

# 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/SB 2674

SPONSOR: Children and Families Committee and Senator Wise

SUBJECT: Statewide and Local Advocacy Councils

DATE: March 31, 2004 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collins</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>                    </u>	<u>                    </u>	<u>JU</u>	<u>                    </u>
3.	<u>                    </u>	<u>                    </u>	<u>GO</u>	<u>                    </u>
4.	<u>                    </u>	<u>                    </u>	<u>AHS</u>	<u>                    </u>
5.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>
6.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

## I. Summary:

Committee Substitute for SB 2674 establishes the Statewide Advocacy Council (SAC) as an independent agency to be administratively located in the Executive Office of the Governor. The SAC may be assigned for administrative purposes to any Governor's agency. Further, the SAC is not subject to the control, supervision, or direction by any state agency providing client services in the performance of its duties.

The membership requirements of the local and statewide councils are revised, and the committee substitute further specifies that the council is to consist of no fewer than 15 and no more than 20 persons who are residents of this state. The committee substitute also specifies that the SAC is responsible for the operations of local advocacy councils (LAC). The Governor is authorized to appoint the Executive Director of the SAC.

The committee substitute also directs the SAC to develop and maintain inter-agency agreements between the councils and agencies that provide client services. These agreements are to address the coordination of efforts and the roles and responsibilities of the SAC and LAC with each agency, including the access to records.

In the performance of its duties, the SAC is provided with statutory authority to access all client records, files, and reports from any program, service, or facility that is operated, funded, or contracted by any state agency that provides client services. This legislation provides LACs with the same authority to access records from facilities, programs, and clients as the SAC.

Each state agency that provides client services is required to amend state plants to reflect activities of the SAC and LACs as a part of the program administration. Finally, the committee

substitute directs a type 2 transfer of 6 FTEs and the toll-free complaint line from the Department of Children and Families to the Statewide Advocacy Council.

This committee substitute amends sections 402.164, 402.165, 402.166, and 402.167 of the Florida Statutes.

## **II. Present Situation:**

The Statewide Advocacy Council (SAC) and the Local Advocacy Councils (LACs) are statutorily established as a network of councils of volunteers who are appointed by the Governor and who are charged with investigating and monitoring threats to the rights, safety, or welfare of people who receive services from state agencies (s. 402.165 and s. 402.166, F.S.). These councils function as an independent third party to protect the constitutional and human rights of citizens who receive services from any state agency or contracted provider.

The statewide council consists of 15 persons, one from each service area designated by the SAC, who broadly represent the interests of the public and the clients who are served by the council. The council selects an Executive Director who serves at the pleasure of the council.

The jurisdiction of the SAC and LACs is defined as clients covered by specific sections of Florida law, regardless of the state agency providing or contracting for the services. Generally, this includes clients of the Department of Children and Families (DCF or the department) -- clients who receive child care, Medicaid clients, participants of adult day care centers, and residents of assisted living facilities. Adult victims of alleged abuse who live in their own homes or community have not been considered clients.

The state and local councils are administratively housed within the Department of Children and Families, which is responsible for providing administrative and staff support. Administrative support includes operation of the council's toll free number, secretarial and clerical support to each local council and other duties that are required by the council. It is reported that the department has decreased this statutorily required staff support as part of its internal restructuring and required budget reductions. The Florida Statewide Advocacy Council is currently housed at DCF headquarters and consists of an Executive Director and two additional full-time staff. The staff of the statewide office provides support to the local councils, prepares the annual budget, arranges for meetings and training, and performs other duties as required. While the SAC and LACs receive administrative support from the department, the Legislature has directed that:

- The statewide council is not subject to control, supervision, or direction by the department in the performance of its duties; and
- The department staff assigned to assist the local councils shall perform the functions required by them without interference by the department.

Approximately 13 staff from the department provide part-time support to the LACs. It is reported by the department that this support is provided for the most part by the District Client Relations Coordinators who also handle constituent issues and perform other functions for the department. Client Relations Coordinators receive client calls from clients who are in need of services or information. They also receive client calls from a posted 1-800 number for SAC services. The Statewide Advisory Council consistently states that this is a conflict of interest.

The SAC and LACs' access to confidential client information is generally limited to specific cases being investigated by the local councils, not groups of clients. Any confidential information provided by the Department of Children and Families to the SAC or LACs remains confidential and may not be publicly disclosed. Recently, there has been disagreement between the department and the SAC regarding the ability of the council to access client healthcare information and whether the SAC actually plays the oversight role which would authorize its access to specific healthcare records [based upon the federal Health Insurance Portability and Accountability Act (HIPAA) requirements]. A recent judicial ruling in Texas supports the ability of the state to release such information if there is authorization by state law.

### III. Effect of Proposed Changes:

#### Section 1:

This committee substitute amends s. 402.164 F.S., providing definitions for Statewide and Local Advocacy Councils. "Council" or "statewide council" means Statewide Advocacy Council and "local councils" or "local advocacy council" means one of the local advocacy councils located in this state, under the supervision of the Florida Statewide Advocacy Council.

**Section 2:** Amends section 402.165, F.S., relating to the Florida Statewide Advocacy Council – confidential records and meetings. The committee substitute:

- Directs that the SAC be located in the Executive Office of the Governor but may be assigned for administrative purposes to any Governor's agency; specifies that the statewide council is not subject to the control, supervision, or direction by any state agency providing client services.
- Specifies the councils' membership shall be not less than 15 and not more than 20 residents of the state. The director of the SAC reports that some judicial circuits are covered by the same representatives, and the distance that must be covered by individual members often necessitates travel reimbursements that could be saved if there was a local representative.
- Amends the membership requirements of the council specifying that priority consideration be given to anyone who has served on a local council. The director reports that it is frequently difficult to find persons willing to serve on the council. This change should make it easier for persons to serve on councils.
- Authorizes the Governor to fill a council vacancy from a list of nominees submitted by the statewide council or to appoint any qualified person.
- Directs the Governor to select an Executive Director who serves at the pleasure of the Governor.
- Authorizes the council to generate a complaint after consulting with the Governor's office.
- Removes the provision requiring that the responsibilities of the council be reflected in procedures.
- Specifies that the statewide council is responsible for supervising the operations of local councils.

- Directs the SAC to develop and maintain inter-agency agreements that address the coordination of efforts and the roles and responsibilities of the SAC and LAC, including the access to records, with each agency.
- Requires that copies of client files, agency records and reports are to be provided to the council and the local councils at the agency's expense.

**Section 3.** Amends s. 402,166, F.S., relating to local advocacy councils, hearings, and meetings. The committee substitute:

- Adds language providing that the SAC will assign staff to support the LACs and deletes the current language requiring the department to perform functions for the LACs. This committee substitute does not identify how these staff will be allocated.
- Extends the period of time allowed for the Governor to approve or disapprove a replacement on the local council from 30 days to 60 days.
- Specifies that the local councils serve as an independent 3<sup>rd</sup> party to protect the constitutional and human rights of clients served by the LAC in the local service area. The "local service area" is not defined for the purposes of this committee substitute. This area may or may not include a specified geographic area, a district, or a judicial circuit.
- Deletes the requirement for the councils to review existing or proposed programs and to make recommendations pertaining to these programs.
- Specifies that the LAC has the same authority to access client records, state agency files, reports from any program or service, records of contractors and providers, and records from any facility operated, funded, or under contract with a state agency as specified in s. 402.165(8)(a), F.S., for the Statewide Council.

**Section 4:** Amends s. 402.167, F.S., relating to the duties relating to the Florida Statewide Advocacy Council and the Florida local advocacy councils of state agencies that provide client services. The committee substitute:

- Deletes the requirement that agencies providing client services engage in rulemaking and requires the heads of these agencies to notify all providers of the powers, duties, and responsibilities 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 the SAC and LACs as a part of the administration of the program.

**Section 5.**

This section directs that the local advocacy councils, six staff positions, and the council's toll-free complaint line are to be transferred by a type two transfer under s. 20.06, F.S., from the Department of Children and Families to the Florida Statewide Advocacy Council. This committee substitute directs the department to identify six full-time equivalent (FTE) staff positions that are funded by general revenue. The department reports that it currently provides approximately 13 positions to provide support to local advocacy councils on a part-time basis.

This committee substitute provides an effective date of October 1, 2004.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

**IV. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

## C. Government Sector Impact:

The Department of Children and Families reports that the positions to provide support to the local advocacy centers were never appropriated to the department. Although staff currently perform duties for the local councils, there are none dedicated solely to these duties.

There will be an undetermined cost to agencies required to provide copies of records and reports to the council. The Department of Children and Families reports that it does not currently charge the council for copies of records.

**V. Technical Deficiencies:**

None.

**VI. Related Issues:**

The Statewide Advocacy Council is funded by general revenue through specific organizational codes within the department's budget. Funding is appropriated to support three FTE positions and associated expenses for the statewide and local councils. In fiscal year 2004-2005, funding totaled \$238,921.

This legislation authorizes membership of the council to increase up to 20 members.

**VII. Amendments:**

None.

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

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