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Battle of the Budget: The Legislature and the Governor Fight for Control

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TABLE OF CONTENTS

I.	INTRODUCTION	1102
II.	SUMMARY OF THE GOALS OF SECTION 19	1104
A.	<i>The Tax and Budget Reform Commission (TBRC)—Context for Reform</i>	1104
B.	<i>Provisions and Goals of Section 19</i>	1105
1.	To Formulate an Open and Understandable Budgeting Process for the Benefit of the Public	1105
2.	Establish Planning as a Fundamental Part of Budgeting	1107
3.	To Increase Working Capital Reserves to Promote Stability and Responsibility	1108
4.	To Reduce the Use of Trust Funds	1108
5.	To Facilitate Budget Reductions by the Executive	1109
6.	To Facilitate Executive Line Item Vetoes	1109
III.	OTHER BUDGET-RELATED PROVISIONS OF THE FLORIDA CONSTITUTION: A PERSPECTIVE OF FLORIDA'S BUDGET PROCESS	1110
IV.	SEPARATION OF POWERS, VETOES AND BUDGETING IN FLORIDA COURTS	1111
A.	<i>The Line Item Veto Power Prior to the Enactment of Section 19</i>	1111
1.	Defining "Specific Appropriation"	1112
2.	Defining "General Appropriation"	1114
B.	<i>Budget Reductions and the Separation of Powers</i>	1115
V.	THE FUTURE OF THE BUDGET BATTLE AFTER THE ENACTMENT OF SECTION 19	1117

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A.	<i>Line Item Veto Authority After Section 19</i>	1117
B.	<i>Budget Reductions After Section 19</i>	1118
C.	<i>Other Provisions</i>	1120
1.	Integration of Planning and Budgeting . . .	1120
2.	An Open and Accountable Process: Working Capital Requirements, Trust Fund Limitations and Simplification of the Process	1121
VI.	CONCLUSION	1121

I. INTRODUCTION

Conflicts between the Legislative and the Executive branches on fiscal issues are a tradition as old as the separation of powers.¹ Conflicts have occurred at the federal and state levels over the power of the purse. In the early 1970's, substantial litigation occurred over the issue of "impoundment"² by the Executive. The litigation addressed whether the Executive, in particular President Nixon, had abused its constitutional authority and violated the separation of powers doctrine.³

The battle between the Legislative and Executive branches in Florida regarding impoundment has focused on the exercise of the line item veto⁴ and the Governor's budget reduction power.⁵ The new section 19 of article III was enacted with the hope of resolving the controversy and uncertainty surrounding the Legislative and Executive conflicts over the budget.⁶ Even the commission proposing the budget reforms of 1992, the Tax and Budget

1. The separation of powers doctrine prohibits any branch of the state government from encroaching upon powers of another and prohibits any branch from delegating to another branch its constitutionally assigned powers. *See* FLA. CONST. art. II, § 3.

2. The term "impoundment" is applied to situations in which the Executive declines to enter into obligations or commitments for the full amount appropriated by the Legislature. Decisions to impound are made by the Executive branch alone through the use of closed meetings and confidential information. *See generally* L. Harold Levinson & Jon L. Mills, *Budget Reform and Impoundment Control*, 27 VAND. L. REV. 615 (1974).

3. *See generally id.* (for discussion of presidential discretion during execution of appropriations with a focus on President Nixon).

4. "The governor [of] Florida has the [line] item veto only over appropriations bills. This permits him to veto a part of an appropriations bill rather than the entire bill." MANNING J. DAUER, *FLORIDA'S POLITICS AND GOVERNMENT* 147 (2d ed. 1984).

5. *See infra* notes 17-27 and accompanying text.

6. *See* FLA. CONST. art. III, § 19.

Reform Commission (“TBRC”), originated out of conflict.⁷ The TBRC is at least partially a result of the services tax conflict and the desire to create a less political forum for major tax and budget reforms.

The goal of demystifying the rituals of the appropriations and budget process is laudable. Undoubtedly, the leaders in the appropriations process found power in complexity, detail, and obscurity.⁸ The Executive’s power to control the implementing process⁹ and the scope of the line item veto has been attacked. Section 19 embodies the constitutional efforts to achieve a reasonable balance and to open the process to public scrutiny.

Much of section 19 deals with procedural improvements and budget policy issues including clarifying annualized costs, clarifying the format of appropriation bills, establishing a planning and appropriation process for agencies, providing a 72-hour viewing period for the appropriations bill, providing a final budget report, reducing the use of trust funds, establishing a schedule to increase the budget stabilization fund (the working capital fund), and expanding the importance of planning in the budget process.¹⁰ While many of these provisions will have an impact on the clarity of the budget process and on important policy issues, such as an inadequate working capital fund¹¹ and excessive reliance on trust funds, the major task will be redefining the Legislative/Executive relationship embodied in subsections (b) and (h) of section 19 and the closely related article IV, subsection (13), also proposed by the TBRC. These provisions redefine the nature of the line item veto and the process for budget reductions in the event of shortfalls. Each of these related issues has been the subject of litigation between the Executive and Legislative branches in the last decade.

The constitutional revisions have not ended the battle. In fact, the Governor recently vetoed a bill proposed by the Legislature to implement section 19.¹² This bill would have allowed a legislative committee to revise Executive agency budget requests. The Governor vetoed the bill, stating that it was unconstitutional to allow a legislative committee to alter

7. The author was Speaker of the House during the services tax controversy and when the Legislature passed the Resolution creating the TBRC.

8. The author observed this conflict when he chaired the two different Appropriations Subcommittees in the Florida House of Representatives.

9. See *Chiles v. Children*, 589 So. 2d 260 (Fla. 1991) (statute authorizing Executive Branch Commission to take steps to reduce state agency budgets to prevent deficit violated separation of powers doctrine).

10. FLA. CONST. art. III, § 19.

11. Eckl, *Planning Ahead with Budget Stabilization Funds*, THE FISCAL LETTER, March/April 1990, Vol. XII, No. 2. at 6 [hereinafter Eckl].

12. FLA. S. JOUR. 1608 (Reg. Sess. 1993).

the product of an officer of the Executive branch. In his veto message, the Governor stated, “[c]ommittee substitute for Senate Bill 1692 represents a substantial and serious intrusion into the executive powers long recognized in this state and recently recovered for the executive by the citizens of this state.”¹³ The recently recovered Executive power referred to in the veto message is section 19. Regardless of the constitutional revisions, the battle continues.

This article describes the policy changes and the history of section 19 and focuses on the continuing conflict between the branches surrounding the veto and budget reduction process. The battle between Florida’s Legislative and Executive branches is sure to continue during the implementation of section 19. Even when section 19 is implemented, the effectiveness of the reforms can only be assessed after several years of experience. However, preliminary analysis indicates serious difficulties with some of the reforms.

II. SUMMARY OF THE GOALS OF SECTION 19

A. *The Tax and Budget Reform Commission (TBRC)—Context for Reform*

Section 19 is the focal point of some of the bolder initiatives of the TBRC. Some understanding of the history of the Commission is useful to evaluate its proposals. The Commission was created to separate fiscal issues into the equivalent of a mini-constitutional convention.¹⁴ The hope was to allow reform of budget and fiscal matters and to modernize Florida’s Constitution with less political pressure than the Legislature would encounter and with more deliberation than is generated by initiative petition.¹⁵

According to constitutional mandates,¹⁶ the TBRC was politically balanced by a split of appointments and voting procedures were formulated

13. Letter from Governor Lawton Chiles to the Honorable Jim Smith (May 3, 1993) (delivering veto message).

14. See FLA. CONST. art. XI, § 6; H.R.J. Res. 1616 (1988).

15. The initiative petition is a method of amending the constitution. The amendment is written out in the same form as it would appear if added to the constitution. It is then placed on a petition and circulated for signatures of registered voters. If sufficient signatures are secured at least 90 days before the general election, the amendment is placed on the ballot. To be added to the constitution, the amendment must win a majority of the votes cast on the amendment. See DAUER, *supra* note 4, at 100; see also FLA. CONST. art XI, § 3.

16. See FLA. CONST. art. XI, § 6.

to prevent radical reforms.¹⁷ Additionally, the election of a republican Governor and the continuance of democratic control in the Legislature further diversified the TBRC, probably to a greater extent than the drafters of the TBRC amendment envisioned. This diversity is reflected in article III, section 19, which adopted fiscal conservatism along with several progressive budget and planning policies.

One progressive aspect of section 19, apparently unique to Florida, is the constitutional linkage of planning to budgeting.¹⁸ This section requires plans to be used as budgetary tools. The current administration is using the agency strategic plans as a basis for the agency budgets.¹⁹

B. *Provisions and Goals of Section 19*

To aid with the future interpretation of section 19, the TBRC passed a resolution articulating its intent behind each provision.²⁰ The basic goals of the section are outlined below:

1. To Formulate an Open and Understandable Budgeting Process for the Benefit of the Public

The Commission repeatedly stated that it intended for section 19 to provide an “open and easily understood budgeting process”²¹ in order to “increase the ability of the citizens of Florida to understand where money

17. Eleven members are selected by the Governor, seven members are selected by the Speaker of the House, and seven members are selected by the President of the Senate. None of these members may be a member of the Legislature at the time of appointment. Four non-voting *ex-officio* members must be members of the Legislature at the time of their appointment. Two members are selected by the Speaker and two members are selected by the President of the Senate. One appointment by each shall be a member of the minority party.

To place a measure on the ballot, the Commission must achieve a greater-than-majority vote. Specifically, two-thirds of the members of the full Commission must concur as well as a majority of the appointees of the Governor, a majority of the members appointed by the Speaker and a majority of the members appointed by the President of the Senate. FLA. CONST. art. XI, §§ 6 (a), (c).

18. Telephone Interview with Ron Snell, Budget Analyst, National Conference of State Legislatures (August 19, 1993).

19. Telephone Interview with Robert Bradley, Deputy Director, Office of Planning & Budgeting, Office of the Governor (August 19, 1993).

20. Tom L. Rankin, Chairman of the Taxation and Budget Reform Commission, Resolution of the Taxation and Budget Reform Commission (August 9, 1993) [hereinafter Resolution].

21. *Id.* at 2.

for state expenditures comes from, how that money is appropriated, what goals are being met by that appropriation, how that money is eventually spent, and the results achieved.”²² Section 19 attempts to achieve this goal though several basic changes in the budgeting process including:

a. Annual Budgeting: The Commission stated in its Resolution on section 19 that it intends to “ensure that Florida maintains an integrated planning and budgeting system.” To this end, the TBRC suggested that the state use an annual budgeting and planning process.²³

b. Appropriation Bills Format: The Commission suggested that the state use a single General Appropriations Bill, rather than multiple appropriation bills, in order to avoid having multiple bills which exceed available revenue.²⁴ However, the single appropriations bill is to contain separate sections for a variety of major programs including education, the criminal justice system, and environmental protection.²⁵ The most significant aspect of this change in bill format is the Commission’s explicit recognition of the Governor’s power to apply a line item veto to substantive bills containing appropriations.²⁶

*c. Appropriation Review Process:*²⁷ The Commission stated that the Legislature should adopt a formal review process which requires the appropriate subcommittee of the Appropriation Committee of each house to review each department’s or agency’s budget request. These requests should be compared to the major issues in each department’s or agency’s planning document and to the major issues in the Governor’s recommended budget for the department or agency.²⁸

*d. Seventy-Two Hour Public Review Period:*²⁹ The Commission implemented a seventy-two hour public review or “cooling off” period, in

22. *Id.* at 3.

23. *Id.* at 2. Additionally, “state agency Legislative Budget Requests, the Governor’s Recommended Budget, and Appropriation Bills should be accompanied by detailed data reflecting the annualized costs of the budget.” Each agency should use the state plan and all relevant agency planning documents to develop its budget request. *Id.*

24. Resolution, *supra* note 20, at 2.

25. *Id.* at 2, 3.

26. See *supra* text accompanying note 15 for further discussion of this issue.

27. Resolution, *supra* note 20, at 2.

28. *Id.* at 4.

29. *Id.*

which the Conference Report on the General Appropriation Bill is to be made available to the Legislature and to the general public. The TBRC implemented this review period to allow the public and the Legislature the necessary time to read and understand the merits of the policies contained in the Conference Report. However, substantive bills containing appropriations are specifically excluded from this mandatory review period.³⁰

*e. Final Budget Report.*³¹ The Commission required the preparation of a final budget report within ninety days of the beginning of each fiscal year. This report should include the following: all appropriations approved by the Governor, whether in substantive bills or in the General Appropriation Bill; the net appropriations for each budget item; the actual expenditures for preceding fiscal years; the estimated expenditures for the current fiscal year; the estimated revenues and cash balances for the current fiscal year; and the final budget, expenditures, and revenues by department or agency and major program areas.³²

2. Establish Planning as a Fundamental Part of Budgeting

Florida has been a national trendsetter in the use of planning as a budgeting tool.³³ Perhaps because of Florida's rapid growth, the need was more apparent and the political will more available than in other states. The State Comprehensive Plan³⁴ is designed as the blueprint to the state's future. Other legislation, such as the Growth Management Act,³⁵ also adds to the overall commitment to planning in Florida. However, the TBRC noted that Florida has not reached all of its planning goals.³⁶

Florida's new effort to incorporate planning in the budgeting process includes appointing the State Plan Growth Management Advisory Committee to propose legislation to improve the state plan. The intent of the Committee is to clarify state land development goals and objectives.³⁷ These

30. *Id.* at 5.

31. *Id.*

32. Resolution, *supra* note 20, at 5, 6.

33. THE SPEAKER'S ADVISORY COMMITTEE ON THE FUTURE, THE SUNRISE REPORT (1987).

34. FLA. STAT. ch. 187 (1991).

35. FLA. STAT. §§ 163.3161-163.3243 (1991).

36. Florida Taxation and Budget Reform Commission, *A Program for Reform of Florida Government*, (February, 1991) at 25.

37. Fla. Exec. Order No. 93-217 (1993); FLA STAT. § 186.009 (1993).

legislative proposals will be part of an overall effort to implement the section 19 provisions related to planning.

3. To Increase Working Capital Reserves to Promote Stability and Responsibility

The purpose of this subsection is to expand Florida's "rainy day fund" to make budget shortfalls easier to manage. Some other states are implementing such increases as well. However, fiscal problems and political disagreement on the proper extent and proper use of these funds is likely to prohibit significant increases in other states' budget reserve funds in the near future.³⁸

Wall Street analysts recommend that states "maintain budget reserves equal to five percent of the state's general fund to cushion state finances against unforeseen fiscal problems."³⁹ Although section 19 does not mandate that Florida fall within this suggested amount immediately, the TBRC set basic guidelines for reaching the goal of five percent by fiscal year 1998-1999.⁴⁰ Similarly, most other states do not have sufficient rainy day funds. At the end of fiscal year 1989, eight states had funds with a zero balance, twenty-five states had funds with less than three percent of their general fund budgets, and only four states had balances of five percent or more.⁴¹ Although state reserves are difficult to maintain, especially at the suggested five percent level, most state officials recognize their importance. In Florida, for example, the TBRC mandated that the fund increase to five percent by 1998 because the state has experienced budget shortfalls⁴² and inaccurate budget estimates in the past. The TBRC acknowledged the importance of this fund for effective future budget management.

4. To Reduce the Use of Trust Funds

Trust funds constitute a significant segment of the Florida budget. Trust funds raise policy concerns because they are less visible and less scrutinized than general revenue funds. Earmarking revenue by placing it in a trust fund is thought to inhibit revenue sources for general government priorities.

38. Eckl, *Rainy Day Funds*, 1 NCSL Legisbrief No. 9 (March, 1993).

39. *Id.*

40. Resolution, *supra* note 20, at 8.

41. Eckl, *supra* note 11, at 6.

42. See Resolution, *supra* note 20, at 8.

5. To Facilitate Budget Reductions by the Executive

The TBRC specifically stated its intent to overrule *Chiles v. Children*,⁴³ viewing that decision as a constraint on Executive power to control budget reductions. The Commission's intent was to increase the Governor's power to implement budget reductions. Section 19 specifies that reductions adhere to agency planning documents which will prioritize programs for possible cuts.⁴⁴

Additionally, the new section 13 of article IV specifically refers to revenue shortfalls. This section empowers the Governor and Cabinet to "establish all necessary reductions in the state budget"⁴⁵ to comply with the balanced budget requirements of article VII.⁴⁶ Section 13 allows the Legislature to define "revenue shortfalls."⁴⁷

6. To Facilitate Executive Line Item Vetoes

Section 19 specifically expands the Executive authority to line item veto appropriations. Beginning July 1, 1994, section 19 requires the Legislature to itemize every "specific appropriation" over one million dollars.⁴⁸ This section increases the number of line items available for veto. Additionally, section 19 subjects substantive bills (other than the general appropriations bill) to the Executive's veto power for the first time.⁴⁹

While a primary purpose of section 19 was to increase the Governor's line item veto power,⁵⁰ the section's effect may be to micro-manage the budget. Literally read, implementation of these changes in the line item veto process is impossible. For example, large segments of the budget, such as the funding formula for public schools, are not amenable to division into line items.⁵¹

43. 589 So. 2d 260 (Fla. 1991).

44. FLA. CONST. art. III, § 19(h).

45. *Id.* art. IV, § 13.

46. *Id.* art. VII, § 1(d).

47. *Id.* art. IV, § 13.

48. *Id.* art. III, § 19(b).

49. FLA. CONST. art. III, § 19(b).

50. Telephone Interview with Robert Bradley, Deputy Director, Office of Planning & Budgeting, Office of the Governor (August 19, 1993).

51. The Florida Education Finance Program is distributed to school districts through a complex formula which is applied to a lump sum appropriation.

III. OTHER BUDGET-RELATED PROVISIONS OF THE FLORIDA CONSTITUTION: A PERSPECTIVE OF FLORIDA'S BUDGET PROCESS

Part of the drive for budget reform was generated by the overall constraints and parameters of Florida's Constitution. Florida relegates a fairly small role for the Executive in the budgeting process in comparison to other states. California, for example, authorizes its Governor to reduce appropriations in the veto process.⁵² The Florida Supreme Court has held that such a reduction specifically violates the separation of powers provision of Florida's Constitution.⁵³

Additionally, prior to the adoption of section 19, article III, section 8 prohibited the Governor from vetoing specific appropriations unless those appropriations were contained in a "general appropriations bill."⁵⁴ This provision prohibited the Governor from modifying and amending substantive legislation containing appropriations. If the Governor wished to veto the appropriation provision, section 8 required that he/she veto the entire bill. Section 19 drastically changes this policy and allows line item vetoes in substantive bills.⁵⁵

Although section 19 significantly alters Florida's budgeting process, other forces continue to limit tax sources and to constrain spending. First, Florida is one of only ten states which virtually prohibits a personal income tax.⁵⁶ During the debate which preceded the adoption of TBRC's resolution on section 19, some legislators expressed a desire that the TBRC submit a modification of the income tax restriction to the public. The TBRC, however, did not focus on this issue. Instead, the Commission concentrated on addressing spending controls and budget policies.

A second fiscal policy which remains unchanged by section 19 is the article VII, section 1(d) requirement for a balanced budget. Unlike some other states, Florida cannot deficit finance. No groundswell of support exists for modifying this policy.

Third, Florida continues to prohibit using appropriation bills to modify substantive policy.⁵⁷ The purpose of this prohibition is to confine substantive policy making to individual bills. Individual bills must comply with the

52. CAL. CONST. art. IV, § 10(e) ("The Governor may reduce or eliminate one or more items of appropriation while approving other portions of a bill.").

53. FLA. CONST. art. II, § 3; *Chiles v Children*, 589 So. 2d 260 (Fla. 1991).

54. FLA. CONST. art. II, § 8(a).

55. *Id.* § 19(b).

56. *Cutting Expenses Will Make Nest Egg Last*, THE ORLANDO SENTINEL, July 18, 1993, at F2.

57. FLA. CONST. art. III, § 7.

single subject rule, and, therefore, must be separately scrutinized in the legislative process.⁵⁸ To allow substantive statutory amendments in an appropriation bill would allow logrolling and inclusion of multiple subjects in one bill.⁵⁹

Conflict over managing the budget has ensued over the last decade. The issues of veto power and budget control were fought out in the courts. Those battles set the playing field for the TBRC reforms of 1992.

IV. SEPARATION OF POWERS, VETOES AND BUDGETING IN FLORIDA COURTS

Two major sources of budget controversy have generated litigation on budget issues in Florida. First, the recurrent controversy over the extent of the Governor's authority to line item veto appropriations, and second, the less frequent circumstance of administrative budget reductions in the case of revenue shortfalls.⁶⁰ The TBRC sought to address both these controversies in its section 19 amendment to article III of the Florida Constitution.⁶¹ While section 19 does speak directly to these issues, much controversy still exists regarding the Governor's power to line item veto and to correct for budgetary shortfalls.

A. *The Line Item Veto Power Prior to the Enactment of Section 19*

Prior to the enactment of section 19, the Governor's line item veto authority was based solely on the language of article III, section 8, which states, "[i]n all cases except general appropriations 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."⁶² The terms "general appropriation bill" and "specific appropriation" are not defined in section 8. Consequently, the definitions of each of these terms became the subject of litigation and were finally addressed by the Florida Supreme Court.

58. *Id.* § 6.

59. Of course, some may correctly argue that large appropriation bills have a major substantive effect.

60. *See supra* text accompanying notes 17-27.

61. *See infra* notes 110-128 and accompanying text. The TBRC sought specifically to overrule *Chiles v. Children* and to strengthen Executive authority.

62. FLA. CONST. art. III, § 8(a).

1. Defining "Specific Appropriation"

In *Brown v. Firestone*,⁶³ the court discussed generally the limits of the Governor's line item veto power and defined the term "specific appropriation."⁶⁴ In *Brown*, the Governor vetoed appropriation provisions which included legislation on other subjects in contravention of article III, section 12 of the Florida Constitution (the single subject requirement).⁶⁵ The court characterized the Governor's veto power as "a negative power, the power to nullify, or at least suspend, legislative intent. It is not designed to alter or amend legislative intent."⁶⁶ Thus, the court determined that any exercise of veto power over an appropriation destroys that appropriation and that the Governor could not redirect the appropriation to another recipient.⁶⁷ According to the court, the framers of the 1968 Florida Constitution sought to avoid creative use of the gubernatorial veto by controlling "the expenditure of funds unless the governor was willing to forsake the funds appropriated along with the legislative direction."⁶⁸

The court in *Brown* also considered the intended meaning of "specific appropriation."⁶⁹ It found that the terms "line item" and "specific appropriation" are identical, stating "[a] specific appropriation is an identifiable, integrated fund which the legislature has allocated for a specified purpose."⁷⁰ According to the court, each "fund" meeting this description was subject to the line item veto power.⁷¹

The court later refined its definition of "specific appropriation" in *Martinez v. Florida Legislature*.⁷² The court found that language in the Legislature's statement of intent was not part of the appropriation bill, and therefore, not a specific appropriation.⁷³ In addition, the court found that these statements were not binding upon the Executive and were only

63. 382 So. 2d 654 (Fla. 1980).

64. *Id.*

65. *Id.* The supreme court held that mandamus was the proper mechanism to challenge the constitutionality of appropriations acts rather than to veto them. *Id.* at 662 (citing *Dickinson v. Stone*, 251 So. 2d 268 (Fla. 1971) and *Division of Bond Finance v. Smathers*, 337 So. 2d 805 (Fla. 1976)).

66. *Id.* at 664. It is important to note that other states allow budget reductions.

67. *Brown*, 382 So. 2d at 664-65.

68. *Id.* at 667.

69. *Id.* at 668.

70. *Id.*

71. *Id.*

72. 542 So. 2d 358 (Fla. 1989).

73. *See id.* at 361-62.

directive in nature.⁷⁴ Consequently, *Martinez* held that the Executive had no authority to veto the intent language.⁷⁵

In *Florida House of Representatives v. Martinez*,⁷⁶ the court evaluated several line item vetoes in the 1989 appropriations bill. In continuing to interpret the term “specific appropriation,” the court stated that in order to veto “proviso” language in an appropriation bill, “that language *on its face* must create an identifiable integrated fund—an exact sum of money—that is allocated for a specific purpose.”⁷⁷

Among the challenged vetoes were a provision that authorized exceeding the standard pay grade for certain salaried officials without providing a funding amount, a provision setting forth conditions under which certain workers could redeem unused annual leave credits on termination of employment without identifying a sum of money, and a provision providing for the treatment benefits for alcohol dependency for members and employees of the State Legislature without specifying a sum of money funded.⁷⁸ The court found the veto of these provisions unconstitutional because none of these provisions met the court’s definition of “specific appropriation” requiring an identifiable sum of money.⁷⁹

The court in *Florida House* also addressed a \$4 million appropriation which the Legislature divided into two parts. The first part of the appropriation was specifically designated, but the second part was identified only as the “remainder.”⁸⁰ The Governor sought to veto the second part of the appropriation.⁸¹ The court found that this was an acceptable veto because the source and amount of the funding were readily discernible.⁸² According to the court, the appropriation met the *Brown* definition of “specific appropriation” because it constituted an “integrated identifiable fund allocated for a specified purpose.”⁸³

In another challenged veto in the same case, the court found that the Governor could not use the line item veto to eliminate specific funding sources from a single appropriation item, leaving the line item partially

74. *Id.* at 362.

75. *Id.*

76. 555 So. 2d 839 (Fla. 1990).

77. *Id.* at 844.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Florida House*, 555 So. 2d at 844.

82. *Id.*

83. *Id.* at 844-45.

funded.⁸⁴ Stating that the Governor “must veto all or none” of such appropriations,⁸⁵ the court found that this veto violated the legislative intent to spend a certain amount of money for a certain purpose.⁸⁶ The court reiterated the position that a line item veto could not partially reduce an appropriation. In this instance, the veto would have partially reduced the *sources* of funding, thereby reducing the appropriation. The court believed that vetoing part of a funding source for a line item would be equivalent to vetoing part of a “specific appropriation” or editing a specific appropriation, a clear violation of the then-existing constitutional provisions.⁸⁷

2. Defining “General Appropriation”

In addition to defining “specific appropriation,” the court also defined the term “general appropriation” within the context of article III, section 8. In *Thompson v. Graham*,⁸⁸ the legislation question amended statutes and authorized and provided funding for specific public education capital outlay (PECO) projects. Governor Robert Graham vetoed several of the specific appropriations. As a result, the House of Representatives filed a petition for writ of mandamus, arguing that the PECO bill was not a “general appropriations bill.” Examining the legislation, the court noted that the PECO bill was an act “authorizing and providing funding for specified public educational capital outlay projects,” and found that it was indeed a general appropriation bill for the purposes of the veto power.⁸⁹ The court further noted that although only one section of the bill provided funding authorization, this section contained eighty-six specific items authorizing the expenditure of over a half billion dollars.⁹⁰ The court rejected the House of Representatives’ argument that the appropriations were merely “incidental” to the legislation and approved the Governor’s line item veto.⁹¹

84. *Id.* at 845-46 (emphasis added).

85. *Id.* at 845. “If the legislature’s purpose is to expend a specific amount of money for a single stated purpose, then the governor has no authority to reduce that amount by vetoing one of several funding sources. The governor must veto all or none.” *Florida House*, 555 So. 2d at 845.

86. *See id.*

87. *See* FLA. CONST. art. III, § 8.

88. 481 So. 2d 1212 (Fla. 1985).

89. *Id.* at 1214.

90. *Id.* at 1215.

91. *Id.* (distinguishing this case from *Bengzon v. Secretary of Justice*, 299 U.S. 410, 413 (1937), which held that general legislation might include provisions “carrying an appropriation as an incident”). Concurring in *Thompson*, Justice Boyd noted that, even though the funds for these PECO projects were provided by bonds, the bill would still be considered a

Justice Ehrlich, dissenting in *Thompson*, criticized the majority's broad definition of "general appropriation bill."⁹² He argued that a general appropriation bill provided for payment of "salaries of public officers and other current expenses of the state."⁹³ According to Justice Ehrlich, the PECO bill did not provide for such payments, but only appropriated money for Florida's educational system. He determined that the PECO bill was an appropriation bill but that it did not meet the definition of a "general appropriation bill," and, therefore, was not subject to line item veto.⁹⁴

The issue of whether line item vetoes should extend beyond general appropriation acts is raised by new language in section 19(b), where substantive bills containing appropriations are subject to the line item veto.

B. Budget Reductions and the Separation of Powers

A revenue shortfall in the fiscal 1991-92 state budget of some \$621.7 million led to an order to revise budgets and reduce expenditures. This order was made pursuant to Florida Statutes, section 216.221(2), which provides:

If, in the opinion of the Governor, after consultation with the Revenue Estimating Conference, a deficit will occur in the General Revenue Fund, he shall so certify to the commission. The commission may, by affirmative action, reduce all approved state agency budgets and releases by a sufficient amount to prevent a deficit in any fund.⁹⁵

Controversy ensued over the Governor's proposed budget reductions. This controversy resulted in litigation challenging the constitutionality of the actions of the Governor and Cabinet and the constitutionality of section 216.

The Florida Supreme Court, in *Chiles v. Children*,⁹⁶ found that section 216.221(2) violated the separation of powers doctrine, and thus was

"general appropriation." Citing article XII, section 9(a)(2), which says that bonds may be issued and their proceeds expended only by authorization of the legislature, Justice Boyd concluded that the authorizations were "appropriations of state taxpayers' money to the state budget for the purpose of meeting the current expenses of the state" whether the money was to come from current revenues or bond proceeds to be repaid by future revenues. *Id.* at 1216-17 (Boyd, J., concurring).

92. *Thompson*, 481 So. 2d at 1219-20 (Ehrlich, J., dissenting).

93. *Id.* at 1220 (quoting *Amos v. Mosley*, 77 So. 619, 623 (Fla. 1917)).

94. *Id.*

95. FLA. STAT. § 216.221(2) (1991).

96. 589 So. 2d 260 (Fla. 1991).

unconstitutional.⁹⁷ The court also found that the statute conflicted with article III, sections 1 and 7, which grant to the Legislature the responsibility of passing bills into law, and article VII, sections 1(c) and (d), which require a balanced budget.⁹⁸ The court noted that it “has long held that the power to appropriate state funds is legislative and is to be exercised only through duly enacted statutes.”⁹⁹ Furthermore, the court stated that the power “to reduce appropriations, like any other lawmaking, is a legislative function.”¹⁰⁰ The court recognized that the Governor was constitutionally prohibited from using his veto power to alter or amend appropriations. Accordingly, the court held that the Legislature was prohibited from abandoning its legislative responsibility through delegation.¹⁰¹

The court distinguished its holding regarding budget deficits from cases addressing the legislative delegation of authority to the Executive branch in order to dispose of surplus funds.¹⁰² The court stated that in the case of surpluses, the legislative mandates in appropriations had to be met before the Executive branch could act.¹⁰³ In the case of deficits, however, “the facts indicate that entities of state government will not even be able to fulfill their legal responsibilities. Moreover, there is no express legislative policy that is being carried out. It is, in fact, the Commission which is setting policy.”¹⁰⁴ In the event that a shortfall would be imminent under the then-unconstitutional section 216, the court asked the attorneys in *Chiles* to suggest some available options. The attorneys offered a variety of

97. *Id.* at 268. Several constitutional provisions are implicated by *Chiles v. Children*.

Florida Constitution article II, section 3 provides: “The powers of the state government shall be divided into legislative, executive and judicial branches. *No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided [by the constitution].*” *Id.* at 263-64 (quoting FLA. CONST. art. II, § 3) (emphasis added).

Florida Constitution article VII, section 1(c) provides: “[N]o money shall be drawn from the treasury except in pursuance of appropriation made *by law.*” *Id.* at 264 (quoting FLA. CONST. art. VII, § 1(c)).

Florida Constitution article VII, section 1(d) provides: “[P]rovision shall be made *by law* for raising sufficient revenue to defray the expenses of the state for each fiscal period.” *Id.* at 264-65 (quoting FLA. CONST. art. VII, § 1(d)).

98. See *Chiles*, 589 So. 2d at 264-65.

99. *Id.* at 265 (citing *State ex rel. Davis v. Green*, 116 So. 66, 69 (Fla. 1928)).

100. *Id.* (citing *Florida House of Representatives v. Martinez*, 555 So. 2d 839, 845 (Fla. 1990)).

101. *Id.* at 265.

102. *Id.* at 267.

103. *Chiles*, 589 So. 2d at 267.

104. *Id.*

suggestions ranging from the position that the Governor could do nothing to the position that the Governor could act reasonably under emergency powers to balance the budget.¹⁰⁵

The court went on to suggest that it might be permissible for the Legislature to allow the Executive branch to respond to budget crises, but specified that any such delegation of functions must be accompanied by “sufficient guidelines to assure that the legislative intent is clearly established and can be directly followed”¹⁰⁶ Under this interpretation, the delegation must be accompanied by specific guidelines.¹⁰⁷ These guidelines must indicate the amount of possible reductions, prioritize the reductions, and provide for some legislative control or oversight.¹⁰⁸ Such guidelines were included in amendments to section 216 which were enacted after *Chiles*, but before the enactment of section 19.¹⁰⁹

Dissenting in *Chiles*, Justice McDonald stated that Florida Statutes section 216.221 is a statutory response to the constitutional mandate for a balanced budget in article VII, section 1(d).¹¹⁰ He also stated that the Governor already has the responsibility under article IV, section 1(a) to execute the laws, including the balanced budget, and to ensure that no more money is spent than is taken in.¹¹¹

V. THE FUTURE OF THE BUDGET BATTLE AFTER THE ENACTMENT OF SECTION 19

A. *Line Item Veto Authority After Section 19*

The language of section 19 evidences a clear intent by the TBRC to increase the Governor’s line item veto power. The section 19 requirement that the Legislature line item any appropriation over \$1 million is intended to increase Executive authority to veto line items—most particularly those which are termed “legislative turkeys.” “Legislative turkeys” refer to those special projects which some view as wasteful pork barrel appropriations. The Legislature, therefore, is left with the practical problem, and now the

105. The author was amicus curiae in *Chiles v. Children* and presented oral argument in the case.

106. *Id.* at 268.

107. *See id.*

108. *Id.*

109. *See supra* notes 29-32 and accompanying text (for the implications of the conflict).

110. *Chiles*, 589 So. 2d at 270 (McDonald, J., dissenting).

111. *Id.* at 270-71.

constitutional duty, to define "specific appropriation." While the supreme court has previously offered such a definition, that definition may not suffice under the new constitutional language.

Pragmatically, using the line item on every one million program in a thirty billion budget is impossible. Additionally, such a requirement will surely result in both inefficient and ineffective management. In all states, "[s]ignificant portions of state operating budgets are uncontrollable. Entitlement and mandates mean that services must continue in some capacity regardless of performance."¹¹² Line item budgeting is not pragmatic for these entitlement programs and will not accomplish the goal of cutting government costs. The challenge will be to design legislation which will meet the purposes of the TBRC, pass the Legislature, and be acceptable to the Governor.

Another important controversy will arise under the new ability of the Governor to partially veto appropriations in legislation other than a general appropriation bill.¹¹³ This provision radically departs from the former restriction prohibiting line item vetoes in substantive bills which include appropriations. This concept also directly contravenes the logic of the cases which vehemently denied the authority of the governor to partially veto a policy and let the rest of the policy stand.¹¹⁴

B. *Budget Reductions After Section 19*

The TBRC directly addressed the conflict between the Legislative and Executive branches represented by the various line item veto cases and by the budget reduction controversy. The Commission specifically referred to *Chiles* and declared its intent to reverse the case in order to vest authority for budget reductions in the Governor and the Cabinet, consistent with the provisions of section 19.

The statement of intent to reverse *Chiles* has limited practical effect because section 10 controls the budget reduction process, which effectively invalidates the authority of *Chiles* on the issue. *Chiles* is no longer the authority for evaluating budget reductions; section 19 specifically controls that process. *Chiles* simply found that the existing statutes for budget reductions were unconstitutional as a violation of separation of powers.¹¹⁵

112. Hayes, *The Performance Budget Revisited: A Report on State Budget Reform Initiatives* at 7 (July 1993).

113. See FLA. CONST. art. III, § 19.

114. See, e.g., *Florida House of Representatives v. Martinez*, 555 So. 2d 839 (Fla. 1990).

115. See *Chiles*, 589 So. 2d at 268.

The language of section 216.221 created an unconstitutional, overbroad delegation of authority to the Executive branch. The language of section 216.221 delegated authority to the Administration Commission¹¹⁶ to reduce all approved state agency budgets and releases by a sufficient amount to prevent a deficit in any fund.¹¹⁷ State agencies, for purposes of fiscal affairs, include all budget entities other than the Legislature.¹¹⁸ Reducing the budget requires a majority vote of the Cabinet, which includes the Governor.¹¹⁹

The Florida Supreme Court has consistently maintained a strict separation of powers doctrine.¹²⁰ Accordingly, the court found the language of section 216.221 to be an overbroad unconstitutional delegation.¹²¹ Section 216.221 required no legislative authorization of cutbacks, did not restrict the amount or percentages of the cuts, and required only that the cutbacks be sufficient to prevent a deficit.¹²²

While section 216 relinquished broad discretion and authority to the Administration Commission, the court has consistently held that the Legislature must limit its delegation of authority *with specificity*. Following the standards of *Askew v. Cross Key Waterways*¹²³ and related cases, it is argued that the court should hold the Legislature to the rigorous standard required by the Florida Constitution in delegating the fundamental power of budget decisions.

Pursuant to the decision in *Chiles*, the Legislature passed revisions to chapter 216 which specify how reductions are to be carried out.¹²⁴ These provisions must now be read in conjunction with the new section 19. Together, the provisions substantially increase executive authority both by

116. The Administration Commission is composed of the Governor and the Cabinet.

117. See FLA. STAT. § 216.221(2) (1991).

118. See *id.* § 216.011(1)(kk).

119. *Id.* § 14.202 (1991).

120. See, e.g., *Orr v. Trask*, 464 So. 2d 131 (Fla. 1985); *Askew v. Cross Key Waterways*, 372 So. 2d 913 (Fla. 1978); *Lewis v. Bank of Pasco County*, 346 So. 2d 53 (Fla. 1976).

121. See *Orr*, 464 So. 2d at 134-35.

122. NATIONAL CONFERENCE OF STATE LEGISLATURES, FISCAL AFFAIRS PROGRAM, *Legislative Budget Procedures in the 50 States: A Guide to Appropriations and Budget Processes* (1988). Examples include a binding requirement of approval by House and Senate Appropriations Committees in Michigan and Illinois, where cuts over two percent of total appropriations require approval of the full legislature. Some states grant authority to reduce the budget up to a set percentage. *Id.*

123. 372 So. 2d 913 (Fla. 1978).

124. See FLA. STAT. § 216.221 (1991).

accomplishing a constitutional delegation of authority and by placing expanded Executive authority in the Florida Constitution.

Section 19 does not suspend the operation of the separation of powers clause. Section 19 does, however, define the exercise of Executive authority in reductions and is likely to have a dramatic effect on the application of the separation of powers clause in budget reduction actions. The TBRC resolution discusses the need for expeditious action in shortfalls and, therefore, focuses on Executive action.¹²⁵

Section 19 also specifies that reductions adhere to agency planning documents which will prioritize programs for possible cuts.¹²⁶ Furthermore, the new article IV, section 13 of the Florida Constitution specifically refers to revenue shortfalls and empowers the Governor and the Cabinet to "establish all necessary reductions in the state budget" in order to comply with the balanced budget requirements of article VII.¹²⁷ Section 13 does allow the Legislature to define "revenue shortfalls."¹²⁸ This provision provides an opportunity for the Legislature to limit Executive power by controlling when a shortfall occurs.

C. Other Provisions

1. Integration of Planning and Budgeting

The success of the efforts in section 19 to integrate planning and budgeting will depend in large measure on the cooperation of the Legislature and the Executive branch because section 19 does not compel appropriations to comply with plans.¹²⁹

One critical problem with section 19 is the potentially destructive consequences of increased line item budgeting in appropriation bills. This effort, which was intended to increase the Governor's power to cut wasteful spending, runs contrary to trends in budgeting which accord increased discretion to program administrators. For example, in Massachusetts, so long as an agency does not overspend its budget and "service delivery groups" do not change by more than ten percent, an administrator can set

125. See Resolution, *supra* note 20, at 11.

126. FLA. CONST. art. III, § 19(h).

127. See *id.* art. IV, § 13; *id.* art. VII, § 1(d).

128. See *id.* art. IV, § 13.

129. See Hayes, *supra* note 112, at 4 ("[A]greement on priorities and full cooperation in execution [of performance budgeting] will depend, however, upon local circumstances and personalities involved.").

on state budgeting noted that, “performance reform asks lawmakers to abandon traditional line item spending controls and allow managers to reallocate appropriations as conditions merit.”¹³¹ The constitutional mandate of section 19 to increase line items appears to be contrary to this kind of management reform.

2. An Open and Accountable Process: Working Capital Requirements, Trust Fund Limitations and Simplification of the Process

The gradual increase of the working capital fund to five percent makes solid financial sense. Of course, pressure will increase in times of shortfall. However, by placing this provision in the constitution, meeting the reserve level is a mandate.

The series of issues dealing with establishing waiting periods for public review and clearer appropriation formats will help public understanding of the process. However, the Legislature must be committed as an institution to facilitating these reforms for them to make a major impact.

Limitation of trust funds has long been a goal of budget reformers. The number of trust funds in Florida will decline due to the continuing review process, and making enactment of future trust funds more difficult through the three-fifths vote requirement of each chamber of the Legislature.

VI. CONCLUSION

The reforms of section 19 are the beginning of resolving the complex issues of budget policy rather than the end. Many provisions are not even effective as of 1993. Legislation implementing the reforms of section 19 will be the prime indicators of whether the provision will meet its goals of improved openness, understandability, and efficiency.

The most difficult goal to implement is integrating planning and budgeting. Solid implementing legislation and commitments from the leadership of the Legislature and the Governor are indispensable.

The most unpredictable outcome is the continuing controversy over line item vetoes and budget reductions. Again, implementing legislation is a key factor in achieving a balance of power, efficiency, and accountability. The most predictable outcome is that the Legislature and the Executive branch will continue to struggle over political control of the budget process.

131. *Id.* at 10.