

STORAGE NAME: h0845.cf

DATE: March 8, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CHILDREN & FAMILIES
ANALYSIS**

BILL #: HB 845

RELATING TO: Human Rights

SPONSOR(S): Representative Wilson; (CO-SPONSOR) Frankel; Barriero; Putman; Kelley; Crist

COMPANION BILL(S): SB 960 (Similar)

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

- (1) CHILDREN & FAMILIES
 - (2) GOVERNMENTAL OPERATIONS
 - (3) HEALTH & HUMAN SERVICES
 - (4)
 - (5)
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I. SUMMARY:

House Bill 1985 changes the name of the Statewide Human Rights Advocacy Committee to the Statewide Human Rights Advocacy Council and the composition of the membership is modified. Term limits for members of the statewide council are changed from three years to four years. The bill revises the membership of the statewide council. The local human rights advocacy committees are changed to councils as well. The bill allows any district of the Department of Children and Family Services that has a developmental services institution or a state mental health hospital to petition the statewide council and establish a separate council to serve the facility population.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Statewide Human Rights Advocacy Committee (SHRAC) and local Human Rights Advocacy Committee (HRAC)

The roots of the Statewide Human Rights Advocacy Committee (SHRAC) and local Human Rights Advocacy Committee (HRAC) go to a Blue Ribbon Jury organized at Miami Sunland, a developmental services institution, in 1972 as the result of reports of abuse of clients at that facility. The local Association for Retarded Citizens (ARC) formed a citizen's committee for the purposes of discovering abuse and deprivations of client rights and of helping management find solutions with input from the public. The committee was called the Human Rights Committee, and was similar to committees being formed around the country in response to concerns about poor conditions in institutions treating developmentally disabled persons.

The committee formed in Florida was broader in its scope than similar committees in other states, since it undertook to represent developmentally disabled persons in the community as well as in institutions.

In 1973, the Florida ARC entered into an agreement with the Division of Retardation of the (then) Department of Health and Rehabilitative Services (HRS) to organize human rights committees in all eleven service districts of the department. These committees were to be based on the Human Rights Committee at Miami Sunland. This was the first time in the state that private citizen-watchdogs had access to government-operated facilities to investigate living conditions and allegations of deprivations of human rights. While the proposal included a general committee for each service district, the emphasis was on protecting individuals with mental retardation, and the first committees were located in the service districts which housed Sunland Centers (Miami, Gainesville, Orlando, Tallahassee, and Marianna).

The early HRAC duties included review of research proposals, reviews of programs and services and serving as a third party for the discovery of abuse and deprivations of rights. Committees were to operate free of governmental restraint and were to have the right to appeal unresolved issues. Members were required to comply with HRS confidentiality restrictions.

The HRACs were first recognized in state law in 1975, when they were officially created as part of the Department of Health and Rehabilitative Services (HRS) Reorganization Act of 1975. It was at this point that the committees were given authority to act on behalf of all recipients of HRS services. Both local committees (one in each of the eleven service districts) and the statewide committee (SHRAC) were recognized in this legislation. SHRAC was to serve as the appellate body for complaints unresolved by the local HRACs, to report to the Legislature, and to 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.

The duties of the HRACs were to:

- Serve as a third-party mechanism for protecting the constitutional and human rights of any client within a program or facility operated, funded, or regulated by HRS.
- Receive, investigate, and resolve reports of abuse or deprivation of rights within the committee's jurisdiction.
- Review existing programs or services and new or revised programs of HRS and make recommendations as to how these changes affected rights of clients.
- Appeal unresolved complaints to SHRAC, submit an annual report to SHRAC annually, and conduct at least six meetings each year.

SHRAC had similar duties but was also charged with developing policies and procedures for the HRACs and for reviewing HRS research involving human clients prior to implementation.

According to information supplied by SHRAC for this analysis, on April 3, 1976, a "charter" for SHRAC was signed by the Secretary of HRS and the Chair of SHRAC. According to this "charter," SHRAC was to function as a forum through which governmental and community sectors could seek, through

advocacy, to resolve issues regarding the legal, and human rights of clients, and to provide effective avenues for appeal for issues which were not resolved by local committees. According to the "charter," SHRAC was to be free from dictation, restraint, reprisal or any other influence or domination by the Legislature, the Governor, the Cabinet, or any level of HRS.

As early as 1977, SHRAC, in its annual report, was noting insufficient funding and inadequate staff support. In that early report, SHRAC recommended a "separate and independent location for the advocacy system."

Beginning in 1979, the HRACs were given statutory access to HRS files. This same legislation established the requirement that HRS notify HRAC within 24 hours of any allegation of abuse of an HRS client. It also transferred responsibility for the review of research involving human clients from SHRAC to the HRACs. The annual report by SHRAC for this year again noted the need for independence of the advocates and also pointed out the inherent conflict of interest experienced by HRS staff providing support to HRAC committees. These staff members, called Client Relations Specialists (CRCs), were assigned in each district to act as liaisons with the HRACs.

In 1981, the Legislature conducted a Sunset Review of the HRAC legislation. The report of this review recommended continuing the committees, but separate legislation transferred the HRACs to the Department of Administration. This transfer, however, was never accomplished, since no appropriation was made for this purpose.

In 1984, the HRACs were statutorily granted access to records of HRS clients in outside agencies of government and in provider agencies.

The 1989 Sunset Review of the HRAC system resulted in revisions of the membership and training requirements for the committee. The report also discussed moving the SHRAC and the HRACs to the Joint Legislative Auditing Committee or the Attorney General's office, but no action was taken.

In 1990 and 1991, bills were introduced to create an Office of the Public Advocate, locating the HRAC with that advocate under the Joint Legislative Auditing Committee. These proposals never passed out of a legislative committee.

In 1992, the Legislature expanded HRS to 15 districts. SHRAC was concurrently expanded to allow representation from committees in each district.

During the same time period, the Legislature began dismantling HRS. The effort began in earnest in 1991 with the creation of the Department of Elder Affairs. This trend continued with the creation of the Agency for Health Care Administration in 1992, the Department of Juvenile Justice in 1994, and the Department of Health in 1996. Additionally, the Child Support Enforcement activities of HRS were moved to the Department of Revenue in 1994. None of the statutes creating the new departments from the old HRS addressed the jurisdiction of SHRAC or the HRACs. Consequently, the authority of HRAC members to investigate complaints and inspect records in the new departments is unclear.

Development of Other Advocacy Organizations Since 1973

According to the Clearinghouse on Human Services, a partial listing of the advocacy organizations which now represent clients of the former HRS (including the current DCF) includes Florida Legal Services, The Advocacy Center for Persons with Disabilities, Inc., the Florida Developmental Disabilities Council, and the Florida Alliance for the Mentally Ill.

Other groups representing these persons include the Offices of the Public Defender in the Judicial Circuits, the Offices of Inspector General in state departments and agencies, the Patient Legal Services Attorney at Florida State Hospital, and the Long Term Care Ombudsman Council. None of these bodies provided significant advocacy efforts to HRS clients at the time the HRACs and SHRAC were created.

Additionally, a Bills of Rights for the following, lists persons who would have been clients of the former HRS since 1973:

- Adult family-care home residents, s. 400.628, F.S.

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- Assisted living facilities, s. 400.428, F.S.
- Continuing care facilities, s. 651.083, F.S.
- Developmentally disabled persons, s. 393.13, F.S.

The rights of mental health patients are set forth in s. 394.459, F.S.

The statewide toll-free number for the Florida Abuse Hotline was established in 1988 for the purposes of receiving reports of abuse to children and vulnerable adults, including elders and the developmentally disabled.

Current Status of the HRAC System

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.

SHRAC receives, investigates, and resolves reports of abuse or deprivation of constitutional and human rights that have been 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.

Although DCF is responsible for providing administrative support to both SHRAC and the local committees, these committees are not subject to control, supervision or direction by DCF in the performance of their duties.

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.

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, however, is permitted to have four committees. 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.

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. The HRACs also receive complaints, usually filed through the DCF district client relations offices, review these complaints, and then vote on whether to recommend changes to DCF policies and procedures. HRACs also reviewed proposed research projects.

B. EFFECT OF PROPOSED CHANGES:

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?

N/A

(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:

This bill amends the following sections of the Florida Statutes: 39.001, 39.202, 39.302, 393.13, 394.459, 394.4595, 394.4597, 394.4598, 394.4599, 34.4615, 400.0089, 400.419, 400.428, 402.165, 402.166, 402.167, 415.1034, 415.104, 415.1055, 415.106, 415.107, and 430.04.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 402.165, Florida Statutes, 1996 Supplement

Changes the name of the statewide "committee" to a statewide "council" and the "district committees" to "local councils."

The number of members of the statewide council remains the same, one from each service district of the department, but the affiliation of the members is modified as follows:

- One provider who delivers services or programs to clients of the department;
- Two nonsalaried representatives of nonprofit agencies or civic groups;
- Four representatives of consumer groups who are currently receiving, or have received, services from the department within the past four years, at least one of whom must be a consumer; and
- Two residents of the state who do not represent any of the other groups, one of whom represents health-related professions and one of whom represents the legal profession.

The bill goes on to state that in making appointments to the statewide council, priority must be given to appointing at least:

- One elected official;
- One additional health professional;
- One additional legal professional;
- Two additional nonsalaried representatives of nonprofit agencies or civic groups; and
- One individual whose primary area of interest, experience or expertise is a major client group of the department which is not represented on the council at the time of appointment.

Section 2. Amends s. 402.166, Florida Statutes, 1998 Supplement

Changes the name of the "district committees" to "local councils." Allows a local council to petition the statewide council to create a separate council for a developmental services institution as defined in s. 393.063, or a state mental health hospital.

Section 3. Amends s. 402.167, Florida Statutes

This section makes technical and conforming changes.

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This section makes technical and conforming changes.

Section 4. Amends paragraph (a) of subsection (7) of s. 39.001, Florida Statutes, 1998 Supplement

This section makes technical and conforming changes.

Section 5. Amends paragraph (k) of subsection (2) of s. 39.202, Florida Statutes, 1998 Supplement

This section makes technical and conforming changes.

Section 6. Amends subsection (4) of s. 39.202, Florida Statutes, 1998 Supplement

This section makes technical and conforming changes.

Section 7. Amends paragraphs (g) and (i) and of subsection (4) and (7) of s. 393.13, Florida Statutes

This section makes technical and conforming changes.

Section 8. Amends paragraph (c) of subsection (5) and (12) of s. 394.459, Florida Statutes

This section makes technical and conforming changes.

Section 9. Amends s. 394.4595, Florida Statutes,

This section makes technical and conforming changes.

Section 10. Amends paragraph (d) of subsection (2) of s. 394.4597, Florida Statutes

This section makes technical and conforming changes.

Section 11. Amends subsection (1) of s. 394.4598, Florida Statutes, 1996 Supplement

This section makes technical and conforming changes.

Section 12. Amends paragraph (b) of subsection (2) of s. 394.4599, Florida Statutes, 1996 Supplement

This section makes technical and conforming changes.

Section 13. Amends subsection (5) of s. 394.4615, Florida Statutes

This section makes technical and conforming changes.

Section 14. Amends paragraph (g) of subsection (2) of s. 400.0067, Florida Statutes

This section makes technical and conforming changes.

Section 15. Amends s. 400.0089, Florida Statutes

This section makes technical and conforming changes.

Section 16. Amends subsection (6) of s. 400.419, Florida Statutes

This section makes technical and conforming changes.

Section 17. Amends subsection (2) of s. 400.428, Florida Statutes, 1998 Supplement

This section makes technical and conforming changes.

Section 18. Amends paragraph (a) of subsection (1) of s. 415.1034, Florida Statute, 1998 Supplement

This section makes technical and conforming changes.

Section 19. Amends subsection (1) of s. 415.104, Florida Statutes

This section makes technical and conforming changes.

Section 20. Amends paragraphs (a) and (l) of subsection (1) of s. 415.1055, Florida Statutes, 1998 Supplement

This section makes technical and conforming changes.

Section 21. Amends subsection (2) of s. 415.106, Florida Statutes

This section makes technical and conforming changes.

Section 22. Amends paragraph (g) of subsection (2) of s. 415.107, Florida Statutes, 1998 Supplement

This section makes technical and conforming changes.

Section 23. Amends subsection (3) of s. 430.04, Florida Statutes, 1998 Supplement

This section makes technical and conforming changes.

Section 24. Provides an effective date of 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

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2. Recurring Effects:

See fiscal comment.

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:

N/A

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 any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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 provision that permits a local council to petition the statewide council to establish a separate council to serve the population of a developmental services institution or a state mental health hospital may result in a fiscal impact. Although members serve without compensation, they are entitled to per diem and travel expenses. The Statewide Human Rights Advocacy Committee has not requested additional funds and has indicated that the committee anticipates using current resources for costs associated with these new local councils.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

COMMITTEE ON CHILDREN & FAMILIES:

Prepared by:

Staff Director:

Bob Barrios

Bob Barrios