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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HJR 999
RELATING TO: Legislature/Agenda Limited
SPONSOR(S): Representative Bitner
STATUTE(S) AFFECTED: Article III, Section 3, Florida Constitution
COMPANION BILL(S): SJR 192(i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS YEAS 4 NAYS 0
- (2) RULES, RESOLUTIONS & ETHICS
- (3)
- (4)
- (5)

I. SUMMARY:

HJR 999 requires the Legislature to devote every regular session in an odd-numbered year to developing the budget and to the monitoring and evaluation of state program performance and effectiveness. This resolution requires that special review emphasis will be given to programs that have become fully compliant with the performance based program budgeting requirements provided by general law. This resolution also directs the Legislature to limit by general law the introduction of bills on other subjects during odd-numbered year regular sessions. Finally, HJR 999 limits the introduction of bills in odd-numbered year regular sessions to those which (1) are necessary to respond to a specific threat to the public health, safety, and welfare and (2) where a delay in legislative response would result in an unreasonable risk of death or harm to persons or damage to property.

Although not specifically required by the language of HJR 999, the resolution appears to anticipate the implementation of a biennial budgeting process (See Comments).

Several other states have implemented either limited legislative sessions or biennial budgeting, with different levels of success (See Comments).

This resolution appears to have no fiscal impact on local governments. However, with regard to state agencies and state funds, the fiscal impact is indeterminate (See Fiscal Comments).

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Legislative Sessions

Article III, Sec. 3(b), Florida Constitution, provides that the regular session of the Legislature must convene on the first Tuesday after the first Monday in March of each odd-numbered year, and on the first Tuesday after the first Monday in March, or such other date as may be fixed by law, of each even-numbered year. No constitutional provision currently requires the Legislature to address any particular category of subject matter during regular legislative sessions. Pursuant to Art. III, Sec. 3(d), Florida Constitution, each regular session may not exceed 60 consecutive days unless extended by a three-fifths vote of each house. During such an extension, no new business can be taken up except by a two-thirds vote of each house.

Article III, Sec. 3(c), Florida Constitution, also provides for special legislative sessions which may be called by the Governor. During a special session, the Legislature may only conduct such legislative business as is contained within a proclamation or communication from the Governor or is introduced by the consent of two-thirds of the membership of each house. Pursuant to Art. III, Sec. 3(d), Florida Constitution, such a special session may not exceed 20 consecutive days unless extended by a three-fifths vote of each house. During an extension of a special session, no new business can be taken up except by a two-thirds vote of each house. Finally, s. 11.011, F.S., provides that the President of the Senate and the Speaker of the House may by joint proclamation convene a special session.

Performance Based Program Budgeting

In 1994, the Legislature passed and the Governor signed into law Chapter 94-249, L.O.F., also known as the "Government Performance and Accountability Act" ("Act"). This Act implemented a system of performance based program budgeting ("PB²"), designed to balance the need for managerial flexibility with the need for highly informed legislative oversight. One of the Act's primary goals was to assist legislators in making informed decisions throughout the complex appropriations process by equipping them with information tools by which to gauge program results.

Section 216.011, F.S., defines a "program" as a "set of activities undertaken in accordance with a plan of action organized to realize identifiable goals and objectives based on legislative authorization." Pursuant to PB², every state agency must break down its activities into discrete programs. State agencies must work with the Executive Office of the Governor and the Legislature to establish a list of programs and to develop a set of performance measures and standards by which each program's success can be evaluated. Section 216.0172, F.S., provides a schedule for gradual transition to PB² for state government. Most state agencies will be required to submit performance based program budgets by the year 2002. By the time an agency becomes fully PB² compliant, its yearly budget requests will be accompanied by performance measurement data. The Legislature may then utilize this information at its discretion in making funding decisions.

B. EFFECT OF PROPOSED CHANGES:

If approved by the electors of the state, this resolution would constitutionally require the Legislature to devote each odd-numbered session to preparing a budget and to the monitoring and evaluation of state program performance and effectiveness. This resolution requires that special program review emphasis be given to those programs that have "become fully operational with performance budgeting as provided by general law."

This resolution requires the Legislature to limit, by general law, the introduction of bills on subjects other than those regarding preparation of a budget or those regarding state program monitoring or evaluation. HJR 999 limits the introduction of bills during odd-numbered year sessions unless the bill meets a two-part test. First, the bill must be necessary to respond to specific threat to the public health, safety, and welfare. Second, the bill must address a threat such that a delay in legislative response would result in an unreasonable risk of death or harm to persons or damage to property.

Proponents of HJR 999 believe that its adoption would enhance legislative participation in the funding process. Because elections occur in even-numbered years, Legislators would have the opportunity to spend the first half of their term in office monitoring state programs and evaluating whether or not these programs are meeting legislative goals and objectives. Proponents of this resolution may point out that such odd-numbered year sessions may allow new Legislators to spend time familiarizing themselves with the wide array of state programs and the complex issues surrounding the funding of these programs. This may prove particularly beneficial in light of term limits.

This resolution would also require legislators to focus special attention on those programs for which PB² data is available. Thus, (theoretically) the most scrutiny would be given to programs for which the most helpful performance data is available.

This resolution restricts the introduction of bills during the regular sessions of odd-numbered years, but the scope of this restriction is unclear. This resolution calls for a general law limiting the introduction of bills which do not concern the budget, program monitoring, or program evaluation. Few bills, aside from an appropriations bill, will fall under these three categories. Program monitoring and evaluation can typically be accomplished without introducing a bill. It is not certain whether this resolution would preclude Legislators from introducing bills that establish, abolish, or alter programs as a result of the monitoring and evaluation process.

During odd-numbered regular sessions, a Legislator could introduce a bill that addresses a specific threat to public health, safety, and welfare where a delay in legislative response would result in an unreasonable risk of death or harm to persons or damage to property (see Comments section of this analysis).

HJR 999 does not affect the convening of special sessions. Presumably, the Governor or legislative leadership could convene a special session in order to conduct business, during odd-numbered years, which does not meet the requirements for business conducted during regular sessions. Other states which have passed measures similar to HJR 999 have seen an increase in the use of special sessions during budget-year

sessions (see Comments). It is uncertain whether Florida would experience such a phenomenon.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Indeterminate. The Legislature's ability to impose new restrictions as well as remove existing restrictions on individuals or private organizations would be limited in odd-numbered year regular sessions.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. Legislators would no longer be permitted to introduce bills on certain subject matter during regular sessions in odd-numbered years.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

HJR 999 may enhance the scrutiny given to state program funding, especially during odd-numbered regular sessions. However, it is uncertain whether or not certain programs will receive more or less funding as a result of this enhanced scrutiny. Likewise, the purpose of PB² is to place enhanced information tools in the hands of decision makers -- not to suggest specific shifts in state funding. This resolution could indirectly lead legislators to make different funding decisions based on performance measures, but the exact character of these decisions cannot be accurately predicted in advance.

Additionally, it is not clear whether this resolution would allow bills on taxation to be considered during odd-numbered year sessions as a part of devoting odd-numbered year regular sessions to "preparing a budget."

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This resolution does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This resolution does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This resolution does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Remaining Issues/Questions:

It is uncertain who would make the crucial determination as to whether a bill meets the "legislative necessity" test. Significant opportunity could exist for legislators to assert that their bill meets the test because many issues may intuitively fall within the category outlined by the test. HJR 999 does not specify whether the House or Senate leadership, or the

Governor may determine whether or not a proposed bill meets the test. Additionally, this resolution does not address the criteria that would be used to determine whether a bill meets the test for introduction in an odd-numbered year regular session. Presumably, the Legislature would provide these criteria by general law.

The operational character of the Legislature would most likely undergo a significant change upon adoption of this resolution. During odd-numbered year sessions, Legislators may begin to introduce more provisos and amendments to the appropriations bills because Legislators will not be permitted to introduce substantive bills on most subjects. During even-numbered year sessions, there could be a substantial increase in substantive bills filed (see discussion of Louisiana's experience below, for a contrary view) . Term limits may exacerbate these effects.

Although this resolution contemplates a biennial budgeting process, HJR 999 does not expressly provide for such a process. One interpretation of HJR 999 might be that it only requires a special emphasis on the budget during odd-numbered year regular sessions, but that some sort of budget process may also be conducted during even-numbered year regular sessions. Another interpretation might be that HJR 999 implies a shift from annual to biennial budgeting. A full exploration of biennial budgeting is beyond the scope of this analysis, but some additional issues do arise. For example, forecasting of both revenues and expenditures may become more difficult under a biennial budgeting system. See Ronald K. Snell, "Annual and Biennial Budgeting: The Experience of State Governments," National Conference of State Legislatures, for a more in-depth discussion of biennial budgeting issues (on file with the Committee on Governmental Operations).

Experience in Other States

Limited Sessions

Six states currently limit one year of every two year term to the introduction of specific types of legislation: Connecticut, Louisiana, Maine, New Mexico, North Carolina, and Wyoming (phone conversation with Brenda Erickson, Program Principal, National Conference of State Legislatures, March 24, 1997).

Louisiana is the only state that has, by constitutional amendment, limited its Legislature's ability to hear bills during odd-numbered year regular sessions, except for bills on appropriations, budgets, taxes, or bond issuance (phone conversation with Robert Keaton, Chief Budget Analyst, Louisiana Senate Fiscal Services, March 25, 1997). This amendment has resulted in several unforeseen effects. Foremost among these changes is a slight enhancement of Executive power (*Id.*). Louisiana's Governor has called numerous special sessions by proclamation during odd-numbered years to address certain issues (*Id.*). In Louisiana, like in Florida, the subject matter of bills heard in a special session may only address the purposes contained in the proclamation. Following the adoption of the amendment, Louisiana reduced the odd-numbered year regular session to 30 days rather than 60 days. However, the frequent special sessions have drawn out the total time the Legislature is in session during odd-numbered years -- so that the Legislature meets just as long during odd-numbered years (*Id.*).

Another consequence of the Louisiana amendment has been heightened Legislator frustration (*Id.*). Many Legislators have expressed a desire to introduce substantive bills

during the **first** year of their term in order to establish constituents' confidence -- then deal with the budget in even-numbered years (note: Unlike HJR 999, Louisiana's amendment has no provision for limited introduction of substantive bills during an odd-numbered year regular session) (*Id.*).

Louisiana legislative staff indicate that the amendment has resulted in neither an increase of appropriations proviso or amendment bills in odd-numbered year sessions nor a substantial increase in substantive bills during even-numbered year sessions (*Id.*). Staff attributes this to the fact that most Louisiana Legislators are not long-time incumbents, and that most freshman Louisiana Legislators have narrow legislative priorities (*Id.*).

Wyoming has also limited, by general law, every other year's session to budget bills (phone conversation with Brenda Erickson, Program Principal, National Conference of State Legislatures, March 24, 1997). However, Wyoming has achieved greater flexibility by allowing substantive, non-budget bills to be introduced upon a 2/3 vote by the house where the bill is introduced (*Id.*).

Biennial Budgeting

Connecticut is the state that most recently changed to a biennial budget process where every other legislative session is devoted to developing a two-year budget. Connecticut leaders have experienced some disappointment with the transition because there remains considerable pressure to address substantive non-fiscal issues during the budget session (phone conversation with Corina Eckl, Fiscal Program Director, National Conference of State Legislatures, March 24, 1997). Legislators have also found it difficult to make the transition to a fiscal custodial role rather than a traditional legislative role during the budget session (*Id.*).

The Arizona Legislature has recently instituted "hybrid" biennial budgeting whereby 88 state agencies are funded biennially while the 14 largest agencies, which receive 95% of total appropriations, are still funded annually (see "Summary of Recommendations and Economic and Revenue Forecast, Proposed Budget FY 1996 and FY 1997," Arizona Joint Legislative Budget Committee). In conjunction with performance based budgeting, Arizona hopes to increase the quality of legislative decision making with regard to funding decisions while maintaining the flexibility of annual review for the state's major agencies (*Id.*).

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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