



**Legislative Budget Commission
Zero-Based Budgeting
Subcommittee on Public Safety
Monday, January 7, 2002
6:15 p.m. 214 C**

AGENDA
Legislative Budget Commission
Public Safety Zero Based Budgeting Subcommittee

DATE: Monday, January 7, 2002
TIME: 6:15 p.m. until completion
PLACE: 214 Capitol

Members: Senator Anna Cowin Representative Randy Ball, Chairman
 Senator Skip Campbell Representative Gus Bilirakis
 Senator Victor Crist Representative Rob Wallace

1. Call To Order
2. Roll Call
3. Chairman's Opening Remarks
4. Overview of Changes to Staff Recommendations
5. Public Testimony and Discussion
6. Adjourn

Legislative Budget Commission
Public Safety Zero Based Budgeting Subcommittee
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I. Summary of Substantive Changes to Staff Recommendations from Initial Draft

Parole Commission

- Dropped recommendation related to use of telecommuting technology for examiners and resulting ability to close satellite offices.
- Dropped recommendation related to use of a shorter questionnaire for clemency applicants.
- Recommendation that Legislature consider shifting a portion of clemency costs to applicants was previously a consensus recommendation. It is now a House staff recommendation only.

State Courts – Executive Direction and Support

- Revised House option related to additional reductions to court services, education from 8 FTE to 7 FTE to correct for duplication with another recommendation.
- Revised recommendation related to reduction to Operating Capital Outlay to conform to Special Session C decision.

Capital Collateral Regional Counsels

- Dropped House recommendation related to changes to Chapter 216 that would prohibit lobbying/consulting contracts for the CCRC's. Section 11.062, F.S., already provides for a prohibition against the use of state funds to pay for outside lobbyists and also provides for penalties. In addition, the Legislature reduced the expense budget in the CCRC's by \$60,000 related to lobbyist/consultant contracts during Special Session C.

No other changes made to staff recommendations.

II. Summary of Staff Recommendations Adopted During Special Session C

Parole Commission

- \$50,000 General Revenue reduction which will annualize to 8 FTE and \$534,559 in FY 2002-03 due to assignment of certain administrative support functions to the Department of Corrections.

State Courts – Executive Direction and Support (Office of State Courts Administrator)

- Eliminate Trial Court Funding Unit – 2 FTE and 81,023
- Eliminate Secretarial Support Position – 1 FTE and \$28,605
- Reduce Operating Capital Outlay - \$150,000
- Eliminate 1 FTE in Court Education Unit – 1 FTE and \$70,244
- Eliminate 1 FTE in Children’s Court Improvement Unit – 1 FTE and \$52,418
- Replaced General Revenue with funds from the Court Education Trust Fund (fund shift of \$264,735 which will annualize to \$529,471 in FY 02-03)

Capital Collateral Regional Counsels

- Reduced \$60,000 in expenses related to consulting/lobbying contract.

TAB 1

SUPREME COURT

All activities within the Supreme Court are being recommended for continuation with no recommendations for modifications. This overall recommendation is based upon the following:

- The Supreme Court operates in an effective and efficient manner in carrying out its mission. The Supreme Court operates with fewer resources than its counterparts in the 10 most populous states, yet ranks near the top in clearance rates of cases and opinions issued per justice.
- Revising the Supreme Court's responsibilities would require restructuring of Florida's Constitution, which is not recommended. The Legislature created the Supreme Court Workload Study Commission in 2000 and charged it with the responsibility of conducting a comprehensive review and analysis of the structure, caseload, and operations of the Supreme Court. The Commission issued its report in March 2001 and did not recommend any changes to the Court's jurisdiction.
- The Supreme Court currently outsources facility maintenance and major repairs. Other areas were reviewed for outsourcing but **no** further outsourcing is recommended at this time.

Zero Based Budget Review Recommendations by Service & Activity - 2001

Agency:	State Courts System
Program:	Supreme Court
Service:	Supreme Court of Florida

1. Should the state continue to perform this Service? X YES _____ NO

The Constitution of the State of Florida creates the Supreme Court and vests it with the following duties:

- *Article V, Section 3 makes the Supreme Court the court of last resort in the Florida judicial branch, vesting the court with mandatory and discretionary review powers.*
- *Article V, Section 2 charges the Supreme Court with responsibility for the administrative supervision of all Florida courts and with rule-making authority for the practice and procedure of law in all state courts.*
- *Article V, Section 12 gives the Supreme Court authority for disciplining and removing judges.*
- *Article V, Section 15 grants the Supreme Court exclusive responsibility for regulating admission to the practice of law, the discipline of attorneys admitted to practice, and all other matters relating to the practice of law.*

Elimination of the Supreme Court, or revising its responsibilities, could not occur without restructuring Florida's Constitution. In March 2001, the Supreme Court Workload Study Commission, which was created by the Florida Legislature in 2000 to conduct a comprehensive review and analysis of the structure, caseload, and operations of the Supreme Court, issued its report and did not recommend any changes to the Court's jurisdiction. The Supreme Court operates in an effective and efficient manner and does so with fewer resources than most of the highest level courts in the 10 most populous states.

2. Are there any areas where performance is not meeting expectations for this service?

For those activities within the Supreme Court for which there are performance standards those standards are being met.

3. Based on the information provided, should each activity within this service continue to be performed by the state and, if continued, should funding be modified per questions 3.1 through 3.6? *Each activity should continue without any funding modifications.*

Activities (Business Processes)	FY 01-02 Est. Exp.	YES	NO	Modify
1. Judicial Processing of Cases	\$4,324,665	X		
2. Court Records and Case Flow Management	\$ 969,790	X		
3. Facility Maintenance and Management	\$1,093,976	X		
4. Security	\$ 371,212	X		
5. Supreme Court Library	\$ 664,606	X		
6. Desktop Support	\$ 104,527	X		
7. Fixed Capital Outlay	0			
Total Service	\$7,528,776			

3.1 Provide detailed reasons for activities NOT being recommended for continuation.

Not applicable.

3.2 Are there any areas where the agency could improve performance by re-engineering any activity? *No.*

3.3 For each activity recommended for continuation, is the current level of efficiency and effectiveness meeting legislative expectations? Describe those deficiencies. Can the deficiency be addressed using current resources?

Yes.

3.4. For each activity, identify potential and recommended reductions as follows:

a. Can any General Revenue be shifted to trust funds?

No.

b. List and describe all reductions listed in the 5% LRPP reduction list and the LBR Schedule 8B reduction list (if different). Explain in detail why any of these reductions should or should not be recommended.

There are no reductions listed in the 5% LRPP reduction list. The only reduction issues included in the LBR Schedule VIII B includes eliminating funds for the First District Court of Appeals Annex Fixed Capital Outlay project. The Revenue Estimating Conference has already included the reversion of these funds in the state revenue estimate for FY 2002-03.

c. List the activities, or components thereof, which are least relevant to or least effective in accomplishing the agency's missions and goals (if not previously listed in "b" above). Should any funding for these activities be redirected to a higher priority activity within this agency or eliminated entirely?

Not applicable.

d. For any LRPP reduction above that you recommend against adopting, develop alternative reduction options to achieve the 5% savings.

Not applicable.

3.5. Are there any funding enhancements which would significantly enhance the efficiency or effectiveness of the activities within this service?

No. Based on staff review of the current operations of the Supreme Court there are no funding enhancements that would significantly enhance the efficiency or effectiveness of the activities evaluated.

3.6 For each recommendation relating to an activity's funding level (whether to eliminate or modify) what are the consequences to the customers of each recommendation?

4. Based on a review of statutory authorities for activities and the analysis of customer needs and quality of services provided, are any changes to statutes or other expressions of legislative intent recommended?

No.

5. Were there any areas in this service which consistently lack adequate information necessary to perform the zero based budget analysis? If so please explain.

No.

6. Is there any evidence that quality could be improved or costs reduced through outsourcing or privatizing all or part of the activities within this service?

No. The Supreme Court currently outsources facility maintenance and major repairs. Other areas were reviewed for outsourcing but no further outsourcing is recommended at this time.

7. Should all or some of the tasks or functions within this activity be transferred to a more appropriate service or budget entity where a similar activity exists or to an entity that has a more compatible mission?

Activity 1. The judicial processing of cases cannot be transferred to another entity without changing the Florida Constitution, and the other activities within this program support the court's ability to process cases and should not be transferred.

8. Are any changes indicated to the mission statements and goals of the LRPP based on your review of statutory authorities and legislative intent for this service and its activities?

No.

9. Are there other recommendations at either the Service or Activity Level not addressed in the recommendations above?

No.

TAB 2

District Courts of Appeal

- The Appellate Mediation program should be discontinued. Private sector mediators can perform the same service for litigants as the Appellate Mediation Program with the same level of quality.
- The statutory provisions governing waiver of filing fees, costs and/or service charges for indigents in criminal or civil actions should be re-examined and perhaps be revised to establish, at a minimum, uniform criteria upon which to make a determination of who is indigent. Uniform criteria may ensure that there is more equitable treatment among civil and criminal litigants and possibly discourage appeals without merit.

Zero Based Budget Review Recommendations by Service & Activity - 2001

Agency:	State Courts System
Program:	District Courts of Appeal
Service:	District Courts of Appeal

1. Should the state continue to perform this Service? X YES _____ NO

Provide reasons for the above recommendation

The District Courts of Appeal are created by Article V of the Florida Constitution. Citizens whose rights and liberties are determined by the trial courts have a right to appeal the decision to the District Courts of Appeal. In most cases this is the final review of a decision. The District Courts of Appeal correct errors of law made by the lower courts and insure the law is applied consistently within the district. If there were no District Courts of Appeals, the citizens' constitutional right to appeal would be negated.

2. Are there any areas where performance is not meeting expectations for this service?

There are no statewide performance standards for the District Courts of Appeal.

3. Based on the information provided, should each activity within this service continue to be performed by the state and, if continued, should funding be modified per questions 3.1 through 3.6?

Activities (Business Processes)	FY 01-02 Est. Exp.	YES	NO	Modify
1. Judicial Processing of Cases	\$26,694,799	X		
2. Court Records and Case Flow Management	3, 774,7998	X		
3. Judicial Administration	1,500,787	X		
4. Security	458,981	X		
5. Facility Maintenance and Management	1,582,796	X		
6. Appellate Mediation	377,101		X	
7. Desktop Support	981,208	X		
Total Service	\$35,370,378			

3.1 Provide detailed reasons for activities NOT being recommended for continuation.

Activity 6 – Appellate Mediation: By Administrative Order, the Fourth DCA, based on “budgetary and other considerations,” discontinued its Appellate Mediation program effective September 30, 2001. Presently, the First DCA is the only district that has an Appellate Mediation program.

In October, the First DCA issued its Report on the Status of the First District Court of Appellate Mediation Program. The report concludes the unit cost for successful mediation of a case is substantially higher than the unit cost for resolution of a case through the traditional process of appellate adjudication. The court recognized that first priority must be given to those expenditures that most efficiently accomplish the court’s mission of competent case disposition. The First DCA plans to phase out the program over the course of the current fiscal year.

Staff concurs with the First DCA’s conclusion and recommends that the program be discontinued. Private sector mediators can perform the same service for litigants as the Appellate Mediation Program with the same level of quality. There are enough private mediators to meet the anticipated needs. If the litigants who are currently receiving this service from the state for free perceive the service as beneficial and valuable, they will be able to hire private mediators.

3.2 Are there any areas where the agency could improve performance by re-engineering any activity?

No activities were identified that could be improved by re-engineering.

3.3 For each activity recommended for continuation, is the current level of efficiency and effectiveness meeting legislative expectations? Describe those deficiencies. Can the deficiency be addressed using current resources?

The District Courts of Appeal have not yet adopted any statewide performance standards. Although there is variance in some administrative practices among the appellate courts, it appears that the activities recommended for continuation are performing at a satisfactory level of efficiency and effectiveness based on the information available. In addition, it appears that the automated case management system and other technological advances have greatly improved the efficiency and effectiveness of the court without significant attendant increases in personnel.

3.4. For each activity, identify potential and recommended reductions as follows:

- a. Can any General Revenue be shifted to trust funds?

None have been identified.

- b. List and describe all reductions listed in the 5% LRPP reduction list and the LBR Schedule 8B reduction list (if different). Explain in detail why any of these reductions should or should not be recommended.

There are no reductions listed in the 5% LRPP reduction list. The only reduction issue included in the LBR Schedule VIII B includes eliminating funds for the 1st District Court of Appeals Annex Fixed Capital Outlay project. The Revenue Estimating Conference has already included the reversion of these funds in the state revenue estimate for FY 2002-03. This recommendation should not be adopted since the funds are no longer available.

- c. List the activities, or components thereof, which are least relevant to or least effective in accomplishing the agency's missions and goals (if not previously listed in "b" above). Should any funding for these activities be redirected to a higher priority activity within this agency or eliminated entirely?

N/A

- d. For any LRPP reduction above that you recommend against adopting, develop alternative reduction options to achieve the 5% savings.

N/A

3.5. Are there any funding enhancements which would significantly enhance the efficiency or effectiveness of the activities within this service?

No.

3.6 For each recommendation relating to an activity's funding level (whether to eliminate or modify) what are the consequences to the customers of each recommendation?

If Appellate Mediation is no longer funded, litigants will still be able to have their cases mediated if they chose since there is a strong private market. The litigants will have to seek out and pay for the appellate mediators, since the mediation will no longer be provided free of charge by the state. However, if the litigants perceive mediation as an effective alternative to further litigation and chose to hire a mediator, the cost of the mediation will be less than the cost of continuing the appeal in the court system.

4. Based on a review of statutory authorities for activities and the analysis of customer needs and quality of services provided, are any changes to statutes or other expressions of legislative intent recommended?

It is recommended that statutory provisions ((ss. 27.52, s. 57.081, 57.085, 440.25, F.S.) governing waiver of filing fees, costs and/or service charges for indigents in criminal or civil actions be re-examined and revised to establish, at a minimum, uniform criteria upon which to make a determination of indigency, pursuant to s. 29.002(3), F.S. It may ensure that there is more equitable treatment among civil and criminal litigants in determining who is unable to pay based on federal poverty guidelines or other specific threshold. It may also help to deter the pursuit of frivolous claims and appeals made easier by waivers of fees, costs and services.

5. Were there any areas in this service which consistently lack adequate information necessary to perform the zero based budget analysis? If so please explain.

No. Adequate information was provided by the court system to perform the zero-based budget analysis.

6. Is there any evidence that quality could be improved or costs reduced through outsourcing or privatizing all or part of the activities within this service?

Discontinuing the Appellate Mediation Program will reduce costs to the state while maintaining the same quality for the participants since private sector mediators can perform the same service for litigants the same level of quality. There are enough private mediators to meet the anticipated needs. If the litigants who are currently receiving this service from the state for free perceive the service as beneficial and valuable, they will be able to hire private mediators.

7. Should all or some of the tasks or functions within this activity be transferred to a more appropriate service or budget entity where a similar activity exists or to an entity that has a more compatible mission?

No.

8. Are any changes indicated to the mission statements and goals of the LRPP based on your review of statutory authorities and legislative intent for this service and its activities?

No.

9. Are there other recommendations at either the Service or Activity Level not addressed in the recommendations above?

No.

TAB 3

MEMORANDUM

TO: Staff, Zero-Based Budgeting Subcommittee on Public Safety

FROM: The Honorable Martha C. Warner
Judge, Fourth District Court of Appeal

DATE: November 30, 2001

SUBJECT: Draft Zero-Based Budget Review Recommendations

The Judicial Management Council of Florida's Committee on District Court of Appeal Performance and Accountability coordinated the preparation of the Zero-Based Budget Review for the district courts of appeal. As chair of that committee, I write in response to the request for comments and feedback regarding the draft staff recommendations that resulted from the Zero-Based Budget Review of the District Courts of Appeal.

Our committee has reviewed the draft recommendations prepared by staff. In addition, we circulated the draft recommendations to the chief judges of the district courts of appeal, to members of the District Court of Appeals Budget Commission, and to the Marshals and Clerks of the district courts of appeal. I must note, however, that the Supreme Court has not yet had the opportunity to review these recommendations and formulate an official State Courts System position. When the State Courts System is afforded the opportunity to speak before the Zero-Based Budgeting Subcommittee on Public Safety, I will be able to represent that position to the committee.

We do not disagree with any of the recommendations that have been prepared by the staff regarding the district courts of appeal. Of course, we agree that the State should continue to perform the "service" provided by the district courts of appeal. We also agree with the recommendation regarding the elimination of the appellate mediation activity. This is consistent with the findings from the 1st and the 4th District Courts of Appeal.

With respect to the recommendation regarding filing fees, costs and/or service charges for indigents, guidelines for the determination of indigence for the purposes of the waiver of court costs and fees would be helpful, as would revisions that would provide equity in the treatment of civil and criminal

Draft Zero-Based Budget Review Recommendations

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litigants and uniformity across the state. We can supply staff or any legislative committee with information and will be responsive to any questions. However, because any challenges to statutes regarding indigents would be heard in our courts, *e.g. Jackson v. Florida Dep't of Corrections*, 790 So. 2d 381 (Fla. 2000), we feel it would be inappropriate for the courts to suggest what that standard should be.

TAB 4

Judicial Qualifications Commission

- The JQC should consider employment of a full-time in-house counsel.
- The Legislature should consider a requirement of full reimbursement to the JQC of costs and fees from guilty judges.
- The JQC should consider eliminating the collection and filing of financial disclosure forms that are also filed and held with the Ethics Commission.

Zero Based Budget Review Recommendations by Service & Activity - 2001

Agency:	State Courts System
Program:	Judicial Qualifications Commission
Service:	Judicial Qualifications Commission

1. Should the state continue to perform this Service? YES NO

Provide reasons for the above recommendation

The Judicial Qualifications Commission (JQC) investigates charges of unethical conduct by judges,¹ and recommends disciplinary action to the Florida Supreme Court ranging from reprimand through removal from office. Final determination of disciplinary action is by the Florida Supreme Court. This activity is required by art. V, s. 12, of the Florida Constitution.

The activity is not essential to the workings of the government, discipline of judges could be limited to the legislative impeachment process. However, impeachment only allows for one significant remedy, and thus is of little use in cases where a sanction other than removal from office is appropriate. Impeachment consumes a significant amount of legislative time and resources, and is inefficient as compared to the JQC process. The JQC also recommends forced retirement of a judge due to disability, a function that would be difficult to accomplish through the impeachment process.

The JQC also collects and maintains financial disclosure forms that judges are required to file annually. These financial disclosure forms are required by court rule, not state law.

2. Are there any areas where performance is not meeting expectations for this service?

There is little specific guidance on what the appropriate performance expectation is for this service. The Florida Bar disciplines attorneys, a function that is similar to the disciplining of judges. In the latest fiscal year, the Florida Bar disciplinary program expended an average of \$16,770 per sanction, and expended an overall average of \$852.94 per disciplinary case filed.² By contrast, the estimated overall average cost per case filed with the JQC for 2001-2002 is \$1,454.68.³ These numbers are for information only, there is no reasonable known methodology that can factor differences in types of cases and economies of scale in order to create an exact comparison of these averages.

Compared to other states, the Florida JQC receives significantly less funding. The JQC provided the following information on funding of the JQC function in other states:

¹ The JQC has jurisdiction over elected or appointed county court judges, circuit court judges, judges of an appeals court, or justice of the supreme court. The term "judge" is used for simplicity, but refers here to a judge or a justice.

² Statistics for 2000-2001 fiscal year. Source: <http://www.flabar.org/newflabar/lawpractice/Conduct/flastats.html>.

³ JQC ZBB submission, at page 2.

- California has a budget of \$3,101,000, 28 full-time staff (which includes 14 FT attys) and jurisdiction over 1580 judges.
- Illinois has a budget of \$525,000 with 6 full-time staff and jurisdiction over 923 judges. However, Illinois is a two-tier state and these statistics are for the investigative side only. Budget for the second tier is unknown.
- Louisiana has a budget of \$609,829 with 10 full-time and one part-time staff (which includes 3 FT attys.), with jurisdiction over 760 judges.
- Michigan has a budget of \$918,800 with 7 full-time staff (which includes 3 FT attys.) and jurisdiction over 1058 judges (including senior judges).
- Ohio has a budget of \$1,328,024 with 18 full-time staff (which includes 6 FT attys.) and jurisdiction over 1130 judges.
- Pennsylvania has a budget of \$929,000 with 9 full-time staff (which includes 2 FT attys.) and jurisdiction over 1000 judges. However, Pennsylvania is a two-tier state; these statistics are for the investigative side only.
- Arkansas has a budget of \$311,253 with 4 FT staff and jurisdiction over 400 judges. However, litigation costs are paid by the Attorney General's office unless there is a conflict.
- New York has a budget of \$1,947,500 with 26 full-time and 1 part-time staff (which includes 8 FT attys.) and jurisdiction over 3500 judges. (New York has numerous "township" judges, non-lawyer judges, part-time judges, etc.)

It is unclear the extent to which other states may be overfunded, or the Florida JQC may be underfunded, as compared to other states.

3. Based on the information provided, should each activity within this service continue to be performed by the state and, if continued, should funding be modified per questions 3.1 through 3.6?

It is recommended that the activity of investigating and prosecuting complaints against judges should continue to be performed by the state.

Activities (Business Processes)	FY 01-02 Est. Exp.	YES	NO	Modify
1. Disposition of Complaints Against the Judiciary	753,524	X		yes
Total Service	753,524			

3.1 Provide detailed reasons for activities NOT being recommended for continuation.

No activities are recommended for discontinuation.

3.2 Are there any areas where the agency could improve performance by re-engineering any activity?

It appears that the agency could improve performance through re-engineering the activity by employing in-house counsel and by seeking full reimbursement of all costs from judges found guilty of wrongdoing.

3.3 For each activity recommended for continuation, is the current level of efficiency and effectiveness meeting legislative expectations? Describe those deficiencies. Can the deficiency be addressed using current resources?

It appears that the agency could improve efficiency and effectiveness by employing in-house counsel and by seeking full reimbursement of all costs from judges found guilty of wrongdoing.

3.4. For each activity, identify potential and recommended reductions as follows:

a. Can any General Revenue be shifted to trust funds?

On the theory that discipline functions operate as a deterrence to future bad conduct by other similarly situated persons, perhaps some of all of the expenditures of this activity could be transferred to the Court Education Trust Fund. Otherwise, it does not appear that any General Revenue expenditures could be shifted to any existing trust fund.

b. List and describe all reductions listed in the 5% LRPP reduction list and the LBR Schedule 8B reduction list (if different). Explain in detail why any of these reductions should or should not be recommended.

The agency has not completed a LRPP. The agency has indicated that its proposed 5% reduction is to use court reporters from the Attorney General's list of approved providers. Those providers have agreed to a reduced fee in exchange for inclusion on the list. It appears that this is an internal management decision resulting in cost savings, and that this reductions should be recommended.

c. List the activities, or components thereof, which are least relevant to or least effective in accomplishing the agency's missions and goals (if not previously listed in "b" above). Should any funding for these activities be redirected to a higher priority activity within this agency or eliminated entirely?

The component of the activity that appears to be the least relevant or the least effective in accomplishing the agency's missions and goals is the collection of financial reports submitted by judges. Judges are required to file with the JQC a copy of the disclosure form already filed with the Ethics Commission. Judges are additionally required to file with the JQC a "Statement of Business Interests", a requirement that is not statutorily mandated. Compliance must be checked, and the documents received must be indexed and stored. The JQC wastes time and resource keeping a copy of a document maintained elsewhere, and the Statement of Business Interests form appears to be of limited value.

d. For any LRPP reduction above that you recommend against adopting, develop alternative reduction options to achieve the 5% savings.

The agency has not completed a LRPP.

3.5. Are there any funding enhancements which would significantly enhance the efficiency or effectiveness of the activities within this service?

It appears that the agency could improve efficiency and effectiveness by employing in-house counsel and by seeking full reimbursement of all costs from judges found guilty of wrongdoing.

3.6 For each recommendation relating to an activity's funding level (whether to eliminate or modify) what are the consequences to the customers of each recommendation?

There are no apparent consequences to the customers of this activity should the Legislature adopt the funding modification recommendations.

4. Based on a review of statutory authorities for activities and the analysis of customer needs and quality of services provided, are any changes to statutes or other expressions of legislative intent recommended?

Attorneys disciplined by the Supreme Court are routinely required to reimburse the Florida Bar for many of the costs related to the investigation and prosecution. This policy results in the guilty reimbursing the prosecuting authority for the cost of the guilty party's transgressions, and the potential financial penalty encourages early settlement (which further reduces the expense of the activity).

Art. V, s. 12(f)(2)j. provides that the JQC "shall be entitled to recover the costs of investigation and prosecution, in addition to any penalty levied by the supreme court." The Supreme Court, however, has declined to allow the JQC to recover the costs of investigation and prosecution; rather, disciplined judges are charged fewer costs than disciplined lawyers are. Currently, only court reporter fees may be charged against a disciplined judge.⁴ In stating that charged against a disciplined judge should be minimal, the Supreme Court has stated:

It is important that the costs assessed in a JQC proceeding be kept within strict bounds. The constitutional provision noted above is a "prevailing party" requirement. Thus, the amount of taxed costs must not be so substantial that costs will deter either the JQC from initiating a prosecution or a judge from defending against a charge. It is particularly important that an accused judge not be placed in the position of foregoing a defense against unwarranted charges because he or she might otherwise face financial ruin if unsuccessful in the proceeding.⁵

The legislature may wish to consider whether it is appropriate to require that a judge disciplined by the Supreme Court be required to repay all costs of investigation and prosecution. Many investigations would still not provide any income to the JQC, because

⁴ *In re Hapner*, 737 So.2d 1075, 1077 (Fla. 1999). For example, the JQC spent \$250,000 investigating and prosecuting Matt McMillan, who was removed from office by order of the Florida Supreme Court on October 4, 2001. Source: Sarasota Herald Tribune, October 5, 2001. The JQC expects to be awarded taxable costs of \$14,014.81 in that case.

⁵ *In re Hapner*, 737 So.2d 1075, 1076-77 (Fla. 1999).

the vast majority of cases investigated by the JQC are justifiably dismissed because they are without merit,⁶ but the serious cases could generate a significant return to the state.

5. Were there any areas in this service which consistently lack adequate information necessary to perform the zero based budget analysis? If so please explain.

There were no areas in this service which consistently lack adequate information necessary to perform the zero based budget analysis.

6. Is there any evidence that quality could be improved or costs reduced through outsourcing or privatizing all or part of the activities within this service?

The JQC currently employs private investigators and private attorneys to perform many of the tasks of the commission. It does not appear that further outsourcing or privatizing would improve quality or reduce costs.

7. Should all or some of the tasks or functions within this activity be transferred to a more appropriate service or budget entity where a similar activity exists or to an entity that has a more compatible mission?

There do not appear to be tasks or functions within this activity that should be transferred to a more appropriate service or budget entity.

8. Are any changes indicated to the mission statements and goals of the LRPP based on your review of statutory authorities and legislative intent for this service and its activities?

The agency has not completed a LRPP.

9. Are there other recommendations at either the Service or Activity Level not addressed in the recommendations above?

There are no further recommendations at either the Service or Activity Level not addressed above.

⁶ In any adjudicatory system, human nature dictates that there will always be a small number of losing parties who will want to retaliate against those involved in the system. Some of those persons will take the step of filing a formal written complaint. Most complaints filed with the JQC are filed by a person who has lost a case, and most such complaints are without merit; but any complaint against a judicial officer warrants investigation.

TAB 5

M E M O R A N D U M

TO: Zero-Based Budgeting Subcommittee on Public Safety

From: The Honorable James R. Wolf
Judge, First District Court of Appeal
Chair, Judicial Qualifications Commission

Date: January 4, 2002

Subject: Zero-Based Budget Recommendations

The Judicial Qualifications Commission (JQC) has met and discussed the report prepared as part of the Zero-Based Budget review of the Commission. We feel the report confirms that the JQC is performing its essential functions in an efficient manner.

The report makes three specific recommendations for change. These are: 1) The JQC should consider employment of a full-time in-house counsel; 2) the legislature should consider a requirement of full reimbursement to the JQC of costs and fees from guilty judges; and 3) the JQC should consider eliminating the collection and filing of financial disclosure forms that are also filed and held with the Ethics Commission.

I. In-house Counsel.

The report states that the Commission could operate more efficiently and effectively by employing in-house counsel.

We do not necessarily agree with this analysis. The report of the zero-based budget commission indicates that Florida has a lower cost of supervision per judge than all states listed in the report with full-time staff attorneys except for New York and Arkansas. These statistics indicate that efficiency would not be increased by hiring in-house counsel. We also are very happy with the quality of our legal representation.

We do, however, feel that a legitimate issue has been raised which deserves analysis. The question of in-house representation is complex. Issues of how much of the legal work could be handled by a single in-house attorney must be addressed. Associated costs of office space, clerical help, and legal reference materials must be looked at. I have, therefore, appointed four well-respected members of the Commission to make a report to the full Commission concerning the best way of handling all aspects of the Commission's legal needs. The Committee's work will probably take about six months.

II. Full Reimbursement of Costs.

As noted in the Zero-Based Budget Commission, the Supreme Court addressed the issue of what costs should be reimbursed pursuant to Art. V, section 12(f)(2)j, Florida Constitution, in In Re Hapner, 737 So. 2d 1075 (Fla. 1999). Whether this issue should properly be addressed by the legislature or the supreme court is beyond the scope of the Commission's jurisdiction and may involve serious separation of powers concerns.

III. Financial Disclosure Forms.

The Commission has no strong feelings on this matter. The requirement that a second form be filed with the JQC is contained in Canon 6B(1) of the Code of Judicial Conduct. The Commission is powerless to make the change suggested in the report. The Code of Judicial Conduct may only be amended by the supreme court.

Please let me know if I can provide any further information.

cc: Honorable Charles Wells, Chief Justice, Florida Supreme
Court
Brooke S. Kennerly, Executive Director, Judicial
Qualifications Commission

JRW/ecb

TAB 6

State Courts Executive Direction and Support Services

Approved in
Special
Session C?

A. Recommended Budget Reductions

	FTE	All Funds	
1 Eliminate Trial Court Funding Unit	(2)	(81,023)	Yes
2 Upgrade Chief of Budget Services to Reflect Increased Responsibilities		20,000	No
3 Eliminate Strategic Planning Chief	(1)	(103,346)	No
4 Eliminate Clerical Position as Result of Organizational Consolidation	(1)	(30,000)	No
5 Eliminate One of the Deputy State Courts Administrator Positions and Associated Clerical Support	(1)	(133,100)	No
6 Eliminate Two Staff Attorney Positions and Redirect Salaries and One FTE to Establish a General Counsel	(1)		No
7 Eliminate Mediator Certification Program	(5)	(251,903)	No
8 Eliminate 1 FTE in the Court Education Unit	(1)	(70,244)	Yes
9 Eliminate 1 FTE in the Children's Court Improvement Unit	(1)	(52,418)	Yes
10 Eliminate a Secretarial Support Position that Reports to the State Courts Administrator	(1)	(28,605)	Yes
11 Restructure the Communications and Legislative Relations Unit	(1)	(47,748)	Yes
12 Reduce Operating Capital Outlay; Redirect a Portion of the Savings to Fund a Technology Needs Assessment		(150,000)	Yes
13 Reduce Travel Expenses		(444,134)	Partial
14 Total - House and Senate Joint Recommendations	(15)	(1,372,521)	
15 Additional Reduction Option Provided by House Staff			
16 Reduce Court Services Positions	(7)	(399,705)	No
17 Total Including House Option	(22)	(1,772,226)	

B. Other Recommendations

- 1 Outsource selected personnel functions
- 2 Fund Shift General Revenue to Court Education Trust Fund
- 3 Consider outsourcing network operations to the Statewide Technology Office

Zero Based Budget Review Recommendations by Service & Activity - 2001

Agency:	State Courts System
Program:	Executive Direction and Support Services
Service:	Executive Direction and Support Services

1. Should the state continue to perform this Service? X YES _____ NO

Provide reasons for the above recommendation

The Office of State Courts Administrator (a.k.a., Executive Direction and Support Services) provides administrative support for Florida's State Courts System. This support is broken out according to the various activities listed under Item 3 below. Since 1972, the State Courts System has operated a centralized administrative operation - - i.e., administrative support functions, staff and resources, have been consolidated into a single office with support functions performed in (Tallahassee).

Executive Direction and Support Service activities are performed by every agency of state government and are considered essential to administer and support department programs. Several recommendations to enhance this service as well as potentially increase efficiency and reduce costs follows below.

2. Are there any areas where performance is not meeting expectations for this service?

There are no statewide performance standards for Executive Direction & Support Services (Administrative Services).

3. Based on the information provided, should each activity within this service continue to be performed by the state and, if continued, should funding be modified per questions 3.1 through 3.6?

Activities (Business Processes)	FY 01-02 Est. Exp.	YES	NO	Modify
1. Executive Direction and Support Services	\$ 576,982	X		
2. Director of Administration	\$ 481,160	X		
3. Planning and Budgeting	\$ 536,325	X		X
4. Personnel Services/Human Resources	\$ 497,578	X		Outsource
5. Finance and Accounting	\$ 518,752	X		X
6. Procurement	\$ 555,693	X		X
7. General Counsel/Legal	\$ 396,702	X		
8. Court Services, Research and Evaluation	\$2,231,040	X		X
9. Judicial and Court Staff Education	\$2,217,458	X		X
10. Executive Direction-ISS	\$ 122,301	X		
11. Administrative Services-ISS	\$ 342,148	X		

12. Applications Development/Support	\$ 657,685	X		
13. Desktop Support	\$ 588,559	X		
14. Network Operations	\$1,588,226	X		
15. Inspector General	\$ 92,514	X		
16. Professional Certification	\$ 762,032	X		
17. Communication/Public Information	\$ 262,580	X		
18. Grants Management	\$ 47,254	X		
19. Public Education	\$ 44,500	X		X
Total Service	\$12,429,490			

3.1 Provide detailed reasons for activities NOT being recommended for continuation.

Activity 4. Personnel Services/Human Resources: This activity is proposed for outsourcing on a statewide basis. Outsourcing state personnel services/human resources is anticipated to save state tax dollars and improve services to employees through automation enhancements. The state courts system should be included in the statewide plan to outsource personnel services activities.

3.2 Are there any areas where the agency could improve performance by re-engineering any activity?

Based on a thorough review of agency organizational charts and ZBB budget documentation, the following efficiency improvements within Executive Direction & Support Services are recommended:

A. Recommend modifying the organization of the Administrative Services Division and reviewing supervisory/management positions to ensure that they are properly classified. The effect of the modifications would be as follows:

- 1. Eliminate Trial Court Funding Unit (2 FTE & \$81,023)*
- 2. OSCA review its organizational units and reclassify administrators where appropriate to more accurately reflect duties and responsibilities.*
- 3. Rename Office of Budget Services to Office of Planning and Budget; Upgrade and reclassify Chief of Budget to Chief of Planning and Budget and increase salary to reflect expanded responsibilities and span of control: (cost increase of \$20,000)*
- 4. Eliminate Strategic Planning Chief FTE: (cost savings: 1 FTE and - \$103,346)*
- 5. Eliminate one clerical position as a result of office consolidation leaving 1.5 clerical positions and one fiscal assistant to support office operations: (cost savings: 1 FTE and \$30,000)*

B. Consolidate and Reduce Court Services, Education, Family Courts, Dispute Resolution and Children's Court Improvement

- 1. Eliminate one of the two deputy state courts administrator positions: (Cost savings: 1 FTE and \$133,100 based on Legal Affairs and Education position)*
- 2. Eliminate 2 staff attorney positions and create a General Counsel position to supervise other staff attorneys for the OSCA: (Cost savings: 1 FTE, \$0)*

3. *Eliminate Mediator Certification Program: (Cost Savings: 5 FTE and \$251,903)*
4. *Eliminate 1 FTE in the Court Education Unit (Cost savings: 1 FTE and \$70,244)*
5. *Eliminate 1 FTE in the Children's Court Improvement unit (Cost savings: 1 FTE and \$52,418)*
6. *House Staff Option: Reduce additional committee support and education resources to balance to a 20% reduction (Cost savings: 7 FTE and \$399,705)*

C. Other Efficiency Reductions

1. *Eliminate one of two secretarial support positions that report to the state courts administrator (Cost savings: 1 FTE and \$28,605)*
2. *Restructure the Communications and Legislative Relations unit. Convert the graphic communications specialist into either two half-time positions or funds for outsourcing communication functions and eliminate one legislative and communications specialist: (Cost savings: 1 FTE and \$47,758).*
3. *Reduce \$150,000 of operating capital outlay funds identified by the Office of State Courts Administrator in an interim budget amendment for a technology needs assessment. Require written agreement for management assistance with the Statewide Technology Office prior to commencement of the project. (Cost savings: \$150,000).*
4. *Reduce travel expenses by 30% by limiting trips for judicial training conferences, judicial committee meetings and other travel by OSCA staff. The courts should consider increasing the use of teleconferencing, videoconferencing and other technology in lieu of incurring expenses for travel. (Cost savings: \$444,134)*

Total potential cost savings as a result of office consolidation and other efficiency reductions: 14 FTE and \$1,372,521 or 22 FTE and \$1,772,226 including the House option to reduce committee support and education.

Please note: The Conference Report on Senate Bill 2C for Special Session C reduces the Office of the State Courts Administrator by \$375,000 which will annualize to 6 FTE and \$750,000 in FY 2002-03 as the result of across-the-board administrative reductions. In addition, \$150,000 is reduced from operating capital outlay which will annualize to \$300,000 for FY 2002-03. Proviso language accompanying this reduction allows remaining operating capital outlay funds to be redirected to the technology needs assessment but requires an agreement with the Statewide Technology Office for project management assistance.

3.3 For each activity recommended for continuation, is the current level of efficiency and effectiveness meeting legislative expectations? Describe those deficiencies. Can the deficiency be addressed using current resources?

While specific deficiencies are not noted, House and Senate staff believe that it is possible to increase efficiency through organizational restructuring and appropriate use of technology. Specific recommendations are described in section 3.2 above.

3.4. For each activity, identify potential and recommended reductions as follows:

- a. Can any General Revenue be shifted to trust funds?

Activity 9. Judicial and Court Staff Education: Court Education Trust Fund Revenues appear adequate to support fund shifts of General Revenue expenditures to this trust fund in both the current fiscal year and FY 2002-03.

Please note: Budget recommendations adopted in Senate Bill 2C during Special Session C contains a fund shift of \$264,735 which will annualize to \$529,471 in FY 2002-03 from General Revenue to the Court Education Trust Fund.

- b. List and describe all reductions listed in the 5% LRPP reduction list and the LBR Schedule VIII B reduction list (if different). Explain in detail why any of these reductions should or should not be recommended.

There are no reductions listed in the 5% LRPP reduction exercise.

The only reduction issue included in the LBR Schedule VIII B includes eliminating funds for the 1st District Court of Appeals Annex Fixed Capital Outlay project. The Revenue Estimating Conference has already included the reversion of these funds in the state revenue estimate for FY 2002-03. This recommendation should not be adopted since the funds are no longer available.

- c. List the activities, or components thereof, which are least relevant to or least effective in accomplishing the agency's missions and goals (if not previously listed in "b" above). Should any funding for these activities be redirected to a higher priority activity within this agency or eliminated entirely?

N/A

- d. For any LRPP reduction above that you recommend against adopting, develop alternative reduction options to achieve the 5% savings.

The recommendations in section 3.2 above exceed 5% of the recurring base budget.

3.5. Are there any funding enhancements which would significantly enhance the efficiency or effectiveness of the activities within this service?

No.

3.6 For each recommendation relating to an activity's funding level (whether to eliminate or modify) what are the consequences to the customers of each recommendation?

Activity 3 - Planning and Budgeting; Activity 5 - Finance and Accounting; Activity 6 - Procurement: If the recommendations noted in Item 3.2 are adopted, there will be a need to retool certain operations and curtail current levels of

travel. This will require an adjustment on the part of judges and staff during the initial transition

4. Based on a review of statutory authorities for activities and the analysis of customer needs and quality of services provided, are any changes to statutes or other expressions of legislative intent recommended?

No.

5. Were there any areas in this service which consistently lack adequate information necessary to perform the zero-based budget analysis? If so please explain.

No. Adequate information was provided by the Office of State Courts Administrator to perform the zero-based budget analysis.

6. Is there any evidence that quality could be improved or costs reduced through outsourcing or privatizing all or part of the activities within this service?

Activity 4. Personnel Services/Human Resources: This activity is proposed for outsourcing on a statewide basis. Outsourcing state personnel services/human resources is anticipated to save state tax dollars and improve services to employees through automation enhancements and centralized personnel support services. The state courts system should be included in the statewide plan to outsource personnel services activities.

The Court has outsourced several tasks within various activities in the Executive Direction and Support Services Program. Tasks that have been outsourced include: data entry, education and training, printing, program assessment, automated legal research, computer maintenance, and software support. Other tasks, such as publications support, communications, and certification, continue to be explored for outsourcing opportunities.

7. Should all or some of the tasks or functions within this activity be transferred to a more appropriate service or budget entity where a similar activity exists or to an entity that has a more compatible mission?

Activity 14. Network Operations: The State Court System is currently exploring whether the State Technology Office (STO) can assume responsibility for Network Operations. Presumably, these operations could be outsourced by the STO as a part of a larger, statewide contract with a private vendor for Network Operations. The STO has indicated that cost-savings in information technology costs may be achieved by centralizing network operations and through group purchasing agreements whereby agencies "pool" their purchases for computer equipment, data processing services, and network operations. Through "group purchasing agreements", the state may end up getting a better deal by paying lower costs for these services/purchases.

8. Are any changes indicated to the mission statements and goals of the LRPP based on your review of statutory authorities and legislative intent for this service and its activities?

No.

9. Are there other recommendations at either the Service or Activity Level not addressed in the recommendations above?

No.

TAB 7

M E M O R A N D U M

TO: Jim DeBeaugrine

FROM: Elisabeth H. Goodner
Deputy State Courts Administrator

DATE: November 30, 2001

SUBJECT: Zero-Based Budget Recommendations Regarding the
Office of the State Courts Administrator

In accordance with your request, the attached document indicates – through the use of strikethrough and underline – our suggested changes to the legislative staff recommendations. Additionally, we offer the following comments on the proposed recommendations regarding the zero-based budgeting review of the Office of the State Courts Administrator.

The OSCA performs a dual role: the office serves as the administrative arm of the Supreme Court and assists in the development and implementation of policies and procedures for the trial and appellate courts. We are very proud of the accomplishments of the OSCA. This office provides direct support for the constitutional and statutory responsibilities of the entire judicial branch. It is the backbone of the courts, and supports all of the courts, including 67 county courts, 20 circuit courts, 5 district courts of appeal, and the Supreme Court.

As you know, the OSCA is in the process of a dramatic transition. The past year has been an extremely difficult one. We are undergoing a change in leadership for the first time in 17 years. When the new state courts administrator takes office in January, we will undertake a comprehensive review of the OSCA organizational structure. We believe that any major reorganization prior to that time would be premature and would pre-empt the participation of the new administrator.

Mr. Jim DeBeaugrine
November 30, 2001
Page 2

Nevertheless, we concur with many of your recommendations. We agree that the state courts can increase the efficiency and reduce the cost of its meetings through the expanded use of technology, and indeed have already begun to implement this improvement. We agree to collaborate with the State Technology Office to determine the most appropriate course of action for engaging a consultant to conduct a technology needs assessment, which may result in a cost savings. We agree that modifications can be made in our Communication and Legislative Relations office, and the attached document describes the changes we plan to make in that unit. We can also merge the Trial Court Funding Policy unit into another administrative unit in our office.

It appears from your recommendations that you are not recommending any immediate elimination of personnel resources. We agree this is appropriate and reiterate our position that any outsourcing of our personnel/human services resources must be delayed pending implementation of Revision 7, which may substantially impact personnel administration in the state courts.

It appears to be the theme of your recommendations that the OSCA should conduct a comprehensive and thorough review of its organizational structure. As indicated above, we plan to undertake such a review once the new state courts administrator is on board. We do not agree, however, with some of your suggestions for merging and consolidating organizational units. Nor do we agree with some of the proposed recommendations for staffing cuts, in that they would hamper this office's ability to support Florida's trial and appellate courts, respond to statutory requirements, and serve the public.

The OSCA is already a lean, flat organization that cannot absorb further reductions in manpower. We have extremely limited resources as evidenced by our low staffing complement in comparison to administrative offices of the courts in other states. We also compare favorably with executive direction functions in other Florida governmental entities. The OSCA constitutes only about 2% of the entire State Courts System budget. This is substantially *lower* than the proportionate cost of administration in most executive branch agencies. We are also a very flexible organization. Our office constantly adapts to the priorities and workload demands of the judicial branch. As projects are completed, our resources are redeployed toward emerging issues and initiatives. Additionally, most of our staff are assigned to multiple projects.

We cannot eliminate the deputy state courts administrator for the Legal Affairs and Education Division. This position not only fulfills the role of the general counsel, but also exercises administrative responsibility for many other programmatic functions, including Information System Services, Court Services, alternative dispute resolution, family and juvenile court programs, along with judicial education

and legal affairs. No other state government entity in Florida operates without a general counsel, and neither can the courts.

Nor can we eliminate several of our “chief” positions. These are the key staff people who allow us to effectively and efficiently prepare for implementation of Revision 7 and respond to the mandates for zero-based budgeting and performance and accountability. We cannot respond to statutorily-mandated process review and reform, if the resources we have put into place to do just that are eliminated. Our “chief” positions are unit leaders, they are not analogous to agency “bureau chiefs” who perform exclusively administrative or supervisory functions. Nevertheless, when we conduct our organizational review, referenced above, we will evaluate our supervisory and management positions and ensure that their titles accurately reflect their responsibilities.

In response to item 3.3, you recommend that our Finance and Accounting Office improve its record in regard to the prompt payment of invoices. That response also indicates the Florida Department of Law Enforcement is able to achieve a higher compliance rate and notes that FDLE has been allocated three times the staff with which to do so. We suggest that legislative authorization of additional positions for Finance and Accounting would allow the OSCA to improve its record regarding the prompt payment of invoices.

The analysis of average expense per FTE included in the recommendations included funds that are expended on behalf of the judicial branch but that are budgeted within the OSCA for administrative convenience. These include funds such as the Court Education Trust Fund, the Court Improvement Program Grant in the Grants and Donations Trust Fund, and other funds that support judicial branch information technology, committees, and so forth. When those dollars are eliminated, the calculation reveals an actual average expense per FTE of \$4,992, which is well below the \$15,760 average for Executive Direction and Support Services for criminal justice appropriations agencies. Therefore, we suggest that recommendation be eliminated altogether.

We do not agree that the mediation certification program should be eliminated. Certification and discipline of mediators, who are officers of the court, is a critical function. Court-ordered mediation provides litigants with an alternative process for resolving their disputes. Mediation is provided in a variety of court-ordered contexts including circuit civil, family, dependency, and county civil (including small claims). In some instances - such as family cases when the parties are below a specified income level as well as the dependency and small claims arenas - the court appoints the mediator. Public interest demands that court-appointed mediators are subject to a qualifications process which ensures they are competent and qualified and are subject to an investigatory and disciplinary process if they fall short.

Mr. Jim DeBeaugrine
November 30, 2001
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The statutorily-mandated mediator certification and regulation program, which is self-supporting and entirely fee-based, is staffed by the 5 FTE employed in the Dispute Resolution Center. These staff not only assist the Supreme Court in certifying mediators, they are also responsible for assisting in the regulation and discipline of certified mediators, evaluating the feasibility of expanding mediation to new areas of law, evaluating the effectiveness of existing mediation programs, administering innovation grants to encourage the expansion of alternative dispute resolution, and responding to inquiries about alternative dispute resolution. These 5 FTE also provide cost-free training for volunteer mediators who support the court-connected mediation program, which diverts thousands of cases annually from the county courts. For these and many other reasons, elimination of this program is not in the best interest of the public.

We appreciate the opportunity to provide input regarding the proposed recommendations. Please let us know if you have any questions or if we may be of further assistance.

EHG:DH:sb

Enclosure

cc: Robert Beck
Dorothy Johnson
Lynne Overton
Maggie Moody
Michael Billmeier
Carl Dasse
John Forgas
Maria Matthews
Noelle Melanson

TAB 8

PAROLE COMMISSION

Highlights of Staff Recommendations

CLEMENCY:

- Automate the initial review of clemency cases to automatically exclude offenders who are not eligible.
- Outsource clemency investigations in order to relieve the current backlog of cases.
- Consider asking applicants to pay a fee. (House recommendation only)
- Transfer all support functions of clemency to the Executive Office of the Governor, therefore allowing the Clemency Board (Governor and Cabinet) to directly manage the workload issues associated with the clemency process.

PAROLE INVESTIGATIONS:

- Transfer the workload associated with investigations for parole determinations to the Department of Corrections. (The Parole Commission will retain sole authority to grant parole.)

REVOICATIONS:

- Consider charging offenders for a portion of the costs associated with the investigation and prosecution of violations that lead to a revocation.

PAROLE COMMISSION RELOCATION:

- To the extent that parole determination functions, administrative functions and clemency functions are transferred to other entities, the Legislature must then determine whether the parole commission should continue as a free-standing agency or be relocated under another appropriate entity. Zero-based budgeting staff recommends a strategic review of various state government functions to determine where such consolidation and streamlining of management and services are feasible.

Recommendations by Service & Activity - 2001

Agency:	Florida Parole Commission
Program:	Post-Incarceration Enforcement & Victims' Rights
Service:	Post-Incarceration Enforcement & Victims' Rights

1. SHOULD THE STATE CONTINUE TO PERFORM THIS SERVICE?

(Note: The original staff recommendation has been revised based on information provided by the Parole Commission and other sources.)

Yes.

The State of Florida should continue to perform the service of Post-Incarceration & Victims' Rights because this service involves many quasi-judicial activities that are required by statute and are best suited for performance by the state. The Parole Commission is currently referenced in Article IV, Section 8 of the Florida Constitution, and Chapter 947 of the Florida Statutes is devoted entirely to the Parole Commission and its duties.

The Constitution authorizes, but does not mandate, creation of the Parole Commission. The Commission's organizational structure, procedures, and existence as a separate agency are not specified in the Constitution. Therefore, the Legislature is not precluded from transferring some or all of the Commission's support activities (such as investigations) to other agencies, or from housing the Commission within a state agency for administrative purposes.

2. ARE THERE ANY AREAS WHERE PERFORMANCE IS NOT MEETING EXPECTATIONS FOR THIS SERVICE?

Yes. The Parole Commission has acknowledged that there is a substantial backlog of clemency cases (762 case backlog for full clemency cases and 26,040 case backlog for RCR without a hearing). Also, the Commission has acknowledged that 0% of the clemency cases are completed within the 90-day time frame, which is a recognized performance measure for the Commission

Because of this backlog, the Parole Commission is requesting 73 new FTEs (30 in FY 02-03 and 43 in FY 03-04).

3. BASED ON THE INFORMATION PROVIDED, SHOULD EACH ACTIVITY WITHIN THIS SERVICE CONTINUE TO BE PERFORMED BY THE STATE AND, IF CONTINUED, SHOULD FUNDING BE MODIFIED PER QUESTIONS 3.1 THROUGH 3.6?

Activities (Business Processes)	FY 01-02 Est. Exp.	YES	NO	Modify
1. Conditional Release		X		No
2. Offender Revocations		X		No
3. Clemency Services		X		Yes
4. Parole Determinations		X		No
5. Victims Assistance		X		No
6. Executive Direction and Business Support Services		X		No
7. General Counsel/Legal		X		No
8. Human Resources		X		No
9. Accounting and Budgeting		X		Yes
10. Procurement/mail and supply rooms		X		Yes
11. Information Services/ Executive Direction		X		No
12. Information Services/ Application Development		X		No
13. Information Services/ Network Administration		X		Yes
14. Information Services/ Help Desk Support		X		Yes
Total Service		X		Yes

3.1 PROVIDE DETAILED REASONS FOR ACTIVITIES NOT BEING RECOMMENDED FOR CONTINUATION.

N/A

3.2 ARE THERE ANY AREAS WHERE THE AGENCY COULD IMPROVE PERFORMANCE BY RE-ENGINEERING ANY ACTIVITY?

(Note: The original staff recommendation has been revised based on information provided by the Parole Commission and other sources.)

Yes, clemency, parole investigations, satellite office operations, and administrative support functions.

CLEMENCY -- Although there may be non-recurring start-up costs, automating the initial review of clemency cases could help to reduce workload by identifying cases that are clearly not eligible. The Department of Corrections currently generates a list of offenders released from prison and supervision that could be modified to exclude offenders that are not eligible. This could eliminate manual review of a substantial number of cases. Currently, 60% of the cases that are reviewed are not eligible. This

recommendation is reflected in the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) report number 01-55.

PAROLE INVESTIGATIONS -- The Legislature should consider transferring workload associated with investigations for parole determinations to the Department of Corrections (DOC). This is similar to a provision passed by the 2001 Legislature to transfer certain conditional release investigations to the DOC. As with conditional release, much of the information required by the Parole Commission for parole determinations is maintained by the DOC. Savings would be 13 FTE and \$701,734 assuming 90% reduction of current resources and no additional resources for the DOC. The DOC has indicated that most of the information required by the Parole Commission is maintained by the department and that it should be able to absorb the workload within existing resources (also see section 7 below).

*ADMINISTRATIVE FUNCTIONS** -- The Legislature should consider transferring the following administrative functions to the Department of Corrections: (1) accounting and budgeting, (2) procurement and mail and supply rooms, (3) network administration, and (4) help desk support. The Department of Corrections indicates that it can absorb this workload within current resources with the possible exception of some of the information technology services. These actions would produce a reduction of 8 FTE and \$534,559 General Revenue while leaving key Commission personnel in place to serve as liaison with the Department of Corrections. The recent OPPAGA report number 01-55 includes a similar recommendation (also see section 7 below).*

*****PLEASE NOTE: This recommendation was adopted through the Conference Report to Senate Bill 2C during the recent special session. A reduction of \$50,000 in FY 01-02 funding will annualize to 8FTE and \$534,559 in FY 02-03.***

ADDITIONAL RECOMMENDATIONS -- The Legislature should also consider the following additional recommendations:

- 1. Outsource clemency investigations to relieve the current backlog. Outsourcing does not necessarily mean employing the private sector, but could include contracting another state agency (e.g. the Florida Department of Law Enforcement) to perform this service. (This recommendation was also included in the recent OPPAGA report, No. 01-55.)*
- 2. The Legislature should consider transferring support for the Executive Board of Clemency to the Executive Office of the Governor. Clemency is an executive power granted to the Governor by the Constitution, and as such, greater accountability*

can be achieved where the Executive Office of the Governor has direct supervision of its management, workload and resources.

3. *To the extent that parole determination functions, administrative functions and clemency functions are transferred to other entities, the Legislature must then determine whether the parole commission should continue as a free-standing agency or be relocated under another appropriate entity. Zero-based budgeting staff recommends a strategic review of various state government functions to determine where such consolidation and streamlining of management and services are feasible.*

3.3 FOR EACH ACTIVITY RECOMMENDED FOR CONTINUATION, IS THE CURRENT LEVEL OF EFFICIENCY AND EFFECTIVENESS MEETING LEGISLATIVE EXPECTATIONS? DESCRIBE THOSE DEFICIENCIES. CAN THE DEFICIENCY BE ADDRESSED USING CURRENT RESOURCES?

The activities of conditional release, offender revocations, victims' assistance, and parole determinations all appear to be meeting legislative expectations.

However, upon review of materials submitted by the Commission regarding clemency, as well as testimony provided by Commission staff at meetings, it appears that there are deficiencies, inefficiencies, and confusion concerning the clemency process.

- 1) *There is a backlog of clemency cases.*
- 2) *There is a lawsuit that alleges that many eligible offenders have not been notified of the restoration of civil rights process.*
- 3) *The Parole Commission states that the Clemency Board recently gave the Commission various verbal directives that increased the Commission's workload. A brief explanation of the directives was provided in the Commission's Legislative Budget Request, although specific documentation of the Board's directives is not available.*

It is unclear whether the backlog of clemency cases can be addressed within current resources. If the recommendations from section 3.2 above are adopted, however, it should be possible to address the backlog without the need to approve 73 new, permanent FTE.

While identifying potential efficiencies in setting the terms and conditions of conditional release, staff raised questions about whether the statutory changes to Chapter 947 in 2001 inadvertently created an unnecessary duplication of effort. However, insufficient data prevents staff from making recommended changes to this operation at this time. Staff does, however, recommend that OPPAGA be tasked with evaluating the process for setting the terms and conditions for

conditional release and make recommendations on where, if possible, the Legislature could further streamline this process and improve agency efficiency.

3.4. FOR EACH ACTIVITY, IDENTIFY POTENTIAL AND RECOMMENDED REDUCTIONS AS FOLLOWS:

- a. **CAN ANY GENERAL REVENUE BE SHIFTED TO TRUST FUNDS?**

(Note: The original staff recommendation has been revised based on information provided by the Parole Commission and other sources.)

There is a possibility that a portion of current costs charged to General Revenue can be shifted to trust funds.

Specifically, in the area of clemency, the Legislature should consider a policy to shift a portion of the associated costs from state taxpayers to applicants. (House recommendation only; was previously a consensus recommendation)

In the area of revocation proceedings, the Legislature should consider charging offenders for a portion of the costs associated with the investigation and prosecution of violations that lead to a revocation.

In considering these issues, care should be taken to identify all legal and practical issues that may arise from adoption of these recommended policies. In particular, the Legislature should consider the impact on indigent offenders seeking to have their civil rights restored and whether there should be a mechanism established to defer or waive fees for these individuals. In addition, the Legislature should delay adopting a fund shift in the General Appropriations Act until the second year of implementation. This will allow for better estimates of the total revenues that will be generated and an opportunity to identify and correct problems prior to relying on these funds for critical operations.

- b. **LIST AND DESCRIBE ALL REDUCTIONS LISTED IN THE 5% LRPP REDUCTION LIST AND THE LBR SCHEDULE 8B REDUCTION LIST (IF DIFFERENT). EXPLAIN IN DETAIL WHY ANY OF THESE REDUCTIONS SHOULD OR SHOULD NOT BE RECOMMENDED.**

The only 5% reduction offered by the Parole Commission was in the area of clemency (which is also the area where they are asking for 73 more FTEs over the next two fiscal years). The Commission says they can cut 10 FTEs in this activity because clemency is the only

“operational activity that does not have statutory deadlines for completing cases.” By cutting these 10 positions, the state will save \$435,516.

These reductions, however, should not be approved since they would further exacerbate the current backlog.

- c. LIST THE ACTIVITIES, OR COMPONENTS THEREOF, WHICH ARE LEAST RELEVANT TO OR LEAST EFFECTIVE IN ACCOMPLISHING THE AGENCY’S MISSIONS AND GOALS (IF NOT PREVIOUSLY LISTED IN “B” ABOVE). SHOULD ANY FUNDING FOR THESE ACTIVITIES BE REDIRECTED TO A HIGHER PRIORITY ACTIVITY WITHIN THIS AGENCY OR ELIMINATED ENTIRELY?

The area of clemency is an area that could be considered “less” relevant to the Commission’s mission, which is to “provide for public safety through the judicious administration and strict enforcement of statutes regarding post-prison incarceration supervision programs.” Clemency is not a “post-prison incarceration supervision program.”

It is not recommended, however, that these resources be redirected to other activities due to the current backlog.

- d. FOR ANY LRPP REDUCTION ABOVE THAT YOU RECOMMEND AGAINST ADOPTING, DEVELOP ALTERNATIVE REDUCTION OPTIONS TO ACHIEVE THE 5% SAVINGS.

Please see section 3.2 above. The administrative reductions recommended therein would achieve more than 5% savings.

3.5. ARE THERE ANY FUNDING ENHANCEMENTS WHICH WOULD SIGNIFICANTLY ENHANCE THE EFFICIENCY OR EFFECTIVENESS OF THE ACTIVITIES WITHIN THIS SERVICE?

No.

3.6 FOR EACH RECOMMENDATION RELATING TO AN ACTIVITY’S FUNDING LEVEL (WHETHER TO ELIMINATE OR MODIFY) WHAT ARE THE CONSEQUENCES TO THE CUSTOMERS OF EACH RECOMMENDATION?

Proposed modifications to agency administrative support activities will likely generate anxiety among agency staff related to the uncertainty of relying on

another agency for critical support functions. Similar concerns will be likely concerning the transfer of parole determination investigations.

Recommendations related to clemency should have minimal impact on the level of support to the Board of Executive Clemency.

It is anticipated that there would be minimal impact on the Commission's ability to reach appropriate decisions regarding parole and conditional release.

4. BASED ON A REVIEW OF STATUTORY AUTHORITIES FOR ACTIVITIES AND THE ANALYSIS OF CUSTOMER NEEDS AND QUALITY OF SERVICES PROVIDED, ARE ANY CHANGES TO STATUTES OR OTHER EXPRESSIONS OF LEGISLATIVE INTENT RECOMMENDED?

Conditional Release: no changes

Offender Revocation: no changes

Victims' Assistance: no changes

Parole Investigations: If the decision is made to transfer the parole investigation duties to the Department of Corrections (i.e., the interviewing of the inmate and the submitting of parole recommendations to the Commission), then yes, the statutes will need to be amended. Specifically, the following statute sections would likely need to be amended: s. 947.172, s. 947.174, and s. 947.1745.

Clemency: If the decision is made to transfer all clemency functions to the Executive Office of the Governor, then yes, the statutes will need to be amended. Specifically, the following statute sections would need to be amended: s.940.03 and s.947.13(1)(3). Sections 14.28 and 14.201 may also need to be amended and a new subsection (to Chapter 14) may need to be added, defining the duties of the Board of Executive Clemency.

Statutory changes would also be necessary should the Legislature move to consolidate and streamline Parole Commission functions and assign the Commission to another state entity.

Although not an absolute necessity, the assignment of administrative support functions to the Department of Corrections should be specified in law as well.

The proposal to pass costs of clemency and revocation proceedings to offenders would also need to be adopted in law.

5. WERE THERE ANY AREAS IN THIS SERVICE WHICH CONSISTENTLY LACK ADEQUATE INFORMATION NECESSARY TO PERFORM THE ZERO BASED BUDGET ANALYSIS? IF SO PLEASE EXPLAIN.

Initially, the Parole Commission did not provide breakdowns or explanations of their unit costs. However, upon requests from the ZBB staff, such budget information was provided.

6. IS THERE ANY EVIDENCE THAT QUALITY COULD BE IMPROVED OR COSTS REDUCED THROUGH OUTSOURCING OR PRIVATIZING ALL OR PART OF THE ACTIVITIES WITHIN THIS SERVICE?

Because of the unique nature of the activities and services provided by the Parole Commission, the option of outsourcing within this agency is very limited. As suggested in section 3.2 above, the activity that seems to have some potential for outsourcing would be that of clemency investigations, although there are positives and negatives on each side of the issue. Through their research of the issue, OPPAGA determined that outsourcing clemency investigations would facilitate a quick reduction of the backlog, remove the Commission's need for 73 FTEs over the next two years, and allow for the use of more expensive and diverse technology that the Commission cannot afford. On the other hand, OPPAGA noted several concerns about outside agencies getting involved, such as victim confidentiality, limited access to Federal and state crime information, and difficulty in assuring accountability. These concerns, however, should not preclude a good-faith examination of this strategy since similar obstacles have been successfully negotiated in other outsourcing initiatives in state government.

7. SHOULD ALL OR SOME OF THE TASKS OR FUNCTIONS WITHIN THIS ACTIVITY BE TRANSFERRED TO A MORE APPROPRIATE SERVICE OR BUDGET ENTITY WHERE A SIMILAR ACTIVITY EXISTS OR TO AN ENTITY THAT HAS A MORE COMPATIBLE MISSION?

There are several "transfer" options, although each of them may need further, detailed research. Each of these recommendations are discussed in section 3.2 above.

- *Parole Investigations: Transfer the workload associated with investigations for parole determinations to the Department of Corrections. (The Parole Commission will retain sole authority to grant or deny parole.)*
- *Move Clemency: Transfer all support functions of clemency to the Executive Office of the Governor, therefore allowing the Governor and Cabinet (Clemency Board) to directly manage the workload issues associated with the clemency process.*
- *House the Commission Within Another Entity: To the extent that parole investigations, administrative functions, and clemency functions are transferred to other entities, the Parole Commissioners and remaining staff could be*

administratively housed under a another appropriate agency for purposes of streamlining and consolidation.

8. ARE ANY CHANGES INDICATED TO THE MISSION STATEMENTS AND GOALS OF THE LRPP BASED ON YOUR REVIEW OF STATUTORY AUTHORITIES AND LEGISLATIVE INTENT FOR THIS SERVICE AND ITS ACTIVITIES?

No, other than changes that will be necessary to reflect changes from any of the above recommendations that are ultimately adopted.

9. ARE THERE OTHER RECOMMENDATIONS AT EITHER THE SERVICE OR ACTIVITY LEVEL NOT ADDRESSED IN THE RECOMMENDATIONS ABOVE?

No.

TAB 9

Recommendations by Service & Activity - 2001

Agency:	Florida Parole Commission
Program:	Post-Incarceration Enforcement & Victims' Rights
Service:	Post-Incarceration Enforcement & Victims' Rights

1. SHOULD THE STATE CONTINUE TO PERFORM THIS SERVICE?

Yes.

The state of Florida should continue to perform the service of Post-Incarceration & Victims' Rights because this service involves many quasi-judicial activities that are required by statute and are best suited for performance by the state. The Parole Commission is currently referenced in Article IV, Section 8 of the Florida Constitution, and Chapter 947 of the Florida Statutes is devoted entirely to the Parole Commission and its duties.

However, the above statements do not preclude transferring certain duties of the Commission to other agencies, or even the abolishment of the Commission, as long as the duties (such as the granting of parole) are continued in some form by the state.

Parole Commission Comments: The draft report states that the Parole Commission could be abolished if its duties were transferred to other agencies. While it is true that the Commission could be abolished, it is not true that its parole duties could be performed by another entity. The State Constitution vests the authority to grant paroles with the Parole Commission. Unless a constitutional amendment is adopted, the Parole Commission is the only entity that is authorized to perform this function. Further, because of "ex post" facto issues, it needs to be noted that the parole process cannot be abolished for those offenders who committed their crimes during the period that parole was an active program, and therefore, the approximate 5,000 plus eligible inmates still incarcerated are entitled to parole consideration. It is also noted that there are approximately 2,000 parolees on supervision who are currently under the jurisdiction of the Commission.

2. ARE THERE ANY AREAS WHERE PERFORMANCE IS NOT MEETING EXPECTATIONS FOR THIS SERVICE?

Yes. The Parole Commission has acknowledged that there is a substantial backlog of clemency cases (762 case backlog for full clemency cases and 26,040 case backlog for RCR without a hearing). Also, the Commission has acknowledged that 0% of the clemency cases are completed within the 90-day time frame, which is a recognized performance measure for the Commission

Because of this backlog, the Parole Commission is requesting 73 new FTEs (30 in FY 02-03 and 43 in FY 03-04).

Parole Commission Comments: The 26,040 backlog figure for RCR cases without a hearing is a projected number for July 1, 2002. The fact that the Commission has a backlog of Clemency cases is not a new issue. What is new is the substantial projected increases in RCR cases without a hearing. As to the full clemency case backlog, these cases have been accumulating for the past several years due, in part, to a legislative directive that clemency work was to be the Commission's lowest priority, as well as, a lack of adequate staff. The current backlog of RCR cases without a hearing is primarily attributable to problems with software that was maintained by the Department of Corrections. As the result of the correction of a computer glitch in March, 2001, the list of offenders who are terminating supervision who need to be reviewed for RCR consideration by the Commission has doubled from approximately 10,000 cases per year to over 20,000 cases per year. Additionally, because a list is now provided of those inmates released from prison, that workload has increased from approximately 10,000 cases per year to over 13,000 cases per year. This issue is described in the Commission's Zero Based Budget and in its Legislative Budget Request. The Commission's legislative budget request is primarily the result of the significant increase in RCR without a hearing cases. Please refer to the Commission's legislative budget request for details.

As to the performance measure, as indicated in our Zero Based Budget on page 4, the Commission does not believe this is an appropriate measure and has previously requested that this measure be replaced with a more realistic one. Additionally, OPPAGA found in its report that the Commission was averaging 16 months from the date of application to the date the clemency board voted on a full clemency case. According to OPPAGA, "16 months for Florida's clemency cases appears to be consistent with other states that were contacted." Thus, the current performance measure, which was established without consultation with the Commission, is clearly not in line with other states. The Commission's current LRPP has again requested deletion of this performance measure and substitution of a more appropriate measure.

3. BASED ON THE INFORMATION PROVIDED, SHOULD EACH ACTIVITY WITHIN THIS SERVICE CONTINUE TO BE PERFORMED BY THE STATE AND, IF CONTINUED, SHOULD FUNDING BE MODIFIED PER QUESTIONS 3.1 THROUGH 3.6?

Activities (Business Processes)	FY 01-02 Est. Exp.	YES	NO	Modify
1. Conditional Release		X		No
2. Offender Revocations		X		No
3. Clemency Services		X		Yes
4. Parole Determinations		X		No
5. Victims Assistance		X		No

6. Executive Direction and Business Support Services		X		No
7. General Counsel/Legal		X		No
8. Human Resources		X		No
9. Accounting and Budgeting		X		Yes
10. Procurement/mail and supply rooms		X		Yes
11. Information Services/ Executive Direction		X		No
12. Information Services/ Application Development		X		No
13. Information Services/ Network Administration		X		Yes
14. Information Services/ Help Desk Support		X		Yes
	Total Service	X		Yes

Parole Commission Comments: See comments that follow.

3.1 PROVIDE DETAILED REASONS FOR ACTIVITIES NOT BEING RECOMMENDED FOR CONTINUATION.

N/A

3.2 ARE THERE ANY AREAS WHERE THE AGENCY COULD IMPROVE PERFORMANCE BY RE-ENGINEERING ANY ACTIVITY?

Yes, clemency, parole investigations, satellite office operations, and administrative support functions.

CLEMENCY -- Although there may be non-recurring start-up costs, automating the initial review of clemency cases could help to reduce workload by identifying cases that are clearly not eligible. The Department of Corrections currently generates a list of all offenders released from prison and supervision that could be modified to exclude offenders that are not eligible. This could eliminate manual review of a substantial number of cases. Currently, 60% of the cases that are reviewed are not eligible. This recommendation is reflected in the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) report number 01-55.

Parole Commission Comments: The two lists generated by the Department of Corrections are currently automated to the extent possible taking into consideration the availability of necessary information in the Department of Corrections' database and also the directives of the Board of Executive Clemency.

With regard to the availability of necessary information, restitution (an eligibility criteria), is not always located on the Department's database; and therefore, the Commission's ability to accurately determine eligibility for restoration of civil rights cases without a hearing would be compromised if it relied solely on the Department's database for restitution information. Restitution is often ordered in a civil proceeding and is not forwarded to the Department of Corrections by the court. Further, the database does not contain restitution for a misdemeanor case if the offender was not supervised by the Department on that offense and it does not

contain restitution information for restitution that is ordered by the restitution courts in Orange County.

Additionally, out-of-state convictions and crimes for which there are arrests, but no dispositions cannot be screened by the computer. With regard to screening cases based upon the type of crime, these cases cannot be automatically eliminated because there may be multiple reasons why the offender is ineligible. These reasons need to be identified and recorded, and are needed by Clemency Board in order to adequately assess the need for any future rule changes that would improve or make the clemency process more efficient.

With regard to adding additional computer screening criteria to eliminate certain additional offenders such as habitual offenders or those convicted of homicide, such a change would not be appropriate because even though a habitual offender or a homicide offender would not be eligible for RCR without a hearing, these persons would be eligible for RCR with a hearing and would need to be notified as such.

PAROLE DETERMINATIONS -- The Legislature should consider transferring workload associated with investigations for parole determinations to the Department of Corrections (DOC). This is similar to a provision passed by the 2001 Legislature to transfer certain conditional release investigations to the DOC. As with conditional release, much of the information required by the Parole Commission for parole determinations is maintained by the DOC. Savings would be 13 FTE and \$701,734 assuming 90% reduction of current resources and no additional resources for the DOC. The DOC has indicated that most of the information required by the Parole Commission is maintained by the department and that it should be able to absorb the workload within existing resources (also see section 7 below).

Parole Commission Comments: The Commission is opposed to transferring any parole related functions to the Department of Corrections. The State Constitution vests sole authority to grant paroles with the Parole Commission. The Commission submits that it would violate this constitutional mandate for the staff of an entity other than the Parole Commission to grant paroles. Transferring workload associated with investigations for parole determinations would not be appropriate. Unlike conditional release, which is a mandatory non-discretionary release on supervision program, parole is a purely discretionary release program granted solely to the Parole Commission by the State Constitution. It would be, if not an actual, a perceived conflict of interest, for the Department of Corrections to perform these functions. The agency that houses and detains prison inmates should not be controlling the type of information to be utilized by the Commission in discretionary release matters. Currently, the Parole Determinations activity has

only 9 workload FTE associated with these pre-release duties. This includes the field and central office staff. Even if the field interviews and investigations were transferred, the Commission would still need central office staff to process the interviews and prepare the appropriate orders reflecting the Commission's actions on these cases.

ADMINISTRATIVE FUNCTIONS -- The Legislature should consider transferring the following administrative functions to the Department of Corrections: (1) accounting and budgeting, (2) procurement and mail and supply rooms, (3) network administration, and (4) help desk support. The Department of Corrections indicates that it can absorb this workload within current resources with the possible exception of some of the information technology services. These actions would produce a reduction of 8 FTE and \$534,559 General Revenue while leaving key Commission personnel in place to serve as liaison with the Department of Corrections. The recent OPPAGA report number 01-55 includes a similar recommendation (also see section 7 below).

Parole Commission Comments: The Commission opposes and recommends against transferring the enumerated administrative functions to the Department of Corrections. Any minimal cost savings that allegedly might be obtained would not be justified in view of the disruption to the performance of the Commission's administrative activities and the overall operation of the agency. The Commission has consistently maintained that it should remain an independent agency, and this has been acknowledged by the Corrections Commission and OPPAGA. Further, in order to continue as an independent agency, the Commission should keep its legal and budgeting functions as recommended. To transfer the enumerated administrative functions would basically prevent the Commission's independent operation.

OPPAGA indicated that an independent agency should control its own budget. Unlike most larger agencies, the Commission does not have a separate budget office. Its budgeting functions are included in and performed by the Commission's finance and accounting office. Thus, it is necessary that the Commission's finance and accounting functions, along with its budgeting functions, remain with the Commission. As the Commission indicated in its response to the OPPAGA report, it would not be appropriate to transfer the Commission's purchasing functions to the Department. In addition to processing purchasing orders and maintaining supplies, the purchasing function also includes the sorting and distribution of the Commission's mail. It would be inappropriate and unworkable for the Department to perform this function due to the confidentiality and sensitivity of much of the Commission's correspondence. This is particularly so because the Department uses inmate labor to perform this function, and much of the Commission's mail and

correspondence involve confidential clemency matters, and other sensitive victim and release information.

Further, it would not be efficient to separate the purchasing functions from the budget and finance and accounting office because of the fiscal accountability required. Any minimal cost savings that allegedly might be obtained would not be justified in view of the disruption to the performance of the Commission's administrative activities and the overall operation of the agency as previously stated. The Commission also opposes transferring the Commission's Information Systems functions to the Department of Corrections for numerous reasons, which are outlined in the Commission's response to the OPPAGA report on pages 23-24.

ADDITIONAL RECOMMENDATIONS -- The Legislature should also consider the following additional recommendations contained in the OPPAGA report:

- 1. Closure of satellite offices and expanded use of telecommuting by parole examiners. Since parole examiners conduct much of their work at outside locations such as local jails, the OPPAGA feels that they are well suited for working out of their homes with occasional visits to a regional office with proper technological resources. This will allow for savings of \$97,000.*

Parole Commission Comments: As indicated in the Commission's response to the OPPAGA report, there are two major impediments to developing a plan to eliminate the satellite offices using telecommuting: first, when Commission examiners are not traveling to a prison facility, they would be working from home. While at home, they would spend much of their time connected online to the FPC network thus gaining access to the Department's OBIS and Inmate Records Imaging System (IRIS). We already know that this translates to a large cost because examiners need to stay online for hours to review and research cases. As the OPPAGA report points out, some of the proposed savings would be offset by technology needs of the telecommuter. One of those needs, high-speed access into the state network from the home to access inmate record images is not available.

Second, the Florida Department of Law Enforcement does not allow dial-up connection to the Florida Crime Information Center (FCIC). As the OPPAGA report indicates, this is an issue of significant concern and was raised by the Commission during conversations with OPPAGA. Dial-up access is simply not allowed and it is even questionable if it will be allowed when

the use of portable public access keys is implemented. The FBI's new encryption requirements are some of the most stringent in the country. The cost to implement this would be a significant budget issue.

In many of the field offices, support staff performs FCIC/NCIC lookup functions and research for those examiners who are not certified FCIC operators. If those staff were not present, more examiners will have to become operators themselves and perform their own lookups. For at least the next couple of years, this will not be allowed if they are telecommuting. It is also not appropriate, nor allowed, for the examiner to go to some law enforcement office and use their equipment.

It should also be noted that while telecommuting is beneficial in some regards, it is not appropriate in all instances. Telecommuting works well with experienced employees who require little supervision or training. It is not appropriate for newly hired individuals or those who require more intensive supervision.

2. *Use of a shorter, four-page questionnaire for clemency cases that require a hearing by the Clemency Board. In instances where a member of the board needs additional information, this can be accommodated as a special request.*

Parole Commission Comments: As stated in the Commission's response to the OPPAGA report, this is a policy issue over which the Commission has no control. The Clemency Board previously considered this issue, but determined that the abbreviated form did not provide the necessary information that the Board required in those cases requiring a full clemency investigation (e.g., firearm authority, pardons, commutation of sentence, etc.)

3. *Outsource clemency investigations to relieve the current backlog.*

Parole Commission Comments: As stated in the Commission's response to the OPPAGA report, because the clemency function is strictly a governmental function and not the type of work that is best suited to profit-making, outsourcing in this instance would not be appropriate. Regulations regarding the confidentiality of information would also serve as a serious impediment to this activity being effectively privatized. Because of the highly

confidential nature of the investigation, files, and records, the potential for corruption or unauthorized and improper use of confidential information would be of concern. Other considerations that would be involved are increased costs of conducting investigations. The extent of an investigation varies depending on the particular facts of the applicant's background. In many cases, the Clemency Board requests additional information regarding an applicant. These requests can be quite extensive. If a private firm were performing this service, the cost involved in gathering supplemental information could be very high. Further, it would be difficult to find an investigative firm that would have the necessary manpower to perform this statewide activity. Because the Commission has staff in offices located throughout the state, it has the necessary framework in place to obtain court documents, testimony from victims, etc. in a timely and cost effective manner without the necessity of having to deal with separate private firms to obtain this information. A simple phone call or e-mail from one of our offices in one part of the state to a distant office in another part of the state can result in the easy obtainment of necessary information that would not be so easily or cheaply done if two or more separate private firms were utilized.

The Legislature should consider transferring support for the Executive Board of Clemency to the Executive Office of the Governor. This will allow the Governor and the Board to directly manage the workload associated with this function (also see section 7 below).

To the extent that parole determination functions, administrative functions and clemency functions are transferred to other entities, the Legislature should consider the feasibility of assigning the parole commission and remaining staff to the Division of Administrative Hearings (DOAH) or another appropriate entity since the size of agency at this point may not justify a separate, free-standing department (also see section 7 below). Staff of the zero-based budgeting subcommittee that is working on the Department of Management Services (which houses DOAH) is tentatively recommending a review of all administrative hearing functions throughout state government to consider strategies such as consolidation. The Legislature can direct that the scope of this review, if ultimately approved, include the Parole Commission.

Parole Commission Comments. The Commission opposes transferring its parole determinations, administrative

functions, and clemency functions to other entities. With the possible exception of some workload issues in the clemency area, this report acknowledges that the Commission is meeting legislative expectations in all other areas. Thus, it seems inefficient and not an effective use of resources to dismantle an agency that is operating well and meeting legislative expectations. The Commission is further opposed to being assigned to the DOAH. DOAH administers Chapter 120, Florida Statutes, the Administrative Procedures Act. The Commission is not subject to and is specifically exempted from the provisions of chapter 120 because, unlike other state agencies who are subject to the chapter, its proceedings deal exclusively with inmates and released offenders. To put the Commission under DOAH could possibly create an argument that inmates should fall under the provisions of chapter 120 and possibly expand or increase their statutory rights.

3.3 FOR EACH ACTIVITY RECOMMENDED FOR CONTINUATION, IS THE CURRENT LEVEL OF EFFICIENCY AND EFFECTIVENESS MEETING LEGISLATIVE EXPECTATIONS? DESCRIBE THOSE DEFICIENCIES. CAN THE DEFICIENCY BE ADDRESSED USING CURRENT RESOURCES?

The activities of conditional release, offender revocations, victims' assistance, and parole determinations all appear to be meeting legislative expectations.

However, upon review of materials submitted by the Commission regarding clemency, as well as testimony provided by Commission staff at meetings, it appears that there are deficiencies, inefficiencies, and confusion concerning the clemency process.

1) *There is a backlog of clemency cases.*

Parole Commission Comments: Please see response to #2.

2) *There is a lawsuit that alleges that many eligible offenders have not been notified of the restoration of civil rights process.*

Parole Commission Comments: The lawsuit was filed against the Department of Corrections and is still pending. In November, 2001, the Department of Corrections, under the signature of the Coordinator of the Office of Executive Clemency, sent letters to those offenders who may not have been notified regarding the restoration of civil rights process. A copy of that letter is attached. This letter was sent to approximately 112,000 persons previously convicted of felony offenses advising them that they may be eligible to have their civil rights restored.

3) *The Parole Commission asserts that recent changes in the clemency rules have greatly increased their workload, although documentation of the rule changes was not provided to ZBB staff.*

Parole Commission Comments: The Commission disagrees with this statement. The Rules of Executive Clemency have not been changed by anyone from the Governor's staff; however, there have been recent changes by the Governor and Cabinet, acting in their capacity as the Clemency Board. As indicated in the Commission's legislative budget request, these changes and others may ultimately have an impact on the Commission's workload. These changes, however, did not form the basis of our LBR request. An excerpt from our LBR is provided below.

"IT IS NOTED THAT THERE ARE OTHER CHANGES THAT OCCURRED IN FY 00-01 THAT COULD IMPACT THE COMMISSION'S WORKLOAD, BUT HAVE NOT BEEN FIGURED IN ITS PROJECTIONS FOR THIS YEAR AS THE IMPACT OF THESE CHANGES WILL TAKE TIME TO EVALUATE, AND AT THIS POINT, ARE DIFFICULT TO QUANTIFY. IN ADDITION, A LAWSUIT HAS BEEN FILED AGAINST THE DEPARTMENT OF CORRECTIONS CONCERNING THE ISSUE OF RESTORATION OF CIVIL RIGHTS WHICH COULD ALSO IMPACT THE COMMISSION'S WORKLOAD. A summary of the changes and the pending lawsuit is provided below.

- (1) The Clemency Board amended Rule 9 of the Rules of Executive Clemency to eliminate some of the disqualifying factors for restoration of civil rights without a hearing.
- (2) The Clemency Board reduced the length of the restoration of civil rights questionnaire for full investigations from 12 to 4 pages.
- (3) The Clemency Board has directed the Commission to notify all offenders regarding their eligibility status for restoration of civil rights without a hearing (i.e., whether they are eligible or ineligible.) Previously, individuals who were determined ineligible were not notified.
- (4) The Clemency Board has directed the Commission to maintain a database of all of the reasons that an individual is ineligible for restoration of civil rights without a hearing. Previously, once one disqualifying factor was determined, additional investigation and documentation were not required. Now the Commission must investigate and document all disqualifying factors and enter this information into a database.
- (5) In a lawsuit filed against the Department of Corrections it has been alleged that offenders were not adequately assisted and their names were not forwarded to the Parole Commission for consideration for restoration of civil rights. It is possible that the court or the Clemency Board could order that these

affected offenders be located and advised of their opportunity to be considered for restoration of civil rights. If so, this would result in additional workload for the Commission as those offenders may seek to have their civil rights restored once they receive this notification. It has been estimated that the number of persons to be located and contacted will exceed 100,000.”

It is unclear whether the backlog of clemency cases can be addressed within current resource. If the recommendations from section 3.2 above are adopted, however, it should be possible to address the backlog without the need to approve 73 new, permanent FTE. Further, the Legislature should not consider requests for increased workload based on information that an agency is either unwilling or unable to document. This would appear to be the case with the changes from the Clemency Board that the Commission claims have generated additional workload.

Parole Commission Comments: As indicated in our legislative budget request, the backlog cannot be addressed within current resources. Further, the Commission does not have enough staff to handle the projected number of new cases that will need to be processed. The number of RCR cases without a hearing has drastically increased due to factors that are described in detail our LBR, which is attached for your information. See also our response to #2. The Commission believes that it has clearly set forth the factors that have caused the significant increase in its clemency workload. If additional information is needed, the Commission is more than willing to provide whatever information is needed by the Legislature.

To elaborate further, in FY 00-01, it was determined that many offenders terminating supervision had not been identified by the Department of Corrections and their names forwarded to the Commission for review for restoration of civil rights without a hearing. This oversight was due to computer problems, which resulted in offenders who had a letter in their prison number not being identified, as well as for other reasons. These computer problems were corrected by the Department of Corrections in March 2001 and have already resulted in a significant increase in workload for the Commission, which is outlined in our LBR and discussed in the OPPAGA report. Previously, the Commission received approximately 10,000 cases per year. With the correction to the computer program, it will now be receiving over 20,000 cases per year.

In FY 00-01, the Clemency Board requested the Commission to obtain from the Department of Corrections a monthly computer-generated list of inmates being released from prison who may be eligible for restoration of civil rights without a hearing. This list, which is now being used by the Commission, identifies those

offenders who meet the following criteria: they have no supervision to follow their prison sentence, they have no detainers or pending charges, they are a U.S. Citizen, they were sentenced from a Florida court, and they were released to a county in Florida. Previously, the Department of Corrections provided a form to individuals being released from prison at the expiration of their sentence and advised them to mail the completed form to the Commission if they desired to have their civil rights restored. The change in procedure to reviewing a list of offenders released from prison, rather than relying on the submission of forms by offenders, has resulted in a significant increase in workload. Previously, the Commission received approximately 10,000 cases per year. Using the list, the Commission will now be processing over 13,000 cases per year.

The additional FTE that the Commission is requesting is also due to actual and estimated backlogs of RCR cases without a hearing and full clemency investigations. In FY 00-01, the Commission received 19,896 cases for review for restoration of civil rights without a hearing, but was only able to complete 13,459 cases, resulting in a backlog of 6,437 cases. In addition, due to the previously discussed changes in the clemency process in FY 00-01 and the correction of computer problems by the Department of Corrections, it is estimated that there will be an additional 26,040 case backlog in restoration of civil rights cases without a hearing on July 1, 2002. The Commission also had 1,808 pending applications for full clemency investigations in FY 00-01, but it was only able to complete 1,046, resulting in a backlog of 762 cases.

If the Commission does not receive additional positions for the clemency services activity, the backlogs described above will increase significantly. Therefore, in order to meet the demands for this necessary activity, additional FTE are being requested. This activity is necessary because without it persons who have lost their civil rights would not be able to have them restored, which would prevent them from voting and otherwise exercising their civil rights, and persons would not have a mechanism through which they could seek relief in the form of pardons, remission of fines and forfeitures, commutation of sentence, firearm authority and capital case review.

Because the number of FTE that is being requested is significant, the Commission is proposing a 2-year phase-in period. See LBR for details.

While identifying potential efficiencies in setting the terms and conditions of conditional release, staff raised questions about whether the statutory changes to Chapter 947 in 2001 inadvertently created an unnecessary duplication of effort. However, insufficient data prevents staff from making recommended changes to this operation at this time. Staff does, however, recommend that OPPAGA be tasked with evaluating the process for setting the terms and conditions for

conditional release and make recommendations on how, if any, the Legislature could further streamline this process and improve agency efficiency.

Parole Commission Comments: There is no duplication of effort. The Commission makes the final determination as to the appropriate conditions of supervision. In each case, the conditions of supervision consist of twelve standard conditions set by Commission rule and any additional special conditions of supervision that the Commission deems appropriate in order to address specific public safety issues and to facilitate the offender's reintegration into society. Additionally, if the offender has been convicted of a sex offense, the mandatory conditions that are set forth in s. 947.1405(7), F.S., are also included. The Department of Corrections merely provides support to the Commission by providing a summary of the inmate's sentence structure, identifying the qualifying offense, providing information concerning the inmate's release plan, etc., in order to facilitate the Commission's independent review of the case. Although the Department does make recommendations concerning conditions, these recommendations are advisory only and non-binding. When formulating conditions of supervision, the Commissioners thoroughly review and analyze the case materials on each inmate to identify any behavior that may affect an inmate's ability to succeed under supervision and prevent future criminal activity. The Commission is a neutral independent body charged with, not only setting the term and conditions of supervision, but also with determining violations of supervision. The creation of an independent neutral agency for these purposes is to avoid conflict of interest issues. By being unconnected with the day-to-day supervision, and oversight and control of prison inmates, the Commission is in the best position to make unbiased decisions regarding supervision and revocation issues.

3.4. FOR EACH ACTIVITY, IDENTIFY POTENTIAL AND RECOMMENDED REDUCTIONS AS FOLLOWS:

- a. CAN ANY GENERAL REVENUE BE SHIFTED TO TRUST FUNDS?

There is a possibility that a portion of current costs charged to General Revenue can be shifted to trust funds.

Specifically, in the area of clemency, the Legislature should consider a policy to shift all or a portion of the associated costs from state taxpayers to applicants.

In the area of revocation proceedings, the Legislature should consider charging offenders for all or a portion of the costs associated with the investigation and prosecution of violations that lead to a revocation.

In considering these issues, care should be taken to identify all legal and practical issues that may arise from adoption of these recommended policies. In addition, the Legislature should delay adopting a fund shift in the General Appropriations Act until the second year of implementation. This will allow for better estimates of the total revenues that will be generated and an opportunity to identify and correct problems prior to relying on these funds for critical operations.

Parole Commission Comments. As for transferring the costs for clemency and revocation proceedings to offenders, the Commission has no strong opinion other than as mentioned in the report, which states that this issue would need close review of the legal and practical considerations that may arise.

- b. LIST AND DESCRIBE ALL REDUCTIONS LISTED IN THE 5% LRPP REDUCTION LIST AND THE LBR SCHEDULE 8B REDUCTION LIST (IF DIFFERENT). EXPLAIN IN DETAIL WHY ANY OF THESE REDUCTIONS SHOULD OR SHOULD NOT BE RECOMMENDED.

The only 5% reduction offered by the Parole Commission was in the area of clemency (which is also the area where they are asking for 73 more FTEs over the next two fiscal years). The Commission says they can cut 10 FTEs in this activity because clemency is the only “operational activity that does not have statutory deadlines for completing cases.” By cutting these 10 positions, the state will save \$435,516.

These reductions, however, should not be approved since they would further exacerbate the current backlog.

Parole Commission: We concur.

- c. LIST THE ACTIVITIES, OR COMPONENTS THEREOF, WHICH ARE LEAST RELEVANT TO OR LEAST EFFECTIVE IN ACCOMPLISHING THE AGENCY’S MISSIONS AND GOALS (IF NOT PREVIOUSLY LISTED IN “B” ABOVE). SHOULD ANY FUNDING FOR THESE ACTIVITIES BE REDIRECTED TO A HIGHER PRIORITY ACTIVITY WITHIN THIS AGENCY OR ELIMINATED ENTIRELY?

The area of clemency is an area that could be considered “less” relevant to the Commission’s mission, which is to “provide for public safety through the judicious administration and strict enforcement of statutes regarding post-prison incarceration supervision programs.” Clemency is not a “post-prison incarceration supervision program.”

It is not recommended, however, that these resources be redirected to other activities due to the current backlog.

Parole Commission Comments: Even though the clemency activity may be “less” relevant to the Commission’s mission, it is nonetheless appropriately located with the Commission. The Governor and Cabinet comprise the Board of Executive Clemency. Because the Parole Commission is a Governor and Cabinet agency, it is appropriate that this function is performed by the Commission. The individuals who seek or are considered for clemency relief are either currently incarcerated felons or released felons. The Commission, through its duties associated with parole, conditional release, conditional medical release, and control release, is very familiar with the inner workings of the criminal justice system, interacting with criminal offenders, and performing investigations.

- d. FOR ANY LRPP REDUCTION ABOVE THAT YOU RECOMMEND AGAINST ADOPTING, DEVELOP ALTERNATIVE REDUCTION OPTIONS TO ACHIEVE THE 5% SAVINGS.

Please see section 3.2 above. The administrative reductions recommended therein would achieve more than 5% savings.

Parole Commission Comments. Unfortunately, the Commission is unable to recommend any reduction options to achieve the 5% savings insomuch as the Commission’s budget was just cut by 20 percent in the last regular legislative session. The Commission was cut by 37 FTE and \$2,017,632. These cuts took effect July 1, 2001. Thus, the Commission is not in a position to take any further cuts at this time especially in light of its increased workload outlined in its LBR.

3.5. ARE THERE ANY FUNDING ENHANCEMENTS WHICH WOULD SIGNIFICANTLY ENHANCE THE EFFICIENCY OR EFFECTIVENESS OF THE ACTIVITIES WITHIN THIS SERVICE?

No.

Parole Commission Comments: The Commission disagrees with the above statement and believes that the efficiency and effectiveness of the clemency activity would be greatly enhanced if the Commission were to be provided with additional staff to process clemency cases.

3.6 FOR EACH RECOMMENDATION RELATING TO AN ACTIVITY'S FUNDING LEVEL (WHETHER TO ELIMINATE OR MODIFY) WHAT ARE THE CONSEQUENCES TO THE CUSTOMERS OF EACH RECOMMENDATION?

Proposed modifications to agency administrative support activities will likely generate anxiety among agency staff related to the uncertainty of relying on another agency for critical support functions. Similar concerns will be likely concerning the transfer of parole determination investigations.

Parole Commission Comments: In addition to these concerns, please see the Commission's response to #3.2.

Recommendations related to clemency should have minimal impact on the level of support to the Board of Executive Clemency.

Parole Commission Comments: We disagree.

It is anticipated that there would be minimal impact on the Commission's ability to reach appropriate decisions regarding parole and conditional release.

Parole Commission Comments: We disagree.

4. BASED ON A REVIEW OF STATUTORY AUTHORITIES FOR ACTIVITIES AND THE ANALYSIS OF CUSTOMER NEEDS AND QUALITY OF SERVICES PROVIDED, ARE ANY CHANGES TO STATUTES OR OTHER EXPRESSIONS OF LEGISLATIVE INTENT RECOMMENDED?

Conditional Release: no changes

Offender Revocation: no changes

Victims' Assistance: no changes

Parole Determination: If the decision is made to transfer the "pre" parole determination duties to the Department of Corrections (i.e., the interviewing of the inmate and the submitting of parole recommendations to the Commission), then yes, the statutes will need to be amended. Specifically, the following statute sections would likely need to be amended: s. 947.172, s. 947.174, and s. 947.1745.

Clemency: If the decision is made to transfer all clemency functions to the Executive Office of the Governor, then yes, the statutes will need to be amended. Specifically, the following statute sections would need to be amended: s.940.03 and s.947.13(1)(3). Sections 14.28 and 14.201 may also need to be amended and a new subsection (to Chapter 14) may need to be added, defining the duties of the Board of Executive Clemency.

Statutory changes would also be necessary to assign the Parole Commission to the Division of Administrative Hearings.

Although not an absolute necessity, the assignment of administrative support functions to the Department of Corrections should be specified in law as well.

The proposal to pass costs of clemency and revocation proceedings to offenders would also need to be adopted in law.

5. WERE THERE ANY AREAS IN THIS SERVICE WHICH CONSISTENTLY LACK ADEQUATE INFORMATION NECESSARY TO PERFORM THE ZERO BASED BUDGET ANALYSIS? IF SO PLEASE EXPLAIN.

The Parole Commission did not include breakdowns or explanations of their unit costs.

Parole Commission Comments: The Commission answered the question as to the major cost drivers in each activity as Salaries. As we have not been able to meet with staff on this document, we did not understand that a breakdown was being requested. The breakdown by Activity and Category is input into LAS/PBS for the LRPP, but when the LRPP is printed LAS/PBS rolls up these categories into one total amount upon which the unit cost is figured. The following table is the Estimated Expenditure breakdown for 2001-2002 by category for each Activity.

2001-2002 Estimated Expenditure Breakdown by Activity and Appropriation Category

ACTIVITY	SALARIES	OPS	EXPENSES	OC	DP SERVICES	CASUALTY INS	TOTAL
CONDITIONAL RELEASE	497,320	19,343	81,944	4,213		6,266	609,086
OFFENDER REVOCATION	1,772,070	120,338	297,978	15,322		22,785	2,228,493
CLEMENCY SERVICES	2,082,183	32,648	350,124	18,003		26,772	2,509,730
PAROLE DETERMINATION	632,375	25,497	108,018	5,554		8,260	779,704
VICTIMS	332,263	13,188	55,871	2,87		4,272	408,467

ASSISTANCE				3			
EXECUTIVE DIRECTION	396,780	87	36,000	2,881		4,284	440,032
GENERAL COUNSEL	384,920	13,226	56,030	2,881		4,284	461,341
PROCUREMENT/ MAIL & SUPPLY	53,221	6,612	28,015	1,441		2,142	91,431
ACCOUNTING AND BUDGETING	166,605	2,000	28,015	1,441		2,142	200,203
HUMAN RESOURCES	166,605	10,616	28,015	1,441		2,142	208,819
INFORMATION TECHNOLOGY – ALL	331,313	26,976	76,060	2,880	319,856	4,285	761,370

6. IS THERE ANY EVIDENCE THAT QUALITY COULD BE IMPROVED OR COSTS REDUCED THROUGH OUTSOURCING OR PRIVATIZING ALL OR PART OF THE ACTIVITIES WITHIN THIS SERVICE?

Because of the unique nature of the activities and services provided by the Parole Commission, the option of outsourcing within this agency is very limited. As suggested in section 3.2 above, the activity that seems to have some potential for outsourcing would be that of clemency investigations, although there are positives and negatives on each side of the issue. Through their research of the issue, OPPAGA determined that outsourcing clemency investigations would facilitate a quick reduction of the backlog, remove the Commission’s need for 73 FTEs over the next two years, and allow for the use of more expensive and diverse technology that the Commission cannot afford. On the other hand, OPPAGA noted several concerns about outside agencies getting involved, such as victim confidentiality, limited access to Federal and state crime information, and difficulty in assuring accountability. These concerns, however, should not preclude a good-faith examination of this strategy since similar obstacles have been successfully negotiated in other outsourcing initiatives in state government.

Parole Commission Comments: Please see our previous comments under #3.2, paragraph 3 regarding this issue.

7. SHOULD ALL OR SOME OF THE TASKS OR FUNCTIONS WITHIN THIS ACTIVITY BE TRANSFERRED TO A MORE APPROPRIATE SERVICE OR BUDGET ENTITY WHERE A SIMILAR ACTIVITY EXISTS OR TO AN ENTITY THAT HAS A MORE COMPATIBLE MISSION?

There are several “transfer” options, although each of them may need further, detailed research. Each of these recommendations are discussed in section 3.2 above.

- 1) *Transfer the “pre” parole determination functions to the Department of Corrections (DOC). A very similar transfer of responsibility was done last year with CS/HB 245, which transferred all “pre” conditional release responsibilities to the Department. Transferring the pre- parole determination functions to the Department would require having the Department’s Classification Officers interview inmates who are eligible for parole, review their files, and then submit recommendations to the Parole Commission, who will ultimately make the decision whether or not to grant parole. The DOC has indicated that it can absorb these responsibilities within current resources since they already maintain the bulk of the information necessary as part of their normal business operations.*
- 2) *Transfer the entire Clemency process to the Governor’s office. The granting of Clemency is an executive power granted to the Governor by the Constitution. Although the Parole Commission spends a significant amount of time doing clemency research for the Clemency Board (composed of the Governor and Cabinet), the Commission is only providing support and administrative assistance. The transfer of the Office of Clemency Administration and the Office of Executive Clemency to the Executive Office of the Governor would allow the Governor to determine the best use of limited resources in managing the workload associated with this function.*
- 3) *The Legislature should consider transferring selected administrative support responsibilities to the Department of Corrections. This can be accomplished through substantive law assigning these responsibilities to the DOC.*
- 4) *The Legislature can also consider the option to house the Commissioners and remaining staff to the Division of Administrative Hearings (DOAH). This may be particularly compelling if other transfers diminish the size of the Parole Commission to a level that no longer justifies a separate state agency. This can be accomplished by a Type 1 transfer as provided in section 20.06, F.S. The DOAH provides independent Administrative Law Judges to conduct hearings pursuant to s. 120.569, F.S. and s. 120.57(1), F.S., pursuant to other law, and under contract with governmental entities. The Administrative Law Judges are not subject to control, supervision, or direction by any party or any department or commission of state government. The DOAH is established within the Department of Management Services for the provision of support services only. It is recommended that the Commissioners be similarly independent of other Administrative Law Judges and the Department of Management Services if this option is adopted. Implementation of this option may require revisiting recommendations to transfer administrative support services to the Department of Corrections.*

Parole Commission Comments. Please refer to our previous comments on these issues. However, additionally with regard to transferring the Commission’s clemency activity to the Governor’s office, due to the fact that the Clemency Board is comprised of the Governor and Cabinet, it would not be appropriate to place this

function under any one member of the Board. Because the Parole Commission is a Governor and Cabinet agency and because of the other functions it performs, it is best suited to perform the clemency activity. The individuals who seek or are considered for clemency relief are either currently incarcerated felons or released felons. The Commission, through its duties associated with parole, conditional release, conditional medical release, and control release, is very familiar with the inner workings of the criminal justice system, interacting with criminal offenders, and performing investigations.

8. ARE ANY CHANGES INDICATED TO THE MISSION STATEMENTS AND GOALS OF THE LRPP BASED ON YOUR REVIEW OF STATUTORY AUTHORITIES AND LEGISLATIVE INTENT FOR THIS SERVICE AND ITS ACTIVITIES?

No, other than changes that will be necessary to reflect changes from any of the above recommendations that are ultimately adopted.

9. ARE THERE OTHER RECOMMENDATIONS AT EITHER THE SERVICE OR ACTIVITY LEVEL NOT ADDRESSED IN THE RECOMMENDATIONS ABOVE?

No.

TAB 10

Capital Collateral Regional Counsel

- The CCRCs are required to request reimbursement from the federal government for providing legal representation in federal courts. The amount of money requested from the federal government and the amount received should be reported as part of the quarterly report to the Commission on Capital Cases.
- In order to compare the efficiency of the registry attorneys to the CCRCs, the contract with registry attorneys may need to be modified in order to require the registry attorneys to report case costs and progress to the Commission on Capital Cases on a quarterly basis. The payment structure and contract for registry attorneys should also be amended to include responsibility for a case after a death warrant has been signed.
- The legislature should gather information necessary to evaluate feasibility of funding capital collateral representation entirely through the use of private attorneys. If current funds were distributed equally among the inmates on death row, each inmate could be provided with cash assistance of roughly \$39,000 per year in order to hire the qualified attorney of their choice to represent them in collateral proceedings.
- The legislative appropriations committees should evaluate any contracts for lobbying or consulting services that are being paid by the CCRCs. The House staff also recommends that the legislature consider whether an express prohibition against the use of funds for the payment of lobbying or consulting services should be included within chapter 216.
- The CCRC for the Middle Region has begun the process of scanning case files and storing them on computer discs which may reduce the need for file storage space and make information retrieval more efficient for investigators and attorneys. The Northern and Southern Regions should submit a detailed plan to the legislature for the use of scanning equipment that indicates the costs savings that will result.

Zero Based Budget Review Recommendations by Service & Activity - 2001

Agency:	Capital Collateral Regional Councils
Program:	Northern, Middle, and Southern Regional Councils
Service:	Death Penalty Legal Representation

1. Should the state continue to perform this Service? YES NO

Provide reasons for the above recommendation

A prisoner does not have a federal constitutional right to postconviction counsel provided by the state in capital cases. Also, the Florida Supreme Court has not clearly stated whether there is a state constitutional right to postconviction counsel in capital cases. However, if the state stopped providing postconviction counsel in capital cases, it is unlikely that the Florida Supreme Court would allow a death row inmate to be executed. The statutory creation of the Capital Collateral Regional Councils provides a way for the legislature to monitor and fund postconviction representation at reasonable levels.

2. Are there any areas where performance is not meeting expectations for this service?

House staff notes that the according to the Output Measures contained in the ZBB budget document submitted by the CCRCs, 80 percent of the issues raised by the CCRCs are summarily dismissed by the courts or ruled to be procedurally barred or without merit.

3. Based on the information provided, should each activity within this service continue to be performed by the state and, if continued, should funding be modified per questions 3.1 through 3.6?

Activities (Business Processes)	FY 01-02 Est. Exp.	YES	NO	Modify
1. Public Records and Information Services	\$2,403,095	x		
2. Case Investigation Services	\$2,599,857	x		
3. Legal Representation Services	\$4,213,111	x		
Total Service	\$9,216,063			

3.1 Provide detailed reasons for activities NOT being recommended for continuation.

N/A

3.2 Are there any areas where the agency could improve performance by re-engineering any activity? *In the area of Public Records and Information Services, the Middle Region has begun the process of scanning case files and storing them on computer discs. The CCRCs claim that this provides increased efficiency in two ways: It reduces the need for file storage space and makes information retrieval more efficient for the investigators and attorneys. The North and South regions should submit a detailed plan to the legislature for the use of scanning equipment that indicates the costs savings that will result.*

3.3 For each activity recommended for continuation, is the current level of efficiency and effectiveness meeting legislative expectations? Describe those deficiencies. Can the deficiency be addressed using current resources?

In 1985, the legislature created the Office of Capital Collateral Counsel. In 1997, the legislature divided the collateral counsel office into three regional offices. According to a draft OPPAGA justification review of the CCRCs released to staff in October 2001, the performance of the CCRCs has improved since the regional counsels were established. OPPAGA noted that the reforms enacted by the legislature were too recent to “allow for analysis of their effect on case completion” but concluded that cases are moving through the process. Every death row inmate who wants a lawyer is currently represented by the CCRCs or by a private lawyer. Also, OPPAGA found that the public records repository which is maintained by the Department of State has improved the “timeliness of obtaining case records and reduced the litigation over production.” According to the Commission on Capital Cases, the CCRCs have participated in more evidentiary hearings in the last year than in the last 10 years combined.

Additionally, House staff notes that according to the Output Measures contained in the ZBB budget document submitted by the CCRCs, 80 percent of the issues raised by the CCRCs are summarily dismissed by the courts or ruled to be procedurally barred or without merit.

There is room for improvement in the “Public Records” activity as noted above in question 3.2.

3.4. For each activity, identify potential and recommended reductions as follows:

- a. Can any General Revenue be shifted to trust funds?
This is not practical based on current trust fund balances (only about 2 percent of total CCRC appropriations is trust fund). The CCRCs are statutorily required to request reimbursement from the federal government for providing legal representation in federal court. This money is deposited into the Capital Collateral Trust Fund which is maintained by the Justice Administrative Commission. s. 27.702(3)(a), F.S.; 18 U.S.C. s. 3006A. The actual amount recovered from the federal government is based on the judgment of the federal judge assigned to the case and often does not match the reimbursement request which was submitted. Trust funds should be looked on as a supplement and not as a major source of funding.

- b. List and describe all reductions listed in the 5% LRPP reduction list and the LBR Schedule 8B reduction list (if different). Explain in detail why any of these reductions should or should not be recommended. *Current 5% reduction plan offers a cut in Case Related Costs of \$444,000, based on 00-01 reversions. The amount of money expended on case related costs depends on case activity. The category could end up in deficit if cases are more active.*
- c. List the activities, or components thereof, which are least relevant to or least effective in accomplishing the agency's missions and goals (if not previously listed in "b" above). Should any funding for these activities be redirected to a higher priority activity within this agency or eliminated entirely? *N/A refer to 3.1.*
- d. For any LRPP reduction above that you recommend against adopting, develop alternative reduction options to achieve the 5% savings. *See explanation in b. above. It is recommended that CCRC "zero-base" the Case Related Costs category. Each CCRC would list the TOTAL requirements projected for the fiscal year requested, with associated cost estimates and justifications.*

3.5. Are there any funding enhancements which would significantly enhance the efficiency or effectiveness of the activities within this service? *The CCRCs should actively pursue reimbursement for expenses incurred during representation of federal cases from the federal government whenever possible. See further discussion in 3.4.a. As part of their quarterly reports to the Commission on Capital Cases, the CCRCs should be required to report their requests for reimbursement from the federal government and the result of the requests.*

3.6 For each recommendation relating to an activity's funding level (whether to eliminate or modify) what are the consequences to the customers of each recommendation? *N/A*

4. Based on a review of statutory authorities for activities and the analysis of customer needs and quality of services provided, are any changes to statutes or other expressions of legislative intent recommended?

In order to compare the efficiency of the private registry attorneys to the CCRCs (see further discussion in question 6, below), the contract with registry attorneys may need to be modified in several ways. The registry attorneys should be required to report case costs and progress to the Commission on Capital Cases on a quarterly basis. Currently, there is no statutory provision for representation by a registry attorney after a death warrant is signed. There is some concern that in cases in which a warrant is signed in a registry case, a registry attorney could withdraw from the case. The CCRCs could then face the possibility of being assigned to provide post-warrant representation in cases with which they are not familiar. The payment structure and contractual arrangement for registry counsel could be modified to include responsibility for a case after a death warrant has been signed.

5. Were there any areas in this service which consistently lack adequate information necessary to perform the zero based budget analysis? If so please explain.
None noted, however costs fluctuate based on the status of caseloads in the system. This makes it difficult to predict budgetary requirements. For instance, if a large percentage of cases have

evidentiary hearings during a budget year, more funds will be needed than if the cases are awaiting a decision from the court. Likewise, cases in which a death warrant has been signed are very labor intensive and it is difficult to predict when a death warrant may be signed by the Governor.

6. Is there any evidence that quality could be improved or costs reduced through outsourcing or privatizing all or part of the activities within this service?

In 1998, the legislature created a registry of private attorneys who are appointed to represent death row inmate when a CCRC has an excessive caseload or has a conflict of interest. The registry is comprised of attorneys who have met certain statutory criteria and is maintained by the Commission on Capital Cases. s. 27.710(2) and 27.704(2). The registry attorneys are paid at the completion of each phase of postconviction proceedings according to a statutory schedule. s. 27.711, F.S. There are statutory fee maximums for each stage of the proceedings. Although staff has been presented with anecdotal evidence that in certain instances, registry attorneys have provided efficient representation at a low cost to the state, it is difficult to make a reliable comparison to the service provided by the CCRCs. To date, there have been no death warrants signed in any case in which the inmate was represented by a registry attorney. Also, there are pending challenges to the statutory maximum fees. It will be difficult to predict any cost savings to the state if judges allow payment to registry counsel in excess of the statutory maximums.

The legislature should gather the information necessary to evaluate the feasibility of funding this activity entirely through use of private attorneys. If current funds were to be distributed equally among the inmates on death row that are in the process of having a collateral review of their cases, each inmate could be provided with cash assistance of roughly \$39,000 per year at current funding levels. Each death row inmate could, in essence, be given a voucher for up to this amount on an annual basis to allow the inmate to hire the qualified attorney of their choosing to represent them in collateral proceedings. Savings could be achieved by capping the overall amount of funds that the state would provide for an inmate over the life of their collateral proceedings. This system would allow the state to eliminate the bureaucracy of the three CCRCs and focus resources on providing the most effective defense possible for the inmate. It also may give the inmates greater satisfaction in being represented by the attorney of their choosing. This would also eliminate the possibility of a conflict in collateral representation.

7. Should all or some of the tasks or functions within this activity be transferred to a more appropriate service or budget entity where a similar activity exists or to an entity that has a more compatible mission?

It may be argued that this service could be housed within the appellate public defender offices. Because the area of post-conviction litigation is a specialized field, these cases would probably have to be handled by a separate group of attorneys. Also, cases would have to be handled by an office other than the office that originally handled the trial court representation in order to avoid conflict of interest problems. Also, it may be problematic to place postconviction public defenders in a position where they were forced to regularly file motions which would claim that trial court public defenders provided ineffective assistance of counsel. This system might require increased witness and attorney travel costs.

8. Are any changes indicated to the mission statements and goals of the LRPP based on your review of statutory authorities and legislative intent for this service and its activities?

None.

9. Are there other recommendations at either the Service or Activity Level not addressed in the recommendations above?

The Legislative appropriations committees should evaluate any contracts for lobbying or consulting services which are being paid by the CCRCs.

Section 11.062, F.S. provides for a prohibition against the use of state funds for lobbying except by full time employees of an agency.

Please note: The Legislature reduced expenses for the CCRC's by \$60,000 related to lobbying and consulting contracts.

TAB 11

CCRCs' RESPONSE TO RECOMMENDATIONS BY HOUSE STAFF

40718. The CCRCs are required to request reimbursement from the federal government for providing legal representation in federal courts. The amount of money requested from the federal government and the amount received should be reported as part of the quarterly report to the Commission on Capital Cases.

Although the CCRCs are not adverse to reporting to the Commission on Capital Cases the amounts that are billed and received for services rendered in federal court, it should be noted that there may be a substantial period of time between the actual billing and the time the federal monies are received. Further, the billing process is different among the three federal districts. These factors alone make it difficult to provide meaningful federal reimbursement data that is both consistent among all three regions and indicative of actual activities of the CCRCs with regard to requesting reimbursement.

40719. In order to compare the efficiency of the registry attorneys to the CCRCs, the contract with registry attorneys may need to be modified in order to require the registry attorneys to report case costs and progress to the Commission on Capital Cases on a quarterly basis. The payment structure and contract for registry attorneys should also be amended to include responsibility for a case after a death warrant has been assigned.

As for the reporting methods by registry attorneys to the Commission on Capital Cases, this recommendation was also made by OPPAGA as a result of its Justification Review (November 2001). OPPAGA noted that without performance information from the registry attorneys, a determination of the efficacy of the registry attorneys cannot be accomplished. This recommendation was formally presented to the Commission on Capital Cases at the November 27, 2001, meeting; however, at that meeting it appeared that the members were not in favor of such reporting requirements for the registry.

The recommendation for reporting assumes that cost and progress reporting, in and of itself, would constitute proper efficiency comparison of the registry with the CCRCs. Members of the committee should be cautioned as to what measures should be used. If valid comparisons are to be made, it is important that the state has data on the costs, workload, case numbers, and comparable output/outcome results of the CCRCs to properly compare CCRCs with registry lawyers.

For the short-term, the cost factor may seem to be the only factor that matters; however, in the long-term a *seemingly* lesser cost may prove to be much more expensive in the long-run or when you look at the entire picture of post-conviction proceedings in capital cases. There is also a danger in analyzing the costs too simplistically which results in a skewed analysis and assessment. Efficiency analysis without considering performance indicators does not provide sufficient comparisons. The sensitivity of the Supreme Court related to legal competency and the state's concerns about timely filings indicate a need to review costs and results.

As for responsibility for a case after a death warrant has been assigned, the staff is correct in that the statute does not specifically provide for such representation. Historically, the trial courts have appointed the CCRCs for representation of warrant cases when a private attorney has withdrawn from representation after the inmate's federal case has been adjudicated.

The appointment of the CCRC's at this critical stage exponentially increases the fiscal and operational impacts on the agencies. The agencies must completely review the case from its genesis and litigate it as a new case. Due to the condensed time period for warrants, additional personnel and operational resources that are well above what is typically required in non-warrant cases originally assigned to the CCRCs are required. This situation occurs frequently and, therefore, skews cost comparisons for CCRC's and private registry lawyers as well.

40720. The Legislature should gather information necessary to evaluate feasibility of funding capital collateral representation entirely through the use of private attorneys. If current funds were distributed equally among the inmates on death row, each inmate could be provided with cash assistance of roughly \$39,000 per year in order to hire the qualified attorney of their choice to represent them in collateral proceedings.

This recommendation is absent sufficient procedural and practical applications to adequately comment on the recommendations. For example, it fails to address such matters as the importance of competent legal counsel selection, the withdrawal of an attorney from an inmate's case (or multiple withdrawals), the varying levels of complexity and cost of each case, and also the management and supervisory responsibility, if any, over the use of funds.

This issue requires serious consideration of many factors that go beyond its focus on potential cost savings.

40721. The legislative appropriations committees should evaluate any contracts for lobbying or consulting services that are being paid by the CCRCs. The House staff also recommends that the legislature consider whether an express prohibition against the use of funds for the payment of lobbying or consulting services should be included within chapter 216.

The CCRCs believe they should be permitted to utilize consulting services when that function is deemed as a necessary benefit to the agency. The regional counsels are like every other agency and state office head who are placed in positions to manage the agency or office in ways that are cost-efficient, effective, and consistent with the missions of the agencies or offices. Many state agencies procure lobbyists and consultants without oversight or evaluation by the legislative branch of government. Some agencies and state offices have chosen to create legislative offices within the agency and employ a lobbyist and legislative support staff as state employees. Other offices have determined that it is much less costly to contract out this function to eliminate the overhead, need for support staff, and the cost of benefits that go putting the function “in house.” The CCRCs have determined that it is much more cost-efficient, and effective, to outsource this function to the private sector to avoid many costs and expenses. It requires a high level of subject matter expertise as well as a great amount of time to monitor legislative activities and respond to requests for information from the legislative, executive, and judicial branches.

For other state functions, “exercises,” and activities that require expertise and a large amount of time, the CCRCs may not have staff skills in some areas critical to implementing more sophisticated planning, budgeting and managing requirements placed on the CCRCs. The ability to design and implement improved administrative systems, to lower unit of service costs and provide performance-based data and information may depend on using consultants. Additionally, the overseeing bodies, such as the Legislature and the Courts, require more strict adherence to the established service activity output and outcome measures. As a result, management and staff will have to devote far more time to the actual litigation of cases and operations of the offices. This will result in far less time available for budgeting and planning requirements. If the availability of staff positions is curtailed, the need to outsource these functions becomes an even greater necessity.

The CCRCs agree with the concern expressed by a couple of members of the Zero-Based Budgeting Committee (Public Safety): There is no proposal to review all lobbying and consulting contracts, or to review the employment of persons as “legislative liaisons” or “legislative directors” and their support staff and,

therefore, it seems to provide little or no benefit to the state to engage in such a review of three small state offices. And, again, by outsourcing these functions, the CCRCs believe that they are engaging in these necessary functions at a much lower cost than other state agencies and offices.

40722. The CCRC for the Middle Region has begun the process of scanning case files and storing them on computer discs which may reduce the need for file storage space and make information retrieval more efficient for investigators and attorneys. The Northern and Southern Regions should submit a detailed plan to the legislature for the use of scanning equipment that indicates the costs savings that will result.

The Middle Region's scanning project likely will result in dollar savings related to storage and staff time savings related to information retrieval. The project will reduce square footage requirements for filing documents. Additionally, it is likely that research requirements will be expedited, allowing more time for case preparation and meeting performance targets for filing 3.850's. As the scanning project is implemented, documentation of cost and time savings will be available.

The Northern and Southern Regions have been reviewing the feasibility and costs of obtaining the software and equipment for scanning documents for their offices. They plan to implement this program after identifying the most cost-effective and efficient system; however, the technology field is in a constant state of flux, thus leading to the deliberative and cautious approach being taken by the Northern and Southern regions.