functions,* comprise those duties of the court which according to the Trial Court Committee "are reasonably necessary to effectuate public policy or to respond to legitimate public expectations."[4]

In developing these definitions the court committees examined case law related to the inherent powers doctrine in Florida law, the statutory framework for performance-based budgeting, the 1992 constitutional amendment requiring performance reporting and the courts' own strategic plan. The committees determined that most of the activities in the District Courts of Appeal and many of the activities in the trial courts did not meet the criteria of a program for purposes of performance-based program budgeting. However, the committees did determine that performance indicators should be developed for the core functions of the courts to provide public information and accountability. The committees distinguished between performance *indicators* and performance *standards* required by performance-based budgeting by providing that while both provide for reporting on performance, indicators do not contain benchmarks which the courts must strive to meet.

The District Courts of Appeal Committee made this distinction for several enumerated reasons. First, the committee did not want courts to change effective practices to meet a statistical measure. Second, the committee believed that the responsibility for developing performance level targets belonged within the judicial branch. The indicators recommended by the committee were descriptive not evaluative such that relationships between performance indicators and the quality of judicial processes could not be drawn. Finally, the committee recognized that the court did not have baseline data from which to develop performance measures or standards.

The Trial Court Committee went further in its reasons for not providing performance measures or standards for core functions of the court. The committee believed that the core functions of the court reflected the separation of powers between the judicial branch and the Legislative Branch,

> In considering the appropriate mechanisms for providing accountability for trial court performance, the committee confronted the difficult issue of balancing the principles of judicial independence and separation of powers with that of accountability.[5]

The balance was achieved by applying the District Court of Appeal Committee's approach of providing only performance indicators for the inherent functions of the trial courts and performance standards or measures for the integrated functions. The Trial Court Committee also embraced the District Court of Appeal Committee's reasons for the development of only performance indicators for inherent or core functions.

Based on the analysis of the District Court of Appeal Committee and the Trial Court Committee the court is developing a four-tier accountability plan.

The first tier includes the performance indicators. The District Courts of Appeal committee made specific recommendations for performance indicators. The trial court committee did not recommend specific indicators but did make recommendations for a process for developing trial court performance indicators and recommended indicators be developed for each division of the trial courts.

The second tier of accountability recommended by the courts includes workload measures and the development of the annual request for certification of new judges. At the request of the Legislature the court has put a great deal of work into developing a weighted case method of measuring judicial workload using a modified Delphi process. This year is the first time this model will be used in developing the courts request for certification of new judgeships.

The third tier of the court's accountability plan is continuous quality improvement. The court reports that this process will be directed at improving performance in selected areas of court operations. The example given is improvement to the jury process which reduced juror costs over the last 10 years.

The final element of the court's plan is the program performance measures. The programs recommended by the court for inclusion in the budget for purposes of performance-based budgeting are set out below.

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[4]Judicial Management Council, *Committee on Trial Court Performance and Accountability: Report and Recommendations,* 1999, p. 9.

[5]Judicial Management Council, *Committee on Trial Court Performance and Accountability: Report and Recommendations,* 1999, p. 11.

COURT PROGRAMS PROPOSED FOR PERFORMANCE-BASED BUDGETING

SUPREME COURT

Mediator Regulation: The Chief Justice proposed two programs for the Supreme Court. Section 44.106, Florida Statutes, requires the Supreme Court to establish minimum standards and procedures for qualifications, certification, professional conduct, discipline, and training of mediators and arbitrators. The Supreme Court's budget for FY 1999/2000 includes $652,767 and five positions.

Public Education: The Florida Supreme Court has established the Justice Teaching Institute to provide public information and education about the state judicial system to teachers. The program provides hands-on training and proposed curriculum to 20 to 25 secondary teachers each year. The Supreme Court's budget for FY 1999/2000 includes $45,652 for this public education program.

These two programs comprise 4% of the total budget for the Supreme Court.

DISTRICT COURT OF APPEAL RECOMMENDED PROGRAM

Based on recommendations from the District Court of Appeals Committee the Chief Justice recommended that all functions of the District Courts of Appeal be considered core functions of the court except for Appellate Mediation.

Appellate Mediation: The mission statement recommended for this program states: "Mediation in the District Courts of Appeal facilitates the early, voluntary resolution by the parties of appellate cases and issues, thereby reducing litigant costs, increasing satisfaction, and preserving judicial resources." The funding appropriated for this program is $286,439 and four positions in the 1st District Court of Appeals and $202,596 and three positions in the 4th District Court of Appeals.

This program comprises 1% of the overall budget for the District Courts of Appeal.

TRIAL COURT PROGRAMS

For the trial courts the Chief Justice recommended seven specific programs.

Custody Evaluations: Independent custody evaluations can be ordered by judges to assist in making decisions on child custody and visitation in dissolution and paternity cases. Currently independent custody evaluations are not available in all judicial circuits and where they are available many are funded by the counties either through county staff or funding for contracting. State funding is only provided for two Court Counselor positions in the 6th, 13th, and 18th judicial circuits through the Family Courts Trust Fund. The court budget includes $238,779 and six positions for this program for FY 1999/2000.

Guardian ad Litem: Guardian ad Litem personnel are generally lay volunteers who represent children in court proceedings or advise the court on the best interest of the child. These volunteers are most often used in dependency cases where there has been abuse or neglect. The judicial branch budget includes funding for 164.5 positions statewide to provide Guardian ad Litem coordinators, program directors, and attorneys in each circuit. The state budget for Guardian ad Litem services for the 1999/2000 FY was 7,337,207 in general revenue for 164.5 positions. In addition to the state funding, counties also support the program with funding and staff.

Indigence Examinations: Screening of prospective public defender clientele to determine indigency and eligibility for services prior to appointment of counsel is required by s. 27.52, F.S. Currently each circuit has at least one state-funded indigency examiner. The 1999/2000 FY budget included $1,039,452 in general revenue with 24 positions. The counties in the 11th, 13th, and 20th circuits also provide county-funded staff and counties in other circuits provide expense money for the program.

Juvenile Alternative Sanctions Coordination: Pursuant to the requirements of s. 985.216, F.S., each circuit has an alternative sanction coordinator to act as a liaison with programs and sanction providers, and to recommend the most appropriate alternative sanction for juveniles. Each circuit has one state-funded position which was funded in the 1999/2000 by general revenue of $1,135,215 with 20 positions. Additionally, several circuits provide additional county-funded staff for this program and many circuits provide some expense funding.

Guardianship Monitoring: The court may order a report on guardians and executors where there are allegations that a guardian or executor is not acting in the best interests of wards or decedents. The state only funds

two positions in the 17th circuit with 1999/2000 FY budget of $84,510. Funding for guardianship review positions is currently provided by counties in nine circuits. There is a fee collected by the clerks for this program which, according to the court, provides some of the county support.

Neighborhood and Community Justice Centers: These centers provide citizens with access to problem solving, dispute resolution and other legal services to resolve disputes in a non-adversarial non-judicial fashion. When a case is pending in court, it may not be addressed by a Neighborhood and Community Justice Center. Currently the Supreme Court provides $60,000 as grant-in-aid to the Tallahassee Neighborhood Justice Center.

Truancy Programs: The state provides grant-in-aid in the amount of $200,000 to the Miami-Dade Truancy Alternative Program. This program screens juveniles who are arrested for truancy or who are failing academically and uses case workers to monitor the students progress and attendance in school. Dade county provides facilities for this program.

These proposed trial court programs comprise a little over 5% of the total trial court budget.

RECOMMENDATIONS

The Chief Justice of the Supreme Court and the Legislature should work together to develop a method of providing the public accountability demanded in section 19 of Article III while respecting the separation of powers and the inherent powers of the court. The court has recognized the benefits of providing this accountability and has established a four-tier plan to integrate accountability into the court structure.

Because of the distinction of the judicial branch from the Executive Branch, the court has recommended that the use of program performance measures or standards serve as the last tier in the judicial branch's accountability plan and serve only to measure a very narrow list of programs comprising only 4.3% of the judicial branch budget. Recognizing that the court is already working with the Legislature to address recent changes to article V of the constitution, relating to state and local funding of the court system, and recognizing the court's valid concerns related to the establishment of standards for constitutional activities of the court; it is recommended that the court revise the list of programs to include all activities of the court and that the Legislature amend section 6 of Chapter 94-249, Laws of Florida, to require that the judicial branch only provide performance indicators for programs through July 1, 2004. This will allow the budget document to be used to provide information to the public on the state court system while preserving and recognizing the independence of the judiciary.

A recommended program structure would use the current court structure of Supreme Court, District Courts of Appeal, Trial Courts, Office of State Courts Administrator and the Judicial Qualifications Commission.

COMMITTEE(S) INVOLVED IN REPORT ***(Contact first committee for more information.)***
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MEMBER OVERSIGHT
Senator Webster