The Florida Senate

Interim Project Report 2006-127 *January 2006*

Committee on Government Efficiency Appropriations Senator Jeffrey H. "Jeff" Atwater, Chair

GOVERNMENT EFFICIENCY INITIATIVE

SUMMARY

In an effort to raise the visibility and presence of efficient government service and support the strategies contained in the Three Year Financial Outlook, the Government Efficiency Appropriations Committee chose several issues for review by the Office of Program Policy Analysis and Government Accountability (OPPAGA) that offer opportunities to improve government operations and generate potential cost savings for consideration during the 2006 session. This report summarizes the findings and related policy options of OPPAGA's reports for consideration by the committee.

BACKGROUND

Government has an obligation to taxpayers to ensure that the state's resources are used efficiently and cost effectively. Not just today, but tomorrow, and in the years to come. The Senate's Three Year Financial Outlook projects that in Fiscal Years 2006-07 and 2007-08 general revenue spending and reserve requirements will exceed general revenue funds available.[1] In an effort to raise the visibility and presence of efficient government service and support the strategies contained in the long-range financial plan, the Government Efficiency Appropriations Committee chose several issues for review by the Office of Program Policy Analysis and Government Accountability (OPPAGA) that offer opportunities to improve government operations and generate potential cost savings for consideration during the 2006 session. Specifically, these reviews focused on the following issues.

Agency Unit Cost Summaries. Sections 216.1826 and 216.023(4)(b), F.S., require that agencies identify the costs for their activities and the associated cost for each unit of output in their legislative budget requests. Activity and unit costs can provide useful information for assessing whether the state is efficiently using its resources. An important consideration in calculating unit costs is how to allocate direct and indirect costs. OPPAGA examined state agency practices in developing and using unit cost information and whether Aspire, the state's new financial accounting system, would have the capability to capture and process activity and unit cost information.[2]

Regulatory Fees. To promote public health, safety, and welfare, the Legislature has authorized programs to regulate various professions, businesses, and products. These programs generally set standards for goods and services, license individuals and businesses that offer them, conduct inspections, and take enforcement actions to ensure compliance with state standards. Currently, Florida administers 190 regulatory programs that oversee businesses ranging from abortion clinics to yacht and ship brokers. Funding for these programs is derived from three major sources—user charges, federal funds, and general revenue. Of the $975 million in total funding for these programs in Fiscal Year 2004-05, general revenue provided $157 million (16%).[3] OPPAGA examined the allocation of fees and general revenue for state regulatory programs and activities.[4]

---

[1] *State of Florida Three Year Revenue and Expenditure Outlook*, Jointly Prepared by the Senate Ways and Means Committee and the Office of Economic and Demographic Research, Summer 2005.

[2] *More Uniform Methodology Is Needed for State Agencies' Unit Cost Information*, OPPAGA Report No. 05-35, May 2005.

[3] Figures are based on an OPPAGA survey of agencies with regulatory programs of which 67 of the 190 programs did not report any indirect costs. Therefore, the reported funding amounts to administer regulatory programs are likely understated, as well as the percentage of general revenue used to fund these programs.

[4] *Legislature Should Consider Uniform Process to Determine Appropriate Regulatory Program Funding Levels*, OPPAGA Report No. 05-57, December 2005.

Hard Copy Publications. State agencies perform many activities that involve providing information to the public. These include such efforts as distributing information on health care risks and available services, notifying the public and affected groups about changes in regulatory standards such as building codes, announcing the availability of grants and funding opportunities, and releasing data and annual reports. This communication helps ensure that the public is informed of what government is doing and the services that are available. State agencies historically have communicated this information largely through printed documents. It is costly to print and distribute such hard copy documents. Of the $20.7 million spent on printing costs during Fiscal Year 2004-05, general revenue provided $4.05 million (20%). OPPAGA examined how much agencies are spending to produce and distribute public documents and whether existing statutory provisions are effective in managing these cost. [5]

Education Facilities Planning and Cost Reduction. Since 1995, the state's public universities and community colleges have administered their own construction programs with oversight provided by individual boards of trustees. Postsecondary institutions are responsible for the condition of their facilities and for identifying the need for maintenance, remodeling, acquisition or new construction funds to meet current needs and expected student growth. The institutions report this information through capital improvement plans, which are used to develop statewide funding recommendations. In Fiscal Year 2005-06, the Legislature appropriated $744 million for postsecondary education fixed capital outlay projects, which includes construction and infrastructure projects and land acquisition. OPPAGA examined the steps public universities, community colleges and the Department of Education could take to improve cost efficiencies in postsecondary education construction programs including the reasonableness of the facility planning process, the reasonableness of postsecondary facility construction costs, and how well postsecondary institutions use existing facility space. [6]

Right-of-Way Costs. The Department of Transportation spent approximately $471 million to compensate landowners for right-of-way acquisitions in Fiscal Year 2004-05, including $387 million for land and improvements and $84 million for associated landowner expenses and business damages. OPPAGA examined the costs associated with these acquisitions and options for reducing these costs. [7]

METHODOLOGY

The selected issues were reviewed by OPPAGA, which developed policy options for consideration by the Government Efficiency Appropriations Committee. OPPAGA's findings and recommendations were presented to the committee during the interim.

FINDINGS

Excerpts from OPPAGA reports summarizing its findings and related policy options are presented below. The full text of each of OPPAGA's reports on these issues can be found at www.oppaga.state.fl.us.

Agency Unit Cost Summaries

Agencies are submitting unit cost data as required, but differences in costing methods limit usefulness. All agencies submitted unit cost information for activities in their Fiscal Year 2005-06 legislative budget requests as required by law. However, several factors limit the usefulness of this unit cost information as a budgeting, policymaking, and accountability tool. Specifically, many agencies are not allocating all of their costs when calculating their unit costs, and agencies are using different methodologies to calculate their direct and indirect activity costs. These differences limit the Legislature's [as well as agencies'] ability to validly compare the efficiency of similar activities performed by different agencies or to assess changes in agency performance over time.

Florida's new financial accounting system will provide more support of unit costs, but will not provide all information needed for determining these costs. The Department of Financial Services is currently developing a new accounting system (Aspire)

---

[5] *State Printing Expenditures Have Decreased, But Additional Steps Could Produce More Savings,* OPPAGA Report No. 05-53, November 2005.

[6] *Higher Education Facility Planning Process is Designed Reasonably Well; Improvements Could Maximize State Resources,* January 2005; and *Higher Education Facility Construction Costs Are Reasonable; Improvements Could Maximize Classroom Use*, January 2005.

[7] *The Legislature has Several Options for Reducing State Right-of-Way Costs*, February 2005.

to replace the state's current system (FLAIR). Full implementation by all agencies is not expected until after June 2006. When fully operational, Aspire will provide agency managers and the Legislature with the direct costs of activities, which can be used in making operational and policy decisions. Aspire also will allow for increased use of this activity cost information through a new accounting structure that will allow activity costs to be grouped by agency, budget entity, and the outcome affected by the activity. However, Aspire is not designed to provide all information needed to determine the unit cost for an activity. Agencies will thus need to rely on other state information systems to provide data on the number of units of output produced by each activity for use in calculating unit costs.

Policy Options: Revising the legislative budget request instructions to establish a uniform methodology for allocating costs to activities would enhance the usefulness of activity and unit cost information. A uniform methodology that could be considered is the federal government's cost allocation methodology for calculating activity and unit cost information.[8] As a condition of eligibility for federal awards, state agencies are required to certify that federally reimbursable expenditures have been identified in accordance with these federal guidelines. Nearly all of Florida's state government agencies have activities that are eligible for federal reimbursement of costs and are therefore familiar with these federal reporting requirements. One advantage of using the federal cost allocation methodology is that it would require all agencies to develop an indirect cost allocation plan to apportion their indirect costs to programs and activities, which would then serve as the basis for computing indirect and direct costs for all of the state's activities.

Regulatory Fees

There is no overall policy for determining appropriate regulatory program funding sources. Several factors should be considered when determining the appropriate allocation of funding sources for regulatory programs, such as the distribution of benefits, the feasibility of collecting user fees, and the impact of various types of fees on regulated entities. In general, user charges should be the primary source of funding for the state's regulatory programs and should be sufficient to cover all of the associated direct and indirect costs. Such a policy has several advantages, in that it helps reduce demands for general revenue funding, recognizes the benefits that regulation provides to regulated entities, and increases accountability as regulated entities help to monitor agency activities to ensure that the services they are funding are cost-effective. Most regulatory programs [in Florida] are not currently required to be self-supporting. Less than half (81, or 43%) of the state's 190 regulatory programs are statutorily required to be supported solely by user fees and/or federal funds. Further, in some cases, programs that are required to be self-supporting nonetheless receive general revenue. Agencies reported that this occurred for various reasons, including the inability to raise fees due to statutory limits on user charges. General revenue provided $157 million in funding for regulatory programs in Fiscal Year 2004-05.

Current state accounting methods hinder determining appropriate funding levels for regulatory programs. A key problem in establishing a uniform legislative policy on regulatory program funding is that the state's accounting system, Florida Accounting Information Resource Subsystem (FLAIR), does not identify the total direct costs for all regulatory programs. The FLAIR accounting structure is based on appropriated funding categories, which often correlate to services provided by state agencies. However, in many cases FLAIR does not track program expenditures accurately because expenditures are allocated to services that support more than one regulatory program. Further, agencies are using different methodologies to calculate the indirect costs of these programs. Indirect costs, often referred to as overhead costs, cannot readily be associated with the performance of a regulatory program, but provide necessary support to the program. In contrast to direct costs, agencies would continue to incur indirect costs (although at a somewhat lower level) if an individual regulatory program were eliminated. Both direct and indirect costs of regulatory programs need to be considered in program funding decisions. However, there is no uniform method used by agencies to identify indirect costs.[9]

Policy Options. Adopting an overall legislative policy governing how regulatory programs should be funded would help to reduce the $157 million in general revenue that is currently used to subsidize regulatory

[8] Office of Management and Budget Circular A-87.

[9] Although 81 of the state's 190 regulatory programs are statutorily required to be funded from user charges and/or federal funds, OPPAGA was unable to determine whether these user charges were sufficient to meet all of their regulatory costs because 42 of these programs did not report indirect program costs.

programs. If the Legislature wishes to establish a uniform policy governing regulatory program funding, OPPAGA recommends that it consider the actions described below.

- To help ensure that programs remain self-supporting, the Legislature should generally eliminate statutory caps on the amount of regulatory fees. These limits can become outdated if not updated over time to reflect inflation.
- To enable the Legislature to consider the appropriateness of general revenue funding for regulatory programs, the legislative budget request instructions should be revised to require agencies to provide written justification when requesting general revenue for a regulatory program. This would assist the Legislature in determining whether the program provides sufficient broad public benefits to justify general revenue funding.
- To help ensure that regulatory fees are based on total program costs, the Legislature should require that a uniform methodology be used to determine the cost to administer each regulatory program. This could be done by revising the legislative budget request instructions to establish a uniform methodology for calculating the cost of regulatory programs. As discussed in the previous issue on unit cost summaries, the federal government's cost allocation methodology for calculating activity and unit cost information is recommended.

Hard Copy Publications

Statewide printing expenditures have decreased. Over the past eight years, statewide printing expenditures have been reduced by about 25% from $27.9 million in Fiscal Year 1997-98 to $20.7 million in Fiscal Year 2004-05. Most of these expenditures (80%) were funded from various trust funds and federal grants; however, the remaining 20% ($4.05 million) were supported from general revenue. These expenditures include both internal documents (e.g., stationery, training materials, and administrative forms), as well as external documents designed to communicate with the public such as reports, newsletters, and brochures. Printing expenditures also cover specialty products such as registration decals for motor vehicles. [10]

[10] FLAIR does not facilitate the separation of expenditures for public documents from expenditures for other printed products. Therefore, OPPAGA was unable to determine the percentage of printing costs associated only with production and dissemination of public documents.

Agencies are not consistently justifying publications exceeding the statutory cost threshold. Section 283.31, F.S., requires executive branch agencies to maintain records for every agency publication with production costs exceeding $50,000. Specifically, agencies are to document the purpose and justification for these publications and the sources of funding used for their production, and they are to compare the costs of different printing methods and justify the decision to print the documents in-house, by another agency, or by the private sector. However, the effectiveness of this control on agency printing is limited because the statute does not define the term "publication," and agencies have interpreted this term differently. In addition, the statute does not provide a mechanism for monitoring compliance with the documentation requirements.

Mailing list maintenance requirements do not encourage electronic distribution of public documents. Section 283.55, F.S., requires agencies to biennially survey addressees on agency publication mailing lists to determine whether they wish to continue receiving publications. Addressees must respond to continue receiving publications by mail and thus to remain on the agency mailing list. It appears that this accountability mechanism does not encourage electronic distribution of publications, though most agencies have the capability to provide documents via the Internet or e-mail and do so on a regular basis. Specifically, OPPAGA's questionnaire results revealed that most agencies conduct purges of their mailing lists. However, publication recipients are not asked whether they would prefer an electronic version of an agency publication, as the statute does not provide for this alternative.

Agencies are not submitting all public documents to the State Library. Section 257.05, F.S., requires agencies to submit copies of their public documents to the State Library. This requirement is intended to facilitate ready public access to state publications. However, agencies are not consistently complying with this statute. State Library staff identified several reasons why agencies failed to comply with this law, including a lack of knowledge among agency staff about the statutory requirement, differing interpretations regarding what documents need to be submitted, and the State Library's lack of authority to monitor and enforce compliance. To address this problem, the State Library plans to inform agencies about their statutory obligations through its regular meetings with agency staff as well as covering the topic in its public records management seminars.

Policy Options. Updating chs. 257 and 283, F.S., to require agencies to use electronic document distribution to the maximum extent practicable would help to clarify statewide policy regarding public documents. The policy should require agencies, when conducting biennial mailing list purges, to ask recipients if they would prefer to receive publications electronically in lieu of hard copies; which would likely increase electronic distribution. Additionally, the policy could require agencies to submit an annual list of all published documents meeting the definition in s. 257.05, F.S., to the State Library to aid the State Library in ensuring that it received copies of all public documents for transmittal to depository libraries throughout the state. Furthermore, the policy should clarify what types of documents are subject to the written justification requirement for publications with costs exceeding $50,000, and agencies should be required to report these justifications annually in their legislative budget requests.

Education Facilities Planning and Cost Reduction

The formulas used to determine unmet space needs among the institutions need to be updated and revised to accurately reflect when and how classrooms are used today. The state's process for identifying and prioritizing higher education projects is comprehensive, includes multiple levels of review, and operates under guidelines to ensure coordination with higher education goals, local strategic plans, and community development plans. However, the effectiveness of the planning process is dependent on the information provided by the institutions to their respective state level divisions to determine the state's most critical facility needs. As the facility planning process relies heavily on each institution's educational plant survey to identify and prioritize higher education facility needs, it is important that the information contained in these assessments is correct. The reliability and accuracy of information contained in these surveys could be improved by updating the formulas used to develop educational plant surveys to ensure they accurately portray current institutional need for additional facility space. Current standards have not been updated for several years and, therefore, do not take into account technological advances that would likely reduce the need for certain types of space. In addition, the classroom utilization standard established in s. 1013.03(2), F.S. may be too narrow because it does not take into account the total number of hours that classrooms are in use each day. Furthermore, some postsecondary institutions need additional technical assistance to address common errors in educational plant surveys.

Both the university and community college systems are building reasonably cost-effective facilities compared to national norms. However, Florida's construction costs and future demand for facilities continue to climb due largely to economic and demographic factors, while the funds available for construction projects are projected to decrease. Consequently, postsecondary institutions will need to develop long term strategies to reduce construction costs, which should include adopting prototypical designs to lower design costs, implementing energy cost sharing, and maximizing existing facility use.

Classrooms at some state universities and community colleges are significantly underutilized. In general, the allocation of university and community college space is consistent with available national benchmarks and institutional missions. Although a relatively small percentage of all space is used for classrooms, this allocation is consistent with national norms and institutional differences reflect the student populations served. However, overall, only about half of all university classrooms and less than half of community college classrooms have classes scheduled in them throughout the week. Classroom usage rates vary considerably by time of day, day of week, and institution. Although some factors affecting underutilization may be outside the control of institutions, they can take steps to improve classroom utilization and delay the need to build additional classrooms.

Policy Options. Amending s. 1013.03(2), F.S., to update the current minimum utilization rates, which are currently established at 40 hours per week and 60% occupancy, would help improve the reliability and accuracy of information contained in the institution educational plant surveys. To better reflect how institutions currently use classroom space, OPPAGA recommends changing the standard to at least 50 hours per week and 70% occupancy. To further the efforts to improve the reliability and accuracy of the information, the Department of Education and Board of Governor's staff should review and revise these formulas with input from all relevant stakeholders from the various disciplines and update them every 3 to 5 years; and provide comprehensive written instructions for completing these surveys and work toward automating survey submission to the state.

Requiring public colleges and universities to demonstrate that they have implemented comprehensive strategies to maximize use of existing classrooms before approving funding for additional classroom space, would help reduce construction costs for higher education institutions. At a minimum, strategies should address scheduling more class time to non-peak classroom usage periods; fully utilizing Fridays when scheduling classes; providing tuition incentives to students to take classes during non-peaks times; and establishing institutional classroom usage goals, reviewing scheduling processes, and routinely collecting and reporting facility usage data on all campuses. Providing universities flexibility to offer variable tuition for classes scheduled during peak and off- peak demand times would also help to reduce these costs. Alternatively, the Legislature could pilot a variable tuition program to determine the impact on student behavior prior to granting tuition flexibility to the universities.

To further the efforts to reduce construction costs, the Department of Education, the Board of Governors, and the state's public universities and community colleges should:

- Develop strategies to minimize construction costs and use existing facilities as efficiently as possible. These strategies should use prototypical building designs, energy cost sharing, and maximizing the use of existing facilities through better classroom management policies.
- Consider requiring postsecondary institutions to examine how efficiently they use all major categories of space and consider this information when determining prioritizing and funding fixed capital outlay projects. National research shows that classroom utilization is a relatively good indicator of how efficiently other higher education space is used and is information that can be provided in the institution's capital improvement plan.
- Consider including joint use of instructional space as an additional category for data collection and analysis, which would enable it to obtain a more complete picture of how well instructional space is scheduled and utilized.

Right-of-Way Costs

Parcels acquired through negotiation had a lower average total, land, and other costs than parcels acquired through the condemnation process. The department acquires right-of-way property through various methods including negotiation, settlement, mediation, and jury trial. Over the last 10 years, 62% of the 7,143 parcels acquired by the Department of Transportation were obtained through negotiation. The remaining 2,709 parcels were acquired through condemnation and were purchased either through settlement, mediation or jury verdict. Land costs include the amount paid for land, severance damages, and improvements. Other costs included the costs associated with attorney fees, business damage payments, court costs, closing costs, expert fees, final judgment interest payments, and moving costs. The amount of these other costs substantially increased as the department pursued acquiring parcels through the condemnation process.

Having more information would allow the department to make better offers to the property owners, which may increase the likelihood of the property being acquired through negotiation rather than through litigation. The department attempts to make offers that property owner can accept, as acceptance of an initial offer will save time and reduce acquisition costs. However, the department's initial offer was accepted by landowners in only 25% of the right-of-way cases completed in the last 10 years. Department managers and eminent domain mediators contended that the department is hampered in making reasonable offers by a lack of information regarding a property's characteristics, as property owners often do not provide the department with enough information about their property early in the acquisition process. Property owners are not required to provide this information until after a property is condemned.

Providing incentives for property owners to more quickly agree on a department offer may increase the likelihood of the property being acquired through negotiation. The department has implemented a pilot project in three districts that offers a financial incentive to encourage property owners to more quickly agree on a department offer. The department reports the parcels acquired through the pilot program had lower costs and landowner expenses and were acquired more quickly than control parcels or compared to district and statewide averages. The department is currently seeking approval from the Federal Highway Administration to expand the pilot program statewide.

Florida law provides incentives for property owners to litigate rather than negotiate settlements with the department. Because the state pays property owners' expenses if they refuse the department's offer and instead enter into litigation, there is no financial risk for property owners to hire advisors and little incentive for them to negotiate settlements with the state. [11] Florida also currently pays more types of property owner expenses than other states. [12] Further, unlike many other states, Florida does not have limits on the payment of most property owner expenses. [13] Some of the other states that pay such expenses have established limits on how much they will pay.

Most states do not pay business damages for property acquired for right-of-way purposes. Florida is one of 10 states that pay property owners for business damages. Business damages represent permanently lost profits and the reduced profit-making capacity of a business due to a portion of its property being taken by the state. In Florida, the right to collect business damages is provided by state law and is not protected by the United States or Florida constitutions

Policy Options. Revising statutes to require property owners to provide the department with an appraisal and other information about the property within 90 days after receiving the department's initial offer of purchase would expedite the right-of-way acquisition process and help reduce acquisition costs. Setting a maximum payment amount for property owner expert expenses, as done in other states, may help contain the cost of property owner expenses. The Legislature may wish to consider the option of establishing standards for hourly rates and limits on the number of hours that the state will pay for property owners' experts. The Legislature could authorize the courts to approve additional compensation for landowner expert expenses above these limits if deemed necessary. Eliminating payment of business damages would reduce land acquisition costs by approximately $20 million annually. However, the elimination of payment for business damages would likely face strong opposition as property and business owners and other stakeholders will contend that business damage payments are needed to compensate for losses to a business' profitability and economic viability resulting from the acquisition of the property.

RECOMMENDATIONS

Based on the findings of OPPAGA reports, it is the recommendation of committee staff that the following options be considered by the Legislature during the 2006 session.

Agency Unit Cost Summaries

- Revise legislative budget request instructions to require a uniform methodology for allocating direct and indirect costs to program activities.

Regulatory Fees

- Revise statute to establish a legislative policy that all regulatory programs shall be funded entirely through user fees or federal funds, unless a program can demonstrate the need for other state funds using the form and criteria set forth in legislative budget request instructions.
- Revise legislative budget request instructions to identify the form and criteria to be used by agencies to provide written justification when requesting general revenue for all regulatory programs, and require that a uniform methodology be used to determine the direct and indirect cost to administer each regulatory program.

Hard Copy Publications

- Revise statute to require agencies, in conducting biennial mailing list purges, to provide recipients with the option of receiving publications electronically in lieu of hard copies
- Revise statute to require agencies to submit an annual list of all published documents meeting the definition in s. 257.05, F.S.
- Revise statute to clarify what types of documents are subject to the written justification requirement for publications with costs exceeding $50,000.

---

[11] The state will pay the landowner's litigation expenses, including attorney fees, appraiser fees, technical expert fees, relocation expenses, and business damages. Thus, the law encourages property owners to engage in litigation in the hopes of achieving higher values for their property.

[12] Florida is 1 of only 19 states that compensates property owners for attorney fees, 1 of only 18 states that pay appraiser fees, and 1 of only 17 states that pay fees for technical experts.

[13] Florida has established limits on property owner attorney fees

Education Facilities Planning and Cost Reduction

- Revise statute to establish 50 hours per week and 70% occupancy as minimum utilization rates for classroom facilities.
- Revise statute to provide universities additional tuition setting flexibility to offer lower tuition for classes scheduled during off peak times.

Right-of-Way Costs

- Revise statute to require property owners to provide the department with an appraisal and other information about the property within 90 days after receiving the department's initial offer of purchase.
- Revise statute to establish standards for hourly rates and limits on the number of hours that the state will pay for property owners' and Department of Transportation's experts and authorize the courts to approve additional compensation for landowner expert expenses above these limits if deemed necessary.