

STORAGE NAME: h2009a.grr

DATE: April 15, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
ANALYSIS**

BILL #: HB 2009

RELATING TO: Human rights

SPONSOR(S): Representative Littlefield & others

COMPANION BILL(S): SB 1080 (Similar), HB 845 (c), SB 960 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CHILDREN & FAMILIES YEAS 5 NAYS 0
 - (2) GOVERNMENTAL RULES AND REGULATIONS YEAS 7 NAYS 0
 - (3) GENERAL GOVERNMENT APPROPRIATIONS
 - (4)
 - (5)
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I. SUMMARY:

House Bill 2009 clarifies the duties of the Statewide and District Human Rights Advocacy Committees by requiring that the committees monitor and investigate allegations of human rights abuses or constitutional rights violations by state agencies that provide client services through specified chapters of the Florida Statutes. Since the HRS reorganization efforts commenced in 1991, and in the process of creating the numerous agencies to service former HRS clients, non of the statutory provisions created or amended provided for language addressing the jurisdiction of the Statewide Human Rights Advocacy Committee (SHRAC) or the District Human Rights Advocacy Committee (HRACs). Consequently, the authority of HRAC members to investigate complaints and inspect records in the new departments is unclear.

HB 2009 creates section 402.164, F.S., providing legislative intent for the human rights advocacy committees to monitor, inspect, or investigate conditions or determine the presence of individuals that constitute a threat to the welfare of persons who receive client services. The creation of this section also provides legislative intent for the protection of the rights of persons who are provided services under Chapter 39, Chapter 393, Chapter 394, Chapter 397, Part III, Part V, or Part VIII of Chapter 400, Chapter 409, Chapter 411, Chapter 414, Chapter 415, or Chapter 916, F.S.

The bill continues the requirement for the Department of Children and Family Services to provide the administrative support and service to the committee, to provide for the location of the district committees, and provide the necessary equipment and office supplies. The expanded responsibility to include services provided by other state agencies creates resource problems for the Department of Children and Family Services. The department anticipates the expansion would increase the amount of work for the committees, further strain the administrative capability of the department, and result in a negative fiscal impact.

This act is to take effect on July 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Background

Efforts to dismantle the Department of Health and Rehabilitative Services (HRS) began in 1991 with the creation of agencies designed to service clients originally under the jurisdiction of HRS and ended with the official closing of HRS and creation of the Department of Children and Families in 1996. For example, in 1991, the Legislature created the Department of Elderly; in 1992, the Agency for Health Care Administration; in 1994, the Department of Juvenile Justice; in 1996, the Department of Health; and in 1996, the Department of Children and Families (DCF). Also, in 1994, the Child Support Enforcement activities of HRS were moved to the Department of Revenue.

Since the HRS reorganization efforts commenced in 1991, and in the process of creating the numerous agencies to service former HRS clients, non of the statutory provision created or amended provided for language addressing the jurisdiction of the Statewide Human Rights Advocacy Committee (SHRAC) or the District Human Rights Advocacy Committee (HRACs). Consequently, the authority of HRAC members to investigate complaints and inspect records in the new departments is unclear.

Chapter 75-48 L.O.F, created the HRACs 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 the 11 service districts) and the statewide committee (SHRAC) were recognized in this legislation. 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 HRS.

Responsibilities of HRACs

Section 401.166, F.S., (1998 Supplement), creates the district human rights advocacy committees (HRACs). The HRACs are responsible for serving as an independent third-party mechanism to protect the constitutional and human rights of any client within a program or facility operated, funded, licensed, or regulated by the Department of Children and Family Services (formerly the Department of Health and Rehabilitative Services). This duty is accomplished by monitoring, through site visits and the inspection of records, the delivery and use of services, programs, or facilities operated, funded, regulated or licensed by the DCF.

Section 402.166(1), F.S., (1998 Supplement), provides that the department's service districts have at least one district HRAC in each of the 15 service districts of DCF and each district may have no more than three committees. Service District II may have four committees. The district committees are subject to direction from and the supervision of the statewide committee. Although not stated in statute, the executive director of the statewide council reports that the reason District II has an additional committee is that one committee is assigned exclusively to Florida State Hospital. The district administrator in each district must assign staff to provide administrative support to the local councils. The staff who are assigned to the local committees must perform the functions required by the local committee without interference from the department.

Section 402.166(2), F.S., (1998 Supplement), outlines the required membership of each district committee. Each district committee may have 7-15 members. Of this membership, 25 percent must be past or present clients of the department (within the last 4 years), two shall be providers of services or programs to clients of the department, and two shall be representatives of professional organizations, one of whom represents a health-related profession and one of whom represents the legal profession. The statute further provides terms of committee member service and methods for filling vacancies.

Section 402.166(7), F.S., (1998 Supplement), outlines the responsibilities of a district committee and directs district committees to resolve a complaint with the appropriate local administration, agency, or program. If the district committee fails to resolve the complaint, the matter must be referred to the statewide committee. The duties and responsibilities of a district committee encompass several of those delegated to the statewide committee. In addition, the district committee must submit an annual

report to the statewide committee concerning activities, recommendations, and complaints reviewed or developed by the committee during the year.

Section 402.166(8), F.S., (1998 Supplement) outlines the investigative authority of the District Human Rights Advocacy Committee, which includes the authority to access all client records, files, and reports from any program, service, or facility operated, funded, licensed, or regulated by the department and any records that are material to its investigations which are in the custody of any other agency or department of government. The district committee, like the statewide committee, has standing to petition the circuit court to access otherwise confidential client records. These records and any related proceedings, however, are exempt from s. 119.07(1), F.S., relating to public records. The statute specifically prohibits the district committee from having access to confidential adoption records under ss. 39.411, 63.022, and 63.162, F.S.

HRACs receive copies of all reports investigated by DCF protective investigators. The committees then have the discretion to either review and adopt the DCF findings or to conduct their own investigation. In FY 1996/97, the HRACs received 10,963 of these reports and investigated 1,299 of them.

The HRACs also receive complaints, usually filed through the DCF district client relations offices, reviews these complaints, and then votes on whether to recommend changes to DCF policies and procedures. In FY 1996/97, HRACs received and reviewed 2,796 complaints directly from consumers, reviewed 8,499 consumer complaints which were reported to the client relations office, received 129 death reports, and 10,963 internal reports from the Department of Children and Families, for a total of 22,387 complaints or reports. Of these, the 34 HRAC's opened and conducted investigations on 4,083 cases.

Also in FY 1996/97, the HRACs conducted 534 on-site visits to DCF programs and facilities for the purpose of "seeking to prevent violations of rights." Additionally, members of the HRACs were appointed as third representative for 1,772 persons involuntarily admitted for mental health treatment and attended 1,988 hearings relating to this issue. Finally, the HRACs reviewed 37 proposed research projects, approving 34.

Responsibilities of the Statewide Human Rights Advocacy Committee

Section 402.165, F.S., (1998 Supplement), creates the Statewide Human Rights Advocacy Committee (SHRAC). The SHRAC receives, investigates, and resolves reports of abuse or deprivation of constitutional and human rights referred by the district committees. SHRAC also reviews existing programs or services and new or revised programs of DCF and makes recommendations as to how the rights of clients are affected by these programs or services.

The membership of SHRAC consists of 15 citizens, one representing each service district of DCF, and except for the elected official, each person must have been a member of the district committee. These members must represent five groups of citizens:

- One elected public official;
- Two providers who deliver services or programs to clients of DCF;
- Four nonsalaried representatives of nonprofit agencies or civic groups;
- Four representatives of consumer groups who are currently receiving, or have received, services from DCF within the past four years, at least one of whom must be a consumer; and
- Four residents of the state who do not represent any of these groups, two of whom represent health-related professions and two of whom represent the legal profession.

SHRAC members are appointed to serve a 3-year term and may serve for two terms.

Section 402.165(7), F.S., (1998 Supplement), provides responsibilities of the Statewide Human Rights Advocacy Committee, which include the following:

- Serving as an independent third party to protect the constitutional and human rights of any client within a program or facility operated, funded, licensed, or regulated by the department.
- Monitoring the delivery and use of services, programs and facilities operated, funded, regulated, or licensed by the department to prevent abuse or deprivation of the constitutional and human rights of clients.
- Receiving, investigating, and resolving reports of abuse or deprivation of constitutional and human rights referred to the Statewide Committee by a district human rights advocacy committee.
- Reviewing existing programs or services and new or revised programs of the department and making recommendations about how they affect the rights of clients.
- Submitting an annual report to the Legislature, concerning activities, recommendations, and complaints reviewed or developed by the statewide committee.
- Conducting meetings at least six times a year at the call of the chairperson and at other times at the call of the Governor, or by written request of six members of the statewide committee.
- Developing and adopting uniform procedures to be used to carry out the purpose and responsibilities of the statewide committees to include a provision for cooperation with the State Long-Term Care Ombudsman Council, among other things.
- Monitoring the performance and activities of all district committees and providing technical assistance to members and staff of district committees.
- Providing for the development and presentation of a standardized training program for members of district committees.

Section 402.165(8), F.S., (1998 Supplement), provides the Statewide Human Rights Advocacy Committee the authority to receive, investigate, seek to conciliate, hold hearings on, and act on complaints that allege any abuse or deprivation of constitutional or human rights of clients. The statewide committee also has access to all client records, files, and reports from any program, service, or facility operated, funded, licensed, or regulated by the department, and any records that are material to its investigations that are in the custody of any other agency or department of government. The statewide committee has standing to petition the circuit court for access to confidential client records, but must include specific reasons for seeking the information in the petition. The court may authorize committee access to such records upon a finding that they directly relate such access to an investigation regarding the possible deprivation of constitutional or human rights or the abuse of a client. If the statewide committee obtains these records, however, the records and any subsequent actions or communications relating to the records are exempt from the provisions of s. 119.07(1), F.S., relating to open record requirements. The statute specifically prohibits the statewide committee from having access to confidential adoption records under ss. 39.411, 63.022, and 63.162, F.S.

Duties of the Department

Section 402.167, F.S., provides the duties of the department relating to both the statewide and district committees are designated at These duties include providing the following:

- Procedures by which the department's district staff refers reports of abuse to district committees.
- Procedures by which client information is made available to members of the statewide and district committees.
- Procedures by which recommendations made by statewide and district committees will be incorporated into the department's policies and procedures.
- Procedures by which statewide and district committee members are reimbursed for authorized expenditures.
- Facilities and necessary equipment for district committees

In addition, the Secretary is directed to ensure the full cooperation and assistance of employees of the department with members and staff of the statewide and district committees so that staff assigned to the statewide and district Committees are free of interference from or control by the department.

B. EFFECT OF PROPOSED CHANGES:

The bill clarifies and restores the domain of the committees to a situation somewhat comparable to that in existence prior to the breakup of HRS. See Section-by-Section Analysis for more details.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill authorizes each state agency that provides client services pursuant to specific chapters listed in the bill, the authority to adopt rules that address the following:

- Procedures relating to the reporting of abuse.
- Procedures relating to the availability of client information.
- Procedures relating to the incorporation of recommendations.
- Procedures relating to reimbursement of expenses.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates section 402.164, F.S.

Amends sections 402.165, 402.166, and 402.167, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1 creates s. 402.164, F.S., and provides legislative intent. Such intent directs district committees 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.” As used in ss. 402.164, 402.165, 402.166, and 402.167, F.S., the terms “client” and “client services” are specifically extended to agencies that provide such services under specified chapters. Persons served under the specified chapters include clients of the Work and Gain Economic Self-sufficiency Program (WAGES), the Department of Education, the Department of Children and Family Services, the Agency for Health Care Administration, and the Department of Elderly Affairs. Membership of the actual committees is broadened to include those who represent the interests of the public and the clients of the state agencies providing client services.

Section 2 amends s. 402.165 F.S., (1998 Supplement), and expands the Statewide Human Rights Advocacy Committees’ jurisdiction from the former Department of Health and Rehabilitative Services (currently the Department of Children and Family Services) to include “any state agency that provides client services.”

Section 3 amends s. 402.166, F.S., (1998 Supplement), and expands the District Human Rights Advocacy Committees’ jurisdiction from the former Department of Health and Rehabilitative Services (currently the Department of Children and Family Services) to include “any state agency that provides client services.”

Section 4 amends s. 402.167, F.S., and directs each state agency that provides client services to adopt rules that are consistent with the law. Outlines procedures to be addressed in the rules. This section is also amended to provide that the secretaries or directors of affected state agencies ensure full cooperation and assistance with the Statewide and District Human Rights Advocacy Committees.

Section 5 provides that this act is to take effect on July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

Section 402.165, F.S., (1998 Supplement) provides administrative support and services to the HRAC "to the extent requested by the executive director within available resources." As noted above, the effect of the bill is to clarify and restore the domain of the committees to one somewhat comparable to that in existence prior to the breakup of HRS.

The department reports an additional administrative support cost due to the increase in workload. In a September 1997 district survey, the department reported the annual administrative support cost for the district human rights advocacy committees at \$428,074.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The following are comments by the Committee on Governmental Rules and Regulations:

The rulemaking authority provided on page 19, lines 27-31, is permissive and broad. It is the recommendation of the committee that such language be amended to conform to the current standards of rulemaking authority as provided for in chapter 120, F.S.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its April 15, 1999 meeting, the Committee on Governmental Rules and Regulations adopted one amendment to revise the grant of rulemaking to conform it to current drafting practice. It is traveling with the bill.

VII. SIGNATURES:

COMMITTEE ON CHILDREN AND FAMILIES:

Prepared by:

Robert S. Cox

Staff Director:

Robert Barrios

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:

Veronica P. Alvarez

Staff Director:

David M. Greenbaum