

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.)

Prepared By: Children and Families Committee

BILL: SB 386

INTRODUCER: Senator Campbell

SUBJECT: Agency for Persons with Disabilities

DATE: December 8, 2005

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------|----------------|-----------|------------------|
| 1. | <u>Goltry</u> | <u>Whiddon</u> | <u>CF</u> | Favorable |
| 2. | _____ | _____ | <u>GO</u> | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

This bill requires that the director of the Agency for Persons with Disabilities be subject to Senate confirmation.

This bill substantially amends the following section of the Florida Statutes: 20.197.

II. Present Situation:

The Legislature created the Agency for Persons with Disabilities (the Agency or APD) (s. 20.197, F.S.), in Chapter 2004-267, Laws of Florida. The developmental disabilities program and the developmental services institutions in the Department of Children and Family Services (DCF) were transferred to the new Agency for Persons with Disabilities by a type two transfer on October 1, 2004. The Agency is responsible for the provision of all services to persons with developmental disabilities pursuant to chapter 393, F.S., which includes community programs, institutions and the programmatic management of Medicaid waivers.

According to s. 20.197, F.S., the Agency is housed within DCF for administrative purposes but is not subject to the control, supervision, or direction of DCF in any manner including personnel, purchasing, property, or budgetary matters. The director is the Agency head and is appointed by, and serves at the pleasure of, the Governor. The director has the responsibility for administering the affairs of the agency, establishing administrative units, and employing the staff necessary to discharge the powers and duties of the Agency.

Article IV Section 6 of the State Constitution provides that:

“All functions of the executive branch of state government shall be allotted among not more than twenty-five departments, exclusive of those specifically provided for or authorized in this constitution. The administration of each department, unless otherwise provided in this constitution, shall be placed by law under the direct supervision of the governor, the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor, except:

(a) *When provided by law, confirmation by the senate or the approval of three members of the cabinet shall be required for appointment to or removal from any designated statutory office.* (emphasis added)

(b) Boards authorized to grant and revoke licenses to engage in regulated occupations shall be assigned to appropriate departments and their members appointed for fixed terms, subject to removal only for cause.”

While case law defining the term “office” within the meaning of the constitutional phrase any designated office has not been found, the courts have explained the term “office” in other constitutional contexts:

The term ‘office’ implies a delegation of a portion of the sovereign power to, and possession of it by, the person filling the office; . . . The term embraces the idea of tenure, duration, emolument, and duties, and has respect to a permanent public trust to be exercised in behalf of government, and not a merely transient, occasional, or incidental employment. . . . {E}very ‘office’ in the constitutional meaning of the term, impl[ies] an authority to exercise some portion of the sovereign power, either in making, executing, or administering the laws.¹

Section 20.197 (1), F.S., states “the director of the agency shall be the agency head for all purposes . . .” Responsibilities of the Agency include but are not limited to, promulgation of rules for the operation of programs and services for persons with developmental disabilities, licensure of certain facilities and programs, denial, revocation, or suspension of a license or imposition of administrative fines, and determination of eligibility for services.

Section 20.03, F.S., defines the structural components of the executive branch. Pursuant to that section, a department is established as “the principal administrative unit within the executive branch of state government.” The term “agency” may include “an official, officer, commission, authority, council, committee, department, division, bureau, board, section, or another unit or entity of government.” The “secretary” is defined as an individual appointed by the Governor to head each department.

Section 20.05 (2), F.S., requires that “a secretary appointed by the Governor to serve as the head of a department must be confirmed by the Senate.”

¹ *Robbin v. Brewer*, 236 So. 2d 448, 451 (Fla. 4th DCA 1970), quoting *State ex rel. Clyatt v. Hocker*, 22 So. 721 (1897).

As provided in the Florida Constitution and statute, secretaries of departments, members of the Parole Commission and the executive director of the Fish and Wildlife Conservation Commission require Senate confirmation. In addition to certain agency heads and executive directors, there are 160 commissions, boards, councils, and authorities created in statute whose members are appointed by the Governor and require Senate confirmation. These include boards regulating professions and occupations such as the Boards of Medicine, Nursing, and Accountancy, as well as the Ethics Commission, the Public Service Commission, County Expressway Authorities, Boards of Trustees of Community Colleges and State Universities, and Water Management District Governing Boards.

In 1992, the Agency for Health Care Administration was created in the Department of Professional Regulation (DPR). The law creating the agency provided that the director was to be appointed by the Governor, but Senate confirmation was not required.² Since 2000, when the Agency was established as a department and the head of the agency was designated as the secretary rather than a director, Senate confirmation of the secretary has been required.³

The Florida Supreme Court has held that “agencies administratively housed with an executive department, even if they are not subject to the control, supervision, or direction of the department, have not been included in the constitutional limit of 25 executive branch agencies and the placement of such agencies within a department is the prerogative of the legislature.”⁴

The requirement for Senate confirmation of agency directors comparable to the director of the APD varies depending on the language of the authorizing statute. For example, the director of the Division of Administrative Hearings, a separate budget entity within the Department of Management Services (DMS) and not subject to the department’s control, supervision, or direction, requires Senate confirmation. However, the director of the Agency for Workforce Innovation, created as an agency within DMS, does not require Senate confirmation.

III. Effect of Proposed Changes:

Senate Bill 386 amends s. 20.197, F.S., to require Senate confirmation of the director of the Agency for Persons with Disabilities. The bill has an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

² Chapter 92-33, Laws of Florida.

³ Chapter 2000-305, Laws of Florida

⁴ Agency for Health Care Administration v. Associated Industries of Florida, Inc., 678 So.2d 1239 (Fla. 1996)

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:

None

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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