

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1844

SPONSOR: Health, Aging and Long-Term Care Committee and Senator Clary

SUBJECT: The Long-Term Care Ombudsman Program

DATE: April 5, 2000 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Liem</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	<u>White</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

Committee Substitute for Senate Bill 1844 makes changes to the State Long-Term Care Ombudsman program. The bill requires the State Long-Term Care Ombudsman to prepare an annual budget request, enter into cooperative agreements with the human rights advocacy committees and the office of state government responsible for investigating Medicaid fraud.

The bill requires the Department of Elder Affairs (DOEA) to meet the costs of providing administrative support to the ombudsman from appropriated funds; specifies that DOEA should capture these costs when preparing its Legislative Budget Request; and caps the percentage of federal program funds which can be diverted from the ombudsman program by the department.

The bill revises the procedure for appointments to the State Long-Term Care Ombudsman Council and provides that the decision of the ombudsman is final when determining whether a member's three consecutive unexcused absences were without cause for purposes of determining if a vacancy exists. The bill limits membership on the State Council to two three-year terms.

The bill provides for an appropriation for training of newly appointed state and local ombudsmen and an appropriation for materials for public education and awareness training.

The bill creates s. 400.0066, F.S., and amends ss. 20.41, 395.3025, 400.0063, 400.0065, 400.0067, 400.0069, 400.0071, 400.0073, 400.0075, 400.0077, 400.0079, 400.0081, 400.0083, 400.0087, 400.0089, 400.0091, 400.021, 400.022, 400.0255, 400.19, 400.191, 400.23, 400.419, 400.428, 400.434, 400.435, 400.4415, 400.619, and 400.628 F.S.

**II. Present Situation:****The Ombudsman Program**

Long-term care ombudsmen are volunteer advocates for residents of nursing homes, board and care homes, assisted living facilities and similar adult care facilities. They provide an on-going presence in long-term care facilities, monitoring resident care and facility conditions.

The Long-Term Care Ombudsman program began as a federal demonstration project operated in five states. In 1973, the projects were formally assigned to the Administration on Aging within the federal Department of Health and Human Services. In 1978, Congress codified the Ombudsman Program in the Older Americans Act. Title VII of the Older Americans Act delineates the following responsibilities for ombudsmen:

- identify, investigate and resolve complaints made by or on behalf of residents;
- provide information to residents about long-term care services;
- represent the interests of residents before governmental agencies and seek administrative, legal and other remedies to protect residents;
- analyze, comment on and recommend changes in laws and regulations pertaining to the health, safety, welfare and rights of residents;
- educate and inform consumers and the general public regarding issues and concerns related to long-term care and facilitate public comment on laws, regulations, policies and actions;
- promote the development of citizen organizations to participate in the program; and,
- provide technical support for the development of resident and family councils to protect the well-being and rights of residents.

The ombudsman program was transferred from the Department of Health and Rehabilitative Services (now called the Department of Children and Family Services (DCF)) to DOEA in 1991. Sections 20.41(1), 400.0063, and 400.0065, F.S., provide that the ombudsman is to be located for administrative purposes within DOEA, and is to be free of interference by Elder Affairs, DCF, and the Agency for Health Care Administration (AHCA). The DOEA is to assist the ombudsman by developing procedures to investigate reports and determine if abuse or neglect exists in a facility; and, to develop procedures relating to the receipt and resolution of such complaints. Further, DOEA is granted authority to promulgate a rule to ensure that no officer, employee or representative of the ombudsman program nor any member of the immediate family of such officer, employee, or representative, may have a conflict of interest.

Section 400.0069, F.S., requires the DCF to provide space and in-kind administrative support for each local ombudsman council within available resources until the Legislature appropriates funds for office space and administrative support. The DOEA estimates that the value of this space and in-kind support is \$337,142.

In housing the ombudsman program administratively, DOEA performs several functions for the ombudsman program statewide, including: all purchasing activities, personnel actions (advertising positions, insurance and benefits, workers compensation, time sheets, leave balances, travel reimbursements, grievances), federal reporting, accounting, general services, and correspondence tracking.

Generally accepted accounting procedures require that expenses which can be directly linked to administration of programs be charged directly to those programs. In instances where multiple programs share a common administrative infrastructure, such as accounting, computer systems, personnel activities, in which the costs are not readily assignable to a specific program, the administering entity is allowed to charge an indirect rate to each program administered to support these overhead costs. The computation of the rate which can be charged to federal awards is governed by the federal Office of Management and Budget.

The DOEA’s approved indirect cost rate is 30 percent of federal salaries and wages. The DOEA reports that 4 percent of funds go for administration on a total base appropriation of approximately \$236,800,000.

The history of DOEA charges to the state ombudsman grant are as follows:

Federal Fiscal Year	Amount Charged	Indirect Rate Charged
1992	\$0	N/A
1993	\$0	N/A
1994	\$0	N/A
1995	\$15,485	2.78%
1996	\$35,000	6.51%
1997	\$49,000	8.85%
1998	\$152,856	25.66%
1999	\$171,982	30%
2000	\$172,983	30%

In a separate analysis performed by the staff of the State Long-Term Care Ombudsman, it is estimated that the functions DOEA currently performs for the ombudsman would consume the time of 1 full time equivalent staff person, at a cost of around \$50,000 per year.

**Institute of Medicine Evaluation of the Ombudsman Program**

In 1992, the Congress directed the Assistant Secretary for Aging to perform an in-depth examination of the operation of the Long-Term Care Ombudsman program. The Institute of Medicine (IOM), under contract to the Administration on Aging, evaluated and addressed various aspects of the Long-Term Care Ombudsman program: specifically, the Long-Term Care Ombudsmen's ability to deal with problems that affect the care provided to, and the quality of life achieved by, elderly residents of long-term care facilities. Two of the report findings are germane to Florida’s ombudsman program:

## **1. Placement of the Long-Term Care Ombudsman Program in State Long-Term Care Agencies**

All 50 states, the District of Columbia, and Puerto Rico have long-term care ombudsman programs. Forty-two states have placed the Office of the State Long-Term Care Ombudsman program within the state unit on aging. In some areas, the ombudsman programs operate completely outside of the state-level government.

The IOM report recommended that no ombudsman program should be located in an entity of government (state or local) or agency outside government responsible for: licensure, certification, registration, or accreditation of long-term care residential facilities; provision of long-term care services, including Medicaid waiver programs; long-term care case management; reimbursement rate setting for long-term care services; adult protective services; Medicaid eligibility determination; preadmission screening for long-term care residential placements; or decisions regarding admission of elderly individuals to residential facilities. In Florida, these functions are performed by the DOEA, DCF, and AHCA.

## **2. Administrative Charges to Ombudsman Programs**

The IOM report said: “Host agencies should exercise prudent judgment regarding the use of ombudsman service monies to support administrative costs.” The IOM committee became concerned about the possibility that some host agencies may be assessing administrative charges against the ombudsman program budget to such a degree that the ability of the ombudsman and designated representatives to deliver services is affected.

In Florida, federal funding for the ombudsman program flows from the Federal Department of Health and Human Services through the Department of Elder Affairs to the state ombudsman. Until 1994, administrative expenses associated with housing the ombudsman program were charged by DOEA to the federal Older Americans Act grant received annually from the Administration on Aging. In 1994, the Administration on Aging promulgated instructions prohibiting inclusion of ombudsman administrative charges in these grants.

The DOEA responded to this directive in 1994 by beginning to charge an indirect cost to the ombudsman’s federal grant to pay for administrative services DOEA renders to the ombudsman.

### **Other IOM Findings**

The IOM evaluation found that in a number of states operations of the ombudsman program suffered due to a number of other conditions:

- Lack of resident access to the program
- Lack of program visibility
- Inadequate legal counsel
- Conflicts of interest
- Adequate management of volunteers
- Poor management of fiscal resources
- Lack of cooperative agreements

**III. Effect of Proposed Changes:**

**Sections 1-3.** The long-term care ombudsman councils which operate in each of the Department of Elder Affairs Planning & Service Areas are renamed from “district” councils to “local” councils.

**Section 4.** Amends s. 400.0065, F.S. to: make technical and conforming changes; require the State Long-Term Care Ombudsman to prepare a budget request for submittal to the Governor by DOEA; delete a requirement that the ombudsman operate without interference by officials of state agencies; delete a requirement that the ombudsman report to the Legislature and the Governor whenever organizational or departmental policy issues threaten the ability of the ombudsman office to carry out its duties; require the State Long-Term Care Ombudsman to enter into cooperative agreements to coordinate advocacy services to residents of long-term care facilities and to enter into a cooperative agreement with the office of state government which is responsible for investigating Medicaid fraud; and require that DOEA consult with the ombudsman in the adoption of rules to identify and eliminate conflicts of interest as identified in the section.

**Section 5.** Creates s. 400.0066, F.S., to: require the ombudsman to perform the duties specified in state and federal law and be free of interference from DOEA, AHCA and DCF; specify that DOEA is to provide administrative support, and that DOEA meet the costs associated with this support from funds appropriated to the department; require that these costs be included in the annual Legislative budget requests; allow DOEA to divert funds from the ombudsman federal appropriation not to exceed 10 percent of the federal appropriation for the ombudsman; and require DOEA and the ombudsman to determine the actual costs to the department to administratively house the ombudsman.

**Section 6.** Amends s. 400.0067, F.S., to: provide that the State Long-Term Care Ombudsman Council be composed of one active member designated by each local council, plus three persons appointed by the Governor, one of whom must be over 60 years of age; require the ombudsman, in consultation with the secretary of DOEA and the State Ombudsman Council, to prepare the list of nominees from which the Governor selects persons for appointment to the State Long-Term Care Ombudsman Council; provide that, if the Governor fails to make the appointments within 60 days after receiving the list of nominees, the ombudsman will make the appointments; provide that members of the state council can serve no more than two consecutive 3-year terms; and add a provision that allows the ombudsman to determine if a member’s absence from meetings is “without cause”.

**Section 7.** Amends s. 400.0069, F.S., to provide that local ombudsman councils are to work under the direction of the ombudsman and the state ombudsman council. In the case of vacancies and upon expiration of a term of appointment on local councils, the local council shall select a replacement and forward that selection to the ombudsman. The ombudsman shall review the selection and recommend approval or disapproval to the Governor for his appointment. If the Governor takes no action within 30 days, the replacement is considered disapproved and the process is repeated. The local ombudsman council shall meet at the call of the chair or the ombudsman. Technical and conforming changes are made.

**Sections 8-30.** Make technical and conforming changes.

**Section 31.** Provides for an appropriation of \$40,000 from the General Revenue Fund for training members of the state and local long-term care ombudsman councils.

**Section 33.** Provides for an appropriation of \$40,000 to be used for materials to educate residents, their families and visitors, facility staff, and the general public about the ombudsman program and to encourage such persons to seek assistance from the ombudsman program.

**Section 34.** Provides an effective date of July 1, 2000.

**IV. Constitutional Issues:**

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

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

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

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

**C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, s. 19(f) of the Florida Constitution.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The DOEA is currently charging the ombudsman at the rate of 30 percent of ombudsman program federal salaries and benefits. The maximum DOEA would be able to charge the ombudsman under the current methodology is \$197,498. The bill limits DOEA's ability to charge indirect costs to the ombudsman to a maximum of 10 percent of the total ombudsman federal grant. In FY 2000, this amount would be \$101,156. This represents a decrease in DOEA's potential cash flow of approximately \$96,342. The DOEA is estimating that it is currently spending \$339,214 more indirect dollars than it earns. Reducing the amount which

can be charged to the ombudsman would increase this deficit to \$435,556. In addition, the department reports that this change would be in conflict with the federally approved indirect rate which is applied to all programs.

The bill also contains an appropriation of \$40,000 from the General Revenue Fund for training members of the state and local long-term care ombudsman councils, and \$40,000 to be used for materials to educate residents, their families and visitors, facility staff, and the general public about the ombudsman program and to encourage such persons to seek assistance from the ombudsman program.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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