

1 A bill to be entitled

2 An act relating to the State Long-Term Care Ombudsman  
3 Program; amending s. 400.0060, F.S.; providing and  
4 revising definitions; amending s. 400.0061, F.S.; revising  
5 legislative findings and intent; amending s. 400.0063,  
6 F.S.; revising provisions relating to qualifications of  
7 the State Long-Term Care Ombudsman; revising duties of the  
8 legal advocate; amending s. 400.0065, F.S.; revising  
9 duties and responsibilities of the State Long-Term Care  
10 Ombudsman; requiring an annual report; deleting provisions  
11 relating to conflict of interest; repealing s. 400.0066,  
12 F.S., relating to the Office of State Long-Term Care  
13 Ombudsman and departments of state government; amending s.  
14 400.0067, F.S.; revising duties and membership of the  
15 State Long-Term Care Ombudsman Council; providing for  
16 election of a local council member from each local council  
17 to provide representation on the state council;  
18 authorizing the Secretary of Elderly Affairs to recommend  
19 to the Governor appointments for at-large positions on the  
20 state council; providing that state council members serve  
21 at the pleasure of the Governor; providing conditions for  
22 removal of members of and for filling vacancies on the  
23 state council; providing for election of officers and  
24 meetings; providing for per diem and travel expenses if  
25 approved by the ombudsman; deleting provisions relating to  
26 conflicts of interest and requests for appropriations;  
27 amending s. 400.0069, F.S.; authorizing the State Long-  
28 Term Care Ombudsman to designate and direct local long-

29 term care ombudsman councils; requiring approval by the  
30 Secretary of Elderly Affairs of jurisdictional boundaries  
31 designated by the ombudsman; revising duties of local  
32 long-term care ombudsman councils; providing requirements  
33 and application for membership, election of officers, and  
34 meetings of local long-term care ombudsman councils;  
35 providing conditions for removal of members; providing for  
36 travel expenses for members of the council; deleting  
37 provisions relating to conflicts of interest; creating s.  
38 400.0070, F.S.; consolidating provisions relating to  
39 conflicts of interest of the ombudsman; providing  
40 rulemaking authority to the Department of Elderly Affairs  
41 regarding conflicts of interest; amending s. 400.0071,  
42 F.S.; establishing procedures for receiving,  
43 investigating, and assessing complaints against long-term  
44 care facilities; deleting provisions requiring the posting  
45 and distribution of copies of such procedures; amending s.  
46 400.0073, F.S.; providing conditions for investigations of  
47 complaints by state and local ombudsman councils;  
48 providing that refusing to allow the ombudsman or a member  
49 of a state or local council to enter a long-term care  
50 facility is a violation of ch. 400, F.S., under certain  
51 circumstances; deleting conditions for onsite  
52 administrative inspections; creating s. 400.0074, F.S.;  
53 providing conditions and requirements for onsite  
54 administrative assessments of nursing homes, assisted  
55 living facilities, and adult family-care homes;  
56 prohibiting forcible entry of long-term care facilities;

57 providing that refusing to allow the ombudsman or a member  
58 of a state or local council to enter a long-term care  
59 facility is a violation of ch. 400, F.S., under certain  
60 circumstances; amending s. 400.0075, F.S.; providing  
61 complaint notification procedures for state and local  
62 councils; providing circumstances in which information  
63 relating to violations by a long-term care facility is  
64 provided to a local law enforcement agency; amending s.  
65 400.0078, F.S.; requiring information relating to the  
66 State Long-Term Care Ombudsman Program to be provided to  
67 residents of long-term care facilities or their  
68 representatives; amending s. 400.0079, F.S.; providing for  
69 immunity from liability for certain persons; amending s.  
70 400.0081, F.S.; requiring long-term care facilities to  
71 provide the Office of State Long-Term Care Ombudsman and  
72 state and local councils and their members with access to  
73 the facility and the records and residents of the  
74 facility; authorizing rather than requiring the department  
75 to adopt rules regarding access to facilities, records,  
76 and residents; amending s. 400.0083, F.S.; prohibiting  
77 certain actions against persons who file complaints;  
78 providing penalties; repealing s. 400.0085, F.S., relating  
79 to a penalty; amending s. 400.0087, F.S.; providing for  
80 oversight by and responsibilities of the department;  
81 requiring the department to provide certain funding for  
82 the State Long-Term Care Ombudsman Program; amending s.  
83 400.0089, F.S.; requiring the office to maintain a data  
84 reporting system relating to complaints about and

85 conditions in long-term care facilities and to residents  
 86 therein; requiring the office to publish and include  
 87 certain information in its annual report; amending s.  
 88 400.0091, F.S.; providing for training of employees of the  
 89 office and members of the state and local councils;  
 90 requiring the ombudsman to approve the curriculum and  
 91 providing contents thereof; requiring certification of  
 92 employees by the ombudsman; providing an effective date.

93

94 Be It Enacted by the Legislature of the State of Florida:

95

96 Section 1. Section 400.0060, Florida Statutes, is amended  
 97 to read:

98 400.0060 Definitions.--When used in this part, unless the  
 99 context clearly dictates otherwise ~~requires~~, the term:

100 (1) "Agency" means the Agency for Health Care  
 101 Administration.

102 (2) "Department" means the Department of Elderly Affairs.

103 (3) "Local council" means a local long-term care ombudsman  
 104 council designated by the ombudsman pursuant to s. 400.0069.

105 Local councils are also known as district long-term care  
 106 ombudsman councils or district councils.

107 (4) ~~(2)~~ "Long-term care facility" means a ~~skilled~~ nursing  
 108 home facility, ~~nursing facility~~, assisted living facility, adult  
 109 family-care home, board and care facility, or any other similar  
 110 residential adult care facility ~~center~~.

111 (5) ~~(3)~~ "Office" means the Office of State Long-Term Care  
 112 Ombudsman created by s. 400.0063.

HB 1067

2006

113            ~~(6)(4)~~ "Ombudsman" means the individual appointed by the  
 114 Secretary of Elderly Affairs ~~designated~~ to head the Office of  
 115 State Long-Term Care Ombudsman.

116            ~~(7)(5)~~ "Resident" means an individual ~~60 years of age or~~  
 117 ~~elder~~ who resides in a long-term care facility.

118            ~~(8)(6)~~ "Secretary" means the Secretary of Elderly Affairs.

119            ~~(9)~~ "State council" means the State Long-Term Care  
 120 Ombudsman Council created by s. 400.0067.

121            Section 2. Section 400.0061, Florida Statutes, is amended  
 122 to read:

123            400.0061 Legislative findings and intent; long-term care  
 124 facilities.--

125            (1) The Legislature finds that conditions in long-term  
 126 care facilities in this state are such that the rights, health,  
 127 safety, and welfare of residents are not fully ensured by rules  
 128 of the Department of Elderly Affairs or the Agency for Health  
 129 Care Administration, or by the good faith of owners or operators  
 130 of long-term care facilities. Furthermore, there is a need for a  
 131 formal mechanism whereby a long-term care facility resident, a  
 132 representative of a long-term care facility resident, or any  
 133 other concerned citizen ~~or his or her representative~~ may make a  
 134 complaint against the facility or an employee of the facility  
 135 ~~its employees~~, or against other persons who are in a position to  
 136 restrict, interfere with, or threaten the rights, health,  
 137 safety, or welfare of a long-term care facility ~~the~~ resident.  
 138 The Legislature finds that concerned citizens are often more  
 139 effective advocates for ~~of~~ the rights of others than  
 140 governmental agencies. The Legislature further finds that in

HB 1067

2006

141 order to be eligible to receive an allotment of funds authorized  
142 and appropriated under the federal Older Americans Act, the  
143 state must establish and operate an Office of State Long-Term  
144 Care Ombudsman, to be headed by the State Long-Term Care  
145 Ombudsman, and carry out a long-term care ombudsman program.

146 (2) It is the intent of the Legislature, therefore, to  
147 utilize voluntary citizen ombudsman councils under the  
148 leadership of the ombudsman, and through them to operate an  
149 ombudsman program which shall, without interference by any  
150 executive agency, undertake to discover, investigate, and  
151 determine the presence of conditions or individuals which  
152 constitute a threat to the rights, health, safety, or welfare of  
153 the residents of long-term care facilities. To ensure that the  
154 effectiveness and efficiency of such investigations are not  
155 impeded by advance notice or delay, the Legislature intends that  
156 the ombudsman and ombudsman councils and their designated  
157 representatives not be required to obtain warrants in order to  
158 enter into or conduct investigations or onsite administrative  
159 assessments ~~inspections~~ of long-term care facilities. It is the  
160 further intent of the Legislature that the environment in long-  
161 term care facilities ~~shall~~ be conducive to the dignity and  
162 independence of residents and that investigations by ombudsman  
163 councils shall further the enforcement of laws, rules, and  
164 regulations that safeguard the health, safety, and welfare of  
165 residents.

166 Section 3. Section 400.0063, Florida Statutes, is amended  
167 to read:

HB 1067

2006

168 400.0063 Establishment of Office of State Long-Term Care  
 169 Ombudsman; designation of ombudsman and legal advocate.--

170 (1) There is created an Office of State Long-Term Care  
 171 Ombudsman in the Department of Elderly Affairs.

172 (2) (a) The Office of State Long-Term Care Ombudsman shall  
 173 be headed by the State Long-Term Care Ombudsman, who shall ~~have~~  
 174 ~~expertise and experience in the fields of long-term care and~~  
 175 ~~advocacy, who shall~~ serve on a full-time basis and shall  
 176 personally, or through representatives of the office, carry out  
 177 the purposes and functions of the office ~~of State Long-Term Care~~  
 178 ~~Ombudsman~~ in accordance with state and federal law.

179 (b) The ~~State Long-Term Care~~ ombudsman shall be appointed  
 180 by and shall serve at the pleasure of the Secretary of Elderly  
 181 Affairs. The secretary shall appoint a person who has expertise  
 182 and experience in the fields of long-term care and advocacy to  
 183 serve as ombudsman. ~~No person who has a conflict of interest, or~~  
 184 ~~has an immediate family member who has a conflict of interest,~~  
 185 ~~may be involved in the designation of the ombudsman.~~

186 (3) (a) There is created in the office ~~of State Long-Term~~  
 187 ~~Care Ombudsman~~ the position of legal advocate, who shall be  
 188 selected by and serve at the pleasure of the ombudsman, and ~~who~~  
 189 shall be a member in good standing of The Florida Bar.

190 (b) The duties of the legal advocate shall include, but  
 191 not be limited to:

192 1. Assisting the ombudsman in carrying out the duties of  
 193 the office with respect to the abuse, neglect, or violation of  
 194 rights of residents of long-term care facilities.

HB 1067

2006

195           2. Assisting the state and local ~~ombudsman~~ councils in  
196 carrying out their responsibilities under this part.

197           3. Pursuing administrative, ~~Initiating and prosecuting~~  
198 ~~legal, and other appropriate remedies on behalf of equitable~~  
199 ~~actions to enforce the rights of long-term care facility~~  
200 ~~residents as defined in this chapter.~~

201           4. Serving as legal counsel, in conjunction with the  
202 department's legal counsel, to the state and local ~~ombudsman~~  
203 councils, or individual members thereof, against whom any suit  
204 or other legal action is initiated in connection with the  
205 performance of the official duties of the councils or an  
206 individual member.

207           Section 4. Section 400.0065, Florida Statutes, is amended  
208 to read:

209           400.0065 State Long-Term Care Ombudsman; duties and  
210 responsibilities; ~~conflict of interest.--~~

211           (1) The purpose of the Office of State Long-Term Care  
212 Ombudsman shall be to:

213           (a) Identify, investigate, and resolve complaints made by  
214 or on behalf of residents of long-term care facilities, relating  
215 to actions or omissions by providers or representatives of  
216 providers of long-term care services, other public or private  
217 agencies, guardians, or representative payees that may adversely  
218 affect the health, safety, welfare, or rights of the residents.

219           (b) Provide services that ~~to~~ assist ~~residents~~ in  
220 protecting the health, safety, welfare, and rights of ~~the~~  
221 residents.



222 (c) Inform residents, their representatives, and other  
 223 citizens about obtaining the services of the ~~Office of State~~  
 224 Long-Term Care Ombudsman Program and its representatives.

225 (d) Ensure that residents have regular and timely access  
 226 to the services provided through the office and that residents  
 227 and complainants receive timely responses from representatives  
 228 of the office to their complaints.

229 (e) Represent the interests of residents before  
 230 governmental agencies and seek administrative, legal, and other  
 231 remedies to protect the health, safety, welfare, and rights of  
 232 the residents.

233 (f) Administer the ~~Provide administrative and technical~~  
 234 ~~assistance to~~ state and local ~~ombudsman~~ councils.

235 (g) Analyze, comment on, and monitor the development and  
 236 implementation of federal, state, and local laws, rules, and  
 237 regulations, and other governmental policies and actions, that  
 238 pertain to the health, safety, welfare, and rights of the  
 239 residents, with respect to the adequacy of long-term care  
 240 facilities and services in the state, and recommend any changes  
 241 in such laws, rules, regulations, policies, and actions as the  
 242 office determines to be appropriate and necessary.

243 (h) Provide technical support for the development of  
 244 resident and family councils to protect the well-being and  
 245 rights of residents.

246 (2) The State Long-Term Care Ombudsman shall have the duty  
 247 and authority to:

248 (a) Establish and coordinate ~~Assist and support the~~  
 249 ~~efforts of the State Long Term Care Ombudsman Council in the~~

HB 1067

2006

250 ~~establishment and coordination of local ombudsman councils~~  
251 throughout the state.

252 (b) Perform the duties specified in state and federal law,  
253 rules, and regulations.

254 (c) Within the limits of appropriated federal and state  
255 funding ~~authorized and appropriated~~, employ such personnel,  
256 ~~including staff for local ombudsman councils~~, as are necessary  
257 to perform adequately the functions of the office and provide or  
258 contract for legal services to assist the state and local  
259 ~~ombudsman~~ councils in the performance of their duties. Staff  
260 positions established for the purpose of coordinating the  
261 activities of for each local ombudsman council and assisting its  
262 members may be ~~established as career service positions~~, and  
263 ~~shall be~~ filled by the ombudsman after approval by the  
264 secretary. Notwithstanding any other provision of this part,  
265 upon certification by the ombudsman that the staff member hired  
266 to fill any such position has completed the initial training  
267 required under s. 400.0091, such person shall be considered a  
268 representative of the State Long-Term Care Ombudsman Program for  
269 purposes of this part.

270 (d) Contract for services necessary to carry out the  
271 activities of the office.

272 (e) Apply for, receive, and accept grants, gifts, or other  
273 payments, including, but not limited to, real property, personal  
274 property, and services from a governmental entity or other  
275 public or private entity or person, and make arrangements for  
276 the use of such grants, gifts, or payments.

HB 1067

2006

277 (f) Coordinate, to the greatest extent possible, state and  
278 local ombudsman services with the protection and advocacy  
279 systems for individuals with developmental disabilities and  
280 mental illnesses and with legal assistance programs for the poor  
281 through adoption of memoranda of understanding and other means.

282 (g) Enter into a cooperative agreement with the Statewide  
283 Advocacy Council ~~and district human rights advocacy committees~~  
284 for the purpose of coordinating and avoiding duplication of  
285 advocacy services provided to residents ~~of long-term care~~  
286 ~~facilities~~.

287 (h) Enter into a cooperative agreement with the Medicaid  
288 Fraud Division as prescribed under s. 731(e)(2)(B) of the Older  
289 Americans Act.

290 (i) Prepare an annual report describing the activities  
291 carried out by the office, the state council, and the local  
292 councils in the year for which the report is prepared. The  
293 ombudsman shall submit the report to the secretary at least 30  
294 days before the convening of the regular session of the  
295 Legislature. The secretary shall in turn submit the report to  
296 the United States Assistant Secretary for Aging, the Governor,  
297 the President of the Senate, the Speaker of the House of  
298 Representatives, the Secretary of Children and Family Services,  
299 and the Secretary of Health Care Administration. The report  
300 shall, at a minimum:

301 1. Contain and analyze data collected concerning  
302 complaints about and conditions in long-term care facilities and  
303 the disposition of such complaints.

304 2. Evaluate the problems experienced by residents.

HB 1067

2006

305       3. Analyze the successes of the ombudsman program during  
306 the preceding year, including an assessment of how successfully  
307 the program has carried out its responsibilities under the Older  
308 Americans Act.

309       4. Provide recommendations for policy, regulatory, and  
310 statutory changes designed to solve identified problems; resolve  
311 residents' complaints; improve residents' lives and quality of  
312 care; protect residents' rights, health, safety, and welfare;  
313 and remove any barriers to the optimal operation of the State  
314 Long-Term Care Ombudsman Program.

315       5. Contain recommendations from the State Long-Term Care  
316 Ombudsman Council regarding program functions and activities and  
317 recommendations for policy, regulatory, and statutory changes  
318 designed to protect residents' rights, health, safety, and  
319 welfare.

320       6. Contain any relevant recommendations from the local  
321 councils regarding program functions and activities.

322       ~~(3) The State Long Term Care Ombudsman shall not:~~

323       ~~(a) Have a direct involvement in the licensing or~~  
324 ~~certification of, or an ownership or investment interest in, a~~  
325 ~~long term care facility or a provider of a long term care~~  
326 ~~service.~~

327       ~~(b) Be employed by, or participate in the management of, a~~  
328 ~~long term care facility.~~

329       ~~(c) Receive, or have a right to receive, directly or~~  
330 ~~indirectly, remuneration, in cash or in kind, under a~~  
331 ~~compensation agreement with the owner or operator of a long term~~  
332 ~~care facility.~~

333  
 334 ~~The Department of Elderly Affairs shall adopt rules to establish~~  
 335 ~~procedures to identify and eliminate conflicts of interest as~~  
 336 ~~described in this subsection.~~

337 Section 5. Section 400.0066, Florida Statutes, is  
 338 repealed.

339 Section 6. Section 400.0067, Florida Statutes, is amended  
 340 to read:

341 400.0067 State Long-Term Care Ombudsman Council; duties;  
 342 membership.--

343 (1) There is created within the Office of State Long-Term  
 344 Care Ombudsman, the State Long-Term Care Ombudsman Council.

345 (2) The State Long-Term Care Ombudsman Council shall:

346 (a) Serve as an advisory body to assist the ombudsman in  
 347 reaching a consensus among local ombudsman councils on issues  
 348 affecting residents and impacting the optimal operation of the  
 349 program of statewide concern.

350 (b) Serve as an appellate body in receiving from the local  
 351 ~~ombudsman~~ councils complaints not resolved at the local level.  
 352 Any individual member or members of the state ombudsman council  
 353 may enter any long-term care facility involved in an appeal,  
 354 pursuant to the conditions specified in s. 400.0074(2)  
 355 ~~400.0069(3).~~

356 (c) Assist the ombudsman to discover, investigate, and  
 357 determine the existence of abuse or neglect in any long-term  
 358 care facility. ~~The Department of Elderly Affairs shall develop~~  
 359 ~~procedures relating to such investigations. Investigations may~~

HB 1067

2006

360 ~~consist, in part, of one or more onsite administrative~~  
361 ~~inspections.~~

362 (d) Assist the ombudsman in eliciting, receiving,  
363 responding to, and resolving complaints made by or on behalf of  
364 ~~long term care facility residents and in developing procedures~~  
365 ~~relating to the receipt and resolution of such complaints. The~~  
366 ~~secretary shall approve all such procedures.~~

367 (e) Elicit and coordinate state, local, and voluntary  
368 organizational assistance for the purpose of improving the care  
369 received by residents ~~of a long term care facility.~~

370 (f) Assist the ombudsman in preparing the annual report  
371 described in s. 400.0065. Prepare an annual report describing  
372 ~~the activities carried out by the ombudsman and the State Long-~~  
373 ~~Term Care Ombudsman Council in the year for which the report is~~  
374 ~~prepared. The State Long Term Care Ombudsman Council shall~~  
375 ~~submit the report to the Secretary of Elderly Affairs. The~~  
376 ~~secretary shall in turn submit the report to the Commissioner of~~  
377 ~~the United States Administration on Aging, the Governor, the~~  
378 ~~President of the Senate, the Speaker of the House of~~  
379 ~~Representatives, the minority leaders of the House and Senate,~~  
380 ~~the chairpersons of appropriate House and Senate committees, the~~  
381 ~~Secretary of Children and Family Services, and the Secretary of~~  
382 ~~Health Care Administration. The report shall be submitted by the~~  
383 ~~Secretary of Elderly Affairs at least 30 days before the~~  
384 ~~convening of the regular session of the Legislature and shall,~~  
385 ~~at a minimum:~~

386 1. ~~Contain and analyze data collected concerning~~  
387 ~~complaints about and conditions in long term care facilities.~~

HB 1067

2006

388           ~~2. Evaluate the problems experienced by residents of long-~~  
389 ~~term care facilities.~~

390           ~~3. Contain recommendations for improving the quality of~~  
391 ~~life of the residents and for protecting the health, safety,~~  
392 ~~welfare, and rights of the residents.~~

393           ~~4. Analyze the success of the ombudsman program during the~~  
394 ~~preceding year and identify the barriers that prevent the~~  
395 ~~optimal operation of the program. The report of the program's~~  
396 ~~successes shall also address the relationship between the state~~  
397 ~~long term care ombudsman program, the Department of Elderly~~  
398 ~~Affairs, the Agency for Health Care Administration, and the~~  
399 ~~Department of Children and Family Services, and an assessment of~~  
400 ~~how successfully the state long term care ombudsman program has~~  
401 ~~carried out its responsibilities under the Older Americans Act.~~

402           ~~5. Provide policy and regulatory and legislative~~  
403 ~~recommendations to solve identified problems; resolve residents'~~  
404 ~~complaints; improve the quality of care and life of the~~  
405 ~~residents; protect the health, safety, welfare, and rights of~~  
406 ~~the residents; and remove the barriers to the optimal operation~~  
407 ~~of the state long term care ombudsman program.~~

408           ~~6. Contain recommendations from the local ombudsman~~  
409 ~~councils regarding program functions and activities.~~

410           ~~7. Include a report on the activities of the legal~~  
411 ~~advocate and other legal advocates acting on behalf of the local~~  
412 ~~and state councils.~~

413           (3)(a) The State Long-Term Care Ombudsman Council shall be  
414 composed of one active local council member elected ~~designated~~

HB 1067

2006

415 by each local council plus three at-large members ~~persons~~  
 416 appointed by the Governor.

417 (a) Each local council shall elect by majority vote a  
 418 representative from among the council members to represent the  
 419 interests of the local council on the state council. A local  
 420 council chair may not serve as the representative of the local  
 421 council on the state council.

422 (b)1. The secretary, after consulting ~~ombudsman, in~~  
 423 ~~consultation~~ with the ombudsman ~~secretary~~, shall submit to the  
 424 Governor a list of persons recommended for appointment to the  
 425 at-large positions on the state council. The list shall not  
 426 include the name of any person who is currently at least eight  
 427 ~~names of persons who are not~~ serving on a local council.

428 2. The Governor shall appoint three at-large members  
 429 chosen from the list, ~~at least one of whom must be over 60 years~~  
 430 ~~of age.~~

431 3. If the Governor does not appoint an at-large member to  
 432 fill a vacant position ~~Governor's appointments are not made~~  
 433 within 60 days after the ~~ombudsman submits~~ the list is  
 434 submitted, the secretary, after consulting with the ombudsman,  
 435 ~~in consultation with the secretary~~, shall appoint an at-large  
 436 member to fill that vacant position ~~three members, one of whom~~  
 437 ~~must be over 60 years of age.~~

438 (c)1. All state council members shall ~~be appointed to~~  
 439 serve 3-year terms.

440 2. A member of the state ~~Long-Term Care Ombudsman~~ council  
 441 may not serve more than two consecutive terms.



HB 1067

2006

442       3. State council members serve at the pleasure of the  
443 Governor. A local council may recommend removal of its elected  
444 representative from the state council by a majority vote. If the  
445 council votes to remove its representative, the local council  
446 chair shall immediately notify the ombudsman. The secretary  
447 shall advise the Governor of the local council's vote upon  
448 receiving notice from the ombudsman. ~~Any vacancy shall be filled~~  
449 ~~in the same manner as the original appointment.~~

450       4. The position of any member missing three state council  
451 meetings within a 1-year period ~~consecutive regular meetings~~  
452 without cause ~~may~~ shall be declared vacant by the ombudsman. The  
453 findings of the ombudsman regarding cause shall be final and  
454 binding.

455       5. Any vacancy on the state council shall be filled in the  
456 same manner as the original appointment.

457       (d)1. The state ~~ombudsman~~ council shall elect a chair to  
458 serve for a term of 1 year. A chair may not serve more than two  
459 consecutive terms ~~chairperson for a term of 1 year from among~~  
460 ~~the members who have served for at least 1 year.~~

461       2. The chair ~~chairperson~~ shall select a vice chair  
462 ~~chairperson~~ from among the members. The vice chair ~~chairperson~~  
463 shall preside over the state council in the absence of the chair  
464 ~~chairperson.~~

465       3. The chair may create additional executive positions as  
466 necessary to carry out the duties of the state council. Any  
467 person appointed to an executive position shall serve at the  
468 pleasure of the chair, and his or her term shall expire on the  
469 same day as the term of the chair.

470       4. A chair may be immediately removed from office prior to  
 471 the expiration of his or her term by a vote of two-thirds of all  
 472 state council members present at any meeting at which a quorum  
 473 is present. If a chair is removed from office prior to the  
 474 expiration of his or her term, a replacement chair shall be  
 475 chosen during the same meeting in the same manner as described  
 476 in this paragraph, and the term of the replacement chair shall  
 477 begin immediately. The replacement chair shall serve for the  
 478 remainder of the term and is eligible to serve two subsequent  
 479 consecutive terms.

480       (e)1. The state ~~ombudsman~~ council shall meet upon the call  
 481 of the chair or upon the call of the ombudsman. The council  
 482 shall meet chairperson, at least quarterly but may meet ~~or~~ more  
 483 frequently as needed.

484       2. A quorum shall be considered present if more than 50  
 485 percent of all active state council members are in attendance at  
 486 the same meeting.

487       3. Neither the state council nor any of its individual  
 488 members may vote on or otherwise make any binding decisions that  
 489 will directly impact the state council or any local council  
 490 outside of a publicly noticed meeting at which a quorum is  
 491 present.

492       (f) Members shall receive no compensation but shall, with  
 493 approval from the ombudsman, be reimbursed for per diem and  
 494 travel expenses as provided in s. 112.061.

495       ~~(4) No officer, employee, or representative of the Office~~  
 496 ~~of State Long Term Care Ombudsman or of the State Long Term Care~~  
 497 ~~Ombudsman Council, nor any member of the immediate family of~~

498 ~~such officer, employee, or representative, may have a conflict~~  
 499 ~~of interest. The ombudsman shall adopt rules to identify and~~  
 500 ~~remove conflicts of interest.~~

501 ~~(5) The Department of Elderly Affairs shall make a~~  
 502 ~~separate and distinct request for an appropriation for all~~  
 503 ~~expenses for the state and local ombudsman councils.~~

504 Section 7. Section 400.0069, Florida Statutes, is amended  
 505 to read:

506 400.0069 Local long-term care ombudsman councils; duties;  
 507 membership.--

508 (1) (a) The ombudsman shall designate local long-term care  
 509 ombudsman councils to carry out the duties of the State Long-  
 510 Term Care Ombudsman Program within local communities. Each local  
 511 council shall function under the direction of the ombudsman.

512 (b) The ombudsman shall ensure that there is ~~There shall~~  
 513 ~~be at least one local long term care ombudsman council operating~~  
 514 ~~in each of the department's planning and service areas of the~~  
 515 ~~Department of Elderly Affairs, which shall function under the~~  
 516 ~~direction of the ombudsman and the state ombudsman council. The~~  
 517 ombudsman may create additional local councils as necessary to  
 518 ensure that residents throughout the state have adequate access  
 519 to State Long-Term Care Ombudsman Program services. The  
 520 ombudsman, after approval from the secretary, shall designate  
 521 the jurisdictional boundaries of each local council.

522 (2) The duties of the local councils ~~ombudsman council~~ are  
 523 to:

524 (a) ~~To~~ Serve as a third-party mechanism for protecting the  
 525 health, safety, welfare, and civil and human rights of residents  
 526 ~~of a long term care facility.~~

527 (b) ~~To~~ Discover, investigate, and determine the existence  
 528 of abuse or neglect in any long-term care facility and to use  
 529 the procedures provided for in ss. 415.101-415.113 when  
 530 applicable. ~~Investigations may consist, in part, of one or more~~  
 531 ~~onsite administrative inspections.~~

532 (c) ~~To~~ Elicit, receive, investigate, respond to, and  
 533 resolve complaints made by, or on behalf of, ~~long term care~~  
 534 ~~facility~~ residents.

535 (d) ~~To~~ Review and, if necessary, ~~to~~ comment on, ~~for their~~  
 536 ~~effect on the rights of long term care facility residents,~~ all  
 537 existing or proposed rules, regulations, and other governmental  
 538 policies and actions relating to long-term care facilities that  
 539 may potentially have an effect on the rights, health, safety,  
 540 and welfare of residents.

541 (e) ~~To~~ Review personal property and money accounts of  
 542 ~~Medicaid~~ residents who are receiving assistance under the  
 543 Medicaid program pursuant to an investigation to obtain  
 544 information regarding a specific complaint or problem.

545 (f) Recommend that the ombudsman and the legal advocate ~~To~~  
 546 ~~represent the interests of residents before government agencies~~  
 547 ~~and to~~ seek administrative, legal, and other remedies to protect  
 548 the health, safety, welfare, and rights of the residents.

549 (g) ~~To~~ Carry out other activities that the ombudsman  
 550 determines to be appropriate.

551 (3) In order to carry out the duties specified in  
 552 subsection (2), a member of a the local ombudsman council is  
 553 authorized, ~~pursuant to ss. 400.19(1) and 400.434,~~ to enter any  
 554 long-term care facility without notice or first obtaining a  
 555 warrant, subject to the provisions of s. 400.0074(2)  
 556 ~~400.0073(5).~~

557 (4) Each local ~~ombudsman~~ council shall be composed of  
 558 members whose primary residence is located within the boundaries  
 559 of the local council's jurisdiction.

560 (a) The ombudsman shall strive to ensure that each local  
 561 council no less than 15 members and no more than 40 members from  
 562 the local planning and service area, to include the following  
 563 persons as members:

564 1. At least one medical or osteopathic physician whose  
 565 practice includes or has included a substantial number of  
 566 geriatric patients and who may ~~have limited~~ practice in a long-  
 567 term care facility;

568 2. At least one registered nurse who has geriatric  
 569 experience, ~~if possible;~~

570 3. At least one licensed pharmacist;

571 4. At least one registered dietitian;

572 5. At least six nursing home residents or representative  
 573 consumer advocates for nursing home residents;

574 6. At least three residents of assisted living facilities  
 575 or adult family-care homes or three representative consumer  
 576 advocates for alternative long-term care facility residents;

577 7. At least one attorney; and

578 8. At least one professional social worker.

HB 1067

2006

579        (b) In no case shall the medical director of a long-term  
580 care facility or an employee of the agency ~~for Health Care~~  
581 ~~Administration, the department,~~ the Department of Children and  
582 Family Services, or the Agency for Persons with Disabilities  
583 ~~Department of Elderly Affairs~~ serve as a member or as an ex  
584 officio member of a council. ~~Each member of the council shall~~  
585 ~~certify that neither the council member nor any member of the~~  
586 ~~council member's immediate family has any conflict of interest~~  
587 ~~pursuant to subsection (10). Local ombudsman councils are~~  
588 ~~encouraged to recruit council members who are 60 years of age or~~  
589 ~~older.~~

590        (5) (a) Individuals wishing to join a local council shall  
591 submit an application to the ombudsman. The ombudsman shall  
592 review the individual's application and advise the secretary of  
593 his or her recommendation for approval or disapproval of the  
594 candidate's membership on the local council. If the secretary  
595 approves of the individual's membership, the individual shall be  
596 appointed as a member of the local council.

597        (b) The secretary may rescind the ombudsman's approval of  
598 a member on a local council at any time. If the secretary  
599 rescinds the approval of a member on a local council, the  
600 ombudsman shall ensure that the individual is immediately  
601 removed from the local council on which he or she serves and the  
602 individual may no longer represent the State Long-Term Care  
603 Ombudsman Program until the secretary provides his or her  
604 approval.

605        (c) A local council may recommend the removal of one or  
606 more of its members by submitting to the ombudsman a resolution

HB 1067

2006

607 adopted by a two-thirds vote of the members of the council  
608 stating the name of the member or members recommended for  
609 removal and the reasons for the recommendation. If such a  
610 recommendation is adopted by a local council, the local council  
611 chair or district coordinator shall immediately report the  
612 council's recommendation to the ombudsman. The ombudsman shall  
613 review the recommendation of the local council and advise the  
614 secretary of his or her recommendation regarding removal of the  
615 council member or members. All members shall be appointed to  
616 ~~serve 3-year terms. Upon expiration of a term and in case of any~~  
617 ~~other vacancy, the council shall select a replacement by~~  
618 ~~majority vote. The ombudsman shall review the selection of the~~  
619 ~~council and recommend approval or disapproval to the Governor.~~  
620 ~~If no action is taken by the Governor to approve or disapprove~~  
621 ~~the replacement of a member within 30 days after the ombudsman~~  
622 ~~has notified the Governor of his or her recommendation, the~~  
623 ~~replacement shall be considered disapproved and the process for~~  
624 ~~selection of a replacement shall be repeated.~~

625 (6) (a) Each ~~The local ombudsman~~ council shall elect a  
626 chair for a term of 1 year. There shall be no limitation on the  
627 number of terms that an approved member of a local council may  
628 serve as chair ~~from members who have served at least 1 year.~~

629 (b) The chair shall select a vice chair from among the  
630 members of the council. The vice chair shall preside over the  
631 council in the absence of the chair.

632 (c) The chair may create additional executive positions as  
633 necessary to carry out the duties of the local council. Any  
634 person appointed to an executive position shall serve at the

HB 1067

2006

635 pleasure of the chair, and his or her term shall expire on the  
 636 same day as the term of the chair.

637 (d) A chair may be immediately removed from office prior  
 638 to the expiration of his or her term by a vote of two-thirds of  
 639 the members of the local council. If any chair is removed from  
 640 office prior to the expiration of his or her term, a replacement  
 641 chair shall be elected during the same meeting, and the term of  
 642 the replacement chair shall begin immediately. The replacement  
 643 chair shall serve for the remainder of the term of the person he  
 644 or she replaced.

645 (7) Each ~~The local ombudsman~~ council shall meet upon the  
 646 call of its ~~the~~ chair or upon the call of the ombudsman. Each  
 647 local council shall meet, at least once a month but may meet ~~or~~  
 648 more frequently if necessary ~~as needed to handle emergency~~  
 649 ~~situations.~~

650 (8) A member of a local ~~ombudsman~~ council shall receive no  
 651 compensation but shall, with approval from the ombudsman, be  
 652 reimbursed for travel expenses both within and outside the  
 653 jurisdiction of the local council ~~county of residence~~ in  
 654 accordance with the provisions of s. 112.061.

655 (9) The local ~~ombudsman~~ councils are authorized to call  
 656 upon appropriate agencies of state government for such  
 657 professional assistance as may be needed in the discharge of  
 658 their duties. All state agencies shall cooperate with the local  
 659 ~~ombudsman~~ councils in providing requested information and agency  
 660 representation ~~representatives~~ at council meetings.

661 ~~(10) No officer, employee, or representative of a local~~  
 662 ~~long term care ombudsman council, nor any member of the~~



HB 1067

2006

663 ~~immediate family of such officer, employee, or representative,~~  
664 ~~may have a conflict of interest. The ombudsman shall adopt rules~~  
665 ~~to identify and remove conflicts of interest.~~

666 Section 8. Section 400.0070, Florida Statutes, is created  
667 to read:

668 400.0070 Conflicts of interest.--

669 (1) The ombudsman shall not:

670 (a) Have a direct involvement in the licensing or  
671 certification of, or an ownership or investment interest in, a  
672 long-term care facility or a provider of a long-term care  
673 service.

674 (b) Be employed by, or participate in the management of, a  
675 long-term care facility.

676 (c) Receive, or have a right to receive, directly or  
677 indirectly, remuneration, in cash or in kind, under a  
678 compensation agreement with the owner or operator of a long-term  
679 care facility.

680 (2) Each employee of the office, each state council  
681 member, and each local council member shall certify that he or  
682 she has no conflict of interest.

683 (3) The department shall define by rule:

684 (a) Situations that constitute a person having a conflict  
685 of interest that could materially affect the objectivity or  
686 capacity of a person to serve on an ombudsman council, or as an  
687 employee of the office, while carrying out the purposes of the  
688 State Long-Term Care Ombudsman Program as specified in this  
689 part.

690           (b) The procedure by which a person listed in subsection  
 691 (2) shall certify that he or she has no conflict of interest.

692           Section 9. Section 400.0071, Florida Statutes, is amended  
 693 to read:

694           400.0071 State Long-Term Care Ombudsman Program complaint  
 695 procedures.--

696           (1) The ~~state~~ ombudsman, in consultation with the state  
 697 council, shall develop ~~recommend to the ombudsman and the~~  
 698 ~~secretary~~ state and local procedures for:

699           (a) Receiving complaints against a ~~nursing home or~~ long-  
 700 term care facility or ~~an its~~ employee of a long-term care  
 701 facility.

702           (b) Conducting investigations of a long-term care facility  
 703 or an employee or employees of such a facility subsequent to  
 704 receiving a complaint.

705           (c) Conducting onsite administrative assessments of long-  
 706 term care facilities. ~~The procedures shall be implemented after~~  
 707 ~~the approval of the ombudsman and the secretary.~~

708           (2) The ombudsman shall implement all procedures developed  
 709 under this section after receiving approval from the secretary.  
 710 ~~These procedures shall be posted in full view in every nursing~~  
 711 ~~home or long term care facility. Every resident or~~  
 712 ~~representative of a resident shall receive, upon admission to a~~  
 713 ~~nursing home or long term care facility, a printed copy of the~~  
 714 ~~procedures of the state and the local ombudsman councils.~~

715           Section 10. Section 400.0073, Florida Statutes, is amended  
 716 to read:

HB 1067

2006

717 400.0073 State and local ombudsman council  
 718 investigations.--

719 (1) A local ~~ombudsman~~ council shall investigate, within a  
 720 reasonable time after a complaint is made, any complaint of a  
 721 resident, a ~~or~~ representative of a resident, or any other  
 722 credible source based on an action or omission by an  
 723 administrator, an ~~or~~ employee, or a representative of a ~~nursing~~  
 724 ~~home~~ or long-term care facility which might be:

- 725 (a) Contrary to law;;-
- 726 (b) Unreasonable, unfair, oppressive, or unnecessarily  
 727 discriminatory, even though in accordance with law;;-
- 728 (c) Based on a mistake of fact;;-
- 729 (d) Based on improper or irrelevant grounds;;-
- 730 (e) Unaccompanied by an adequate statement of reasons;;-
- 731 (f) Performed in an inefficient manner; or-
- 732 (g) Otherwise adversely affecting the health, safety,  
 733 welfare, or rights of a resident ~~erroneous~~.

734 (2) In an investigation, both the state and local  
 735 ~~ombudsman~~ councils have the authority to hold public hearings.

736 (3) Subsequent to an appeal from a local ~~ombudsman~~  
 737 council, the state ~~ombudsman~~ council may investigate any  
 738 complaint received by the local council involving a ~~nursing home~~  
 739 or long-term care facility or a resident.

740 (4) If the ombudsman or any state or local council member  
 741 is not allowed to enter a long-term care facility, the  
 742 administrator of the facility shall be considered to have  
 743 interfered with a representative of the office, the state  
 744 council, or the local council in the performance of official

745 duties as described in s. 400.0083(1) and to have committed a  
746 violation of this part. The ombudsman shall report a facility's  
747 refusal to allow entry to the agency, and the agency shall  
748 record the report and take it into consideration when  
749 determining actions allowable under s. 400.102, s. 400.121, s.  
750 400.414, s. 400.419, s. 400.6194, or s. 400.6196. In addition to  
751 ~~any specific investigation made pursuant to a complaint, the~~  
752 ~~local ombudsman council shall conduct, at least annually, an~~  
753 ~~investigation, which shall consist, in part, of an onsite~~  
754 ~~administrative inspection, of each nursing home or long term~~  
755 ~~care facility within its jurisdiction. This inspection shall~~  
756 ~~focus on the rights, health, safety, and welfare of the~~  
757 ~~residents.~~

758 ~~(5) Any onsite administrative inspection conducted by an~~  
759 ~~ombudsman council shall be subject to the following:~~

760 ~~(a) All inspections shall be at times and for durations~~  
761 ~~necessary to produce the information required to carry out the~~  
762 ~~duties of the council.~~

763 ~~(b) No advance notice of an inspection shall be provided~~  
764 ~~to any nursing home or long term care facility, except that~~  
765 ~~notice of followup inspections on specific problems may be~~  
766 ~~provided.~~

767 ~~(c) Inspections shall be conducted in a manner which will~~  
768 ~~impose no unreasonable burden on nursing homes or long term care~~  
769 ~~facilities, consistent with the underlying purposes of this~~  
770 ~~part. Unnecessary duplication of efforts among council members~~  
771 ~~or the councils shall be reduced to the extent possible.~~

772 ~~(d) Any ombudsman council member physically present for~~  
 773 ~~the inspection shall identify himself or herself and the~~  
 774 ~~statutory authority for his or her inspection of the facility.~~

775 ~~(e) Inspections may not unreasonably interfere with the~~  
 776 ~~programs and activities of clients within the facility.~~  
 777 ~~Ombudsman council members shall respect the rights of residents.~~

778 ~~(f) All inspections shall be limited to compliance with~~  
 779 ~~parts II, III, and VII of this chapter and 42 U.S.C. ss. 1396(a)~~  
 780 ~~et seq., and any rules or regulations promulgated pursuant to~~  
 781 ~~such laws.~~

782 ~~(g) No ombudsman council member shall enter a single~~  
 783 ~~family residential unit within a long term care facility without~~  
 784 ~~the permission of the resident or the representative of the~~  
 785 ~~resident.~~

786 ~~(h) Any inspection resulting from a specific complaint~~  
 787 ~~made to an ombudsman council concerning a facility shall be~~  
 788 ~~conducted within a reasonable time after the complaint is made.~~

789 ~~(6) An inspection may not be accomplished by forcible~~  
 790 ~~entry. Refusal of a long term care facility to allow entry of~~  
 791 ~~any ombudsman council member constitutes a violation of part II,~~  
 792 ~~part III, or part VII of this chapter.~~

793 Section 11. Section 400.0074, Florida Statutes, is created  
 794 to read:

795 400.0074 Local ombudsman council onsite administrative  
 796 assessments.--

797 (1) In addition to any specific investigation conducted  
 798 pursuant to a complaint, the local council shall conduct, at  
 799 least annually, an onsite administrative assessment of each

800 nursing home, assisted living facility, and adult family-care  
801 home within its jurisdiction. This administrative assessment  
802 shall focus on factors affecting the rights, health, safety, and  
803 welfare of the residents. Each local council is encouraged to  
804 conduct a similar onsite administrative assessment of each  
805 additional long-term care facility within its jurisdiction.

806 (2) An onsite administrative assessment conducted by a  
807 local council shall be subject to the following conditions:

808 (a) To the extent possible and reasonable, the  
809 administrative assessments shall not duplicate the efforts of  
810 the agency surveys and inspections conducted under parts II,  
811 III, and VII of this chapter.

812 (b) An administrative assessment shall be conducted at a  
813 time and for a duration necessary to produce the information  
814 required to carry out the duties of the local council.

815 (c) Advance notice of an administrative assessment may not  
816 be provided to a long-term care facility, except that notice of  
817 followup assessments on specific problems may be provided.

818 (d) A local council member physically present for the  
819 administrative assessment shall identify himself or herself and  
820 cite the specific statutory authority for his or her assessment  
821 of the facility.

822 (e) An administrative assessment may not unreasonably  
823 interfere with the programs and activities of residents.

824 (f) A local council member may not enter a single-family  
825 residential unit within a long-term care facility during an  
826 administrative assessment without the permission of the resident  
827 or the representative of the resident.

828 (3) Regardless of jurisdiction, the ombudsman may  
 829 authorize a state or local council member to assist another  
 830 local council to perform the administrative assessments  
 831 described in this section.

832 (4) An onsite administrative assessment may not be  
 833 accomplished by forcible entry. However, if the ombudsman or a  
 834 state or local council member is not allowed to enter a long-  
 835 term care facility, the administrator of the facility shall be  
 836 considered to have interfered with a representative of the  
 837 office, the state council, or the local council in the  
 838 performance of official duties as described in s. 400.0083(1)  
 839 and to have committed a violation of this part. The ombudsman  
 840 shall report the refusal by a facility to allow entry to the  
 841 agency, and the agency shall record the report and take it into  
 842 consideration when determining actions allowable under s.  
 843 400.102, s. 400.121, s. 400.414, s. 400.419, s. 400.6194, or s.  
 844 400.6196.

845 Section 12. Section 400.0075, Florida Statutes, is amended  
 846 to read:

847 400.0075 Complaint notification and resolution  
 848 procedures.--

849 (1)(a) Any complaint or, including any problem verified  
 850 identified by an ombudsman council as a result of an  
 851 investigation or onsite administrative assessment, which  
 852 complaint or problem is determined to require, deemed valid and  
 853 requiring remedial action by the local ~~ombudsman~~ council, shall  
 854 be identified and brought to the attention of the long-term care  
 855 facility administrator in writing. Upon receipt of such

HB 1067

2006

856 document, the administrator, ~~in concurrence~~ with the concurrence  
857 of the local ombudsman council chair, shall establish target  
858 dates for taking appropriate remedial action. If, by the target  
859 date, the remedial action is not completed or forthcoming, the  
860 local ~~ombudsman~~ council chair may, after obtaining approval from  
861 the ombudsman and a majority of the members of the local  
862 council:

863 1. ~~(a)~~ Extend the target date if the chair ~~council~~ has  
864 reason to believe such action would facilitate the resolution of  
865 the complaint.

866 2. ~~(b)~~ In accordance with s. 400.0077, publicize the  
867 complaint, the recommendations of the council, and the response  
868 of the long-term care facility.

869 3. ~~(e)~~ Refer the complaint to the state ~~ombudsman~~ council.

870 (b) If the local council chair believes that the health,  
871 safety, welfare, or rights of the resident are in imminent  
872 danger, the chair shall notify the ombudsman or legal advocate,  
873 who, after verifying that such imminent danger exists, shall  
874 ~~local long term care ombudsman council may~~ seek immediate legal  
875 or administrative remedies to protect the resident.

876 (c) If the ombudsman has reason to believe that the long-  
877 term care facility or an employee of the facility has committed  
878 a criminal act, the ombudsman shall provide the local law  
879 enforcement agency with the relevant information to initiate an  
880 investigation of the case.

881 (2) (a) Upon referral from a ~~the~~ local ~~ombudsman~~ council,  
882 the state ~~ombudsman~~ council shall assume the responsibility for  
883 the disposition of the complaint. If a long-term care facility



HB 1067

2006

884 fails to take action on a complaint ~~found valid~~ by the state  
885 ~~ombudsman~~ council, the state council may, after obtaining  
886 approval from the ombudsman and a majority of the state council  
887 members:

888 1.~~(a)~~ In accordance with s. 400.0077, publicize the  
889 complaint, the recommendations of the local or state council,  
890 and the response of the long-term care facility.

891 2.~~(b)~~ Recommend to the department and the agency a series  
892 of facility reviews pursuant to s. 400.19~~(4)~~, s. 400.434, or s.  
893 400.619 to ensure ~~assure~~ correction and nonrecurrence of  
894 conditions that give rise to complaints against a long-term care  
895 facility.

896 ~~(c) Recommend to the agency changes in rules for~~  
897 ~~inspecting and licensing or certifying long term care~~  
898 ~~facilities, and recommend to the Agency for Health Care~~  
899 ~~Administration changes in rules for licensing and regulating~~  
900 ~~long term care facilities.~~

901 ~~(d) Refer the complaint to the state attorney for~~  
902 ~~prosecution if there is reason to believe the long term care~~  
903 ~~facility or its employee is guilty of a criminal act.~~

904 3.~~(e)~~ Recommend to the department and the agency ~~for~~  
905 ~~Health Care Administration~~ that the long-term care facility no  
906 longer receive payments under any ~~the~~ state ~~Medical~~ assistance  
907 program, including ~~(Medicaid)~~.

908 4.~~(f)~~ Recommend ~~to that~~ the department and the agency that  
909 initiate procedures be initiated for revocation of the long-term  
910 care facility's license in accordance with chapter 120.

911 ~~(g) Seek legal, administrative, or other remedies to~~  
 912 ~~protect the health, safety, welfare, or rights of the resident.~~

913 (b) If the state council chair believes that the health,  
 914 safety, welfare, or rights of the resident are in imminent  
 915 danger, the chair shall notify the ombudsman or legal advocate,  
 916 who, after verifying that such imminent danger exists, State  
 917 ~~Long Term Care Ombudsman Council~~ shall seek immediate legal or  
 918 administrative remedies to protect the resident.

919 (c) If the ombudsman has reason to believe that the long-  
 920 term care facility or an employee of the facility has committed  
 921 a criminal act, the ombudsman shall provide local law  
 922 enforcement with the relevant information to initiate an  
 923 investigation of the case.

924 ~~(3) The state ombudsman council shall provide, as part of~~  
 925 ~~its annual report required pursuant to s. 400.0067(2)(f),~~  
 926 ~~information relating to the disposition of all complaints to the~~  
 927 ~~Department of Elderly Affairs.~~

928 Section 13. Section 400.0078, Florida Statutes, is amended  
 929 to read:

930 400.0078 Citizen access to State Long-Term Care Ombudsman  
 931 Program services ~~Statewide toll-free telephone number.--~~

932 (1) The office of State Long Term Care Ombudsman shall  
 933 establish a statewide toll-free telephone number for receiving  
 934 complaints concerning matters adversely affecting the health,  
 935 safety, welfare, or rights of residents ~~nursing facilities.~~

936 (2) Every resident or representative of a resident shall  
 937 receive, upon admission to a long-term care facility,  
 938 information regarding the purpose of the State Long-Term Care

HB 1067

2006

939 Ombudsman Program, the statewide toll-free telephone number for  
 940 receiving complaints, and other relevant information regarding  
 941 how to contact the program. Residents or their representatives  
 942 must be furnished additional copies of this information upon  
 943 request.

944 Section 14. Section 400.0079, Florida Statutes, is amended  
 945 to read:

946 400.0079 Immunity.--

947 (1) Any person making a complaint pursuant to this part  
 948 ~~act~~ who does so in good faith shall be immune from any  
 949 liability, civil or criminal, that otherwise might be incurred  
 950 or imposed as a direct or indirect result of making the  
 951 complaint.

952 (2) The ombudsman or any person authorized by the  
 953 ombudsman to act ~~acting~~ on behalf of the office, as well as all  
 954 members of State Long Term Care Ombudsman or the state and or a  
 955 local councils, long term care ombudsman council shall be immune  
 956 from any liability, civil or criminal, that otherwise might be  
 957 incurred or imposed, during the good faith performance of  
 958 official duties.

959 Section 15. Section 400.0081, Florida Statutes, is amended  
 960 to read:

961 400.0081 Access to facilities, residents, and records.--

962 (1) A long-term care facility shall provide the office of  
 963 ~~State Long Term Care Ombudsman,~~ the state ~~Long Term Care~~  
 964 ~~Ombudsman~~ council and its members, and the local councils and  
 965 their members ~~long term care ombudsman councils, or their~~  
 966 ~~representatives,~~ shall have access to:

HB 1067

2006

967           (a) Any portion of the long-term care facility and any  
 968 resident as necessary to investigate or resolve a complaint  
 969 ~~facilities and residents.~~

970           (b) Medical and social records of a resident for review as  
 971 necessary to investigate or resolve a complaint, if:

972               1. The office has the permission of the resident or the  
 973 legal representative of the resident; or

974               2. The resident is unable to consent to the review and has  
 975 no legal representative.

976           (c) Medical and social records of the resident as  
 977 necessary to investigate or resolve a complaint, if:

978               1. A legal representative ~~guardian~~ of the resident refuses  
 979 to give permission.

980               2. The office has reasonable cause to believe that the  
 981 representative ~~guardian~~ is not acting in the best interests of  
 982 the resident.

983               3. The state or local council member ~~representative~~  
 984 obtains the approval of the ombudsman.

985           (d) The administrative records, policies, and documents to  
 986 which ~~the residents,~~ or the general public, have access.

987           (e) Upon request, copies of all licensing and  
 988 certification records maintained by the state with respect to a  
 989 long-term care facility.

990           ~~(2) Notwithstanding paragraph (1)(b), if, pursuant to a~~  
 991 ~~complaint investigation by the state ombudsman council or a~~  
 992 ~~local ombudsman council, the legal representative of the~~  
 993 ~~resident refuses to give permission for the release of the~~  
 994 ~~resident's records, and if the Office of State Long Term Care~~

HB 1067

2006

995 ~~Ombudsman has reasonable cause to find that the legal~~  
 996 ~~representative is not acting in the best interests of the~~  
 997 ~~resident, the medical and social records of the resident must be~~  
 998 ~~made available to the state or local council as is necessary for~~  
 999 ~~the members of the council to investigate the complaint.~~

1000 (2)~~(3)~~ The department of ~~Elderly Affairs~~, in consultation  
 1001 with the ombudsman and the state ~~Long Term Care Ombudsman~~  
 1002 council, may ~~shall~~ adopt rules to establish procedures to ensure  
 1003 access to facilities, residents, and records as described in  
 1004 this section.

1005 Section 16. Section 400.0083, Florida Statutes, is amended  
 1006 to read:

1007 400.0083 Interference; retaliation; penalties.--

1008 (1) It shall be unlawful for any person, long-term care  
 1009 facility, or other entity to willfully interfere with a  
 1010 representative of the office of ~~State Long Term Care Ombudsman~~,  
 1011 the state ~~Long Term Care Ombudsman~~ council, or a local ~~long term~~  
 1012 ~~care ombudsman~~ council in the performance of official duties.

1013 (2) It shall be unlawful for any person, long-term care  
 1014 facility, or other entity to knowingly or willfully take action  
 1015 or retaliate against any resident, employee, or other person for  
 1016 filing a complaint with, providing information to, or otherwise  
 1017 cooperating with any representative of the office of ~~State Long~~  
 1018 ~~Term Care Ombudsman~~, the state ~~Long Term Care Ombudsman~~ council,  
 1019 or a local ~~long term care ombudsman~~ council.

1020 (3)~~(a)~~ Any person, long-term care facility, or other  
 1021 entity that ~~who~~ violates this section:

HB 1067

2006

1022           (a) Shall be liable for damages and equitable relief as  
 1023 determined by law.

1024           ~~(b) Any person, long term care facility, or other entity~~  
 1025 ~~who violates this section~~ Commits a misdemeanor of the second  
 1026 degree, punishable as provided in s. 775.083.

1027           Section 17. Section 400.0085, Florida Statutes, is  
 1028 repealed.

1029           Section 18. Section 400.0087, Florida Statutes, is amended  
 1030 to read:

1031           400.0087 Department Agency oversight; funding.--

1032           (1) The department shall meet the costs associated with  
 1033 the State Long-Term Care Ombudsman Program from funds  
 1034 appropriated to it.

1035           (a) The department shall include the costs associated with  
 1036 support of the State Long-Term Care Ombudsman Program when  
 1037 developing its budget requests for consideration by the Governor  
 1038 and submittal to the Legislature.

1039           (b) The department may divert from the federal ombudsman  
 1040 appropriation an amount equal to the department's administrative  
 1041 cost ratio to cover the costs associated with administering the  
 1042 program. The remaining allotment from the Older Americans Act  
 1043 program shall be expended on direct ombudsman activities.

1044           (2)-(1) The department of Elderly Affairs shall monitor the  
 1045 office, the state council, and the local ombudsman councils to  
 1046 ensure that each is responsible for carrying out the duties  
 1047 delegated to it by state by s. 400.0069 and federal law. The  
 1048 department, in consultation with the ombudsman, shall adopt

HB 1067

2006

1049 ~~rules to establish the policies and procedures for the~~  
 1050 ~~monitoring of local ombudsman councils.~~

1051 (3)~~(2)~~ The department is responsible for ensuring that the  
 1052 office:

1053 (a) Has the objectivity and independence required to  
 1054 qualify it for funding under the federal Older Americans Act.

1055 (b) ~~of State Long Term Care Ombudsman~~ Provides information  
 1056 to public and private agencies, legislators, and others.

1057 (c) Provides appropriate training to representatives of  
 1058 the office or of the state or local ~~long term care ombudsman~~  
 1059 ~~councils.~~

1060 (d) Coordinates ombudsman services with the Advocacy  
 1061 Center for Persons with Disabilities and with providers of legal  
 1062 services to residents of long-term care facilities in compliance  
 1063 with state and federal laws.

1064 (4)~~(3)~~ The department ~~of Elderly Affairs is the designated~~  
 1065 ~~state unit on aging for purposes of complying with the federal~~  
 1066 ~~Older Americans Act. The Department of Elderly Affairs shall~~  
 1067 ~~ensure that the ombudsman program has the objectivity and~~  
 1068 ~~independence required to qualify it for funding under the~~  
 1069 ~~federal Older Americans Act, and shall carry out the long term~~  
 1070 ~~care ombudsman program through the Office of State Long Term~~  
 1071 ~~Care Ombudsman. The Department of Elderly Affairs shall also:~~

1072 (a) Receive and disburse state and federal funds for  
 1073 purposes that the ~~state ombudsman council~~ has formulated in  
 1074 accordance with the Older Americans Act.

1075 (b) Whenever necessary, act as liaison between agencies  
 1076 and branches of the federal and state governments and the State

HB 1067

2006

1077 Long-Term Care Ombudsman Program ~~representatives, the staffs of~~  
 1078 ~~the state and local ombudsman councils, and members of the state~~  
 1079 ~~and local ombudsman councils.~~

1080 Section 19. Section 400.0089, Florida Statutes, is amended  
 1081 to read:

1082 400.0089 Complaint data Agency reports.--The office  
 1083 ~~Department of Elderly Affairs~~ shall maintain a statewide uniform  
 1084 reporting system to collect and analyze data relating to  
 1085 complaints and conditions in long-term care facilities and to  
 1086 residents, for the purpose of identifying and resolving  
 1087 significant problems. ~~The department and the State Long Term~~  
 1088 ~~Care Ombudsman Council shall submit such data as part of its~~  
 1089 ~~annual report required pursuant to s. 400.0067(2)(f) to the~~  
 1090 ~~Agency for Health Care Administration, the Department of~~  
 1091 ~~Children and Family Services, the Florida Statewide Advocacy~~  
 1092 ~~Council, the Advocacy Center for Persons with Disabilities, the~~  
 1093 ~~Commissioner for the United States Administration on Aging, the~~  
 1094 ~~National Ombudsman Resource Center, and any other state or~~  
 1095 ~~federal entities that the ombudsman determines appropriate. The~~  
 1096 office ~~State Long Term Care Ombudsman Council~~ shall publish  
 1097 quarterly and make readily available information pertaining to  
 1098 the number and types of complaints received by the State Long-  
 1099 Term Care Ombudsman Program and shall include such information  
 1100 in the annual report required under s. 400.0065.

1101 Section 20. Section 400.0091, Florida Statutes, is amended  
 1102 to read:

1103 400.0091 Training.--The ombudsman shall ensure that  
 1104 ~~provide~~ appropriate training is provided to all employees of the



HB 1067

2006

1105 office ~~of State Long Term Care Ombudsman~~ and to the members of  
 1106 the state and local long-term care ombudsman councils, ~~including~~  
 1107 ~~all unpaid volunteers.~~

1108 (1) All state and local council members ~~volunteers~~ and  
 1109 ~~appropriate~~ employees of the office shall ~~of State Long Term~~  
 1110 ~~Care Ombudsman must~~ be given a minimum of 20 hours of training  
 1111 upon employment with the office or approval ~~enrollment~~ as a  
 1112 state or local council member ~~volunteer~~ and 10 hours of  
 1113 continuing education annually thereafter.

1114 (2) The ombudsman shall approve the curriculum for the  
 1115 initial and continuing education training, which must ~~cover~~, at  
 1116 a minimum, address:

- 1117 (a) Resident confidentiality.
- 1118 (b) Guardianships and powers of attorney.
- 1119 (c) Medication administration.
- 1120 (d) Care and medication of residents with dementia and  
 1121 Alzheimer's disease.
- 1122 (e) Accounting for residents' funds.
- 1123 (f) Discharge rights and responsibilities. ~~and~~
- 1124 (g) Cultural sensitivity.
- 1125 (h) Any other topic recommended by the secretary.

1126 (3) No employee, officer, or representative of the office  
 1127 or of the state or local ~~long-term care ombudsman~~ councils,  
 1128 other than the ombudsman, may hold himself or herself out as a  
 1129 representative of the State Long-Term Care Ombudsman Program or  
 1130 conduct ~~carry out~~ any authorized program ~~ombudsman~~ duty  
 1131 described in this part ~~or responsibility~~ unless the person has  
 1132 received the training required by this section and has been

HB 1067

2006

1133 certified ~~approved~~ by the ombudsman as qualified to carry out  
1134 ombudsman activities on behalf of the office or the state or  
1135 local ~~long term care ombudsman~~ councils.

1136 Section 21. This act shall take effect upon becoming a  
1137 law.