

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 Committee on Appropriations

BILL: PCS/SB 7018 (906328)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); and Children, Families, and Elder Affairs Committee

SUBJECT: State Ombudsman Program

DATE: April 8, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Crosier	Hendon		CF Submitted as Committee Bill
1.	Brown	Pigott	AHS	Recommend: Fav/CS
2.	Brown	Kynoch	AP	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 7018 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 are no longer made by the Governor but by the Secretary of the DOEA.

The bill has no fiscal impact.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Older Americans Act

The federal 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. OAA programs are administered through area agencies on aging under the Florida 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 economic or social needs, particularly low-income minority individuals; however, no means testing is allowed. The OAA was most recently reauthorized in 2006 to supply funding for several nutritional programs and in-home and supportive services for elders.

Long-Term Care Ombudsman Program

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.

In Florida, a long-term care ombudsman is a volunteer who helps improve the lives of persons who live in long-term care settings by investigating and resolving their complaints against the facility. The LTCOP includes more than 300 volunteers who advocate for persons who reside in long-term care settings.

The LTCOP is administratively housed within the DOEA. The LTCOP seeks to discover, investigate, and determine the presence of conditions 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 and by conducting annual administrative assessments of such facilities. An administrative assessment is a resident-centered, unannounced review of conditions in a 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 or regulatory oversight authority for long-term care facilities. The Agency for Health Care Administration (AHCA) has the responsibility for licensing long-term care facilities. Ombudsmen, after completing specified statutory requirements, are certified as independent advocates, 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 the ombudsmen to create an environment that allows a resident to candidly voice complaints. If a complaint is verified by an ombudsman indicating facility conditions that could violate the facility's licensure or be viewed as 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.¹

In August 2011, the U.S. Department of Health and Human Services' Administration on Aging issued its Compliance Review of the State of Florida Long-Term Ombudsman Program² The review identified the State of Florida's policies and practices regarding the designation of local ombudsmen, legislative advocacy, and information dissemination as out of compliance with the OAA. Statutory changes are necessary to bring state law into conformity with federal law.

¹ Department of Elder Affairs, *Senate Bill 508 Fiscal Analysis* (Dec. 31, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).

² Administration on Aging, Department of Health and Human Services, *Compliance Review of the State of Florida Long-Term Care Ombudsman Program* (August 30, 2011)(on file with the Senate Committee on Children, Families, and Elder Affairs).

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 State Long Term Care Ombudsman Program” is defined to include the state ombudsman, employees, and certified ombudsmen. The term “state ombudsman” is defined as the person appointed by the secretary of 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” refers to geographical areas in the state designated by the state ombudsman. The bill specifies that each district may have more than one local unit of ombudsmen.

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

Section 4 amends s. 400.0065, F.S., relating to duties of the Long-Term Care Ombudsman Program, to give the state long-term care ombudsman the final authority to make and rescind appointments of individuals serving as ombudsmen; to update the list of individuals to whom the state ombudsman must submit 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 on the council are made by the Governor. Under the bill, each local council in a district must select an ombudsman to serve as a representative to the state council. The state ombudsman will submit the names to the Secretary of the DOEA, who will make the appointments to the three at-large positions on the state council.

Section 6 amends 400.0069, F.S., relating to districts and local ombudsman councils. The state ombudsman will designate districts and each district will designate a local council. The bill provides for development of family councils within facilities; clarifies that ombudsmen, upon good cause shown and with their approval, may serve in a different district; and clarifies the application, background screening, and training requirements needed to become a certified ombudsman. The bill also requires each district to convene a public meeting at least quarterly. 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, to conform to newly-defined terms.

Section 8 amends s. 400.0071, F.S., relating to investigations and resolution of complaints concerning the health, safety, welfare and rights of residents. The bill 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 to the facility or a resident, and conforms to newly-defined terms.

Section 10 amends s. 400.0074, F.S., to provide an on-site administrative assessment at least annually which must be resident-centered and must focus on the rights, health, safety, and welfare of the residents. The assessment must not impose an unreasonable burden on the long-term care facility. The bill moves the rulemaking authority from s. 400.072, F.S., and conforms to newly-defined terms.

Section 11 amends s. 400.0075, F.S., relating to complaint resolutions and the notification process in the event of imminent danger to the health, safety, welfare or rights of a resident, 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 upon being admitted to the facility 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. This bill also provides conformity to newly-defined terms and 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 to make conforming changes.

Sections 19 through 40 amend ss. 20.41, 400.021, 400.022, 400.0255, 400.162, 400.19, 400.23, 400.235, 415.102, 415.1034, 415.104, 415.1055, 415.106, 145.107, 429.02, 429.19, 429.26, 429.28, 429.34, 429.35, 429.67, and 429.85, F.S., to conform to newly-defined terms and to make technical changes.

Section 41 provides an effective date of July 1, 2015.

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, 400.162, 400.19, 400.191, 400.23, 400.235, 415.102, 415.1034, 415.104, 415.1055, 415.106, 415.107, 429.02, 429.19, 429.26, 429.28, 429.34, 429.35, 429.67, and 429.85.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

Recommended CS by Appropriations Subcommittee on Health and Human Services on March 11, 2015:

The committee substitute requires local councils in districts designated by the state ombudsman to convene public meetings at least quarterly, instead of every quarter or as needed.

B. Amendments:

None.