

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1703 w/CS Statewide and Local Advocacy Councils
SPONSOR(S): Goodlette & others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2674

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Future of Florida's Families</u>	<u>17 Y, 0 N w/CS</u>	<u>Walsh</u>	<u>Liem</u>
2) <u>State Administration</u>	<u>7 Y, 0 N w/CS</u>	<u>Brazzell</u>	<u>Everhart</u>
3) <u>Judiciary</u>	_____	_____	_____
4) <u>Appropriations</u>	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 1703 w/ CS amends existing law relating to the statewide and local advocacy councils. The statewide council is relocated to the Executive Office of the Governor, but may be assigned for administrative support purposes to any agency under his control. Membership on the statewide council is enlarged and revised. The bill provides that the governor is to select the council's executive director.

The bill requires that the council enter into interagency agreements with agencies providing client services to address coordination of efforts and roles and responsibilities of the councils and the agencies.

The bill requires that heads of agencies providing client services notify all their providers of the powers, duties, and responsibilities of the statewide and local councils

The bill provides that the statewide council, its staff and funding, the local councils, 10 full-time equivalent staff, and the toll-free complaint line are transferred by a type two transfer from DCF to the statewide council and directs DCF to identify the positions to be transferred.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1703b.sa.doc
DATE: March 31, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Background¹

The intent of the Legislature in creating the Florida Statewide Advocacy Council (statewide council) and the Florida local advocacy councils (local councils) is to "have volunteers operate a network of councils that shall, without interference by an executive agency, undertake to discover, monitor, investigate, and determine the presence of conditions or individuals that constitute a threat to the rights, health, safety, or welfare of persons who receive services from state agencies." Additionally, the Legislature expressed its intent that "the monitoring and investigation shall safeguard the health, safety, and welfare of consumers of services provided by these state agencies."

The Florida Statewide Advocacy Council functioned prior to July 1, 2000, as the Statewide Human Rights Advocacy Committee (SHRAC). Those councils currently designated as local advocacy councils were formerly known as district human rights advocacy committees (HRAC). The committees were created within the Department of Health and Rehabilitative Services (DHRS) to serve as "an independent third-party mechanism for protecting the constitutional and human rights of any client within a program or facility operated, funded, licensed, or regulated by" the DHRS.

Chapter 75-48, L.O.F., created the HRAC's as part of the HRS Reorganization Act of 1975. This act gave committees the authority to act on behalf of all recipients of HRS services. Both local committees (one in each of HRS's 11 service districts) and the statewide committee (SHRAC) were recognized in this legislation. The SHRAC served as the appellate body for complaints unresolved by the local HRACs, reported to the Legislature, and set policy and procedures for the local HRACs. The expenses of both SHRAC and the local HRACs were to be from the HRS budget, and the organization was housed administratively in the DHRS.

Reorganization of the DHRS beginning in 1991 changed the persons statutorily protected by the HRAC. New agencies were created to serve clients originally under the jurisdiction of DHRS. For example, in 1991, the Legislature created the Department of Elderly Affairs; in 1992, the Agency for Health Care Administration; in 1994, the Department of Juvenile Justice; and in 1996, the Department of Health. In 1994, the Child Support Enforcement activities of HRS were moved to the Department of Revenue. In 1996 the DHRS closed officially, and the Department of Children and Family Services (DCF) was created.

¹ See Florida House of Representatives Committee on the Future of Florida's Families Interim Project Report: Statewide and Local Advocacy Councils, January 2004.

In the process of creating the numerous agencies to serve former DHRS clients, the Legislature did not modify the statutory provisions pertaining to the SHRAC or the District HRAC's to expand their jurisdiction to include clients of the newly-created agencies.

During its 2000 session, the Legislature amended statutory provisions relating to SHRAC/HRAC as reflected in Chapter 2000-263, Laws of Florida. Besides changing the name of the SHRAC and the HRAC's to the Statewide Advocacy Council and local advocacy councils, the effect of the changes was to tie the powers and duties of the advocacy committees to the statutory programs named, rather than limiting that power by specifying that only DCF programs were within the scope of action by the advocacy committees. Thus, despite the relocation of certain programs from the former DHRS to other agencies, the advocacy councils retained jurisdiction to monitor such programs.

ADVOCACY COUNCIL ORGANIZATION

The statewide council is composed of 15 state residents, one from each service area. Specifically, s. 402.165, F.S., requires that the statewide council be composed of the following members, each of whom serves no more than two consecutive full terms of four years:

- One provider who delivers "client services";
- Two nonsalaried representatives of nonprofit agencies or civic groups;
- Four representatives of consumer groups who are currently receiving, or have received, "client services" within the past 4 years
 - at least one of whom must be a consumer of one or more client services; and
- Two residents of the state who do not represent any of the foregoing groups;
 - one of whom represents the health-related professions; and
 - one of whom represents the legal profession.
- Of the remaining six members
 - no more than one shall be an elected official;
 - no more than one shall be a health professional;
 - no more than one shall be a legal professional;
 - no more than one shall be a provider;
 - no more than two shall be nonsalaried representatives of nonprofit agencies or civic groups; and
 - no more than one shall be an individual whose primary area of interest, experience, or expertise is a major client group of a client services group that is not represented on the council at the time of appointment.

The Governor appoints the members from a list provided by the statewide council. If the Governor does not appoint a person from the list submitted by the council within 60 days of the vacancy's occurrence, the statewide council may fill the vacancy itself, by majority vote.

APPOINTMENT OF MEMBERS

In addition to the mechanism by which appointments are made, the statutes describe with great specificity the characteristics of the persons who are eligible for appointment to the statewide and local councils. The Executive Director of the statewide council reports this specificity presents occasional difficulty in filling vacancies on the councils.

SUPPORT TO THE COUNCILS

The statewide council appoints an executive director. Currently, the statewide office has, in addition to the executive director, two full-time staff. The staff of the statewide office provides support to the councils, prepares the annual budget, arranges for meetings and trainings, and performs other duties as required.

While the statewide and local councils receive administrative support from the DCF, the Legislature has directed that the statewide council is not subject to control, supervision, or direction by the DCF in the performance of its duties, and that DCF staff assigned to assist the local councils shall perform the functions required by them without interference from the department.

PLACEMENT OF THE ADVOCACY COUNCILS WITHIN THE DCF

The advocacy councils, as noted above, are provided administrative support and office space within the DCF. Administrative support includes operation of the council's toll-free number, secretarial and clerical support to each local council, data collection, meeting activities, and other duties as required by the local membership. The support function is performed by 13.28 DCF staff statewide, generally on a part-time or as-needed basis, and in addition to their primary DCF duties. It is reported that the DCF has decreased this statutorily-required staff support as part of its internal restructuring and required budget reductions.

Although most of the client services under the purview of the advocacy councils are provided through the DCF, not all remain there since the 1995 reorganization of that agency. In addition, the statewide council has recently asserted its expanded jurisdiction over other agencies, like the Department of Education, which provide services to "clients" completely outside the traditional social services arena.

The Statewide Advocacy Council is a state agency for certain purposes. Article IV, Section 6 of the Florida Constitution limits the Legislature's ability to create new departments. The Supreme Court has interpreted the Constitution's 25-department limit not to prohibit the Legislature "from placing an agency within a department, even though the agency itself reports directly to the governor, so long as that agency is functionally related to the department in which it is placed." The 2000 legislative changes expanded the councils' oversight role to agencies other than the DCF, where it continues to be placed, and arguably disturbed the pre-existing functional relationship with the DCF. Accordingly, the advocacy councils may no longer be appropriately placed within the DCF for administrative purposes.

In addition, because the councils' oversight role has expanded to agencies beyond the DCF, and because only the DCF provides the councils' administrative support, it is questionable whether the placement of the advocacy councils within the DCF is equitable to the DCF.

Proposed Changes

HB 1703 w/ CS addresses issues relating to placement of the councils by relocating the statewide council to the Executive Office of Governor and allowing the governor to assign the council for administrative support purposes within any agency under the governor's control. The local councils, the toll-free complaint line, and 10 FTE staff are transferred by a type two transfer from the DCF to the statewide council, and the bill requires the DCF to identify the positions to be transferred [See "Comments" section]. The bill makes the statewide council responsible for assigning that staff to support the local councils.

The bill addresses issues relating to membership of and appointment to the statewide council by:

- Expanding membership to not more than 20 residents.
- Deleting the requirement that membership be representative of four groups.
- Revising criteria for required membership.
- Providing priority of membership to those who were members of local councils.
- Allowing the governor to appoint any qualified person to the council.
- Enlarging the number of days to 120 for the governor to make appointments to the council.

The bill requires that the statewide council consult with the Governor's office prior to generating its own complaints for investigation.

It lengthens the number of days to 60 for the governor to make appointments to the local councils.

The bill requires that the statewide council enter into interagency agreements with agencies providing client services to address coordination of the councils and the agencies, including addressing access to records. The bill also requires agencies to provide copies of their records to the councils at the agencies' expense.

It requires that heads of agencies providing client services notify their contract, service, or treatment providers of the powers, duties, and responsibilities of the statewide and local councils.

C. SECTION DIRECTORY:

Section 1: Amends s. 402.164, F.S.; adds definitions for "access", "council or statewide council," and "local council or local advocacy council."

Section 2: Amends s. 402.165, F.S.; relocates the statewide council to the Executive Office of Governor but allows for assignment for administrative purposes to any agency under the governor's control; expands membership to a maximum of 20 residents; deletes the requirement that membership be representative of four groups; revises criteria for required membership; provides priority of membership to those who were members of local councils; allows the governor to appoint any qualified person to council; requires that the governor select an executive director; requires consultation with the Governor's office prior to the generation of complaints by the council; deletes required components of uniform procedures; provides that the statewide council shall supervise local councils; requires the development and maintenance of interagency agreements between the council and agencies providing client services; requires agencies to provide statewide or local councils copies of their records at the agencies' expense.

Section 3: Amends s. 402.166, F.S.; provides that the statewide council will assign staff to support local councils; provides that areas of local councils shall be consistent with judicial circuit boundaries; lengthens the number of days to 60 for the governor to make appointments to local councils; deletes the responsibility for reviewing existing or proposed programs; provides that local councils have the same access to records as the statewide council.

Section 4: Amends s. 402.167, F.S.; deletes the requirement that agencies providing client services engage in rulemaking; requires the heads of agencies providing client services to notify all providers of the powers, duties, and responsibilities of the statewide and local councils.

Section 5: Provides that the statewide council, its staff and funding, local councils, 10 FTE staff, and toll-free complaint line are transferred by a type two transfer from the DCF to the statewide council and that the DCF is to identify 10 FTE general revenue funded positions for transfer.

Section 6: Provides an effective date of January 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: See Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: The Statewide Advocacy Council is funded by general revenue through specific OCAs within the DCF budget. The appropriation funds three FTE positions, all located in Tallahassee, including the Executive Director, and associated expenses for the statewide and local councils. In Fiscal Year 2004-2005, funding totaled \$238,921. The bill does not address or affect these positions.

DCF reports that positions to support the local councils have never been appropriated. Although DCF district staff assist the local councils by performing administrative functions, there are none dedicated solely to performing those duties. All district staff so assigned also perform other tasks as their primary responsibility. Accordingly, the 10 FTE and associated salary, benefits, and expenses required by the bill to be transferred will need to be identified by the agency.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable.
2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: Section 20.06(2), F.S., provides:

(2) TYPE TWO TRANSFER.--A type two transfer is the merging into another agency or department of an existing agency or department or a program, activity, or function thereof . . .

(a) Any agency or department or a program, activity, or function thereof transferred by a type two transfer has all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, except those transferred elsewhere or abolished, transferred to the agency or department to which it is transferred, unless otherwise provided by law. The transfer of segregated funds must be made in such a manner that the relation between program and revenue source as provided by law is retained.

Thus it appears unnecessary to specifically provide in Section 5 of the bill for the transfer of the positions assigned to the statewide council, its funds, and its toll-free line, since the type two transfer mechanism automatically does so.

Additionally, the transfer language currently in the bill transfers the statewide council to itself. Since Section 2 of the bill provides that the statewide council is located in the EOG, it may be more appropriate to transfer the statewide council and the local councils to the EOG.

Finally, s. 20.06(2), F.S., does not provide for the transfer via a type two transfer of resources not affiliated with the transferred program, activity or function. Thus the transfer of 10 additional positions which are not currently assigned specifically to the statewide or local councils via a type two transfer may not be appropriate; another mechanism may be necessary.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

At its March 24, 2004, meeting, the Committee on the Future of Florida's Families adopted a strike-all amendment to narrow the focus of the bill. The bill as amended will effectuate a transfer of the statewide council from the DCF to the Executive Office of the Governor and allow the governor the flexibility to place the council for administrative support purposes in any agency under the governor's control. In addition, the amendment addresses operational issues between the councils and the agencies providing client services by requiring the development of interagency agreements addressing roles, responsibilities, and importantly, access to records. The amendment also calls for the transfer of six FTE staff from the DCF to the statewide council in order to align the local council support function with the DCF's administrative zone structure.

HB 1703 w/ CS was further amended by the Committee on State Administration at its March 31, 2004, meeting. The strike-all amendment adds a definition for the term "access" and revises references to council access to records throughout the bill; revises language regarding the type two transfer involving the DCF and the statewide council, including increasing the number of positions that will be transferred from the DCF to 10; and makes technical corrections. The amendment also changed the effective date to January 1, 2005. HB 1703 w/ CS as amended was reported favorably.

This analysis is drafted to the committee substitute.