

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Future of Florida's Families</u>	_____	<u>Walsh</u>	<u>Liem</u>
2) <u>State Administration</u>	_____	_____	_____
3) <u>Judiciary</u>	_____	_____	_____
4) <u>Appropriations</u>	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 1703 amends existing law relating to the statewide and local advocacy councils. The statewide council is moved to the Executive Office of the Governor for administrative support purposes, and membership on the statewide council is enlarged and revised.

The bill provides that the statewide and local councils may monitor programs by access to records. It authorizes injunctive relief against service or contract providers for denial of access to records, and authorizes circuit courts to impose a fine of up to \$15,000 against any person unlawfully denying access to any records requested by statewide or local council.

The bill requires that the council enter into interprogram agreements or operational procedures with departmental programs, the Attorney General's Medicaid Fraud Control Unit; the Governor's Inspector General; and other agencies to ensure coordination and cooperation regarding the role of the councils.

The bill requires that heads of agencies providing client services notify all their providers of the powers, duties, responsibilities, and access to information rights of the statewide and local councils. It also requires heads of agencies providing client services to amend any state plans filed with federal agencies to reflect that the activities of statewide and local councils are part of the administration of the federal program.

HB 1703 provides authority to the statewide council to issue declaratory statements and to engage in rulemaking.

Local councils, not less than 15 full time equivalent employees assigned thereto, and the toll-free complaint line are transferred by a type two transfer from DCF to the statewide council.

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

STORAGE NAME: h1703.fff.doc
DATE: March 23, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

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

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

B. EFFECT OF PROPOSED CHANGES:

Background¹

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

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

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 HRS's 11 service districts) and the statewide committee (SHRAC) were recognized in this legislation. The SHRAC served as the appellate body for complaints unresolved by the local HRACs, reported to the Legislature, and set policy and procedures for the local HRACs. The expenses of both SHRAC and the local HRACs were to be from the HRS budget, and the organization was housed administratively in HRS.

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

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

In the process of creating the numerous agencies to serve former HRS clients, the Legislature did not modify the statutory provisions pertaining to the Statewide Human Rights Advocacy Committee or the District Human Rights Advocacy Committees to expand their jurisdiction to include clients of the newly-created agencies.

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

ADVOCACY COUNCIL ORGANIZATION

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

The statewide council is to be representative of four groups of state residents as follows:

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

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

APPOINTMENT OF MEMBERS

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

SUPPORT TO THE COUNCILS

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

While the statewide and local councils receive administrative support from DCF, the Legislature has directed that:

The statewide council is not subject to control, supervision, or direction by the DCF in the performance of its duties, and

DCF staff assigned to assist the local councils shall perform the functions required by them without interference from the department.

PLACEMENT OF THE ADVOCACY COUNCILS WITHIN DCF

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

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

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

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

OTHER ADVOCACY ORGANIZATIONS

Congress has determined that, because the ability of states to protect the rights of certain vulnerable citizens varies widely and may be inadequate, it is necessary to establish a system of protection and advocacy for these groups outside of state government. As the designated Protection and Advocacy System (PAS) for the state of Florida, the Advocacy Center for Persons with Disabilities, Inc. (Advocacy Center) implements the following programs.

- Protection and Advocacy for Mentally Ill Persons (PAIMI): protection for persons diagnosed with significant mental illness who are in treatment facilities or residential programs, or for those who need assistance after their discharge from a residential facility.

- Protection and Advocacy for Persons with Developmental Disabilities (PADD): protection for persons with severe and chronic mental or physical impairment beginning before the age of 22 which substantially limits his or her ability in three or more life activities.
- Protection and Advocacy for Individual Rights: services for persons who are ineligible for PAIMI or PADD
- Client Assistance Program (CAP): services for disabled persons who are interested in receiving benefits from Rehabilitation Act-funded programs or projects.
- Technology Assistance Program (TAP): promotes awareness of assistive technology, services and devices.
- Protection and Advocacy for Beneficiaries of Social Security (PABSS): provides assistance to Social Security recipients who have problems obtaining, maintaining, or retaining employment.

Both the Advocacy Center and the advocacy councils work on behalf of developmentally disabled and mentally ill persons. However, the authority provided to the Advocacy Center under the various federal statutes is arguably broader, including the right to monitor residential facilities, to bring suit on behalf of an individual or class, and to advocate for systemic reform. It also includes the authority to bring suit on behalf of those persons who have **not** received state services.

The activities of the Advocacy Center are entirely federally-funded, and it is staffed by paid professionals, located in Tallahassee, Tampa, Ft. Lauderdale and Orlando. Because their total staffing is less than that assembled by the advocacy councils and less geographically-dispersed, the Advocacy Center and the SAC are developing a memorandum of understanding which will allow both organizations to better serve their clients by clarifying each organization's responsibilities.

The Proposed Bill

HB 1703 provides additional legislative intent specifying that the statewide and local councils provide governmental oversight to ensure protection and advocacy of Floridians who receive state or federal health and human services from state agencies²; and that the intent of the Florida Health and Human Services Act³ is preserved through statewide and local council oversight. In addition, the bill provides that the legislature intends that the statewide and local councils have routine access to protected health and any other confidential information of clients receiving client services.

The bill addresses issues relating to placement of the councils by relocating the statewide council for administrative purposes to Executive Office of Governor or a state agency that is not a provider of client services, and transferring the local councils, the toll-free complaint line, and 15 FTE staff by a type two transfer from DCF to the statewide council. The bill makes the statewide council responsible for assigning that staff to support the local councils.

HB 1703 bill addresses issues relating to membership of and appointment to the statewide council by

- expanding membership to not more than 20 residents
- deleting the requirement that membership be representative of four groups
- revising criteria for required membership
- providing priority of membership to those who were members of local councils
- allowing the governor to appoint any qualified person to the council
- enlarging the number of days to 120 for the governor to make appointments to the council
- enlarging the terms of the chair and vice chair to two years each.

The bill provides that the statewide and local councils may monitor programs by access to records. It authorizes the councils to seek injunctive relief against service or contract providers for denial of access to records, and authorizes circuit courts to impose a fine of up to \$15,000 against any person unlawfully

² This oversight is currently provided by the Advocacy Center for Persons with Disabilities, Inc. See Background, *supra*.

³ S. 408.911, F.S., *et seq.*

denying access to any records requested by statewide or local council. The bill requires agencies to provide councils copies of their records to the councils at the agencies' expense.

The bill requires that the council enter into interprogram agreements or operational procedures with departmental programs, the Attorney General's Medicaid Fraud Control Unit; the Governor's Inspector General; and other agencies to ensure coordination and cooperation regarding the role of the councils.

HB 1703 provides authority to the statewide council to issue declaratory statements and to engage in rulemaking.

The bill requires that heads of agencies providing client services notify all their contract, service or treatment providers of the powers, duties, responsibilities, and access to information rights of the statewide and local councils. It also requires heads of agencies providing client services to amend any state plans filed with federal agencies to reflect that the activities of statewide and local councils are part of the administration of the federal program.

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

C. SECTION DIRECTORY:

Section 1: Amends s. 402.164, F.S.; provides additional legislative intent; adds definitions of "access," "council or statewide council," and "local council or local advocacy council;" amends definitions of "client" and "client services."

Section 2: Amends s. 402.165, F.S.; relocates statewide council for administrative purposes to Executive Office of Governor or a state agency that is not a provider of client services; expands membership to not more than 20 residents; deletes requirement that membership be representative of four groups; revises criteria for required membership; provides priority of membership to those who were members of local councils; allows governor to appoint any qualified person to council; enlarges number of days to 120 for appointment to be made; enlarges terms of chair and vice chair to two years each; provides for monitoring by access to records; requires consultation with Governor's office prior to generation of complaint by council; deletes required components of uniform procedures; provides that statewide council shall supervise local councils; requires development and maintenance of interprogram agreements or operational procedures between council and various entities; provides authority to issue declaratory statements and engage in rulemaking; seek injunctive relief against service or contract providers for denial of access to records; authorizes circuit court to impose fine of up to \$15,000 against any person unlawfully denying access to any records requested by statewide or local council; requires agencies to provide statewide or local councils copies of their records at the agencies' expense.

Section 3: Amends s. 402.166, F.S.; provides that statewide council will assign staff to support local councils; provides that areas of local councils shall be consistent with judicial circuit boundaries; deletes prohibition against relatives serving together on local councils; provides for monitoring by access to records; deletes responsibility for reviewing existing or proposed programs; provides that local councils have same access to records as statewide council.

Section 4: Amends s. 402.167, F.S.; deletes requirement that agencies providing client services engage in rulemaking; requires heads of agencies providing client services to notify all providers of the powers, duties, responsibilities, and access to information rights of the statewide and local councils; requires heads of agencies providing client services to amend any state plans filed with federal agencies to reflect activities of statewide and local councils as part of the administration of the federal program.

Section 5: Local councils, staff assigned thereto, and toll-free complaint line are transferred by a type two transfer from DCF to the statewide council. On January 1, 2005, not less than 15 full time equivalent employees assigned to the local councils on July 1, 2003, shall be transferred.

Section 6: Provides an effective date of July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Statewide Advocacy Council is funded by general revenue through specific OCAs within the DCF budget. The appropriation funds three FTE positions, including the Executive Director, and associated expenses for the statewide and local councils. In Fiscal Year 2004-2005, funding totaled \$238,921.

DCF reports that positions to support the local councils have never been appropriated. Although DCF district staff assist the local councils by performing administrative functions, there are none dedicated solely to performing those duties. All district staff so assigned also perform other tasks as their primary responsibility. Accordingly, the 15 FTE and associated salary, benefits and expenses required by the bill to be transferred will need to be identified by the agency.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides authority to the statewide council to engage in rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

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

The strike everything amendment makes the following changes to the bill as filed:

- Remove the expanded intent language.
- Delete the definition of "access" and the amendments to "client" and "client services" because they are unnecessary.
- Relocate the statewide council to the Executive Office of the Governor, and allow for its assignment for administrative support purposes to any governor's agency.
- Require the governor to select the executive director.
- Delete the enlargement of terms of the chair and vice chair of the statewide council.
- Require development and maintenance of interagency agreements between the statewide council and state agencies providing client services to address coordination of efforts, roles and responsibilities of the councils and the agencies, including access to records.
- Delete the authority to issue declaratory statements, engage in rulemaking, and seek injunctive relief.
- Delete the authority of the circuit court to impose fines for unlawful denial of access to records.
- Enlarge the number of days to 60 for governor to make appointments to the local councils.
- Deletes the reference to "access-to-information rights" in the requirement that heads of agencies providing client services notify their contract, service and treatment providers of the powers, duties, and responsibilities of the statewide and local councils.
- Deletes the requirement that heads of agencies providing client services amend any state plans filed with federal agencies to reflect the activities of statewide and local councils as part of the administration of the federal program.
- Provides for the type two transfer of six full time equivalent staff from DCF to the statewide council and requires DCF to identify six general revenue funded positions for transfer.
- Changes the effective date to October 1, 2004.