

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health and Human Services Appropriations Committee

BILL: CS/SB 564

INTRODUCER: Governmental Operations Committee and Senator Rich and others

SUBJECT: Children's Services

DATE: April 13, 2007      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Jameson	CF	<b>Fav/1 amendment</b>
2.	Rhea	Wilson	GO	<b>Fav/CS</b>
3.	Hardy	Peters	HA	<b>Favorable</b>
4.				
5.				
6.				

**I. Summary:**

The bill creates the Children and Youth Cabinet (Cabinet) in the Executive Office of the Governor (EOG) as a coordinating council to ensure that all state agencies and programs that touch the lives of children and youth work in a coordinated and comprehensive manner for the benefit of the children of Florida.

The bill sets out the membership and meeting requirements of the Cabinet, and describes its duties and responsibilities. The bill authorizes the Governor to appoint an advisory board to assist the Cabinet. The bill requires the Cabinet to provide an annual report.

This bill creates an unnumbered section of the Florida Statutes.

**II. Present Situation:**

**Organizational Structure of the Executive Branch** - Article II, s. 3 of the State Constitution provides:

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

Additionally, Article IV, s. 6 of the State Constitution provides:

All functions of the executive branch of state government shall be allotted among not more than twenty-five departments, exclusive of those specifically provided for or

authorized in this constitution. The administration of each department, unless otherwise provided in this constitution, shall be placed by law under the direct supervision of the governor, the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor, except:

- (a) When provided by law, confirmation by the senate or approval of three members of the cabinet shall be required for appointment to or removal from any designated statutory office.
- (b) Boards authorized to grant and revoke licenses to engage in regulated occupations shall be assigned to appropriate departments and their members appointed for fixed terms, subject to removal only for cause.

The manner of appointment of statutory officers may not unconstitutionally infringe upon the authority of the Governor to appoint executive branch officers:

As the chief executive officer in whom the supreme executive power is vested, the Governor has direct supervision over all executive departments unless the legislature places that supervision in the hands of one of the following other executive officers: the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor. Inherent in that direct supervisory authority is the power to appoint executive officers to public office.<sup>1</sup>

Chapter 20, F.S., provides the statutory organizational structure of state government. Section 20.04, F.S., provides that the department is the principal administrative unit of the executive branch. The internal structure of all departments must adhere to standard terms, except for the Department of Financial Services, the Department of Children and Family Services, the Department of Corrections, the Department of Management Services, the Department of Revenue, and the Department of Transportation. Pursuant to subsection (3) of the section, the principal unit of the department is the “division,” with each division headed by a “director.” The principal unit of the division is the “bureau,” with each bureau headed by a “chief.” No definition for “office” is provided.

Additionally, s. 20.03, F.S., establishes definitions for the entities within the executive branch. The section provides:

(7) “Council” or “advisory council” means 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.

(8) “Committee” or “task force” means 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.

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<sup>1</sup> *Jones v. Chiles*, 638 So.2d 48 (Fla. 1994).

(9) “Coordinating council” means 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.

(10) “Commission,” unless otherwise required by the State Constitution, means 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.

Section 20.052, F.S., establishes requirements that each advisory body, commission, board of trustees, or any other collegial body created by specific statutory enactment as an adjunct to an executive agency must be established, evaluated, or maintained.

**Powers and duties of agency heads** - Under s. 20.05(1), F.S., each head of a department, except as otherwise provided by law, must:

- (a) Plan, direct, coordinate, and execute the powers, duties, and functions vested in that department or vested in a division, bureau, or section of that department; powers and duties assigned or transferred to a division, bureau, or section of the department must not be construed to limit this authority and this responsibility;
- (b) Have authority, without being relieved or responsibility, to execute any of the powers, duties, and functions vested in the department or in any administrative unit thereof through administrative units and through assistants and deputies designated by the head of the department from time to time, unless the head of the department is explicitly required by law to perform the same without delegation;
- (c) Compile annually a comprehensive program budget reporting all program and fiscal matters related to the operation of his or her department, including each program, subprogram, and activity, and other matters as required by law;
- (d) Reimburse the members of advisory bodies, commissions, and boards of trustees for their actual and necessary expenses incurred in the performance of their duties in accordance with s. 112.061;
- (e) Subject to the requirements of chapter 120, exercise existing authority to adopt rules pursuant and limited to the powers, duties, and functions transferred to the department;
- (f) Exercise authority on behalf of the department to accept gifts, grants, bequests, loans, and endowments for the purposes consistent with the powers, duties, and functions of the department. All such funds must be deposited in the State Treasury and appropriated by the Legislature for the purposes for which they were received by the department;
- (g) If a department is under the direct supervision of a board, including a board consisting of the Governor and Cabinet, however designated, employ and executive director to serve at its pleasure; and
- (h) Make recommendations concerning more effective internal structuring of the department to the Legislature. Unless otherwise required by law, such

recommendations must be provided to the Legislature at least 30 days before the first day of the regular session at which they are to be considered, when practicable.

**Executive Office of the Governor** - Section 14.201, F.S., creates the Executive Office of the Governor (EOG) and provides that the head of the EOG is the Governor. The EOG is not the same entity as the Office of the Governor, as the latter is created in Article IV, s. 1 of the State Constitution and this constitutional office holds the constitutional duties assigned to the Governor. The EOG is akin to a department and contains legislatively-delegated functions.

**Long-range program plans** - Section 216.013, F.S., requires state agencies and the judicial branch to develop long-range program plans to achieve state goals using

. . . an interagency planning process that includes the development of integrated agency program service outcomes. The plans shall be policy based, priority driven, accountable, and developed through careful examination and justification of all agency and judicial branch programs.

Long-range program plans, which are excluded from the definition of “rule” under ch. 120, F.S., must provide the framework for the development of budget requests. Each long-range program plan must cover a period of 5 fiscal years, be revised annually, and remain in effect until replaced or revised. These plans or plan revisions must be presented by state agencies and the judicial branch in instructions prepared by the Executive Office of the Governor in consultation with the chairs of the legislative appropriations committees. All plans must be posted on the Internet. Agencies and the judicial branch have 30 days subsequent to the effective date of the General Appropriations Act and implementing legislation to make adjustments to their plans as posted on the Internet.

**Review of programs** – Section 20.051, F.S., requires that all programs, functions, and entities must be reviewed by the executive and the legislative branches. The review must identify and examine the purpose of each program, function, or entity to ensure that each is administered in the most effective and efficient manner possible, and to assess the public benefit derived from the program, function or entity. Reviews must determine whether the program, function or entity:

- (a) Serves an identifiable purpose that benefits the public and accomplishes the purpose for which it was created;
- (b) Operates efficiently and effectively within its statutory framework, and whether there are any statutory changes that would likely increase the effectiveness and efficiency of the function, program, or entity;
- (c) Is necessary to the public health, safety, or welfare, and what would be the effect of its abolition;
- (d) Serves a beneficial purpose to state agencies in improving the effectiveness and efficiency of the operations of the state;
- (e) Directly or indirectly increases or decreases the costs of any goods or services, and whether any identified increase in cost is more harmful to the state than any of the harm that could occur absent the function, program, or entity;

- (f) Is situated within an organizational structure that promotes its efficient and effective administration and does not duplicate activities conducted in other agencies of the state; and
- (g) Could be assigned to another state agency or to private enterprise, and if so, the most efficient way of doing so.

In conducting a review, the presumption is in favor of the repeal.

**Children’s Cabinets** - The National Governor’s Association (NGA) Center for Best Practices defines Governor’s Children’s Cabinets as “collaborative governance structures that seek to promote coordination across state agencies and improve the well-being of children and families.”<sup>2</sup> At least sixteen states currently have Children’s Cabinets.<sup>3</sup> Although the Cabinets vary from state to state, they typically involve senior state officials from a range of state agencies, as well as representatives of key private sector stakeholders, such as parents, business and industry leaders, and advocates. Some Cabinets also include government members from the legislative and judicial branches. Some Cabinets have advisory boards, commissions or task forces which provide input to the Cabinet but do not participate in the decision-making.<sup>4</sup> In the states that have them, Children’s Cabinets have been established through Executive Orders, through legislation and through combinations of both processes.

In October 2006, more than 1,000 community leaders, legislators, advocates and policy makers met at the Florida Children’s Summit. Summit participants identified and discussed many public policy issues and proposals relating to children and youth. The Summit’s recommendations are reflected in the Florida Children’s Action Agenda 2007/2008 which identifies as its “flagship issue” the creation of a Florida Children’s Cabinet.<sup>5</sup> The Summit also recommended initiatives concerning health care, transition services, screening and assessment, and child care.

### III. Effect of Proposed Changes:

SB 564 describes the Legislature’s finding that all state agencies and programs that touch the lives of children and youth must work in a coordinated and comprehensive manner to provide a continuum of services from prenatal care through successful transition to adulthood. The bill describes the Legislature’s finding that the creation of a Children and Youth Cabinet (Cabinet) is the best method to ensure that Florida is the first place families think of when asked, “Where do you want to raise a child?” The bill describes the Legislative intent to work collaboratively with the Governor to improve child and family outcomes in Florida.

The bill creates the Cabinet, which is defined as a coordinating council, in the Executive Office of the Governor (EOG) and directs it to ensure that Florida’s public policy promotes interdepartmental collaboration and program implementation so that services for children and youth are planned, managed, and delivered in a holistic and integrated manner.

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<sup>2</sup> NGA Center for Best Practices, A Governor’s Guide to Children’s Cabinets (August 2004).

<sup>3</sup> Children’s Cabinets have been established in Arizona, Kansas, Louisiana, Maryland, Maine, Michigan, Montana, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, and West Virginia.

<sup>4</sup> Id.

<sup>5</sup> Found at <http://www.childrens-week.org/summit/index.htm> (last visited March 15, 2007).

The bill specifies that the EOG will provide administrative support to the Cabinet. It requires the Cabinet to meet for its organizational session no later than October 1, 2007. After its organizational meeting, the Cabinet is to meet six times each year in different regions of the state. Each meeting must provide an opportunity for public comment.

The bill provides that the Cabinet shall have fifteen members as follows:

- The Governor (who shall serve as chair);
- The Secretary of Children and Family Services;
- The Secretary of Juvenile Justice;
- The Director of the Agency for Persons with Disabilities;
- The Director of the Agency for Workforce Innovation;
- The Secretary of Health;
- The Secretary of Health Care Administration;
- The Commissioner of Education;
- The Director of the Statewide Guardian ad Litem Office;
- The Director of the Office of Child Abuse Prevention; and
- Five members appointed by the Governor who are representatives of children and youth advocacy organizations, but who are not service providers.

The bill provides that the following or their designees shall serve as *ex officio* members of the Cabinet:

- The President of the Senate;
- The Speaker of the House;
- The Chief Justice of the Supreme Court; and
- The Chief Financial Officer.

The bill provides that nongovernmental Cabinet members shall serve without compensation, but may receive per diem travel expenses pursuant to s. 112.061, F.S.

The bill describes the duties and responsibilities of the Cabinet:

- Develop and implement a shared vision using integrated services to improve child, youth and family outcomes in Florida;
- By December 31, 2007, develop a strategic plan to achieve the goals of the shared vision;
- Develop and implement measurable outcomes, and regularly report on progress made toward the outcomes;
- Design and implement actions to promote collaboration, creativity, increased efficiency, information sharing, and improved service delivery between and within state governmental organizations, and develop long-range plans in accordance with s. 216.013, F.S.
- Foster public awareness of issues related to children and youth, and develop new partners;
- Create a children and youth impact statement evaluating proposed legislation, requested appropriations, and programs;
- Develop a budget through an estimating conference; and

- Engage in other activities.

The bill permits the Governor to appoint an advisory board to assist the Cabinet, and specifies that the board should include representatives of advocacy groups, as well as young people who have received services funded by the state.<sup>6</sup>

The bill requires the Cabinet to provide an annual report by February 1 of each year.

The act is to take effect on July 1, 2007.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

The Children and Youth Cabinet meets the definition of “agency” under s. 119.011(2), F.S., and is subject to the open records and meetings requirements of ss. 119.07(1)(a) and s. 286.011, F.S., and s. 24, Art. I of the State Constitution.

##### C. Trust Funds Restrictions:

None.

##### D. Other Constitutional Issues:

**Public Officers** – Article II, s. 5 of the State Constitution provides

. . . No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that a notary public or military officer may hold another office, and any officer may be a member of a constitution revision commission, taxation and budget reform commission, constitutional convention, or *statutory body having only advisory powers* [emphasis added].

The bill provides that the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, the Attorney General, and the Chief Financial Officer, or their appointed designees, shall serve as ex officio members of the cabinet. As the powers of the Children and Youth Cabinet are *merely advisory*, then the requirements of Art. II, s. 5 are not violated.

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<sup>6</sup> Pursuant to s. 20.03(7), F.S., an “advisory council” means 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.

**Policy Formulation** - The formulation of public policy is the duty of the Legislature.<sup>7</sup> This power cannot be exercised by another branch of government.<sup>8</sup> An enabling statute may not provide unbridled authority to an administrative agency to decide what the law is.<sup>9</sup> A statute providing a legislative authorization must be complete in itself,<sup>10</sup> must declare the legislative policy or standard,<sup>11</sup> and must operate to limit the delegated power.<sup>12</sup>

The bill provides that the Children and Youth Cabinet must

- Develop and implement a shared vision using integrated services. . . .
- Develop . . . a strategic plan to achieve the goals of the shared and cohesive vision. . . .
- Develop and implement measurable outcomes for each state department, agency, and program which are consistent with the strategic plan. . . .
- Design and implement actions that will promote collaboration, creativity, increased efficiency, information sharing, and improved service delivery between and within state governmental organizations. . . .
- Foster public awareness of children and youth issues and develop new partners in the effort to serve children and youth. . . .
- Create a children and youth impact statement for evaluating proposed legislation, requested appropriations, and programs. . . .
- Develop a children-and-youth-based budget through a children and youth estimating conference. . . .

The Children and Youth Cabinet is a coordinating council with only the power to assist in the coordination of agency implementation of programs and functions as currently delegated in statute, as well as the power to advise agencies and the Legislature and make recommendations which could be implemented through legislation.

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

None.

<sup>7</sup> *Carter v. City of Stuart*, 468 So.2d 955, 957 (Fla. 1985).

<sup>8</sup> *Smith v. State*, 537 So.2d 982, 985 (Fla. 1989).

<sup>9</sup> *State ex rel. Davis v. Fowler*, 114 So. 435, 437 (Fla. 1927).

<sup>10</sup> *Spencer v. Hunt*, 147 So. 282, 286 (Fla. 1933); accord *Florida Beverage Corp. v. Wynne*, 306 So. 2d 200, 202 (Fla. 1<sup>st</sup> DCA 1975); *Lewis v. Florida State Bd. of Health*, 143 So. 2d 867, 875 (Fla. 1<sup>st</sup> DCA 1962), *cert. denied*, 149 So. 2d 41 (Fla. 1963).

<sup>11</sup> *Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 268 (Fla. 1991).

<sup>12</sup> *Palm Beach Jockey Club, Inc.*, 28 So. 2d at 335; accord, *Amare v. Daytona Beach Shores*, 181 So.2d 722, 724 (Fla. 1<sup>st</sup> DCA 1966); *City Council of N. Miami Beach v. Trebor Constr. Corp.*, 254 So. 2d 51, 53 (Fla. 3<sup>d</sup> DCA 1971), *cert. denied*, 260 So. 2d 514 (Fla. 1972); *Permenter v. Younan*, 31 So. 2d 387, 389 (Fla. 1947).

**C. Government Sector Impact:**

The per diem travel expenses of up to five nongovernmental employees for six meetings per year around the state will be reimbursed. The EOG estimates fiscal impact of approximately \$20,000 per year for travel expenses.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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