

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 1160

SPONSOR: Appropriations Committee and Governmental Oversight and Productivity Committee

SUBJECT: Executive Advisory Bodies, Boards of Trustees, and Commissions

DATE: March 25, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Kelly</u>	<u>Coburn</u>	<u>AP</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Committee Substitute for Senate Bill 1160 creates a new, periodic system of executive and legislative review for advisory bodies, boards of trustees, commissions, and other collegial bodies within or adjunct to executive agencies. Under the bill, executive branch agencies, beginning on July 15, 2005, and annually thereafter, must provide the Executive Office of the Governor (EOG) with information about the membership, activities, accomplishments, and costs for each entity within or adjunct to the agency. Additionally, beginning on July 15, 2005, and every four years thereafter, the executive agency must also recommend whether each statutorily authorized, non-regulatory entity should be continued, revised, or abolished.

Thereafter, the EOG is required to compile the agencies' information and recommendations into a report that must be submitted to the Legislature on August 15, 2005, and annually thereafter. Legislative substantive committees are required to review the portions of the report that are within each committee's jurisdiction and in the event the report:

- Indicates that a statutorily authorized entity has not met at least once during the previous fiscal year, the legislative committee is required to review the continued necessity for the entity and to recommend whether the entity should be continued, revised, or abolished; or
- Sets forth an executive agency recommendation to revise or abolish a statutorily authorized entity, the legislative committee is required to review the continued necessity for the entity and recommend whether to implement, amend, or reject the proposed revision or abolition.

This bill substantially amends s. 20.052 of the Florida Statutes.

II. Present Situation:

Overview of Executive Branch Entities: Chapter 20, F.S., authorizes the creation of a number of different entities within the executive branch to assist agencies¹ in performing their duties more efficiently and effectively. These entities include a:

- “Council” or “advisory 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.”²
- “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.”³
- “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.”⁴
- “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.”⁵
- “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 Governor to administer public property or a public program.”⁶

In addition to the aforementioned entities (hereinafter collectively referred to as “adjunct entities”), other entities are also statutorily formed within the executive branch for the purpose of implementing regulations enacted pursuant to s. 11.62, F.S., entitled the “Sunrise Act.” These entities (hereinafter referred to as “regulatory entities”) are formed for the purpose of regulating professions or occupations, e.g., the Board of Medicine.

¹ Pursuant to s. 20.03(11), F.S., “agency” means “. . . an official, commission, authority, council, committee, department, division, bureau, board, section, or another unit or entity of government.”

² Section 20.03(7), F.S.

³ Section 20.03(8), F.S.

⁴ Section 20.03(9), F.S.

⁵ Section 20.03(10), F.S.

⁶ Section 20.03(12), F.S.

Section 20.052, F.S., provides that statutorily created, executive advisory bodies,⁷ commissions, boards of trustees, and other collegial bodies are subject to requirements that 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.

Further, in addition to being specifically created by statute, advisory bodies are created by:

(a) agency heads pursuant to discretionary authority accorded in statute;⁸ (b) Executive Order;⁹ and (c) federal authority.¹⁰

Past Legislative Review of Executive Regulatory and Adjunct Entities: Prior to 1993, two acts required the Legislature to periodically review executive branch regulatory and adjunct entities:

- Under the “Regulatory Sunset Act,”¹¹ legislation that created or revived state regulatory programs or functions was required to contain a repeal date that would be effective within 10 years after the creation or revival date. 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.

⁷ The term “advisory body” is not defined in s. 20.052, F.S.; however, the term appears to refer to councils, committees, and task forces, as these entities are specifically referred to as advisory bodies in s. 20.03, F.S.

⁸ 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).

⁹ See e.g., Executive Order Number 03-160 (creating the Governor's Task Force on Access to Affordable Health Insurance).

¹⁰ See e.g., 34 C.F.R. s. 300.650 (requiring each state establish a state advisory panel on the education of children with disabilities).

¹¹ Section 11.61, F.S.

- Under the “Sunset Act,”¹² 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. The act also set forth review criteria for the Legislature to consider when determining whether to reestablish the entity.

Both of these acts were the subject of interim project studies conducted by the Senate in 1988 and 1991. The 1988 Senate study found that the benefits of the Sunset and Sunset Reviews were difficult to define and quantify, and noted that cost data for such reviews was unavailable at the time of the study. The study recommended that both of the acts be repealed contingent upon future legislative review that considered comprehensive cost data.¹³

In 1991, a Senate study was conducted in order to gather cost data for the Sunset and Sunset reviews. The 1991 study’s findings included the following: (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 Sunset Review cost \$5,100 or \$178,400 for the 35 Sunset Reviews conducted during the 1990-1991 interim; (c) legislative staff were precluded from performing more traditional legislative oversight during the interim 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 Sunset Reviews since 1978, 90 advisory boards were repealed while an estimated 150 new ones were created. Based on these findings, the 1991 study recommended that second and subsequent Sunset and Sunset Reviews be extended to every 20-years, rather than every 10-years. The impetus for this recommendation was to retain the benefits of periodic review, while reducing the legislative cost burden with an extension of the review time frame.¹⁴

In response to these Senate studies, legislation was enacted in 1991 that provided for the repeal of the Sunset and Sunset Acts effective April 5, 1993. In that same year, the “Sunrise Act”¹⁵ was enacted. This act, which relates to regulatory entities, 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. In 1994,¹⁶ the Legislature enacted s. 20.052, F.S., which, as discussed *supra*, sets forth requirements for the statutory creation, operation, and termination of executive advisory bodies, commissions, boards of trustees, and other collegial bodies.

At the present time, there is no mandatory review and repeal of existing regulatory or adjunct entities, nor is there an up-to-date, comprehensive listing of such entities maintained in Florida.¹⁷

¹² Section 11.611, F.S.

¹³ Senate Committee on Governmental Operations, *A Review of the Sunset and Sunset Laws of Florida* (1988).

¹⁴ Senate Committee on Governmental Operations, *A Review of the Regulatory Sunset Act and the Sunset Act* (1991).

¹⁵ Section 11.62, F.S.

¹⁶ Ch. 94-235, L.O.F.

¹⁷ 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

1999 Review of Executive Regulatory and Adjunct Entities: In 1999, the Legislature enacted SB 2280,¹⁸ which 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 entity, and the executive director of key stakeholder groups for each entity. The surveys requested identification of all boards, commissions, councils, and other such entities under each agency's jurisdiction, excluding Direct Support Organizations, Citizen Support Organizations, and most entities created during the 1999-2000 Legislative Session. Survey responses were compiled by the DMS in a report entitled the "Boards and Commissions Review" that was released in January 2000.

The report stated that a total of 522 regulatory and adjunct entities were identified. Of this number, 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.

The report also compiled recommendations from each executive branch agency concerning whether the entities identified should be continued, revised, or abolished. The report stated that 141 (27 percent) of the entities were recommended for abolition and that 187 (36 percent) of the entities were recommended for revision.

Finally, the report reviewed Florida's history of Sunset and Sundown Review, along with other states' processes for such review. The report concluded that a new "Sunset Law" should be enacted, which would again establish a regular review process for executive advisory entities.

The new "Sunset Law" process recommended would require current and future regulatory and adjunct 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 entity, the agency head would be required to provide a recommendation to the Legislature regarding whether the entity should be reinstated. 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."

The most comprehensive legislative response to the DMS report was implemented by CS/HB 501, which was passed during the 2001 Legislative Session. Based on the agency head recommendations summarized in the DMS report, this bill abolished 42 executive advisory

established as adjuncts to executive agencies. It does not appear, however, based on staff's research, that it is the practice of all executive branch agencies to regularly maintain this information.

¹⁸ Chapter 99-255, L.O.F.

entities. To date, the Legislature has not implemented the report's recommendation that a new Sunset Review process be enacted.

2003 Review of Executive Regulatory and Adjunct Entities: During the 2003 Legislative Interim, the Senate Governmental Oversight and Productivity Committee conducted a study entitled, "A Review of Task Forces, Boards, and Commissions." The study found that, as of October 2003, there were a total of 556 regulatory and adjunct entities identified by executive branch agencies. Of that number, 380 (68.3 percent) of the entities were mandated by state statute, 42 (7.6 percent) were mandated by federal authority, 124 (22.3 percent) of the entities were discretionarily created by executive branch administrative directive, and 10 (1.8 percent) of the entities were created by executive order.

The study also stated that in order to accurately determine the difference between the finding of 556 entities in 2003 and the DMS's finding of 522 entities in 1999, that it was necessary to subtract 24, the number of entities identified by the Fish and Wildlife Conservation Commission (FWCC) and the State Board of Administration (SBA) in 2003, from the total of 556, as neither the FWCC nor SBA were surveyed during the 1999 review. Accordingly, the total number of advisory entities found by the 2003 study for comparison purposes was 532. This figure demonstrated an increase of 10 entities (almost two percent) over the total of 522 entities identified in 1999.

Additionally, the 2003 Senate study indicated that executive agencies recommended abolition of 12 entities and revision of 96 entities. The recommendations that would require legislative action were:

- The Agency for Health Care Administration recommended 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 stated 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 recommended 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 is no longer active and its abolition would not reduce the quality of services offered by the department.

- The Department of Juvenile Justice recommended 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 would be encouraged.
- The DMS recommended 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 recommended amending s. 372.673, F.S., to abolish the Florida Panther Technical Advisory Council. The FWCC stated 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.

Finally, the study recommended that the Legislature consider a proposed committee bill (PCB) that would implement:

- The recommendations provided by executive branch agencies regarding the abolition and revision of specified advisory entities.
- Either the new Sunset Review process recommended by the DMS in its "Boards and Commissions Review" report, as discussed supra, or a requirement that executive branch agencies annually compile a list of all adjunct and regulatory entities, and recommend whether to continue, revise, or abolish each entity.

III. Effect of Proposed Changes:

Section 1. The bill amends s. 20.052, F.S., to create a new, periodic system of executive and legislative review for advisory bodies, boards of trustees,¹⁹ commissions,²⁰ and other collegial bodies within or adjunct to executive agencies. The bill provides the following definitions:

- "Advisory body" means any entity defined in s. 20.03(7),²¹ (8),²² or (9),²³ F.S., or any group, by whatever name, which is created to provide advice or recommendations to one or more executive agencies.
- "Executive agency" means, ". . . a department, as defined in s. 20.03(2), the Agency for Workforce Innovation, the Executive Office of the Governor, the Fish and Wildlife Commission, the Parole Commission, or the State Board of Administration."²⁴
- "Direct costs" means, ". . . the costs of an advisory body, board of trustees, commission or other collegial body for which an executive agency receives a specific appropriation."

¹⁹ Section 20.03(12), F.S., defines the term, "board of trustees."

²⁰ Section 20.03(10), F.S., defines the term "commission."

²¹ Section 20.03(7), F.S., defines the terms, "council" and "advisory council."

²² Section 20.03(8), F.S., defines the terms, "committee" and "task force"

²³ Section 20.03(9), F.S., defines the term, "coordinating council."

²⁴ Section 20.03(2), F.S., states, "'Department' means the principal administrative unit within the executive branch of state government."

- “Indirect costs” means, “. . . the costs of an advisory body, board of trustees, commission, or other collegial body which are not specifically appropriated and which are funded by an executive agency’s existing appropriations and resources.”

The bill retains, but renumbers, existing provisions of s. 20.052, F.S., which provide, with regard to advisory bodies, boards of trustees, commissions, and other collegial bodies, that the:²⁵

- Entity may only be created when found to be necessary and beneficial to the furtherance of a public purpose, and must be terminated when no longer necessary and beneficial to the furtherance of that purpose.
- Entity’s powers and responsibilities must conform with the definitions for governmental units in s. 20.03, F.S.
- Entity’s members must be appointed by the:
 - Governor, the head of the department, the executive director of the department, or a Cabinet officer, unless otherwise provided by law, in the case of an advisory body; or
 - Governor, unless otherwise provided by law, must be confirmed by the Senate, and must be subject to the dual-office-holding prohibition of s. 5(a), Art. II of the State Constitution, in the case of a commission or board of trustees.
- Entity’s members may only receive per diem and travel reimbursement, not compensation.
- Entity’s meetings are subject to the open meeting requirements of s. 286.011, F.S.
- Entity’s records must be properly stored within 30 days after the effective date of its abolition.

The bill renumbers and amends s. 20.052 (4)(c), F.S., which provides that members of an advisory body, board of trustees, or commission must be appointed to four-year staggered terms, unless otherwise provided in the Florida Constitution. Under the bill, this paragraph becomes s. 20.052(3)(c), F.S., and it is amended to provide that members of such entities, unless expressly provided otherwise by the constitution, must be appointed for terms that may last no longer than four-years. The bill’s amendments to this paragraph have the effect of clarifying that: (a) statutes may provide for term lengths that are less than four years;²⁶ and (b) “committees” and “task forces,” which, pursuant to s. 20.03(8), F.S., may last no longer than three years, are not subject to the four-year staggered term requirement.

The bill creates a new paragraph (4)(a) to provide that, beginning on July 15, 2005, and annually thereafter, each executive agency must submit the following information to the Executive Office of the Governor (EOG) for each advisory body, commission, board of trustees, or other collegial body within or adjunct to the agency:

²⁵ In recognition of the fact that executive collegial bodies are sometimes created pursuant to discretionary authority accorded to agency heads by statute, executive order, or federal authority, the bill removes current law’s provision indicating that these general requirements are only applicable to collegial bodies, “created by specific statutory enactment.”

²⁶ Florida statutes often specifically provide for term lengths that vary from the four-year requirement. *See, e.g.*, s. 14.29, F.S., (creates the Florida Commission on Community Service and provides for three-year membership terms). Accordingly, the bill conforms s. 20.052, F.S., to current practice.

- Identification of the entity and of the legal authority therefore.
- Identification of each entity's number of members, the appointment method for the entity's membership, the date of each member's appointment, and any membership positions not currently filled.
- Identification of each entity's direct and indirect costs, staff positions, dates of meetings, and major accomplishments during the previous fiscal year.

The effect of this provision should be to create a comprehensive listing of all collegial bodies with the executive branch, notwithstanding the type of authority pursuant to which the entity is created. No such listing is currently maintained in Florida.

The bill creates a new paragraph (4)(b) to require that executive agencies, beginning on July 15, 2005, and every 4 years thereafter, provide a recommendation, and reasoning therefore, regarding whether each entity identified pursuant to paragraph (4)(a) should be continued, revised, or terminated.²⁷ This recommendation requirement applies only to statutorily authorized entities and is not applicable to committees, task forces,²⁸ regulatory entities,²⁹ and not-for-profit direct support and citizen support organizations.³⁰ Further, the bill requires an executive agency, prior to submitting a recommendation to revise or terminate an entity, to provide notice and an opportunity to be heard to the entity's members regarding the recommendation. The executive agency must draft a written summary of member comments received.

The bill creates a new paragraph (4)(c) to require the EOG to compile the information and recommendations received pursuant to paragraphs (4)(a) and (b) into a report that is to be submitted to the President of the Senate and the Speaker of the House of Representatives on August 15, 2005, and annually thereafter.

The bill creates a new subsection (5) to require each appropriate substantive committee in the Senate and the House of Representatives to review portions of the report that pertain to the entities within each committee's jurisdiction. Further, if the report:

- Indicates that a statutorily authorized entity has failed to meet at least once during the previous fiscal year, the legislative committee is required to review the continued necessity for the entity and to recommend whether the entity should be continued, revised, or abolished; or
- Sets forth an executive agency recommendation to revise or terminate a statutorily authorized entity, the legislative committee is required to review the continued necessity

²⁷ The four-year time frame for review beginning in 2005 will insure continuity of review and should have the effect of enabling executive agency leadership to have gained some experience in office prior to making the required recommendations regarding continuation, revision, or termination of a statutorily required entity.

²⁸ Pursuant to s. 20.03(8), F.S., a committee or task force self-repeals within three years; thus, periodic review of these entities does not appear warranted.

²⁹ Sufficient legislative oversight appears to currently exist for regulatory entities, given that: (a) legislation creating such entities is subject to s. 11.62, F.S., the Sunrise Act; and (b) such entities are typically the subject of annual specific appropriations.

³⁰ Sufficient legislative oversight appears to currently exist for direct support and citizen support organizations, given that these not-for-profit corporations are: (a) typically self-funding and/or subject to specific appropriation by the Legislature; and (b) subject to audit by the Auditor General. *See* ss. 11.45(3)(a), 20.2551, F.S., 215.981, 258.015, 267.17, and 372.0215, F.S.

for the entity and recommend whether to implement, amend, or reject the proposed revision or termination.

Legislative committee recommendations are to be provided prior to the next regular legislative session.

The bill amends subsection (6) to make conforming changes.

Section 2. The bill provides that it takes effect on July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There will be indeterminate costs to executive agencies and the Legislature due to the bill's annual reporting and periodic review requirements for advisory bodies, boards of trustees, commissions, and other collegial bodies. These costs, however, may be offset or overcome by a savings in overall executive branch spending to the extent that such review results in eliminating entities that are not essential to the furtherance of a public purpose.

VI. Technical Deficiencies:

None.

VII. Related Issues:

As discussed in the “Present Situation” section above, Florida’s previous Sunset and Sundown Review processes, which were repealed in 1993, proved to be overly burdensome and costly for the Legislature. Such negative results should be avoided by the new executive and legislative review process implemented in this bill because:

- The initial responsibility for review is assigned to the executive branch, rather than centralized in the Legislature. This responsibility should not be unduly burdensome on the executive branch, as it is manageably dispersed among individual agencies.
- The number of entities subject to legislative committee review and recommendation may be fewer, as legislative review is initiated only when circumstances warrant, rather than by an arbitrary repeal date.
- The workload required for those entities that must be legislatively reviewed should be reduced by the bill’s requirements that executive agencies first provide comprehensive information and recommendations for each entity.

Moreover, the review process implemented by the bill will afford more frequent review than did the prior Sunset and Sundown laws; i.e., review will occur at least every four years as opposed to every ten years.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.
