



# The Florida Senate

Interim Project Report 2004-142

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Committee on Governmental Oversight and Productivity

James E. "Jim" King, Jr., President

## REVIEW OF TASK FORCES, BOARDS, AND COMMISSIONS

### SUMMARY

Hundreds of advisory entities, such as task forces, boards, commissions, and councils, are authorized or mandated by state statute, federal authority, or Executive Order to assist Florida's executive branch agencies in executing their duties. These entities perform the valuable role of bringing citizen input to governmental processes and enable the state to economically harness the knowledge and experience of private sector experts in a myriad of subject areas. Such advisory entities, however, are plentiful in state government and this fact raises the issue of whether such a proliferation is necessary or providing value to the state.

Currently, there is no mandatory, periodic legislative review of executive branch advisory entities, nor is there an up-to-date, comprehensive listing of such entities maintained in Florida. In the past, the Legislature has implemented mandatory Sunset and Sundown Reviews of advisory entities; however, these reviews proved overly burdensome and costly, and did not appear to achieve the streamlining returns that had been envisioned.

This report reviews the current number of advisory entities in the executive branch and makes recommendations regarding possible options for future legislative review.

### BACKGROUND

*Overview of legal authority for the creation of executive branch advisory entities:* Chapter 20, F.S., authorizes the creation of a number of different advisory entities within the executive branch to assist agencies in performing their duties more efficiently and effectively. These entities include a:

- "Council" defined as, ". . . an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives."<sup>1</sup>
- "Committee" or "task force" defined as, ". . . an advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution or policy alternative with respect to that problem. Its existence terminates upon the completion of its assignment."<sup>2</sup>
- "Coordinating council" defined as, ". . . an interdepartmental advisory body created by law to coordinate programs and activities for which one department has primary responsibility but in which one or more other departments have an interest."<sup>3</sup>
- "Commission" defined as, ". . . unless otherwise required by the State Constitution . . . a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor and exercising limited quasi-legislative or quasi-judicial powers, or both, independently of the head of the department or the Governor."<sup>4</sup>
- "Board of trustees" defined as, ". . . a board created by specific statutory enactment and appointed to function adjunctively to a department, the Governor, or the Executive Office of the

<sup>1</sup> Section 20.03(7), F.S.

<sup>2</sup> Section 20.03(8), F.S.

<sup>3</sup> Section 20.03(9), F.S.

<sup>4</sup> Section 20.03(10), F.S.

Governor to administer public property or a public program.”<sup>5</sup>

Hundreds of the aforementioned advisory entities are legislatively created in Florida statute. Such statutorily created entities are subject to requirements set forth in s. 20.52, F.S., which include the following:

- ❑ The entity must be necessary and beneficial to the furtherance of a public purpose.
- ❑ The entity must be terminated by the Legislature when no longer essential to the furtherance of a public purpose.
- ❑ Members of the entity may not receive compensation, other than per diem and travel expense reimbursement pursuant to s. 112.061, F.S., unless otherwise provided by statute.
- ❑ Members of an entity, other than a commission or board of trustees, must be appointed by the Governor, a department head, an executive director, or a Cabinet officer.
- ❑ Members of a commission or board of trustees must be appointed by the Governor unless otherwise provided by law, confirmed by the Senate, and are subject to the dual-office-holding prohibition of s. 5(a), Art. II of the State Constitution.
- ❑ All meetings and records of the entity are public, unless an exemption is specifically provided by law.

Additionally, advisory entities are created in the executive branch by: (a) agency heads pursuant to discretionary authority accorded in statute;<sup>6</sup> (b) Executive Order;<sup>7</sup> and (c) federal authority.<sup>8</sup>

<sup>5</sup> Section 20.03(12), F.S.

<sup>6</sup> See e.g., ss. 20.43(6), 110.405, and 570.0705, F.S. (permitting the heads of the Departments of Health, Management Services, and Agriculture to establish advisory entities subject to specified requirements); and s. 395.10972, F.S. (permitting the Secretary of Health Care Administration to appoint an advisory council for matters pertaining to health care risk managers).

<sup>7</sup> See e.g., Executive Order Number 03-160 (creating the Governor's Task Force on Access to Affordable Health Insurance).

<sup>8</sup> See e.g., 34 C.F.R. s. 300.650 (requiring each state establish a state advisory panel on the education of

### ***Legislative Review of Executive Advisory Entities:***

Prior to 1993, two acts required the Legislature to periodically review executive branch advisory entities:

- ❑ Under the “Regulatory Sunset Act,” legislation creating or reviving state regulatory programs or functions, such as regulatory boards, was required to contain a repeal date that would be effective within 10 years after the creation or revival date.<sup>9</sup> The act specified that appropriate substantive legislative committees were to review and make a recommendation regarding the program or function fifteen months prior to its repeal date. The act also set forth review criteria for the Legislature to consider when determining whether to reestablish the regulatory program or function.
- ❑ Under the “Sundown Act,” legislation that created or revived executive branch advisory bodies, commissions, and boards of trustees was required to contain a date for review and repeal of the entity within 10 years after the creation or revival date.<sup>10</sup> The act also set forth review criteria for the Legislature to consider when determining whether to reestablish the entity.<sup>11</sup>

Both of these acts were the subject of interim project studies conducted by the Senate in 1988 and 1991. The 1988 Senate study concluded that the benefits of the Sunset and Sundown Reviews were insignificant compared to the costs incurred to perform the reviews and recommended that both of the acts be repealed.<sup>12</sup>

The 1991 Senate study made findings that included: (a) each Senate Sunset Review cost \$14,700 or \$205,300 for the 14 Sunset Reviews conducted during the 1990-1991 interim; (b) each Senate Sundown Review cost \$5,100 or \$178,400 for the 35 Sundown Reviews conducted during the 1990-1991 interim; (c) legislative staff were precluded from performing more traditional legislative oversight during the interim

children with disabilities).

<sup>9</sup> Section 11.61, F.S.

<sup>10</sup> Section 11.611, F.S.

<sup>11</sup> In the House of Representatives, the “Regulatory Reform Committee” was formed in 1979 to conduct the Sunset and Sundown Reviews. In the Senate, the reviews were assigned by the Senate President to the appropriate substantive committee. Senate Committee on Governmental Operations, *A Review of the Regulatory Sunset Act and the Sundown Act* (1991) pp.31-32.

<sup>12</sup> Senate Committee on Governmental Operations, *A Review of the Sunset and Sundown Laws of Florida* (1988).

due to the vast amount of time required to conduct the reviews; (d) out of approximately 240 Sunset Reviews between 1977 and 1991, an estimated 20 regulatory laws were repealed while 50 new ones were created; and (e) out of 280 Sundown Reviews since 1978, 90 advisory boards were repealed while an estimated 150 new ones were created.<sup>13</sup> The study report concluded by recommending that statute be amended to provide for 20-year, rather than 10-year, Sunset and Sundown Reviews, unless otherwise directed by the Legislature.<sup>14</sup>

In response to the Senate studies, legislation was enacted in 1991 that provided for the repeal of the Sunset and Sundown Acts effective April 5, 1993.<sup>15</sup> In that same year, the “Sunrise Act” was enacted.<sup>16</sup> This act, currently codified at s. 11.62, F.S., requires: (a) the Legislature, when determining whether to regulate a profession or occupation, to consider specified criteria; (b) proponents of such legislation to document the necessity for the regulation; and (c) agencies to provide information concerning the effects of the legislation.<sup>17</sup>

At the present time, there is no mandatory periodic legislative review of executive branch advisory entities, nor is there an up-to-date, comprehensive listing of such entities maintained in Florida.<sup>18</sup>

Section 20.052(3), F.S., does require that the Legislature be kept informed of the numbers, purposes, memberships, activities, and expenses of statutorily created advisory bodies, commissions, boards of trustees, and other collegial bodies established as adjuncts to executive agencies. Despite this statutory directive, it does not appear to be the practice of all executive branch agencies to regularly maintain this information.<sup>19</sup> Furthermore, s. 20.052(2), F.S., as

mentioned above, provides that such entities must be terminated by the Legislature when the entity is no longer necessary and beneficial; however, without mandatory legislative review, statutorily created entities often remain in statute after the entity has served its public purpose.

**1999 Review of Executive Advisory Entities:** The last review of executive branch advisory entities occurred in 1999, when the Legislature enacted SB 2280, Chapter 99-255, L.O.F. This law required each executive department to survey every board, council, and other such entity under its jurisdiction and to recommend whether the entity should be abolished, continued, or revised. Further, the law directed the Department of Management Services (DMS) to submit the departments’ findings to the Governor and Legislature by December 1, 1999.

To execute the statutory directive, the DMS electronically disseminated a survey via the Internet to executive branch agencies, the chairperson of each advisory entity, and the executive director of key stakeholder groups for each advisory entity.<sup>20</sup> The surveys requested identification of all advisory entities under each agency’s jurisdiction, excluding Direct Support Organizations and most entities created during the 1999-2000 Legislative Session.<sup>21</sup> Survey responses were compiled by the DMS in a report entitled the “Boards and Commissions Review” that was released in January 2000.

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to be continually updated as agencies became aware of certain entities within their jurisdiction that no longer existed, but still were provided for in statute. Department of Management Services, “*Boards and Commissions Review*”, (January 2000), pp. 13-14. Senate staff’s experience in conducting the survey process for this report was similar in that it did not appear that most agencies had information about advisory entities readily available.

<sup>20</sup> The survey response rate for chairpersons and stakeholders was 32 percent and for executive branch agencies was 100 percent. Chairperson and stakeholder responses were provided to agency heads for use in making agency recommendations regarding each entity. Department of Management Services, *Boards and Commissions Review* (January 2000) p. 13.

<sup>21</sup> Advisory entities created during the 1999-2000 Legislative Session, other than those which were scheduled to sunset in the year 2000, were excluded from the DMS’s review because it did not appear that such an entity would have existed long enough for an agency to fairly evaluate its value to the state. *Id.* at 10, 61.

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<sup>13</sup> Senate Committee on Governmental Operations, *A Review of the Regulatory Sunset Act and the Sundown Act* (1991).

<sup>14</sup> *Id.* at 6-7.

<sup>15</sup> Chapter 91-429, ss. 4-5, L.O.F.

<sup>16</sup> Chapter 91-429, s. 6, L.O.F.

<sup>17</sup> Section 11.62(3)-(5), F.S.

<sup>18</sup> Section 20.04(8), F.S., directs the Executive Office of the Governor to maintain a current organizational chart of each agency in the executive branch. These charts, however, do not contain listings of all advisory entities to the agencies.

<sup>19</sup> This assertion is based on statements in the Department of Management Services’ “*Boards and Commissions Review*,” report indicating that it appeared difficult for many agencies to list all of their advisory entities given the lack of a comprehensive database and that some survey responses had

The report stated that a total of 522 advisory entities were identified. The number of advisory entities identified by individual agency was:

- Agency for Health Care Administration, 36;
- Department of Agriculture, 64;
- Department of Legal Affairs, 3;
- Department of Banking and Finance, 3;
- Department of Business and Professional Regulation, 25;
- Department of Children and Families, 84;
- Department of Citrus, 2;
- Department of Community Affairs, 20;
- Department of Corrections, 1;
- Department of Education, 17;
- Department of Elder Affairs, 17;
- Department of Environmental Protection, 9;
- Department of Health, 55;
- Department of Highway Safety and Motor Vehicles, 4;
- Department of Insurance, 9;
- Department of Juvenile Justice, 102;
- Department of Labor and Employment Security, 23;
- Department of Law Enforcement, 7;
- Department of Lottery, 1;
- Department of Management Services, 10;
- Department of Military Affairs, 1;
- Department of Revenue, 0;
- Department of State, 10;
- Department of Transportation, 2; and
- Department of Veterans' Affairs, 1;
- Executive Office of the Governor, 14;
- State Board of Community Colleges, 1;
- State University System, 0.<sup>22</sup>

Of the 522 advisory entities identified, 367 (70.3 percent) of the entities were mandated by state statute, nine (1.7 percent) were mandated by federal authority, 142 (27.2 percent) of the entities were discretionarily created by executive agency head directive, and four (.8 percent) of the entities were created by executive order.

**“Boards and Commissions Review” Report Recommendations:** The DMS report compiled the recommendations required from each executive branch agency concerning whether the advisory entities should be continued, revised, or abolished. The report stated that 141 (27 percent) of the advisory entities identified were recommended for abolition and that 187

(36 percent) of the entities were recommended for revision.<sup>23</sup>

Additionally, the DMS report reviewed Florida’s history of Sunset and Sundown Review of advisory entities, along with other states’ processes for such review.<sup>24</sup> The report concluded that a new “Sunset Law” should be enacted, which would again establish a regular review process for executive advisory entities.

Unlike Florida’s previous Sunset and Sundown Reviews, the new review process recommended would require agency heads, rather than the Legislature, to review each advisory entity and to make recommendations regarding the continued necessity for the entity. The DMS report stated that this process would remove the legislative burden endured under the previous system by providing a more manageable decentralized system that would disperse responsibility along agency lines.

Specifically, the legislation recommended by the DMS would have required current and future advisory entities to sunset every five years beginning in 2003 for entities created in statutes numbered 0-400 and in 2004 for all other entities. To reestablish the advisory entity, the agency head would be required to provide a recommendation to the Legislature regarding whether the entity should be reinstated and it would then be the responsibility of the Legislature to concur in, revise, or deny the recommendation. The report stated that, “Such legislation, if passed, would establish a timely review process that will ensure that boards and councils are consistently monitored for performance and held accountable to the citizens of Florida.”<sup>25</sup>

## METHODOLOGY

Staff surveyed executive branch agencies and reviewed the Florida Constitution, statutes, legislative history, and executive orders in order to obtain current statistics regarding executive branch advisory entities.

## FINDINGS

Since the issuance of the “Boards and Commissions Review” report in January 2000, considerable legislative and executive branch revision of executive advisory entities has occurred. The most

<sup>22</sup> *Id.* at 33-60.

<sup>23</sup> *Id.* at 5-6.

<sup>24</sup> *Id.* at 61-64.

<sup>25</sup> *Id.* at 64-65.

comprehensive legislative response to the DMS report was CS/HB 501, which was passed during the 2001 Legislative Session.<sup>26</sup> Based on the agency head recommendations contained in the report, this bill abolished 42 executive advisory entities.<sup>27</sup> To date, the Legislature has not implemented the report's recommendation that a new Sunset Review process be enacted.

In order to obtain current data regarding the number of advisory entities, surveys were distributed to executive branch agencies. The survey responses, which are current as of October 2003, identified a total of 556 advisory entities in the executive branch.<sup>28</sup> The number of advisory entities identified by each agency is:

- Agency for Health Care Administration, 31;
- Agency for Workforce Innovation, 52;
- Department of Agriculture, 49;

<sup>26</sup> Chapter 2001-89, L.O.F.

<sup>27</sup> These entities were the: State Lottery Commission; Joint Developmental Research School Planning, Articulation, and Evaluation Committee; Task Force on Gender Equity in Education; District Interagency Councils on Early Childhood Services; College-Ready Diploma Program Task Force; Asbestos Oversight Program Team; Capitol Center Planning Commission; Task Force on Privacy and Technology; Creek Indian Council; Commission on Government Accountability to the People; Cardiac Advisory Council; Florida Coordinating Council on Radon Protection; Florida Special Disability Trust Fund Privatization Commission and an advisory committee thereto; Toxic Substances Advisory Council; Medical Advisory Council to the Florida State Boxing Commission; Task Force on Home Health Services Licensure Provisions; Information Service Technology Development Task Force; Advisory Group on the Submission and Payment of Health Claims; Task Force for Review of Funding Sources of the Public Medical Assistance Trust Fund; Diversity Council; State Customer Advisory Council; State Agency Law Enforcement Radio System Review Panel; Driver's Under the Influence Advisory Council; Florida Rider Training Program Citizen Motorcycle Safety Council; thirteen Farmers Market Advisory Committees and Councils; Nitrate Bill Best Management Practices Advisory Council; Seed Potato Advisory Council; Tropical Soda Apple Task Force; and Community Development Block Grant Advisory Council.

<sup>28</sup> Senate staff obtained data for the Agency for Workforce Innovation and the Executive Office of the Governor through legal research because survey responses were not received from these agencies prior to publication of this report. As a result, the data for these agencies has not been confirmed and additional advisory entities, which are not formally identified in legal research materials, may exist.

- Department of Legal Affairs, 3;
- Department of Business and Professional Regulation, 23;
- Department of Children and Families, 60;
- Department of Citrus, 7;
- Department of Community Affairs, 19;
- Department of Corrections, 1;
- Department of Education, 34;<sup>29</sup>
- Department of Elder Affairs, 23;
- Department of Environmental Protection, 12;
- Department of Financial Services, 28;
- Department of Health, 63;
- Department of Highway Safety and Motor Vehicles, 4;
- Department of Juvenile Justice, 79;
- Department of Law Enforcement, 10;
- Department of Lottery, 0;
- Department of Management Services, 5;
- Department of Military Affairs, 1;
- Department of Revenue, 1;
- Department of State, 10;
- Department of Transportation, 2;
- Department of Veterans' Affairs, 1.
- Executive Office of the Governor, 14;
- Fish and Wildlife Conservation Commission, 21;
- Parole Commission, 0; and
- State Board of Administration, 3.

Of the total number of 556 advisory entities identified, 380 (68.3 percent) of the entities are mandated by state statute, 42 (7.6 percent) are mandated by federal authority, 124 (22.3 percent) of the entities are discretionarily created by executive branch administrative directive, and 10 (1.8 percent) of the entities are created by executive order.

In order to determine the difference in the number of executive branch advisory entities since the 1999 review by the DMS, it is necessary to subtract 24 of the entities identified for this report by the Fish and Wildlife Conservation Commission (FWCC) and the State Board of Administration (SBA), as neither the FWCC nor SBA were surveyed during the 1999 DMS review. Accordingly, the current total number of advisory entities for comparison purposes is 532, which

<sup>29</sup> The Department of Education indicated in its survey response that an internal review of all advisory entities under its jurisdiction is currently being conducted due to the recent Constitutional and statutory reorganization of the department. As this internal review is not yet complete, not all advisory entities may have been identified in the department's response.

is ten entities (almost two percent) more than the total of 522 entities identified in 1999.<sup>30</sup>

To date, agency heads responding to the Senate's survey have recommended abolition of 12 advisory entities and revision of 96 advisory entities. The recommendations that require legislative action are:

- The Agency for Health Care Administration recommends amending s. 641.65, F.S., to abolish the mandatory Statewide Managed Care Ombudsman Committee, and amending s. 641.65, F.S., to provide that District Managed Care Ombudsman committees are optional, rather than mandatory. The agency states that only four of the 11 district committees are functional due, in part, to an inability to find appointees who meet statutory requirements and a lack of funding for committee activities.
- The Department of Financial Services recommends amending:
  - Section 215.95, F.S., which creates the Florida Financial Management Information Board, to revise its membership to include the Commissioner of Agriculture, the only cabinet member who is not currently a member of the board;
  - Section 215.96, F.S., to merge or replace the Florida Management Information System Coordinating Council with the Enterprise Resource Planning Integration Task Force;
  - Section 627.0628, F.S., to provide more flexible appointment criteria for members of the Commission on Hurricane Loss Projection Methodology, as the current criteria makes it difficult to find qualified applicants; and
  - Section 626.2815(6), F.S., to abolish the Continuing Education Advisory Board, as it no longer active and its abolition would not reduce the quality of services offered by the department.
- The Department of Juvenile Justice recommends amending s. 985.4135, F.S., which authorizes the department's 57 County Juvenile Justice Councils and 20 Circuit Juvenile Justice Boards, so that

greater interaction between the councils and boards is encouraged.

- The DMS recommends merging the Florida Commission on Human Relations, Division of Administrative Hearings, Public Employees Relations Commission, and State Retirement Commission. The Office of Program Policy Analysis and Government Accountability is currently reviewing the feasibility of this merger.
- The FWCC recommends amending s. 372.673, F.S., to abolish the Florida Panther Technical Advisory Council. The FWCC states that the council has not met since 1998 and is unnecessarily duplicative of the Florida Panther Working Group, an informal group of governmental agencies that share information on panther conservation.

Additionally, several agency representatives have indicated that their agencies will continue to review the advisory entities under their respective jurisdictions to determine if greater efficiencies can be achieved through revision or abolition, and that additional recommendations may be provided to the Legislature for its consideration during the 2004 Legislative Session.

## RECOMMENDATIONS

The Legislature may wish to consider a proposed committee bill (PCB) that implements the recommendations provided by the executive branch, as outlined in this report, for the abolition and revision of specified advisory entities. The committee review process for a PCB will afford relevant substantive legislative committees and affected parties to comment on the propriety of these recommendations so that only those in the state's best interest are enacted.

Additionally, the Legislature may wish to consider a PCB that implements either the new Sunset Review process recommended by the DMS in its "Boards and Commissions Review" report, as discussed *supra*, or a requirement that an annually updated, comprehensive listing of all executive branch advisory entities be maintained by the Executive Office of the Governor (EOG).<sup>31</sup> This latter suggestion could be implemented

<sup>30</sup> The percentage increase indicated is based on the best available information as of the date of this report. The accuracy of the total number of advisory entities provided in this report is subject to the limitations discussed in footnotes 28 and 29.

<sup>31</sup> The EOG appears to be the appropriate entity to be assigned the responsibility of compiling agency advisory entity information, given the office's constitutional duty to

by statutorily directing each executive branch agency to annually submit to the EOG a list of its advisory entities, along with a recommendation and reasoning therefore regarding whether to continue, revise, or abolish the entity. The EOG could be statutorily directed to compile this information in a report to be annually submitted to the Legislature and published on its Internet website. Such statutory directives: (a) would permit greater, less onerous legislative and executive branch oversight of the number and type of advisory entities in state government; (b) would enable greater public oversight through its Internet publication requirement; and (c) would not appear to be an overly burdensome process for individual executive branch agencies to implement.

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supervise executive agencies. *See* Art. IV, s. 6 of the Florida Constitution. The compilation responsibility also corresponds with the EOG's statutory duty to maintain agency organizational charts. *See* 20.04(8), F.S.