

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1123 CS Government Accountability
SPONSOR(S): Sansom and others
TIED BILLS: HB 1125 **IDEN./SIM. BILLS:** SB 2460

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	<u>5 Y, 2 N, w/CS</u>	<u>Mitchell</u>	<u>Williamson</u>
2) <u>Fiscal Council</u>	<u>16 Y, 2 N, w/CS</u>	<u>Belcher</u>	<u>Kelly</u>
3) <u>State Administration Council</u>	<u>7 Y, 2 N, w/CS</u>	<u>Mitchell</u>	<u>Bussey</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill creates the Florida Government Accountability Act. The bill provides definitions, establishes the Legislative Sunset Advisory Committee, provides the membership and organization of the Legislative Sunset Advisory Committee, creates a schedule to abolish state agencies and advisory committees, requires reports and assistance from agencies and the Office of Program Policy Analysis and Government Accountability, sets criteria for review, provides responsibilities for the Legislative Sunset Advisory Committee, authorizes subpoenas, provides for the abolition and continuation of state agencies and advisory committees, creates procedures after termination, requires review and monitoring, provides a savings clause, and provides additional requirements for agency legislative budget requests including a recommended cost-allocation methodology.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill provides a schedule to abolish state agencies, examining and licensing boards, councils, advisory councils, committees, task forces, coordinating councils, commissions or boards of trustees. This bill creates a legislative committee to review these entities and report its findings and recommendations.

B. EFFECT OF PROPOSED CHANGES:

The Florida Legislature previously abolished boards, committees, commissions, councils, and agencies, as well as regulations of businesses and professions, pursuant to a schedule and subject to legislative review.

Regulatory Reform Act of 1976/Regulatory Sunset Act

In enacting the Regulatory Reform Act of 1976, the Florida Legislature set forth a schedule to repeal provisions of law that regulated professions, occupations, businesses, or industries.¹ Codified as sections 11.61 and 11.6105, Florida Statutes, the Regulatory Reform Act of 1976 established criteria for the Legislature to consider in determining whether to reestablish a program or function and also provided for the appointment of a select joint committee to assist in implementation.

In 1981, the Regulatory Reform Act of 1976 was substantially reworded and changed to the Regulatory Sunset Act.² The Regulatory Sunset Act required each appropriate substantive committee to review programs and functions 15 months prior to the date set for repeal and to make a recommendation regarding continuation, modification, or repeal.

The Legislature repealed the Regulatory Sunset Act in 1991.³

Sundown Act

Section 11.611, Florida Statutes, was previously the Sundown Act.⁴ The Sundown Act, enacted in 1978, originally provided for the 1979 repeal of boards, committees, commissions, and councils which had not held a meeting after January 1, 1975.⁵ The Sundown Act also provided for the 1982 repeal of all other boards, committees, commissions, and councils.⁶ The Sundown Act required the Legislature to review these boards, committees, councils, and commissions to determine if any should be reestablished for the public interest.⁷ The Sundown Act prohibited boards, committees, commissions, and councils from being established for more than six years.⁸

The Sundown Act was substantially reworded in 1982.⁹ The revised Sundown Act contained criteria for the Legislature to consider in determining whether to reestablish an advisory body, commission, or

¹ Ch. 76-318, Laws of Fla.; additional programs and functions added by ch. 77-457, Laws of Fla.

² Ch. 81-318, Laws of Fla.

³ Ch. 91-429, Laws of Fla. § 4 (to take effect on the day following the day of adjournment sine die of the 1993 regular session of the Legislature). See also ch. 96-318, Laws of Fla., § 33.

⁴ Section 11.6115, Florida Statutes, codified additional provisions related to the Sundown Act.

⁵ Ch. 78-323, Laws of Fla.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Ch. 82-46, Laws of Fla.

board of trustees. The revised Sundown Act also set forth a revised schedule for abolishment and review.

The Legislature repealed the Sundown Act in 1991.¹⁰

Explanation for the Previous Repeal of the Sunset and Sundown Acts

The bill analysis from the repeal of the Regulatory Sunset and Sundown Acts provides the following explanation for their repeal:

“This committee [Senate Committee on Governmental Operations] first studied the Regulatory Sunset Act and the Sundown Act in 1988. At that time, the committee was directed to assess the laws and their implementation, and to evaluate their accomplishments. The 1988 report considered the overall costs and benefits of the review process of entities subject to repeal under the Sunset and Sundown laws. As well, the prior report identified high tangible costs associated with Sunset and Sundown reviews. The benefits of the laws, while generally acknowledged by both legislative and executive agency staff, were found to be intangible, and therefore difficult to quantify.

The review of the Sunset and Sundown laws revealed that approximately 240 Sunset reviews have occurred between 1977 and 1991. Since then, an estimated 20 regulatory laws have been repealed, and 50 new ones have been created.

There have been approximately 280 Sundown reviews conducted since 1978. Ninety advisory bodies have been repealed since 1978, and an estimated 150 have been created. Of the 90 advisory bodies that have been repealed, 9 were repealed in 1978 without prior reviews, as the law provided, because they have not met in the 5 years prior to the passage of the Sundown Act.

Staff’s review found that Sunset reviews are usually more complicated and time-consuming than Sundown reviews. This is due to the technical nature of many laws which regulate professions and industries.

Based on the 1991 review of these laws, and the data available to measure the costs of the reviews, it was concluded that the costs are high. The review also finds, however, that some benefits of the laws are recognized by legislative and agency staff because the laws serve as one mechanism for oversight of executive branch entities. The benefits, which are intangible, are difficult to quantify, while the costs of implementing the laws are very real, and are thus much easier to measure.

The 1991 interim project further indicates that the initial reviews conducted of Sunset and Sundown entities are generally perceived to be more useful, in terms of the substantive results they yield, than are second and other subsequent reviews. Further, although the results of second and other subsequent reviews are generally less substantive, such subsequent reviews require the same amount of time (i.e., 525 analyst-hours for Sunset reviews and 152 analyst-hours for Sundown reviews) as do first-time Sunset and Sundown reviews. The amount of time required of executive agency staff and of legislators is also the same for second and subsequent reviews, even though the benefits gained from the reviews appear to be far less than are those gained in first-time reviews. The review also found that, in 1987, many second-cycle Sunset and Sundown reviews began. This means that many of the reviews conducted since 1987 have been second or third-time reviews for Sunset and Sundown entities.

¹⁰ Ch. 91-429, Laws of Fla. § 5 (to take effect on the day following the day of adjournment sine die of the 1993 regular session of the Legislature). See also ch. 96-318, Laws of Fla., § 33.

The findings of this review also suggest that general oversight by legislative staff of executive agencies and of the statutes which govern them has decreased as staff has been required to perform an increasing number of Sunset and Sundown reviews assigned by law. Since general oversight responsibilities are of a more discretionary nature, reviews which are required by statute necessarily take precedence over projects which are discretionary.”¹¹

This bill analysis recognizes the value of the review process, particularly the initial review. The bill analysis also specifies the staff effort required to perform the analysis and reviews for sunset and sundown.

Florida Government Accountability Act

HB 1123 creates the Florida Government Accountability Act. The bill recreates chapter 21, Florida Statutes,¹² provides definitions, establishes the Legislative Sunset Advisory Committee, provides the membership and organization of the Legislative Sunset Advisory Committee, creates a schedule to abolish state agencies and advisory committees, requires reports and assistance from agencies, the Auditor General and the Office of Program Policy Analysis and Government Accountability, sets criteria for review, provides responsibilities for the Legislative Sunset Advisory Committee, authorizes subpoenas, provides for abolition and continuation, creates procedures after termination, requires review and monitoring, provides a savings clause, and provides additional requirements for agency legislative budget requests including a recommended cost-allocation methodology.

Definitions

The bill provides definitions for “state agency” and “agency”. This definition not only includes departments,¹³ but also any other administrative unit of state government scheduled for termination and prior review under the Florida Government Accountability Act.

The bill defines “committee” as the Legislative Sunset Advisory Committee.

The bill defines “advisory committee” as “any examining and licensing board, council, advisory council, committee, task force, coordinating council, commission, or board of trustees.”¹⁴ Advisory committee also includes “any group, by whatever name, created to provide advice or recommendations to one or more agencies, departments, divisions, bureaus, boards, sections, or other units or entities of state government.”

Legislative Sunset Advisory Committee: Membership

The bill creates the Legislative Sunset Advisory Committee (“LSAC”) with the following composition:

- Five members of the Senate;
- One public member appointed by the President of the Senate;
- Five members of the Florida House of Representatives; and
- One public member appointed by the Speaker of the House of Representatives.

The bill contains several other provisions related to appointment:

- (1) Each appointing authority is permitted to designate himself or herself as one of the legislative appointees;
- (2) If a legislative member ceases to be a member of the house from which he or she was appointed, the member vacates his or her membership on the committee; and

¹¹ Fla. S. Comm. on Gov. Over., SB 28-D (1991) Staff Analysis (Dec. 11, 1991) (on file with comm.).

¹² Chapter 21, Florida Statutes, previously contained provisions related to the State Auditing Department. Most of the provisions were repealed pursuant to chapters 69-82 and 69-106, Laws of Florida.

¹³ Fla. Stat. 20.03(2)

¹⁴ The bill references the definitions in sections 20.03(3), (7), (8), (9), (10), or (12), Florida Statutes.

(3) If a vacancy occurs, the appropriate appointing authority shall appoint a person to serve for the remainder of the unexpired term in the same manner as the original appointment.

Each member serves a term of two years and a public member may not serve more than two consecutive two-year terms. The bill further provides that a member is considered to have served a term only if the member has served more than half a term. The bill prohibits an individual from serving as the public member if he or she is regulated by a state agency that the LSAC will review during the term for which the individual would serve or if he or she is employed by, participates in the management of, or directly or indirectly has more than a 10-percent interest in a business entity or other organization regulated by a state agency the LSAC will review during the term for which the individual would serve. The bill makes it grounds for removal to not meet these eligibility criteria, but not impacting the validity of any action taken by the LSAC if a ground for removal existed.

LSAC: Organization

The bill requires initial appointments to be made no later than November 30, 2006, and subsequent appointments shall be made not later than January 15 of the year following each organization session of the Legislature.

The bill provides that the LSAC will have a chair and vice chair, each from a different chamber, that alternates each year between the Senate and the House. A Senate appointee serves as chair during odd-numbered years and as vice-chair during even-numbered years. A House appointee serves as chair during even-numbered years and as vice-chair during odd-numbered years.

The bill sets a quorum for the LSAC as seven members and requires a recorded vote of seven for a final action or recommendation.

The bill permits each member of the LSAC to be reimbursed for actual and necessary expenses incurred in performing LSAC duties. Reimbursement for legislative members coming from the appointing chamber and reimbursement for public members coming from LSAC funds.

The bill allows each chamber to employ staff to work for the chair and vice chair on matters related to LSAC activities.

Schedule to Abolish State Agencies/Advisory Committees

The bill provides a schedule to abolish certain state agencies and their advisory committees. The bill also provides that the President of the Senate and the Speaker of the House of Representatives may alter the schedule by moving agencies between review years.

2008	2009	2010	2011
Advisory committees for the Fish and Wildlife Conservation Commission	Department of Children and Family Services	Advisory committees for the Florida Community College System	Agency for Health Care Administration
Department of Agriculture and Consumer Services	Department of Community Affairs	Advisory committees for the State University System	Agency for Persons with Disabilities
Department of Citrus, including the Citrus Commission	Department of Management Services	Agency for Workforce Innovation	Department of Elderly Affairs
Department of Environmental Protection	Department of State	Department of Education	Department of Health

2008	2009	2010	2011
Department of Highway Safety and Motor Vehicles		Department of the Lottery	
Water management districts.			

2012	2013	2014	2015
Department of Business and Professional Regulation	Advisory committees for the State Board of Administration	Department of Corrections	Executive Office of the Governor
Department of Transportation	Department of Financial Services, including the Financial Services Commission	Department of Juvenile Justice	Florida Public Service Commission
Department of Veterans' Affairs	Department of Revenue	Department of Law Enforcement	
		Department of Legal Affairs	
		Justice Administrative Commission	
		Parole Commission	

Agency and Advisory Committee Reports and Requests for Assistance

Based on this schedule, the bill requires agencies and their advisory committees to report to the LSAC not later than January 1st of the year preceding abolition of the agency. The agency must address the specified review criteria, provide any other appropriate or requested information, and have all data and information provided in the report validated by the agency's inspector general.

The agency shall report:

- (1) A list of agency programs and activities;
- (2) 3 years of performance measures for each program and activity;
- (3) List and describe the factors for the agency's success and failure in meeting its performance measures;
- (4) The promptness and effectiveness with which the agency addresses complaints from individuals;
- (5) The extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency;
- (6) The extent to which the agency has complied with applicable requirements of an agency of the Federal Government or of this state regarding equality of employment opportunity and the rights and privacy of individuals; or state law and applicable rules of any state agency regarding purchasing goals and programs for historically underutilized businesses;
- (7) An identification of the objectives intended for the agency or advisory committee and the problem or need that the agency or advisory committee was intended to address, the extent to which the objectives have been achieved, and any activities of the agency in addition to those granted by statute and the authority for these activities;
- (8) The extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies and the extent to which the programs

- administered by the agency can be consolidated with the programs of other state agencies;
- (9) An assessment of less restrictive or alternative methods of providing any regulatory function for which the agency is responsible while adequately protecting the public;
 - (10) The extent to which the agency has corrected deficiencies and implemented recommendations identified by the Auditor General, the Office of Program Policy Analysis and Government Accountability, legislative interim reports, and federal audits;
 - (11) The extent to which the agency addresses potential conflicts of interest of its employees;
 - (12) The extent to which the agency complies with public records and public meeting requirements and timeliness of response to public information requests;
 - (13) The extent to which alternative delivery options have been investigated;
 - (14) Recommendations to the Legislature for statutory or budgetary changes to improve operations or reduce costs;
 - (15) The effect of federal intervention or loss of federal funds if the agency is abolished;
 - (16) The extent to which the advisory committee is needed and is used; and
 - (17) Other information deemed necessary by the committee.

The bill allows the LSAC to request the assistance of state agencies and officers. The committee and staff may inspect the records, documents, and files of any state agency.

Review Criteria

The bill requires agencies and advisory committees to address, and the LSAC to consider, seventeen criteria for determining whether a public need exists for the continuation of a state agency or its advisory committees or the performance of the functions of the agency or its advisory committees.

These are the review criteria:

- (1) The extent to which the agency complies with accountability measures according to the Auditor General, the Office of Program Policy Analysis and Government Accountability, and the Office of Policy and Budget.
- (2) The efficiency with which the agency or advisory committee operates.
- (3) An identification of the objectives intended for the agency or advisory committee and the problem or need that the agency or advisory committee was intended to address, the extent to which the objectives have been achieved, and any activities of the agency in addition to those granted by statute and the authority for these activities.
- (4) An assessment of less restrictive or alternative methods of providing any regulatory function for which the agency is responsible while adequately protecting the public.
- (5) The extent to which the advisory committee is needed and is used.
- (6) The extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies and the extent to which the programs administered by the agency can be consolidated with the programs of other state agencies.
- (7) Whether the agency has recommended to the Legislature statutory changes calculated to be of benefit to the public rather than to an occupation, business, or institution that the agency regulates.
- (8) The promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.
- (9) The extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.
- (10) The extent to which the agency has complied with applicable requirements of an agency of the Federal Government or of this state regarding equality of employment opportunity and the rights and privacy of individuals; or state law and applicable rules of any state agency regarding purchasing goals and programs for historically underutilized businesses.
- (11) The extent to which changes are necessary in the enabling statutes of the agency so that the agency can adequately comply with the criteria listed in this section.

- (12) The extent to which the agency issues and enforces rules relating to potential conflicts of interest of its employees.
- (13) The extent to which the agency complies with public records and public meetings requirements under chapters 119 and 287, Florida Statutes, and section 24, Article I of the Florida Constitution and follows records management practices that enable the agency to respond efficiently to requests for public information.
- (14) The extent to which the agency budget reports are transparent.
- (15) The extent to which the agency accurately reports on performance measures to justify spending.
- (16) The effect of federal intervention or loss of federal funds if the agency is abolished.
- (17) Whether any advisory committee or any other part of the agency exercises its powers and duties independently of the direct supervision of the agency head in violation of section 6, Article IV of the Florida Constitution.

Office of Program Policy Analysis and Government Accountability (OPPAGA) Responsibilities

OPPAGA must conduct a comprehensive program evaluation and justification review of each agency and advisory committees under review for abolition. OPPAGA also must review the information provided by the agency and any other information deemed necessary by the committee. By October 31st of the year in which the agency submitted its report, OPPAGA must provide its own report to the LSAC including recommendations.

LSAC Responsibilities

The bill creates several responsibilities for the LSAC which must be completed by March 1st of each year.

Review. The LSAC is required to review the agency and OPPAGA reports.

Consultation. The LSAC must consult with the Legislative Budget Commission, the Planning and Budgeting Office in the Executive Office of the Governor, the Auditor General, and the Chief Financial Officer, or their successors, on the application of these criteria to the agencies and its advisory committees.

Public Hearings. The LSAC must complete all public hearings concerning the application of these criteria to the agency and its advisory committees. The scope of the public hearings is not limited to this criteria

Report. The LSAC must report its specific findings regarding these criteria, make recommendations, and provide other information necessary for a complete evaluation of each agency and its advisory committees.

Recommendations. The LSAC must make three types of recommendations:

- (1) on the abolition, continuation, or reorganization of each affected state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees;
- (2) on the consolidation, transfer, or reorganization of programs within state agencies not under review when the programs duplicate functions performed in agencies under review;
- (3) on appropriation levels for each state agency and advisory committee for which abolition or reorganization is recommended; and
- (4) on legislation necessary to carry out the LSAC's recommendations.

In addition, the LSAC may recommend exempting certain agencies from the requirements relating to staff reports, hearings, and evaluations in the year prior to the scheduled abolition.

Subpoena Powers

The bill allows the President of the Senate or the Speaker of the House of Representatives to issue subpoenas, which may be served on a witness at any place in the state, to compel the attendance of witnesses and the production of books, records, papers, and other objects necessary or proper for the purposes of the LSAC proceedings. The bill allows the LSAC to request the issuance of a subpoena.

The bill requires testimony taken under subpoena to be reduced to writing and given under oath subject to the penalties of perjury.

The bill provides that a witness who attends a LSAC proceeding under process is entitled to the same mileage and per diem as a witness who appears before a grand jury in this state.

Abolition and Continuation

An advisory committee is abolished on the date set for abolition of the agency unless the advisory committee is expressly continued by law. A state agency and its advisory committees may be continued by the Legislature for a period not to exceed eight years. The Legislature may address only one state agency and its advisory committees and functions in a bill, unless more than one agency, advisory committee, or function is to be consolidated.

The bill specifically authorizes the Legislature to abolish a state agency or advisory committee on a date earlier than that scheduled in this chapter or to consider any other legislation related to a state agency or advisory committee which is scheduled to be abolished.

Procedure after Termination

The bill contains provisions related to concluding business, remaining funds, property, and indebtedness.

Concluding Agency Business. Any state agency that is abolished may continue in existence until July 1 of the following year in order to conclude its business. Abolishment does not reduce or otherwise limit the powers and authority of the state agency during the concluding year unless the law provides otherwise. The terminated agency must cease all activities at the expiration of the one-year period and all rules that have been adopted expire, unless otherwise provided by law.

Funds. The bill provides that any unobligated and unexpended appropriations of an abolished agency or advisory committee lapse on July 1 of the year following abolishment. Unless otherwise provided by law, all money in a dedicated fund of an abolished state agency or advisory committee on July 1 of the year immediately following abolishment is transferred to the General Revenue Fund and any part of law dedicating the money to a specific fund of an abolished agency becomes void on July 1 of the year immediately following abolishment.

Property. Property and records in the custody of an abolished state agency or advisory committee on July 1 of the year immediately following abolishment shall be transferred to the Department of Management Services, unless otherwise provided by law.

Indebtedness. The bill recognizes the Legislature's continuing obligation to pay bonded indebtedness and all other obligations incurred by a state agency abolished under this chapter. The bill provides that the Florida Government Accountability Act does not impair or impede the payment of bonded indebtedness and other obligations. The bill specifically declares the outstanding bonded indebtedness or other outstanding obligations of an abolished state agency valid and enforceable in accordance with their terms and subject to all applicable terms and

conditions. The bill requires the Department of Management Services, unless otherwise provided by law, to continue to carry out all covenants contained in the bonds and in all other obligations. The bill requires the designated state agency to provide payment from the sources of payment of the bonds in accordance with the terms of the bonds and to provide payment from the sources of payment of all other obligations until the bonds and interest on the bonds are paid in full and all other obligations are performed and paid in full. If provided, all funds established by laws or proceedings and bonds or other obligations shall remain with the Chief Financial Officer or the previously designated trustee. If the proceedings do not provide that the funds remain with the Chief Financial Officer or the previously designated trustee, the funds shall be transferred to the designated state agency.

LSAC Review and Monitoring

The bill requires the President of the Senate and the Speaker of the House of Representatives to forward all bills that create new state agencies or advisory committees to the LSAC for review and for written comments addressing:

- (1) Whether the proposed regulatory and other functions of the state agency or advisory committee could be administered by one or more existing state agencies or advisory committees;
- (2) Whether the form of regulation, if any, proposed by the bill is the least restrictive form of regulation that will adequately protect the public;
- (3) Whether the bill provides for adequate public input regarding any regulatory function proposed by the bill; and
- (4) Whether the bill provides for adequate protection against conflicts of interest within the state agency or advisory committee.

The bill also requires LSAC staff to monitor legislation that affects agencies and advisory committees which have undergone review. At the close of each legislative session, the LSAC staff are required to present a report to the committee on the adoption of committee recommendations by the legislature. LSAC staff also are required to periodically report to the members of the LSAC on proposed changes that would modify prior recommendations of the LSAC.

Savings Clause

The bill contains a savings clause which provides that abolition of a state agency does not affect the rights and duties that matured, penalties that were incurred, civil or criminal liabilities that arose, or proceedings that were begun before the effective date of the abolition, except as otherwise expressly provided by law.

Agency Legislative Budget Requests

The bill modifies the agency legislative budget request instructions to require agencies to:

- (1) Identify the associated activities contributing to each performance measure;
- (2) Include the standards for each activity for each performance measure; and
- (3) Include in the cost-benefit and business case analyses for each request to outsource or privatize, an assessment of the impact on each affected activity.

By December 31, 2006, a recommendation will be provided to the governor and the legislature by a workgroup established to develop a cost-allocation methodology for agencies to use in the computation of activity and unit costs. The workgroup will be comprised of staff from the Executive Office of the

Governor, OPPAGA, the Auditor General, the Department of Financial Services, and legislative appropriations committees. The cost-allocation methodology developed must be based on the standards and guidelines set forth in the Federal Office of Management and Budget (OMB) Circular A-87:

Purpose. This Circular establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and federally recognized Indian tribal governments (governmental units).

Policy. This Circular establishes principles and standards to provide a uniform approach for determining costs and to promote effective program delivery, efficiency, and better relationships between governmental units and the Federal Government. The principles are for determining allowable costs only. They are not intended to identify the circumstances or to dictate the extent of Federal and governmental unit participation in the financing of a particular Federal award. Provision for profit or other increment above cost is outside the scope of this Circular.¹⁵

OMB Circular A-87 sets forth ten factors related to whether costs are allowed,¹⁶ five factors related to whether a cost is reasonable,¹⁷ and four factors regarding cost allocation.¹⁸ OMB Circular A-87 also provides detailed principles for 43 categories of costs in order to determine the allowability or unallowability of certain items of cost.¹⁹

¹⁵ Office of Management and Budget Circular A-87, p. 1 (available at http://www.whitehouse.gov/OMB/circulars/a087/a87_2004.pdf (last visited Apr. 21, 2006)).

¹⁶ *Id.*, pp. 8-9 (“To be allowable under Federal awards, costs must meet the following general criteria: (1) be necessary and reasonable for proper and efficient performance and administration of Federal awards; (2) be allocable to Federal awards under the provisions of this Circular; (3) be authorized or not prohibited under State or local laws or regulations; (4) conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items; (5) be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit; (6) be accorded consistent treatment – a cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost; (7) except as otherwise provided for in this Circular, be determined in accordance with generally accepted accounting principles; (8) not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation; (9) be the net of all applicable credits; and (10) be adequately documented.”).

¹⁷ *Id.*, p. 9 (“A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost...In determining reasonableness of a given cost, consideration shall be given to: (1) whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award; (2) the restraints or requirements imposed by such factors as: sound business practices; arms length bargaining; Federal, state and other laws and regulations; and, terms and conditions of the Federal award; (3) market prices for comparable goods or services; (4) whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government; and (5) significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.”).

¹⁸ *Id.* pp. 9-10 (“(1) A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received; (2) all activities which benefit from the governmental unit's indirect cost, including unallowable activities and services donated to the governmental unit by third parties, will receive an appropriate allocation of indirect costs; (3) any cost allocable to a particular Federal award or cost objective under the principles provided for in this Circular may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons; and (4) where an accumulation of indirect costs will ultimately result in charges to a Federal award, a cost allocation plan will be required.”).

¹⁹ *Id.*, Attachment B, pp. 13-40 (The 43 categories of cost include: advertising and public relations costs; advisory councils; alcoholic beverages; audit costs and related services; bad debts; bonding costs; communication costs; compensation for personal services; contingency provisions; defense and prosecution of criminal and civil proceedings, and claims; depreciation and use allowances; donations and contributions; employee morale, health, and welfare costs; entertainment costs; equipment and other capital expenditures; fines and penalties; fund raising and investment management costs; gains and losses on disposition of depreciable property and other capital assets and substantial relocation of Federal programs; general government expenses; goods or services for personal use; idle facilities and idle capacity; insurance and indemnification; interest; lobbying; maintenance, operations, and repairs; materials and supplies costs; meetings and conferences; memberships, subscriptions, and professional activity costs; patent costs; plant and homeland security costs; pre-award costs; professional service costs; proposal costs; publication and printing costs; rearrangement and alteration costs; reconversion costs; rental costs of building and equipment; royalties and other costs for the use of patents; selling and marketing; taxes; termination costs applicable to sponsored agreements; training costs; and travel costs).

C. SECTION DIRECTORY:

- Section 1: Creates chapter 21, Florida Statutes, the Florida Government Accountability Act, the Legislative Sunset Advisory Committee, and related sunset provisions for state agencies and advisory committees.
- Section 2: Modifies the requirements for agency legislative budget requests.
- Section 3: Creates a workgroup to develop a cost-allocation methodology for use by agencies in computing activity and unit costs.
- Section 4: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have an impact on local government revenues.

2. Expenditures:

This bill does not appear to have an impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

If a state agency or advisory committee is abolished, the state may realize some cost savings.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that counties or municipalities have to raise revenue.

2. Other:

Advisory Committees of Constitutional Officers, Agencies, or Entities

There may be a constitutional conflict to the extent that this bill abolishes or attempts to abolish advisory committees created under the authority of a constitutional officer, agency, or entity rather than those authorized by statute, which the Legislature has the discretion to abolish.

Previous Constitutional Attacks

The authority of the Legislature to implement a similar provision related to abolishing regulatory programs was upheld after the court dismissed a challenge to the constitutionality of the Regulatory Reform Act of 1976.²⁰

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Placement in Chapter 21, Florida Statutes

Chapter 11, Florida Statutes, provides for legislative organization, procedures, and staffing. The sponsor may wish to place the Florida Government Accountability Act in chapter 11, Florida Statutes, rather than recreating chapter 21, Florida Statutes.

Drafting Issue: Definition of "Advisory Committee"

The sponsor may wish to examine some apparent inconsistencies in the definition of advisory committee. For example, the definition of advisory committee contains a cross reference commissions as defined section 20.03(10), but also refers to "any group, by whatever name, created to provide advice or recommendations;" commissions independently exercise quasi-judicial or quasi-legislative authority and do not simply provide advice or recommendations.

Drafting Issue: Altering the Schedule

The sponsor may wish to further detail the manner in which the President of the Senate and the Speaker of the House may alter the statutory schedule for abolishing agencies. Such a provision may run contrary to the purpose for providing the schedule in statute. It might also disadvantage an agency which suddenly finds itself being reviewed as there are no limits on when such a transfer may be made.

Drafting Issue: Recommending Exemptions

The sponsor may wish to further detail the recipient of the LSAC's recommendation to exempt certain agencies from the requirements related to staff reports, hearings, and evaluations.

Drafting Issue: No Implementation without Recommendation

The provision which requires a recommendation by the LSAC before a bill creating an agency or advisory committee can be implemented may create future conflict if the Legislature passes such a bill without this recommendation. The sponsor may wish to address this situation. One way to do this might be to create a time requirement for the LSAC to make its recommendation.

Drafting Issue: Inspection of Records

The sponsor may wish to strengthen the provision authorizing the LSAC or its designated staff member to inspect the records, documents, and files of any state agency to include access to confidential and exempt records.

²⁰ *Alterman Transp. Lines, Inc. v. State*, 405 So.2d 456 (Fla. 1st DCA 1981).

Other Comments: Public Members on a Legislative Committee

Public members generally are not appointed to serve on standing legislative committees. Even though this committee is an “advisory” committee, some of its powers appear to be similar to those which are normally reserved to committees composed only of legislators, i.e. the power to keep a bill creating an agency from being implemented. Also, it is not clear whether a public member is prohibited from serving as the chair or vice-chair of a committee. The sponsor may wish to address these issues.

Other Comments: Interaction with Existing Legislative Entities and Structures

The bill does not clearly provide how the LSAC will interact with existing legislative committees and structures such as standing committees, fiscal committees, and the Joint Legislative Auditing Committee. The sponsor may wish to clarify the intended interaction.

Other Comments: Sunset (Regulatory) and Sundown (Structural/Functional) Review

Unlike the Sunset and Sundown Reviews, this bill combines the structural and functional review of an agency and its advisory committees with regulatory review. The sponsor may wish to address this issue if there is a different intent.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Governmental Operations Committee adopted two amendments. Amendment 1 changed the authority of the Legislative Sunset Advisory Committee to inspect records, documents, and files to more closely mirror the authority of other legislative committees. Amendment 2 changed the process by which the Legislative Sunset Advisory Committee reviews bills that create agencies or advisory committees; depending on when the “creation” bill is filed considered, the amendment requires the Legislative Sunset Advisory Committee to review the bill within three weeks after the regular session of the Legislature convenes or during any special session. The bill was reported favorably with committee substitute.

On April 17, 2006, the Fiscal Council adopted one amendment. The amendment changed the reporting date and requirements for agencies and requires the agency inspector general to validate the information. The amendment required OPPAGA to review the agency report then report and provide recommendations to the committee. The amendment modified the committee review process. The amendment modified the agency legislative budget request requirements. The amendment created a workgroup to develop a cost-allocation methodology for use by the agencies in developing activity and unit costs. The bill was reported favorably with committee substitute.

On April 21, 2006, the State Administration Council adopted one amendment which removed one of the duplicative sections related to the monitoring of recommendations.