

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Governmental Oversight and Productivity Committee

BILL: CS/SB 2460

INTRODUCER: Governmental Oversight and Productivity Committee and Senator Posey

SUBJECT: Florida Governmental Accountability Act

DATE: April 19, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
2.	_____	_____	<u>AG</u>	_____
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	<u>RC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates a “Florida Government Accountability Act” and provides a rationale for and an analytical review of agencies of Florida government on a periodic cycle. It creates a multi-member Legislative Sunset Advisory Committee to conduct hearings and develop criteria for the continuation, modification, or abolition of named state agencies and advisory bodies.

This bill creates Part II of Chapter 11, Florida Statutes, consisting of new ss. 11.901; 11.902; 11.903; 11.904; 11.905; 11.906; 11.907; 11.908; 11.909; 11.910; 11.911; 11.912; 11.913; 11.914; 11.915; 11.916; 11.017; 11.018; 11.019; and 11.920.

The bill also amends s. 216.023, F.S., to provide additional requirements for the preparation of state agency budgets.

II. Present Situation:

The United States of America and its states and territories operate in a federated system of exclusive prerogatives and shared responsibilities. The uniqueness of this American experience has been influenced by many factors. Established as a consequence of colonization and rebellion, the republic through its founders immediately set about to create a successor governmental apparatus that was steeped in limitations on its own nascent authority. The abuses of an all-powerful king and doctrinaire parliamentary Star Chamber so colored these sensibilities that they led, first, to Articles of Confederation and, then, only reluctantly after that ineffectual result, to a constitution. The Constitution of 1787, like the federal and state constitutions of today, are documents that describe public institutions, limit government powers, and articulate citizen rights. In the early years of the republic and the territory later to be known as Florida this proved

both easy to formulate and execute: there was no governmental apparatus apart from an intermittent legislative body and a militia.

As commerce expanded and the effective territorial reach of authority increased, whether through acquisition or conquest, a developing infrastructure of government began to emerge. While the 1824 proclamation of then President, and former Florida territorial governor, Andrew Jackson was to enshrine the spoils system as the only recognized method of identifying government service, only two generations later the Congress would create a civil service apparatus to attenuate the dark side of patronage and perverse public administration. Intervening national and international conflicts over the next three generations regularized the presence of a civilian government structure. Public regulation of discreet functions of the economy became more commonplace as corporate power came to be concentrated among only a few large enterprises and the abuses of non-accountable cartels were documented.

In 1907 the elementary foundations of a rational budgeting structure began to appear at the local government level. By the 1960s the federal government and many states had formalized immediate and longer term spending plans in a system known as program planning and budgeting systems (PPBS). Though framed in terms of a logical sequence of steps, this rational process also spawned incremental budgeting, that is, analytical focus on only the increments of greater or lesser revenues available to governments in succeeding fiscal years. Once incorporated into a prior year base level of appropriations, agency operations became much less sensitive to analysis.

The innovation of PPBS, and the inherent weaknesses of incremental budgeting, spawned other variations of this in both financial management and regulatory oversight. By the 1970s the rational model of budget formulation had migrated to the examination of regulatory functions. As the national and state governments deregulated portions of the economy - trucking, airline passenger fares, and intercity passenger traffic - they began an examination of formal governmental agencies as well as their regulatory functions. This proved to be a robust activity for Florida in particular which developed a number of separate regulatory oversight mechanisms. Chief among these were:

The Regulatory Reform Act of 1976 (Chapter 78-168, Laws of Florida). This provided the first organized and sequential review of 94 regulated professions and was patterned after federal legislation of the same name. Implementing documents published by the Florida Senate that year indicated the governmental and industry objectives to be served: the development of a sound regulatory apparatus and the avoidance of barriers to professional entry that could spike inflationary consequences in consumer prices.¹

The Sunrise Act: Section 11.62, F.S., requires the submission of certain data and a needs justification prior to creation of any newly licensed profession.

The Sundown Act: this act focused on a periodic review of ancillary boards, councils, and commissions adjunct to executive departments. This was the successor process to the regulatory

¹ *Manual of Instruction for Implementation of the Regulatory Reform Act of 1976* (Chapter 76-168, Laws of Florida). Senate Governmental Operations Committee. Tallahassee, FL: March 1977, pp. 4-5.

Reform Act. It was repealed in 1991 following an interim study which questioned its effectiveness.

The Sunset Act: this is abbreviated term for the official Open Government Sunset Review Act, s. 119.15, F.S., which provides for a five-year periodic review of exemptions from public records statutes. Public meeting access and the availability of government records are constitutional imperatives in Florida.

There have been permutations to each of the specific enactments. Some legislatures have, like their federal legislative peers, attached mandatory expiration dates to certain statutes, agencies, or functions outside of the formal application of the sun-based enactments. All Florida governmental entities are effectively under a sunset provision as Florida budgets and appropriates annually; the General Appropriations Act is the only instrument enacted by the Florida Legislature that self-repeals at the end of the fiscal period. Trust funds have a separate three-year review cycle incorporated into the Florida Constitution which requires a triennial reenactment or automatic repeal.²

In addition to these regulatory oversight mechanisms there have been a variety of management techniques employed to either discipline budgeting or analyze executive operations. Chief among these have been Management By Objectives (MBO); Value-Based Engineering (VBE); Total Quality Management (TQM); Zero-Based Budgeting (ZBB); Activity-Based Budgeting (s. 216.1826, F.S.); and Performance-Based Budgeting (PB2). Annual instructions issued to state agencies for the preparation of the legislative budget requests also include requirements for the development and presentation of unit cost measures [s. 216.023(4)(b), F.S.]

The concept of performance has gained traction in recent years and the PB2 experience has led to the annual development and execution of specific performance expectations for state agencies or funded programs.³ The Florida Legislature has statutorily recognized ZBB and ABB, but has had the most consistent experience with PB2. ZBB was developed by Texas Instruments, Inc., and is best employed when the developer has wide discretion in modifying the products and services to be delivered. It works especially poorly in government organizations and their large entitlement programs where the public agency can influence only the cost components, not the program direction. Since the vast majority of the state budget deals with entitlements - education, public health and assistance, medical needs, and criminal justice, ZBB has been more aspirational than operational.⁴ The statutory authorization for ZBB has since been repealed.

Finally the Legislature incorporates within its organizational structure a policy analysis unit. Originally formulated as a self-contained performance audit section within the Office of the Auditor General (OAG), the Office of Program Policy Analysis and Government Accountability (OPPAGA) is charged with reporting on how well government programs work and whether they are on task with their statutory mission. A principal responsibility of OPPAGA is the completion

² Art. III, s. 19(f), Constitution of the State of Florida.

³ The performance measures for state agencies are contained in a document, "Performance Measures and Standards Approved by the Legislature for Fiscal Year 2006-2007" accessible on the Florida Senate web page, www.flsenate.gov.

⁴ Of the \$63 billion in appropriated funds for FY 2006, more than \$46 billion, or 73%, were concentrated in only three program areas: education, human services, and criminal justice and corrections. See *General Appropriations Act for Fiscal Year 2005-2006*, pp. 394-395.

of a program justification and review analysis of each state agency on a periodic basis as set forth in s. 11.513, F.S.

A more recent activity has occurred with the Texas and California Performance Reviews. Leadership in these two states determined a more discipline analysis of government structures and functions was warranted. The products prepared made wide-ranging recommendations for change and institutionalized a review process that has attempted to integrate the concepts of efficiency, performance, and accountability. The original Texas process, initiated by its state's comptroller, is now overseen by the Legislative Budget Board. The California counterpart reports to that state's Governor.⁵

III. Effect of Proposed Changes:

Section 1. The bill creates Part II of Chapter 11, F.S. and names it the Florida Government Accountability Act.

Title and Definitions (ss. 11.901 and 11.902)

The bill defines the state agencies covered by the reviews scheduled under the act as well as the component units, advisory committees and committees that will perform the reviews.

Legislative Sunset Advisory Committee (s. 11.903)

This section creates a twelve-member advisory committee, ten members of which are evenly appointed members from the respective presiding officers of the Legislature. Each officer appoints one additional member, non-legislator member, who cannot have more than a ten percent business interest in any agency scheduled for review. The members are provided usual and customary travel and per diem allowances in furtherance of the committee's duties. Appointments are to be made by November 30, 2006.

Staffing Responsibilities (s. 11.904)

The Senate and House of representatives may employ or assign staff, including joint committee staff of the OAG or OPPAGA, in furtherance of the advisory committee's activities.

Schedule for Abolition of Named Staff Agencies and Advisory Bodies (s. 11.905)

Named state agencies and their advisory bodies are abolished on a multi-year schedule, as follows:

July 1, 2008: Advisory Committees for the Fish and Wildlife Conservation Commission;
Department of Agriculture and Consumer Services;
Department of Citrus, including the Citrus Commission;
Department of Environmental Protection;
Department of Highway Safety and Motor Vehicles; and

⁵ The web sites are www.cpr.ca.gov, and www.lbb.state.tx.us/TSGPR/documents/htm.

Water Management Districts.

- July 1, 2009: Department of Children and Family Services;
Department of Community Affairs;
Department of Management Services; and
Department of State.
- July 1, 2010: Advisory Committees for the Florida Community College System;
Advisory Committees for the State University System;
Agency for Workforce Innovation;
Department of Education; and
Department of the Lottery.
- July 1, 2011: Agency for Health Care Administration;
Agency for Persons with Disabilities;
Department of Elderly Affairs; and
Department of Health.
- July 1, 2012: Department of Business and Professional Regulation;
Department of Transportation; and
Department of Veterans' Affairs.
- July 1, 2013: Advisory Committees for the State Board of Administration;
Department of Financial Services, including the Financial Services Commission;
and
Department of Revenue.
- July 1, 2014: Department of Corrections;
Department of Juvenile Justice;
Department of Law Enforcement;
Justice Administrative Commission; and
Parole Commission.
- July 1, 2015: Executive Office of the Governor; and
Florida Public Service Commission.

Agency Reports to Committee (s. 11.906)

By October 30 of each even-numbered year, or July 31 of each odd-numbered year, each entity scheduled for review shall submit a report to the committee including appropriate program and performance information determined by the named agency or information requested by the committee. This section affirms the importance of the evaluative criteria listed in s. 21.0111, below, as the benchmarks for agency evaluation.

Legislative Review (s. 11.907)

Upon receipt of an agency report pursuant to s. 21.006, OPPAGA shall conduct and submit to the Sunset Advisory Committee a program evaluation and justification review as defined in s. 11.513, F.S.

Committee Duties (s. 11.908)

By March 1 of the year in which a named agency is to be abolished, the committee shall:

- Review and verify the reports submitted pursuant to s. 21.006 and 21.007;
- Consult with other named agencies such as the Legislative Budget Commission, the Office of Policy and Budget, the Chief Financial Officer on application of the criteria specified in s. 21.0111;
- Conduct a performance evaluation using the criteria in s. 21.011;
- Determine compliance with the budgeting requirements specified in ss. 216.1826 and 216.023(4)(b), F.S.;
- Review implementation of committee recommendations contained in reports presented during the prior legislative session, and
- Hold public hearings.

Monitoring of Recommendations (s. 11.909)

Staff assigned to the committee shall periodically report on legislation that would modify prior recommendations of the committee.

Criteria for Review (s. 11.910)

The committee shall consider the following criteria in making a determination on the continuation of a named state agency:

- The efficiency of its operations;
- Problem identification and the achievement of desired objectives;
- Less restrictive means of achieving similar results;
- The extent to which an advisory committee is needed and is used;
- The jurisdictional overlap of multiple state agencies;
- Agency recommendations that balance public need with regulated interest benefit;
- Complaint satisfaction and effectiveness;
- Public accessibility to agency operations;
- Compliance with external requirements on equality of opportunity and historically underutilized business access;
- Changes needed in the organic statute of the agency under review;
- Agency enforcement of conflicts of interest affecting its employees;
- Compliance with public meetings and records and statutes;
- Maintenance of transparent budget reports;
- Accuracy in the reporting of performance measures;

- The effect of federal intervention or the loss of shared revenues; and
- Whether any advisory committee or other part of the agency exercises its powers independently of the agency head.

Committee Recommendations (s. 11.911)

The legislative committee shall make recommendations on the continuation or modification of a named agency or its advisory body which shall include termination, consolidation, transfer, appropriation levels and shall prepare drafts of legislation to implement those recommendations.

Review of Certain Agencies (s. 11.912)

The committee may recommend exemption of certain agencies from the requirements of the act in the year preceding the review process.

Monitoring of Recommendations (s. 11.913)

This section provides similar annual committee legislation monitoring duties as that contained in s. 21.009, above.

Abolition of Advisory Committees (s. 11.914)

Advisory committees to an agency are abolished on the date set for the abolition of the parent agency.

Continuation by Law (s. 11.915)

The Legislature may consider other alternatives to those established in this act.

Procedure after Termination (s. 11.917)

A state agency terminated shall continue in existence until the succeeding July 1, at which time all rules and unexpended balances of appropriations shall expire. All trust fund balances shall revert to the General Revue Fund and all property and records shall be transferred to the Department of Management Services. All bonded indebtedness and other contractual financial obligations shall remain in effect and, if not otherwise provided in law, shall accrue to the Department of Management Services or other designated state agency or Chief Financial Officer.

Subpoena Power (s. 11.918)

The committee, upon application to the presiding officers, may issue process to compel the attendance of witness or the production of records. Testimony so taken shall be under oath. Witnesses attending a hearing under process qualify for reimbursement for expenses as if appearing before a grand jury.

Assistance of and Access to State Agencies (s. 11.919)

The legislative committee may request the assistance of state agencies in carrying out its duties under this act and such agencies shall provide access to records in furtherance of this objective.

Saving Provision (s. 11.920)

Abolition of a state agency is not designed to adversely jeopardize any proceeding commenced on a date prior to agency abolition.

Section 2. Section 216.023, F.S., is amended to provide that each agency budget request shall contain performance standards and measures at the activity level of organization and shall include cost-benefit and business cases analyses in which the standards shall be based upon units of activity.

Section 3. A working group of named principals will meet after July 1, 2006, to develop cost-allocation methodologies for the computation of activity and unit costs which shall be based upon federal standards and guidelines. The working group is directed to develop procedures that permit the use of such unit cost information as a comparative analytical tool for public and private sector activities of a similar nature. The report submission to the Governor and the Legislature's presiding officers is December 31, 2006.

Section 4. The bill takes effect July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Legislature's presiding officers retain considerable discretion as to the means of staffing this review committee. They may direct the hiring of new staff, which has a fiscal consequence, or they may redirect the activities of existing staff to address the requirements of this act. There is precedent for both. During the 1970s and 1980s it had been the custom of the House of Representatives to centralize such governmental and regulatory review processes in a specific committee. The Senate took an alternative position and distributed the additional workload among its standing committees.

Examples of an internal staffing model, consistent with the prior regulatory reform process, are embraced in the Joint Select Committee on Collective Bargaining, the Joint Select Committee on Everglades Oversight, and the Legislative Budget Commission. These entities exist in the statutes but they use an existing staffing complement of the Senate and House of Representatives to discharge their unique duties.

Based upon average expenditures for the Texas Sunset Commission from 1982 through 2005, an average annual budget of \$900,000 to \$1 million is indicated. The fiscal impact of the meetings cost can be moderated if the appointed members obligate their parent agency's existing budget revenues for the required travel and per diem expenses. Otherwise the convention of \$500 per member per meeting is an amount that can be used and extended for the frequency of committee business contemplated.

Mitigating against any specific additional fiscal impact is the assignment of OPPAGA or the OAG to the advisory committee to act as its designated staffing resource.

VI. Technical Deficiencies:

The bill treats all bodies adjunct to a named state agency as if they were generic equivalents. They are not. A commission is not an advisory body to the extent that it executes specific responsibilities independently of the agency head. In that sense, this bill may eliminate commissions from the review process. Examples of commissions are the Human Relations Commission and the Transportation Disadvantaged Commission.

VII. Related Issues:

Considerable portions of this bill appear to have been imported from an enactment of the 1977 Texas Legislature, the Texas Sunset Act, s. 325.001 of the Texas Government Code.⁶ It is uncommon for there to be a closeness of constitutional or statutory fit as organizational considerations unique to specific state jurisdictions make such overlays unwieldy.

The bill is selective in the agencies chosen. Excluded from the review process are the Judicial Branch and its components, other than the Justice Administrative Commission; the Legislative Branch and its components, other than the Public Service Commission; the Board of Administration, other than its advisory committees; the Department of Military Affairs; the Fish

⁶ Like Florida, that state publishes a handbook that describes the components of its twelve-year review process. Sunset Advisory Commission, *Guide to the Texas Sunset Process*, 2006 ed, Austin Texas. See also www.sunset.state.tx.us/guide.

and Wildlife Conservation Commission; and various entities reporting to the Governor and Cabinet such as the Board of Trustees of the Internal Improvement Trust Fund in which the Governor or Governor and Cabinet act as the nominal head. While some of these entities have a constitutional origin, many execute statutory functions and most are reliant upon funding in the General Appropriations Act.

The bill is also silent on whether the review process extends to dependent corporations authorized by statute such as P.R.I.D.E., ch. 946, F.S., and Enterprise Florida, ch. 288, F.S.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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