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Committee on Governmental Oversight and Productivity

Senator Nancy Argenziano, Chair

REVIEW OF JOINT LEGISLATIVE COMMITTEES AND OPERATIONS

SUMMARY

This report discusses the shared committee operations of the Senate and House of Representatives and the various structural means through which they appear in the Florida Legislature's table of organization. It finds a patchwork accumulation of these entities that have been layered upon each other over time. Organizational authority differs and many operate under management structures more stringent than those in place for agencies of the executive branch. The report recommends greater use of delegations of authority to permit the joint committees to act on behalf of both chambers without the perception of allegiance to one or the other. It also recommends that their authority emanate specifically from joint rules enacted by the legislative bodies themselves rather than specific statute requiring concurrence by the executive.

BACKGROUND

The state legislature of today, whether celebrated as the consummate laboratory of democracy or vilified as an itinerant collection of strangers,¹ bears little resemblance to its colonial ancestors. These representative bodies still meet in predominantly rural surroundings, yet they are confronted with some of the most urbane and far-reaching challenges in their history. While much attention has been devoted to their external legislative responses in developing public policy, only academic attention has been devoted to how the institution itself operates internally.² This is no less true for the Florida

¹ John Burns, *The Sometime Governments: A Critical Study of the 50 American Legislatures*, New York, NY, Bantam Books: 1971. See also the dissenting opinion of Justice Brandeis in *New State Ice Co. v. Liebman*, 285 U.S. 282, 311 (1932) which invoked the phrase "laboratories of democracy."

² Perhaps the most consistent commentator on the

experience, where one may argue there are three separate branches to the state house: the Senate, the House of Representatives, and their little known but widely disparate Joint Operations.

The stock and trade of legislative bodies is the sheer volumetric processing of proposed changes to substantive and financial public policy. Their chambers are organized to develop, debate, and process the thousands of requests for changes in how its particular state sees itself relative to its internal constituencies and the larger external public. While one may argue the two types of demands on legislator time fall into procedural and policy assistance, the methods for addressing these needs are by no means uniform throughout the 50 states. Shared assets, or joint committees, do provide the opportunity to blend consensus on organizational direction but this feature alone does not preordain a state to have greater consensus on low intensity policy-making. Nor do shared administrative assets necessarily mean each chamber avoids redundancy. As will be discussed below, many such functions overlap in the Florida Legislature notwithstanding the combined nature of the activity.

METHODOLOGY

The report reviews the infrastructure development of the modern Florida Legislature from the standpoint of how it operates as an organization. The report reviews

legislative assembly has been Alan Rosenthal. His 1981 descriptive publication *Legislative Life: People, Process and Performance in the States*, New York, NY, Harper and Row: 1981, was followed by a more prescriptive Book, *The Decline of Representative Democracy: Process, Participation, and Power in State Legislatures*, Washington, DC: CQ Press, 1998. His most recent publication, *Heavy Lifting: The Job of the American Legislature*, Washington, DC: CQ Press, 2004, evaluates how such internally diverse institutions can stay responsive and responsible.

previous studies undertaken of the shared assets managed jointly by the Senate and House of Representatives and how those assets are deployed in 2005. It focuses specific analysis upon three entities of varying subject matter jurisdiction labeled with the term “joint committee” and reviews them in terms of organization, nominal authority, and operational status. Finally, the report makes recommendations that attempt to link academic commentaries on the institution with the practicalities of managing a diverse organization that is experiencing leadership turnover and truncated terms of office. This report is a continuation of a similar one undertaken prior to the 2005 Session and two other studies that focused on shared business and administrative support operations.³

FINDINGS

The Florida Legislature conducts its business through a complex organizational network. In addition to its internal permanent, or standing, and temporary, or select committees that serve the respective chambers, it has an infrastructure of shared assets over which its presiding officers exercise joint control.⁴ These assets originally were designed to serve the combined administrative support operations of the Senate and House of Representatives as the Legislative Branch came to deemphasize its traditional part-time relationship to state government. As late as 1957 the Attorney General performed all bill drafting for the then biennial-convened Legislature. It was only in the 1960s that the state auditor reported directly to the Legislature, having previously been embedded in a corporate-type structure in which it reported to the Governor. Up to that time there was little incentive

³ Senate Committee on Governmental Oversight and Productivity, *Review of Joint Legislative Committees and Operations*, Tallahassee, FL, March 2005; _____, *Office of Legislative Services Core Business Services Review*, Tallahassee, FL, November 2004; _____, *Office of Legislative Information Technology Services Core Business Services Review*, Tallahassee, FL, December 2004.

⁴ The complexity extends as well to nomenclature. While the legislature attempts to standardize the hierarchy of the organizational structure of the executive branch of state government through s. 20.04, F.S., no such standardization exists for itself. The joint operations contain a varied collection of “offices,” “councils,” “commissions,” “joint committees,” one “board,” and a “workgroup” several of which are peers to one another. Two of the entities have their own separate trust accounts for funding and one unit acts as a statutory consultant to both chambers’ appropriations committees.

for an investment in full-time functions for a body which met for only two months out of every twenty-four.

As the Legislature moved from biennial to annual sessions it constructed a larger capitol complex to house its growing infrastructure⁵ and came to occupy a much more physically commanding presence than ever before.

In 1968 the Joint Legislative Management Committee (JLMC) was established to act as the supervisory unit over the central research functions in the Legislative Reference Bureau and the Fiscal Accounting Division. One year later purchasing and data processing functions were added and the bureau was renamed the Legislative Services Bureau. In 1972 the Senate and House of Representatives removed the central administration of research, bill drafting, and committee staffing to their respective chambers and abolished the Bureau. Eight years later the Legislature adjusted the mix of these assets and their reporting hierarchies through a variety of budget initiatives, the largest single one of which involved transferring a separately operated library function from the legislative to the executive branch.⁶

Today there are many entities operating under the title of joint operations. The functions of the former JLMC persist in a newly named Office of Legislative Services but report directly to the presiding officers themselves. Its previous supervisory committee of legislators, and a like one for a joint committee on technology, were disbanded. Some of the remaining joint entities are free-standing; two are created in the state constitution,⁷ while others are dependencies embedded within other organizations. One of the units provides consensus-based revenue and caseload estimates for budgeting purposes and has itself been reorganized by a nomenclature change from division to office status. All of the joint committees are formalized in statute but only one of the three is codified in the legislature’s own joint rules. Still another mimics the public utility

⁵ The legislative branch occupied only three buildings in 1972. Today it occupies nine capital-area buildings in whole or in part.

⁶ Joint Legislative Management Committee, Legislative Information Technology Resources Committee, *Joint Committee Review and Rightsizing Project: Recommendations of the Steering Committee*, The Florida Legislature, Tallahassee, FL: 1998.

⁷ The Auditor General in s. 2, Art. III, and the Commission on Ethics in s. 2, Art II, State Constitution.

rate-setting regulatory operation of the executive branch but is nominally located in the legislative branch. The below table indicates the scope of joint operations as of August 2005, their appropriated budgets, and their subsidiary units.

Joint Legislative Operations, 2005 Entities	
Legislative Support Services (9)	\$ 30,528,998
Administrative Procedures	\$ 1,232,008
Intergovernmental Relations	\$ 868,044
Technology Review (2)	\$ 1,107,827
Public Counsel	\$ 2,193,074
Ethics Commission (2)	\$ 2,413,793
Uniform Laws Commission	\$ 75,474
OPPAGA	\$ 8,271,753
Auditor General	\$ 36,895,649
Legislative Auditing Committee	\$ 358,134
Public Service Commission Oversight	unfunded
TOTAL	\$ 83,938,754

There are at least three other joint committees, listed in statute that will not be reviewed since they are either time-limited, have no separate funding status, or are units led and staffed by other entities. The Legislative Budget Commission,⁸ the Joint Legislative Committee on Everglades Oversight,⁹ and the Joint Legislative Committee on Article V Oversight¹⁰ are staffed by other committee operations or meet on only an ad hoc basis.

The **Joint Legislative Auditing Committee (JLAC)** is the supervising entity for the post-audit functions of the Office of the Auditor General, the performance review responsibilities assigned to the separate Office of Program Policy Analysis and Governmental Accountability (OPPAGA), and the Office of the Public Counsel. The committee derives its authority both from ch. 11, F.S., as well as joint rules adopted by the Senate and House of Representatives. In addition, the JLAC, by name or by assigned responsibility, is found in 23 other sections of general law. Its principal duties are participation in joint executive/legislative oversight of corrective matters involving local government financial emergencies and the conduct of investigations into “any matter within the scope of an audit either completed or then being conducted . . .”¹¹ The JLAC may also separately commission the annual audit of the Department of the Lottery.¹²

⁸ Section 11.90, F.S.

⁹ Section 11.80, F.S.

¹⁰ Section 11.75, F.S.

¹¹ Part V of ch. 218, F.S.; Joint Rule 4.1, *Joint Rules of the Florida Legislature, 2002-2004*.

¹² Section 24.123, F.S.

The **Legislative Committee on Intergovernmental Relations (LCIR)** is a research-based entity uniquely comprised of both legislators and gubernatorial appointees. The chairs annually alternate between the Senate and House of Representatives; seven of the fifteen appointments are made by the Governor. The committee mimics the functions of the federal Advisory Commission on Intergovernmental Relations by examining sub-state as well as federal programs for funding commonalities and needs to “improve organizational structure, operational efficiency, allocation of functional responsibilities, delivery of services, and related matters.”¹³ Principal legal authority emanates from ch. 11, F.S., but nine other chapters of the Florida Statutes contain references to it. The committee publishes a number of resource and research documents, some of which involve distribution of estimations of local government revenues for use by local governments in their budget-making process. To this end it overlaps with separately constituted legislative standing committees on finance and tax, local government, a separately operated revenue estimating process in another joint operation, and executive branch agencies involved directly in revenue management, local government oversight, criminal justice and budget administration. By custom it undertakes the calculations for the setting of compensation levels for county constitutional officers in ch. 145, F.S.

The **Joint Administrative Procedures Committee (JAPC)** is directed to maintain a continuous review system on the promulgation of rules by executive branch agencies. Unlike the federal government in which agencies have the inherent power to make rules, executive branch agencies in Florida have only those powers that are specifically delegated to them by constitution or statute. The committee is an outgrowth of a prolonged legislative experience starting in the 1970s with agency rule-making which exceeded the bounds of statutory authority. The committee is given the authority to file objection reports with the affected agency and the Department of State on rules it believes exceed these bounds but does not have intervening status to interpose its objections in administrative or judicial proceedings. The debate over the proper apportionment of legislative policy-making and executive management may be arcane but it is no less robust.¹⁴ The

¹³ Section 11.70(4)(b), F.S.

¹⁴ A point-counterpoint treatment of the two sides of legislative review of agency rules is contained in Boyd, F. Scott, *Legislative Checks on Rulemaking under*

committee uses its objection report as a mechanism as a sounding board for agencies to justify their actions prior to the commencement of its legislative hearings. While nominally charged with the undertaking of a continuous review of agency rules, the JAPC has performed this significant task only once in 1997.¹⁵

As creatures of the legislative branch, the joint committees are exempted from many of the provisions applicable to entities within the executive branch but are subject to their own unique administrative procedures. Approval of both presiding officers is required for a budget or policy decision and the effect is to have the most restrictive policy rule the day. This bifurcation of decision-making extends to administrative matters. Over the past three years each of the committees has received written authorizations expanding or restricting its administrative operations. These delegations of authority have been neither uniform nor consistent. In one case, a presiding officer rescinded all delegations while the other made no statement on the matter.

Within their separate chambers presiding officers simultaneously discharge the combined duties of chief executive officer, chief financial officer, and chairs of their respective boards of (legislator) directors. In matters dealing with the joint committees, the presiding officers delegate some of their operational authority to designated staff or to the named joint committee itself, subject to their final review and approval. In setting its own spending plan for each fiscal year, the past operating practice of each presiding officer has been to act in a “hands-off” capacity with the other chamber’s budget.¹⁶ The same cannot be said for budgets of the joint committees or associated operations which, by design or default, tend to reflect the overall consensus or dissensus of the respective chambers.

Florida’s New APA, 24 Fla. St. U.L. Rev. 309 (1996), and Zodrow, TA, *The Use of the Legislative Veto in Florida: A Violation of the Separation of Powers Doctrine*, 70-NOV Fla. B.J. 65 (1996).

¹⁵ Section 120.536(2), F.S.

¹⁶ The same cannot be said of the Legislature’s own budget relationship with the Governor. In two prior fiscal years the Governor’s Recommended Budget took the relatively rare stance of recommending a structural reduction in legislative operations by combining two separate legislative entities - the Auditor General and OPPAGA - and a proportionate reduction in funding. The recommendation was not implemented.

The joint committees are limited in their ability to introduce legislation. As shared creatures of both chambers they have the prerogatives of neither. The respective chairs must introduce committee-recommended legislation under their own names in their chambers, a particular disadvantage in the House of Representatives where there are limits on bills members may file and keep active in any one session.

Each of the joint committees reviewed has a jurisdictional breadth that extends government wide. The JLAC acts as the supervisory body for auditing and performance review activities of the Legislature but it also oversees corrective action plans for audit compliance and financial management across all audited units of government. The LCIR along with other standing committees deals with intergovernmental relations with similar scope. The JAPC has a like scope among state agencies and to those other entities that are subject to the Administrative Procedures Act, ch. 120, F.S. Its statute suggests that there is a progressive and continuous review of rules but the practice has been to address only those rules that are filed with the Department of State.

These joint committee-based organizational models are not the only means of addressing these issues, as was noted earlier in the change to a leadership structure for legislative administrative support services. Both the Senate and House of Representatives use their standing committee structures for such purposes today. The Senate requires all of its subject matter standing committees to complete the review processes mandated under the Open Government Sunset Review Act. The House of Representatives reaches the same result but by referring all of its reviews to a single committee. Those models could be expanded to achieve an alternative result if so desired. It would also enhance the role of some standing committees that deal regularly with intergovernmental relations and local government and require all committees to pay closer attention to rule-making and accountability.

RECOMMENDATIONS

The modern Florida Legislature is a complex and diverse series of organizations. Its internal operations indicate it shares attributes of many differing models of legislative management while exclusively adopting none of them. In order to improve the role of these

component organizations within the legislative branch the following recommendations are offered:

1. References to the internal organization of the legislative branch should be formalized in joint rule adopted by the chambers themselves. This change would serve to make the joint rules more descriptively complete as well as preventing the executive from intruding into legislative prerogatives. Currently, any change made to ch. 11, F.S., requires the Governor's assent, since legislative organization is codified in general law.

2. All joint operations should have the benefit of a uniform process which provides delegations of authority. This has the benefit of insulating their administrative activities from the normal differences which exist between the chambers and prevents use of the joint process as a tool for the development of allegiance specific to time, place, or administration.

3. The presiding officers should determine in their joint rules the operating practices of each entity relative to the chamber from which the chair emanates. Senate and House rules on committee meetings differ in substantial respects. Each chamber should also consider the bill filing status of joint committees under their respective rules relative to the introduction of consensus, or committee-based, products resulting from approved interim studies.

4. The Legislature needs to consider the "congressionalization" of joint committee operations and their overlap with its own standing committee structure. "Congressionalization" or the development of committee-specific jurisdiction separate from that of the parent body is not unknown to legislative halls. It is relatively uncommon, however, in Florida as the committee structure is considered subordinate to the legislative body and its presiding officers. Where it does exist it is defined solely in terms of the legislature's constitutional functions to appropriate funds or to internally govern itself. The development of an independence of operation in other policy areas can prove problematic as it can undermine the ability of the presiding officers to govern.

Each of the committees reviewed overlaps with one or more separately constituted committee operations of the Senate or House of Representatives. This is clearest with the LCIR and the standing committee structure of the Senate and House of Representatives. Moreover, the names of the joint committees appear in some three dozen separate sections of Florida law. The Senate

needs to consider what is an appropriate organizational investment in the functions represented by these committees to avoid the creation and funding of repetitive layers of similar activities throughout the organization.¹⁷ The joint committees created some forty years earlier were designed to discharge common, direct support administrative duties unattainable elsewhere. Their successors, directly responsible for less than three percent of the joint legislative budget, have been transformed into policy-based entities that can compete with its own organizational structure.

5. To the extent that the presiding officers wish to refresh their own organizations, they may wish to fold some of the joint committee operations within their standing committee structure or leadership offices. The effect will be to flatten the reporting hierarchies within the legislative branch while preserving focus on the same subject matter. This recommendation places greater organizational investment in their leadership offices, as has been the recent custom, or of those legislators who chair substantive committees that deal with such issues on a continuing basis.

¹⁷ A similar recommendation on the proliferation of non-standing committees was made to the Virginia General Assembly by the state legislatures' national representational body. National Conference of State Legislatures, *A Study of the Legislative Process in Virginia: A Report Submitted to the Virginia Joint Rules Committee*, Denver, CO: 1990, pp. 26-27.