

STORAGE NAME: h0027.go

DATE: October 4, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 27

RELATING TO: Legislative Projects/Funding

SPONSOR(S): Representative Merchant and others

TIED BILL(S): HB 37

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

- (1) GOVERNMENTAL OPERATIONS
 - (2) GENERAL APPROPRIATIONS
 - (3) RULES & CALENDAR
 - (4)
 - (5)
-

I. SUMMARY:

HB 27 substantially changes the process by which the Legislature appropriates money for member projects. It provides that any member project that is not recommended by an agency or the Governor must have a public hearing in both chambers and must meet four of eight criteria in order to be funded by the Legislature. The eight criteria are: (1) overall public benefit, (2) overall statewide benefit, (3) overall fiscal benefit, (4) objective evaluation, (5) competition, (6) partnership, (7) performance, and (8) consistent treatment of beneficiaries. Projects which do not meet these criteria may be funded as an exceptional project under the provisions of the tied bill, HB 37, which creates a trust fund for exceptional projects.

The statutory requirements in the bill as to how the legislature approves certain projects raise serious constitutional concerns over the ultimate effectiveness of the bill. Generally, earlier enacted limitations cannot restrict subsequent legislative general appropriations, and only provisions of the Florida constitution can restrict the power of the Legislature to appropriate money.

HB 27 is contingent upon passage of the tied bill, HB 37, which creates a trust fund for "exceptional projects" that do not meet the criteria above, but that are determined by the legislature to be essential.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Legislative appropriations process

Article VII, Sec. 3(c), Fla. Const., grants the Legislature broad power to appropriate money for the expenses of the state: "No money shall be drawn from the treasury except in pursuance of appropriation made by law." Chapter 216, F.S., provides the general timeline for the legislative appropriations process. By June 15 the Legislature will distribute its legislative budget request instructions (jointly prepared by the appropriation committees of the Legislature and the Executive Office of the Governor) to all state agencies and to the judicial branch. By August 1 of each year, the agencies must submit a preliminary budget request to the Governor, who will review it for technical compliance with the legislative budget request instructions. By September 1 of each year, "the head of each state agency shall submit a final legislative budget request to the Legislature and to the Governor, as chief budget officer of the state, . . . based on the agency's independent judgment of its needs." Sec. 216.023(1), F.S. The independent judgment is needed to distinguish the objective needs of the agency from the subjective needs of the agency as determined by the Governor later in the process. Each budget request shall contain, among other things, detailed information for the next fiscal year necessary for the Legislature and the Governor to evaluate the effectiveness and justification of the programs. Each agency and judicial branch may amend its final recommended budget request by transmitting an amended request to the Governor and Legislature. At least 45 days before the legislative session, the Governor shall furnish each legislator with a copy of the Governor's "recommended balanced budget for the state, based on the Governor's own conclusions and judgment" Sec. 216.162(1), F.S. This budget would implement the Governor's agenda for the state, reorganizing agencies, creating new programs and abolishing others.

The Legislature typically starts developing its committee recommendations in the months preceding session, when it holds committee meetings to consider member requests, review the agencies' budget requests, review the Governor's recommended budget, and develop proposed committee bills. "The review may allow for the opportunity to have information or testimony by [certain state officials] and the public regarding the proper level of funding for the agency in order to carry out its mission." Sec. 216.052(1), F.S. Each entity which requests an appropriation that was not included in the recommended budget request "may be allowed the opportunity to provide information or testimony to the appropriate subcommittee of each appropriation committee. Each such request must include a fiscal

note . . .” Sec. 216.052(3), F.S. Meetings of the legislative appropriations committees are open to the public. During session Members can offer floor amendments to the appropriations bills, which are frequently combined into a single General Appropriations Bill. Since the House and Senate versions do not match identically, the two chambers appoint a conference committee to resolve the differences and present a conference committee report, which cannot be amended on the floor. Under Art. III, sec. 19(d), Fla. Const., each chamber must wait 72 hours upon receipt of any general appropriations bill (or more likely the conference report) before voting on it for final passage. After enactment, the chairs of the legislative appropriations committees shall transmit to the Governor a Letter of Intent, which expresses a non-binding statement as to how the legislature thinks the appropriations should be spent.

If the Governor receives the appropriation bill during session, he or she has 7 days to review it and exercise a veto over the entire bill or specific line items; if the Governor receives it after session, he or she has 15 days. The Legislature may override any such veto by two-thirds vote at their next regular or special session.

Member projects and special projects are known as “turkeys” in Florida, and commonly known as “pork barrel” elsewhere. Strictly speaking, the term “turkey” does not suggest the project has questionable merit, but rather the agency did not originally include the project in its agency request, and a Member proposed its insertion into the appropriations bill. In common usage, however, “turkey” frequently suggests a project has questionable merit. As defined in *The Language of Lawmaking in Florida IV*:

Turkeys Bills to appropriate money for parks, monuments, and the like that have not been recommended by the department careerists for inclusion in the year’s program, but believed dear to the heart of some Member’s constituents. Some are added by floor amendment to the General Appropriations Bill and often knocked out in conference committee. . . . [As one Senate appropriation chairman said]: “What one person calls a turkey, another person sees as a necessity.”

Certain projects might not find their way into an agency request for several legitimate reasons: agencies may wish to not include a new project that is outside their initial needs-based budget request; the need for some projects may not be known until after agencies submit their budget requests; or the timeline for local approval of or application for a project may run well after the deadline for agencies to submit their requests. All the while, agencies recognize that the Legislature ultimately writes the annual budget, and may modify agency requests and supplement them with member projects.

Constitutional limitations on legislative appropriations

No constitutional requirements are placed on the justification for the funding of particular line items or particular member projects. However, the Florida Constitution provides several limitations on the form and subject of legislative appropriations in general, which include:

Art. III, Sec. 6 (limits every bill to a single subject, with that subject briefly expressed in the title, and with a specific enacting clause)

Art. III, Sec. 12 (“Appropriation bills.--Laws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject.”)

Art. III, Sec. 19(b)¹ (appropriation bills format -- requiring separate sections for each major program area, itemization of expenditures by purpose, and itemization of expenditures for each appropriation exceeding \$1 million)

Art. III, Sec. 19(f) (single subject rule for creation of trust funds)

In addition, the constitution provides certain limitations on the *process* of legislative appropriations, which include:

Art. III, Sec. 3 (sessions of the legislature)

Art. III, Sec. 4 (quorum and procedure of the legislature)

Art. III, Sec. 7 (passage of bills)

Art. III, Sec. 19(d) (requires a seventy-two hour public review period before final passage of all general appropriation bills)

The constitution further limits the process of legislative appropriations by providing for extraordinary super-majority votes on several significant subjects, which include: corporate income tax, creation of trust funds, and the override of a veto of a bill or a line-item appropriation.

Regarding appropriation bills specifically, the single-subject rule for general appropriation bills also means that proviso language cannot amend existing law on subjects other than appropriations, and that proviso language can restrict expenditures only if rationally related to the purpose of an expenditure. *Brown v. Firestone*, 382 So.2d 654 (Fla. 1980). Proviso language which breaks the line-item expenditure into smaller defined items with specific dollar amounts would constitute a specific appropriation subject to a veto. However, "where the proviso language does not identify a sum of money but merely specifies that some unidentified portion of the line item shall be used for particular purposes, the governor is not permitted to veto the language." *Florida Senate v. Harris*, No. 95,960 (Fla. Oct. 28, 1999).

The court interpreted the single-subject rule in *Thompson v. Graham*, 481 So.2d 1212 (Fla. 1985), when it upheld the veto of certain specific appropriations contained in a substantive bill which had \$500 million in education appropriations. The court treated the bill as a general appropriation bill subject to a line-item gubernatorial veto, rather than a substantive bill with "incidental" appropriations subject to an all-or-nothing veto. Concurring and dissenting opinions in *Thompson* suggested the bill violated the single-subject rule by mixing appropriations with substantive law. Subsequently in 1994, Art. III, Sec. 19(b), Fla. Const., was amended to provide for a line-item veto of specific appropriations contained in a substantive bill.

Under the doctrine of separation of powers, courts will not substitute their judgement for that of the legislature. "[The court] will only measure acts done with the yardstick of the Constitution. The propriety and wisdom of the legislation are exclusively matters for legislative determination." *In re Apportionment Law, Senate Joint Res. No. 1305*, 263 So.2d

¹According to the Division of Statutory Revision, the repeal of Art. III, Sec. 18 (pursuant to Revision No. 13, 1998, proposed by the Constitutional Revision Commission and adopted by the voters in November 1998, and effective January 5, 1999) does not remove the section, and therefore does not require the renumbering of the subsequent section.

797 (Fla. 1972). However, courts will hold the legislature accountable to the standards set out in the constitution that restrict the legislature's discretion to enact law. In *Halifax Hospital Medical Center v. News-Journal Corp.*, No. 92,047 (Fla. Jan. 21, 1999), the court struck down a public record exemption because the legislature attempted to exempt more information than was justified by the statement of public necessity, in violation of the "specificity" and "no broader than necessary" standards of Art. I, sec. 24(c), Fla. Const.

Statutory limitations on legislative appropriations

In a representative democracy, the legislature expresses the "will of the people" through enacting laws. Every legislature is of equal dignity with others; every legislature has the power to enact laws regardless of what a previous legislature has done. The legislative enactments of one legislature may not limit the enactments of future legislatures. "A legislature may not bind the hands of future legislatures," *Neu v. Miami Herald Pub. Co.*, 462 So.2d 821 (Fla. 1985). To allow such limits would place the earlier legislature in a superior position to subsequent legislatures, which would then find it difficult or impossible to enact laws on a certain subject or in a certain manner. Instead, when a new law conflicts with an old law, the new will supersede the old. "[W]e restate the fundamental rule of statutory construction . . . that the last expression of legislative will prevails." *Askew v. Schuster*, 331 So.2d 297 (Fla. 1976).

Regarding appropriation bills specifically, in *Thomas v. Askew*, 270 So.2d 707 (Fla. 1972), the supreme court considered a conflict regarding a specific appropriation in the 1972 General Appropriations Act for \$25 million for construction of a new capitol complex. The specific appropriation conflicted with a prior statute which limited the expenditure of such a complex to \$10 million. The court held:

[The earlier enacted limitations] cannot restrict subsequent legislative general appropriations. Only limiting provisions of the State Constitution . . . can have restrictive effects on the legislative power to appropriate. * * * [In appropriating the \$25 million], the Legislature expressly superseded Section 272.126's earlier requirement that the [complex] be reconstructed for no more than ten million dollars. Appellants' contention that the construction of a new capitol building is in conflict with Chapter 272, Florida Statutes, F.S.A., therefore, has no merit because, as noted, prior statutes cannot tie the hands of succeeding legislatures acting within their constitutional powers.

Through proviso language or by statute (frequently in the annual budget implementing law), the Legislature has the prerogative to restrict how agencies and other recipients can spend the money. Similarly, each successive Legislature has the prerogative to change statutory restrictions by law, or change annual proviso restrictions subject to the limitations in *Brown v. Firestone*.

Internal limitations on legislative appropriations

Each chamber of the legislature may provide limitations on its own process of legislative enactments through internal rules and policies. The constitution reinforces the doctrine of separation of powers by providing that: "Each house shall determine its rules of procedure." Art. II Sec. 4(a), Fla. Const. Each chamber typically adopts its rules at the organizational session immediately following a general election. Each chamber also provides that it can waive these rules by two-thirds vote. See, House Rule 158 and Senate Rule 11.2.

For example, the House restricts the appropriations process under several rules. Rule 80 requires a fiscal analysis to accompany every bill affecting revenues or expenditures upon favorable reporting by a fiscal standing committee. Rule 18 requires the Chair of the Fiscal Responsibility Council to chair the conference committee for a general appropriations bill. Rule 89 requires a vote for the acceptance or rejection of the entire conference committee report without amendment. Typically the House and Senate form a conference committee to hammer out disagreements over the final provisions of a bill, especially a general appropriations bill. Additionally, Rule 147(j) provides:

Whenever an amendment is offered to a General Appropriations Bill that would increase any line item of such bill, such amendment shall show the amount by line item of the increase and shall, from within the jurisdiction of the same fiscal standing committee, decrease a line item or items in an amount or amounts equivalent to or greater than the increase required by the amendment. Any floor amendment to the General Appropriations Bill that proposes to move spending authority between sections of the bill shall require a two-thirds vote of the Members present and voting.

However, failure to comply with these internal rules does not render the appropriation or legislation invalid. Under the separation of powers doctrine, Florida courts lack jurisdiction to hear such a challenge to the legislative action. "It is the final product of the legislature that is subject to review by the courts, not the internal procedures." *Moffitt v. Willis*, 459 So.2d 1018 (Fla. 1984). To ensure compliance with the rules, any member of the Legislature can raise a point of order regarding a potential violation of the rules.

The House further influences the appropriations process by policy in member project guidelines, as developed by House leadership.

- Past member project guidelines: Until recently, member project guidelines had few absolute restrictions -- instead the guidelines suggested that member projects "should" meet certain objective criteria. The guidelines did require that each project be presented by the member or legislative aide, or a committee member, and not by a lobbyist or interested party. The guidelines stressed that all member projects should be presented to, and considered by, the appropriate fiscal committee. The member should provide to the committee certain information regarding: the name of the project, the amount requested, a brief description, the intended recipient, matching funds, past funding, whether it was recommended by an agency or Governor in their proposals, and the reasons for funding. The guidelines reminded the members that the committee will ask questions regarding whether the project serves a state public purpose, whether it can be accomplished at the local level, whether it will be an incentive for local participation, whether it provides performance standards, and whether it deserves funding.
- New member project guidelines: The Chair of the Fiscal Responsibility Council released the new guidelines for Member Issue Process on October 14, 1999. It describes the three ways a member issue (project) may be considered by the legislature. The first is when the member issue is contained in an agency budget request. The second way is when the issue falls within a "legislative policy initiative":

The Legislature, with consultation from the Governor, will identify a set of policy initiatives which will be the focus of member issues in the 2000-2001 budget. * * *

These initiatives and associated funding allocations will be identified early in the process so that members can focus their requests appropriately. The Governor will include funds for these initiatives in his recommended budget.

When the initiatives are announced, any statutorily established restrictions or criteria will be reiterated. If there are no such restrictions or criteria, they will be developed.

In the Appropriations Act, each initiative will consist of a series of issues that meet the restrictions or criteria. Issues which meet the mutually agreed upon criteria will presumably not be vetoed.

Members may propose issues to be included as part of an initiative. Each issue must meet the appropriate criteria.

For initiatives for which there are established programs:

- Established guidelines or criteria will be applied.
- Issues ranked through an established process will be funded in rank order.
- After funding the approved list, other issues may be funded under the initiative if they meet the criteria.
- In those instances where there are statutorily established criteria and agencies have the delegated authority to distribute appropriations based upon those criteria or formula, issues will be subject to those criteria or formulas.

For initiatives for which there are no established guidelines or criteria, the Legislature, with consultation from the Governor, will create and implement the initiative through either agreement with the Governor, substantive legislation or proviso. Issues falling under such initiatives will be subject to those criteria. (Note: these initiatives presumably will change from year to year, so we may well choose not to set them permanently in statute or proviso.)

The third way is the traditional "member project," which does not meet the criteria above, and is, like all line-items, subject to a veto by the Governor.

The new House guidelines propose a deadline of January 31, 2000 for submission of requests to the appropriations committees. There will be no limit to the number of requests, and members will not be required to present the requests in person before the committees, "although members may be asked to answer questions or provide additional information." Finally, member issues which initially appear in conference without prior notice and review must be referred back to an appropriations committee for review.

Executive branch limitations on legislative appropriations

In keeping with the concepts of separation of powers and checks and balances among the three branches of government, the Florida constitution provides for an executive veto on the legislative prerogative in appropriating money. Article III, section 8(a), Fla. Const., provides:

Every bill passed by the legislature shall be presented to the governor for approval and shall become a law if the governor approves and signs it, or fails to veto it within seven consecutive days after presentation [or within fifteen days if after session]. . . . In all cases except general appropriation bills, the veto shall extend to the entire bill. The

governor may veto any specific appropriation in a general appropriation bill, but may not veto any qualification or restriction without also vetoing the appropriation to which it relates.

The governor can also veto specific appropriations contained in substantive bills without vetoing the entire bill. Art. III, Sec. 19(b), Fla. Const.

In May 1999, Gov. Bush vetoed over \$300 million of line-item projects from the FY1999-2000 appropriations bill. The press release issued on the day he signed the budget outlined the criteria he used for evaluating funding for special (member) projects:

- First, whether the project had an overall statewide benefit, as opposed to benefitting just one or a few select localities.
- Second, whether the project possessed an overall public benefit to help the public at-large rather than narrowly defined special interests.
- Third, whether the project went through an already-established objective, competitive review process.
- And finally, whether there were any technical problems with funding a particular project such as using an inappropriate source of funding, or using an inappropriate agency for the funding.

The press release quoted the Governor, "The failure of a particular special project to meet the review criteria does not necessarily reflect the merit of that expenditure. Indeed, many special spending projects that were vetoed may be worthwhile; however when weighed against the pressing needs of our state, they become much harder to justify."

On August 28, 1999, Gov. Bush announced a new budget and planning process for FY 2000-2001, which includes new standards for all spending proposals, including member projects:

1. Member projects proposed for funding must fall within the statewide policy priorities established by the Governor and the Legislature.
2. Items proposed for funding should fall within the overall spending limits established by the Legislature in consultation with the Governor.
3. Member projects should only be funded with nonrecurring dollars.
4. Items should not have large or unidentified costs in the years after the budget year under consideration.
5. Items should not contain specific directives to the agencies specifying to whom they must award new contracts in order to accomplish policy objectives.
6. Member projects that propose to tap into state trust fund money should be financed only through a trust fund directly related to the policy or program that the member project is meant to aid.
7. An item should only be funded within the entity (agency, division, etc.) with the greatest policy expertise to implement or oversee the item.

On October 6, 1999, the Governor announced a review process for the funding of water projects, which will also "lay the groundwork for review processes in other important areas." According to the proposed process, the Governor and Legislature will agree on threshold criteria for projects, applicants will submit applications to an advisory panel composed of persons appointed by the Governor and Legislature, certain state agencies will provide technical assistance to the panel to determine which applicants meet the criteria, the panel will prepare a list of qualified applicants and send it to the Legislature by February 15, the Legislature will review the list and select projects for funding, and the Legislature will fund

multiple-year projects according to a five-year plan. Presumably the Governor will not veto a project which comports with the new evaluation criteria.

Senate Interim Project Report 2000-40

In September 1999, the Senate Committee on Fiscal Policy issued an interim project report regarding member projects, entitled "Improving the Quality and Efficiency of the Member Project Process." The following is the summary:

A fundamental aspect of representative democracy is the right of citizens to bring their concerns to their elected representatives with the expectation that those concerns will receive attention and, when appropriate, redress. Many concerns voiced by the electorate involve unmet funding needs that, in their view, require the application of state revenue. Some of those needs are recognized by state agencies that include funding for them in their Legislative Budget Requests. Others, however, are not recognized or addressed by state agencies, for reasons that may have little to do with their significance to local citizens. When this occurs, the vehicle available to members of the Legislature is the member project budgeting process.

Senators view the member project process as an appropriate mechanism for addressing local needs in the state budget and that needs identified through this process are as valid as those identified by state agencies. However, this view of member projects is not reflected in the media or through public opinion polls. To change public perception that all member project requests, irrespective of public benefit, are "turkeys," the Legislature will need to redesign its approach and strategy for addressing priority local budget needs.

A survey was conducted of Senators, district staff and staff of the Senate's Budget and Fiscal Policy Committees to gather information upon which to base recommendations for change in the definition, application form, criteria, analysis process, tracking and reporting systems, and review procedures for member projects. Through the survey, Senators and staff indicated the following:

- Member projects should be local or regional in scope, but should be based on need and linked to a statewide interest.
- In making member project funding decisions, the Legislature should determine if the project would meet a documented need, provide a public benefit, protect the state's investment and produce measurable results.
- Member projects that address a priority statewide interest and meet established criteria should be subjected to the same budgeting strategy as similar projects submitted by executive or judicial branch agencies.
- The application form should be simplified and redesigned for completion and transmission electronically.
- Members should present their priority projects in public hearings before legislative committees.
- To the greatest extent possible, the Senate and House should use the same definition, application form and tracking process for member projects. Coordination with the Governor on project criteria might be useful to reduce the magnitude of future veto actions.

C. EFFECT OF PROPOSED CHANGES:

HB 27 provides that any member project that is not recommended by an agency or the Governor must have a public hearing in both chambers and must meet four of eight criteria in order to be funded by the Legislature. The eight criteria are: (1) overall public benefit, (2) overall statewide benefit, (3) overall fiscal benefit, (4) objective evaluation, (5) competition, (6) partnership, (7) performance, and (8) consistent treatment of beneficiaries. Projects which do not meet these criteria may be funded as an "exceptional project" under the provisions of the tied bill, HB 37, which creates a trust fund for exceptional projects.

HB 27 is contingent upon passage of the tied bill, HB 37, which creates a trust fund for certain legislative projects which do not meet the requirements above, but which are determined by the legislature to be essential.

D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. To the extent that member projects fail to meet the criteria set out in the bill, and fail to receive funding by the legislature, state expenditures will be reduced. To the extent the legislature ignores the criteria and funds the member projects regardless, state expenditures will either increase or not be affected. To the extent that members of the legislature succeed in getting their special projects included in an agency budget request, state expenditures will either increase or not be affected. And finally, to the extent that the Governor vetoes member projects that fail to meet his separate criteria for evaluating them, state expenditures will be reduced regardless of this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. To the extent that special projects requested by local governments fail to meet the criteria set out in the bill, and fail to receive funding by the legislature, local revenues will be reduced.

2. Expenditures:

Indeterminate. While the lack of funding from the state appropriation process has no effect on the overall cost of a particular project, it does impact the share borne by local governments, especially where local governments rely on member projects for funding. To the extent that special projects requested by local governments fail to meet the

criteria set out in the bill, and fail to receive funding by the legislature, local expenditures will increase if they go forward with the projects.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. To the extent that special projects requested by private entities fail to meet the criteria set out in the bill, and fail to receive funding by the legislature, certain private sector entities, especially non-profit social service providers which rely on special project funding, will have less revenue to continue providing the same level of services.

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that cities or counties have to raise revenues in the aggregate.

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

The bill does not reduce the percentage of a state tax shared with counties or cities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The Florida Supreme Court opinion in *Thomas v. Askew*, as discussed in the "PRESENT SITUATION" section, raises a serious concern that the bill could not require the legislature to hold any hearings on member projects not recommended by an agency, and could not require the legislature to determine if such a member project met any objective criteria. To repeat the quote:

[The earlier enacted limitations] cannot restrict subsequent legislative general appropriations. Only limiting provisions of the State Constitution . . . can have restrictive effects on the legislative power to appropriate. * * * [In appropriating the \$25 million], the Legislature expressly superseded Section 272.126's earlier requirement that the [complex] be reconstructed for no more than ten million dollars. Appellants' contention that the construction of a new capitol building is in conflict with Chapter 272, Florida Statutes, F.S.A., therefore, has no merit because, as noted, prior statutes cannot tie the hands of succeeding legislatures acting within their constitutional powers.

Please note that in *Brown v. Firestone*, the court attempted (in a footnote) to reconcile that opinion with some uncited "overly broad language" of *Thomas v. Askew* regarding the latitude of the legislature to appropriate state funds. The court favorably quoted *In re Advisory Opinion to the Governor*, 239 So.2d 1 (Fla. 1970), that a general appropriations bill may make "allocations of State funds for a previously authorized purpose in amounts different from those previously allocated," which the court harmonized with an unstated yet more narrow holding of *Thomas v. Askew*. The court then disapproved of any language in it that could not be reconciled with its decision, but did not overrule it.

Alternatively, if the courts determine that statutory restrictions **can** bind subsequent legislatures, then courts would have jurisdiction to monitor the Legislature's compliance with the formal requirements of the public hearings and criteria. Every member project would be subject to legal challenge, and disputes would arise over the sufficiency of the evidence and the "findings" by the Legislature that a project legitimately met four out of the eight criteria. It is unknown what deference, if any, a reviewing court would give to such subjective determinations by the members of the Legislature as to what constitutes "substantial factual evidence," "significant factual evidence," "properly evaluated" or "significant benefit." It is also unknown how the Legislature must designate which four criteria the member project met.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Staff Director:

Douglas Pile

Jimmy O. Helms