

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

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BILL: CS/SB 508

INTRODUCER: Children, Families, and Elder Affairs Committee; and Senator Detert

SUBJECT: State Ombudsman Program

DATE: April 8, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	<b>Fav/CS</b>
2.	Brown	Pigott	AHS	<b>Favorable</b>
3.			AP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 508 revises the operating structure and internal procedures of the State Long-Term Care Ombudsman Program (LTCOP), housed in the Department of Elder Affairs (DOEA), to reflect current practices, maximize operational and program efficiencies, and conform to the federal Older Americans Act. The bill revises the appointment process for three at-large positions to the State Long-Term Care Council whereby the appointments will no longer be made by the governor but will be made by the secretary of the DOEA.

The bill has no fiscal impact.

**II. Present Situation:**

**Older Americans Act**

The Older Americans Act (OAA) was enacted in 1965 to assist elders to lead independent, meaningful, and dignified lives in their own communities rather than in more costly residential or nursing home settings.<sup>1</sup> The OAA programs are administered through area agencies on aging under the Department of Elder Affairs (DOEA). To be eligible for OAA programs, individuals must be 60 years of age or older. Spouses and disabled adults younger than 60 years of age may receive services in certain circumstances. Preference is given to elders with the greatest

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<sup>1</sup> Government Program Summaries, Office of Program Policy Analysis and Governmental Accountability website, available at <http://www.oppga.state.fl.us/profiles/5032/> (last visited March 28, 2014).

economic or social needs, particularly low-income minority individuals. The OAA was most recently reauthorized in 2006 to supply funding for several nutritional programs and in-home and supportive services for elders.

Florida's Long-Term Care Ombudsman Program (LTCOP) was created in 1975 as a result of the OAA. The OAA grants a special set of residents' rights to individuals who live in long-term care facilities such as nursing homes, assisted living facilities, and adult family care homes.<sup>2</sup>

### **Long-Term Care Ombudsman Program**

In Florida, a long-term care ombudsman is a volunteer who helps improve the lives of people who live in long-term care settings like nursing homes, assisted living facilities, and adult family care homes by investigating and resolving their complaints against the facility. The LTCOP comprises more than 300 volunteers who are advocates for the residents to improve their quality of life.

The LTCOP is administratively housed within the DOEA. The LTCOP undertakes to discover, investigate, and determine the presence of conditions or individuals which constitute a threat to the rights, health, safety, or welfare of the residents of long-term care facilities. The LTCOP accomplishes these tasks by conducting investigations of complaints filed by or on behalf of residents of nursing homes, assisted living facilities, and adult family care homes and by conducting annual administrative assessments of such facilities. An administrative assessment is a resident-centered, unannounced review of conditions in the facility which have an impact on the rights, health, safety, and welfare of residents with the purpose of noting needed improvements and making recommendations to enhance the quality of life for residents.

The LTCOP has no enforcement and regulatory oversight authority for long-term care facilities. The Agency for Health Care Administration (AHCA) has the responsibility for licensing long-term care facilities. An ombudsman, after completing specified statutory requirements, is certified as an independent advocate, working solely on behalf of residents to mediate disputes between residents and long-term care facilities on an informal basis. The LTCOP provides residents with the opportunity to develop personal and confidential relationships with ombudsmen to create an environment that allows a resident to candidly voice complaints. If a complaint is verified by the ombudsman that could violate the facility's licensure or be criminal activity, the LTCOP refers the issue to the AHCA, Adult Protective Services within the Department of Children and Families (DCF), the Attorney General's Office, or other agencies as appropriate.<sup>3</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 400.0060, F.S., to revise and create definitions of terms used in the ombudsman statute. Definitions for "long-term care facility," and "ombudsman" are updated. The term "representative of the office" is defined to include the state ombudsman, employees,

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<sup>2</sup> Department of Elder Affairs, Florida's Long-Term Care Ombudsman Program website, *available at* <http://ombudsman.myflorida.com/index.php> (last visited March 28, 2014).

<sup>3</sup> Department of Elder Affairs, *Senate Bill 508 Fiscal Analysis* (Dec. 31, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).

and certified ombudsman. The term “state ombudsman” is defined as the person appointed by the secretary of the DOEA to administer the ombudsman program. The term “resident” is revised to include persons over 18 years of age who reside in a long-term care facility. The term “district” creates geographical areas in the state designated by the state ombudsman and each district may have more than one local unit of ombudsmen.

**Section 2** amends s. 400.0061, F.S., which provides legislative finds and intent, to conform existing text to newly-defined terms.

**Section 3** amends s. 400.0063, F.S., which establishes the office of state ombudsman and to conform existing text to newly-defined terms.

**Section 4** amends s. 400.0065, F.S., relating to duties of the state ombudsman, to give the state ombudsman the final authority to make appointments of individuals serving as ombudsman; to update position titles of individuals to receive the annual ombudsman program report; and to revise terminology to conform to new definitions.

**Section 5** amends s. 400.0067, F.S., relating to the State Long-Term Care Ombudsman Council, to update terminology. Currently, appointments to the three at-large positions to the council are made by the governor. Under the bill, the district manager, in consultation with the district ombudsmen, will select a district ombudsman as a representative to the council. The state ombudsman will submit the names to the secretary of the DOEA, who will make the appointment to the three at-large positions on the state council.

**Section 6** amends 400.0069, F.S., relating to the local ombudsman councils. The councils are renamed as districts and are designated by the state ombudsman. The bill provides for development of family councils within facilities; clarifies that ombudsmen may be allowed to serve in a different district for good cause shown; and clarifies the application, background screening, and training requirements needed to become a certified ombudsman. The bill also requires that each district must convene a public meeting every quarter. The bill provides that ombudsmen identify, investigate, and resolve complaints made by or on behalf of residents relating to actions or omissions by providers of long-term care services, other public agencies, guardians, or representative payees which may adversely affect the health, safety, welfare, or rights of a resident.

**Section 7** amends s. 400.0070, F.S., relating to ombudsman conflicts of interest and to conform to newly-defined terms.

**Section 8** amends s. 400.0071, F.S., relating to how ombudsmen investigate and resolve complaints. The bill separates and removes references to the administrative assessment process from the complaint process.

**Section 9** amends s. 400.0073, F.S., relating to complaint investigations, access to long-term care facilities by ombudsmen, reporting procedures in the event access is denied and conforms to newly-defined terms.

**Section 10** amends s. 400.0074, F.S., to provide an on-site administrative assessment at least annually that must be resident-centered and focus on the rights, health, safety, and welfare of the residents. The assessment may not impose an unreasonable burden on the long-term care facility. The bill adds the rulemaking authority and conforms to newly-defined terms.

**Section 11** amends s. 400.0075, F.S., relating to complaint resolutions, to conform to newly-defined terms, and to clarify complaint reporting procedures.

**Section 12** revises s. 400.0078, F.S., relating to access to the ombudsmen, to add email as a way to make complaints. The bill also requires long-term care facilities to notify all residents and their families when a resident is admitted that retaliation against residents making complaints to the ombudsman is prohibited by law.

**Section 13** amends s. 400.0079, F.S., relating to immunity for persons making complaints, to conform to newly-defined terms.

**Section 14** amends s. 400.0081, F.S., relating to ombudsman access to long-term care facilities, including access to medical and social records of a resident as necessary to resolve a complaint. The bill also deletes the limitation that ombudsmen have access to residents only for investigating a complaint.

**Section 15** amends s. 400.0083, F.S., relating to interference with the ombudsman, to make technical and conforming changes.

**Section 16** amends s. 400.0087, F.S., relating to oversight of the ombudsman program by the DOEA, to make technical and conforming changes.

**Section 17** amends 400.0089, F.S., relating to information on ombudsman complaints, to make technical and conforming changes.

**Section 18** amends s. 400.0091, F.S., relating to ombudsman training, to clarify training requirements and make conforming changes.

**Sections 19 through 44** amend ss. 20.41, 400.021, 400.022, 400.0255, 400.1413, 400.162, 400.19, 400.191, 400.23, 400.235, 415.102, 415.1034, 415.104, 415.1055, 415.106, 145.107, 429.02, 429.07, 429.19, 429.26, 429.28, 429.34, 429.35, 429.67, 429.85, 744.444, F.S., to conform to newly-defined terms and to make technical changes.

**Section 45** provides an effective date of July 1, 2014.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 20.41, 400.0060, 400.0061, 400.0063, 400.0065, 400.0067, 400.0069, 400.0070, 400.0071, 400.0073, 400.0074, 400.0075, 400.0078, 400.0079, 400.0081, 400.0083, 400.0087, 400.0089, 400.0091, 400.021, 400.022, 400.0255, 400.1413, 400.162, 400.19, 400.191, 400.23, 400.235, 415.102, 415.1034, 415.104, 415.1055, 415.106, 415.107, 429.02, 429.07, 429.19, 429.26, 429.28, 429.34, 429.35, 429.67, 429.85, and 744.444.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Children, Families, and Elder Affairs on April 1, 2014:**

The CS contains the following provisions:

- Defines the term “district” as a geographical area designated by the state ombudsman in which ombudsmen carry out of the duties of the state ombudsman program. A district may have more than one local unit of ombudsmen.

- Provides that each local unit in a district selects a representative to serve in an at-large position on the state council. The list of selected ombudsmen will be provided to the state ombudsman and the Secretary of DOEA will appoint the three at-large members to the state council.
- Provides that each district must convene a public meeting every quarter.
- Clarifies that an ombudsman identify, investigate, and resolve complaints made by or on behalf of residents relating to actions or omissions by providers or representatives of providers of long-term care services, other public agencies, guardians, or representative payees which may adversely affect the health, safety, welfare, or rights of residents.
- Allows ombudsmen to have access to medical and social records of a resident as necessary to investigate a complaint.
- Clarifies criteria for a long-term care facility to be recognized as a Gold Seal Program.

B. Amendments:

None.