

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.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 678

INTRODUCER: Senator Richter

SUBJECT: Local Long-Term Care Ombudsman Councils

DATE: March 8, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	Pre-meeting
2.	_____	_____	HR	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Part I of ch. 400, F.S., creates the Office of State Long-Term Care Ombudsman to identify, investigate, and resolve complaints made by or on behalf of residents of long-term care facilities. This bill repeals Florida law requiring the local councils to conduct an annual onsite administrative assessment of each long-term care facility within its jurisdiction.

This bill amends sections 400.0067 and 400.0069, Florida Statutes. This bill repeals section 400.0074, Florida Statutes.

II. Present Situation:

The federal Older Americans Act (OAA) requires each state to create a long-term care ombudsman program in order to be eligible to receive funding associated with programs under the OAA.¹ In Florida, the Long-Term Care Ombudsman Program (program) is a statewide, volunteer-based system of district councils that protect, defend, and advocate on behalf of long-term care facility residents, such as those living in nursing homes, assisted living facilities, and adult family-care homes.² The program is housed in the Department of Elder Affairs (DOEA) and is directed by the state long-term care ombudsman.³ Fifty-five percent of the program's funding comes from the federal OAA; the remaining balance is appropriated by the state.⁴

¹ 42 U.S.C. s. 3058.

² See Florida's Long-Term Care Ombudsman Program, *2009-2010 Annual Report*, available at <http://ombudsman.myflorida.com/Publications.php> (follow the "2009-2010 Annual Report" hyperlink) (last visited Feb. 17, 2011).

³ Section 400.0063, F.S.

⁴ *2009-2010 Annual Report*, *supra* note 2.

An ombudsman “is a specially trained and certified volunteer who has been given authority under federal and state law to identify, investigate and resolve complaints made by, or on behalf of, long-term care facility residents.”⁵ Florida law requires that the Office of State Long-Term Care Ombudsman (office) maintain a statewide system for collecting and analyzing data relating to complaints and conditions in long-term care facilities.⁶ The office must also publish the information pertaining to the number and types of complaints received by the program on a quarterly basis.⁷ Additionally, federal law requires the office to have a statewide data system to collect, analyze, and report data on residents, facilities, and complaints to federal officials as well as the National Ombudsman Resource Center.⁸

Ombudsmen also complete annual assessments of each long-term care facility in the state to ensure the health, safety, and welfare of the residents.⁹ No advance warning of the assessment is to be given to the long-term care facility. An ombudsman is not allowed to forcibly enter the facility to complete the assessment; however, the administrator of the facility commits a violation of part I of ch. 400, F.S., if the ombudsman is not allowed to enter the facility, and, in such circumstances, the Agency for Health Care Administration (AHCA) may use appropriate administrative remedies.¹⁰ The AHCA also conducts routine licensure and complaint surveys of nursing homes, assisted living facilities, and adult day care homes. As part of the survey process, AHCA must do offsite survey preparation, which includes a review of information about the facility prior to the survey. One of the sources of this information is the state long-term care ombudsman.¹¹

Currently, Florida has 376 volunteer long-term care ombudsmen organized in 17 district councils throughout the state.¹² During the 2009-2010 fiscal year, ombudsmen staff and volunteers:

- Investigated and resolved 9,098 complaints;
- Contributed over 20,000 hours of volunteer service to the residents;
- Saved the state over \$1.8 million in salaries and administrative costs for long-term care residents; and
- Completed 100 percent of the prescribed annual facility assessments.¹³

⁵ Florida’s Long-Term Care Ombudsman Program, *Residents and Families*, <http://ombudsman.myflorida.com/ResidentFam.php> (last visited Feb. 17, 2011).

⁶ Section 400.0089, F.S.

⁷ *Id.*

⁸ Dep’t of Elder Affairs, *2011 Legislative Bill Analysis SB 682* (Feb. 28, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs); *see also* 42 U.S.C. s. 3058g(c) and 42 U.S.C. s. 3058g(h)(1).

⁹ *Residents and Families*, *supra* note 5; *see also* s. 400.0074, F.S. For an entire list of responsibilities of an ombudsman, *see* s. 400.0065(1), F.S.

¹⁰ Section 400.0074, F.S.

¹¹ Agency for Health Care Admin., *2011 Bill Analysis & Economic Impact Statement HB 4065* (identical to SB 678) (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹² *2009-2010 Annual Report*, *supra* note 2.

¹³ *Id.*

III. Effect of Proposed Changes:

This bill repeals s. 400.0074, F.S., which requires local ombudsman councils to complete annual administrative assessments of the long-term care facilities in their jurisdictions.

The bill also makes conforming changes to ss. 400.0067 and 400.0069, F.S.

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:

It is suggested that the reference to “administrative assessments” in s. 400.0061(2), F.S., also be deleted.

VII. Related Issues:

This bill repeals the Florida law requiring local ombudsman councils to complete annual administrative assessments of the long-term care facilities in their jurisdictions. However, under federal law, the Department of Elder Affairs must still ensure that the Office of the State Long-Term Care Ombudsman submits an annual report.¹⁴

¹⁴ See 42 U.S.C. s. 3058g(h)(1).

According to the Agency for Health Care Administration (AHCA), this bill will not affect the survey process conducted by AHCA for long-term care facilities.¹⁵

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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

¹⁵ Agency for Health Care Admin., *supra* note 11.