

CSSB

442

**HOUSE COMMITTEE REPORT**

(11)

Date referred: 4/25/88

FURTHER REFERRALS:

(L&C waived 4/25)

DATE: 5-3-88

The Finance Committee has considered CSSB 442(SA)

"An Act relating to the Older Alaskans Commission and the protection of elderly persons; and establishing the office of the long term care ombudsman."

**RECOMMENDS:**

- replace with \_\_\_\_\_  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(s):**

- fiscal impact  same as previous fiscal note published 3/23/88 Senate
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

Adams [Signature]

Durchat [Signature]

Larson [Signature]

Swack [Signature]

Boyer [Signature]

Wallis [Signature]

Brown [Signature]

Davis [Signature]

Rieger [Signature]

**SIGNING OTHER RECOMMENDATIONS:**

~~[Signature]~~

\_\_\_\_\_

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\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Signature]  
Chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Administration  
 Title: Act to protect elderly and BRU: Older Alaskans Commission  
 establishing office of older Alaskans ombudsman  
 Sponsor: Uehling, Kerttula, Szymanski Components: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		49.0	49.0	59.4	59.4	59.4
TRAVEL		1.0	5.0	5.0	5.0	5.0
CONTRACTUAL		2.0	10.7	10.7	10.7	10.7
SUPPLIES		1.5	3.0	3.0	3.0	3.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		53.5	67.7	78.1	78.1	78.1
CAPITAL		-0-	-0-	-0-	-0-	-0-
REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND		40.1	50.8	58.6	58.6	58.6
FEDERAL FUNDS		13.4	16.9	19.5	19.5	19.5
OTHER		0				
TOTAL		53.5	67.7	78.1	78.1	78.1

POSITIONS:

FULL-TIME		1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Personal Services. The Ombudsman salary would increase by \$300 per year when moved from classified service to appointed status.

Supplies Line. Includes supplies for volunteers.

Prepared by: Connie J. Sipe *CJS* Phone: 465-3250  
 Division: Older Alaskans Commission Date: \_\_\_\_\_

Approved by Commissioner: John M. Andrews *JMA* Date: 3/2/88  
 Agency: Administration

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Position Title <b>Paralegal Assistant I</b>		No. of Positions <b>1</b>	Range/Step <b>13</b>	Barg. Unit <b>GGU</b>
Time Status <b>FT</b>	Staff Months <b>12</b>	Location <b>Anchorage</b>		Election District
Type of Expenditure		Justification		
<b>1</b>	<b>2</b>	<b>3</b>		
Salary	36.1	If SB 442 passes, the existing senior ombudsman program within the Older Alaskans Commission will be given a broader mandate to pursue formal remedies on behalf of aggrieved seniors in nursing homes and other adult care residential facilities. The Ombudsman's office will also be empowered to train and maintain a pool of volunteer and representatives to go into the facilities, in every community where a facility exists. The Ombudsman will need to continue present efforts to collect and maintain a uniform state data base on senior complaints. These new and continuing responsibilities require that the ombudsman have an assistant to help process and investigate complaints, coordinate the training and daily management of the volunteers, and assist in the preparation of legal documents needed for any formal actions which the ombudsman may be compelled to bring on behalf of residents.		
Benefits	12.6			
Premium Pay	-0-			
Other	-0-			
<b>Total Personal Services</b>	<b>48.7</b>			
Travel	1.0			
Contractual	2.0			
Commodities	.5			
Equipment				
Other				
<b>Total Cost</b>				
Funding Source for Total Cost				
Federal Receipts 1002		13.0		
G F Match 1003				
General Fund 1004		39.2		
GF Program Receipts 1005				
Other				

**Request For  
New Position**

Agency Administration  
 DRU Older Alaskans Commission  
 Component \_\_\_\_\_

Page 1 of 1  
 Revised Date \_\_\_\_\_

**FY 89**

Original sponsors: Uehling, Kerttula  
and Szymanski

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE  
2 CS FOR SENATE BILL NO. 442 (State Affairs)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL  
6 For an Act entitled: "An Act relating to the Older Alaskans Commission and  
7 the protection of elderly persons; and establishing  
8 the office of the long term care ombudsman."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. AS 44.21.230(b) is amended to read:

- 11 (b) To accomplish its duties, the commission may
- 12 (1) review, evaluate, and comment upon state programs  
13 concerned with the problems and the needs of older Alaskans;
  - 14 (2) collect facts and statistics, and make studies of  
15 conditions and problems pertaining to the employment, health, finan-  
16 cial security, social welfare, and other concerns that bear upon the  
17 well-being of older Alaskans;
  - 18 (3) provide information about public programs that would be  
19 of interest or benefit to older Alaskans;
  - 20 (4) appoint special committees, which may include persons  
21 who are not members of the commission, to complete necessary studies;
  - 22 (5) promote community education efforts regarding the  
23 problems and concerns of older Alaskans;
  - 24 (6) contract for necessary services;
  - 25 (7) consult and cooperate with persons, organizations, and  
26 groups interested in or concerned with programs of assistance to older  
27 Alaskans;
  - 28 (8) advocate improved programs of benefit to older Alas-  
29 kans; and

1           (9) set standards for levels of services for older Alaskans  
2 for programs administered by the commission; and

3           (10) adopt regulations necessary for the administration of  
4 AS 44.21.200 - 44.21.240 and to comply with federal law.

5 \* Sec. 2. AS 44.21 is amended by adding new sections to read:

6           Sec. 44.21.231. OFFICE OF THE LONG TERM CARE OMBUDSMAN. (a)  
7 The office of the long term care ombudsman is established in the  
8 commission.

9           (b) The ombudsman shall be hired by the commission. A member of  
10 the commission who has a financial interest in a long term care facil-  
11 ity in the state, or who has any other conflict of interest, may not  
12 participate in the hiring of the ombudsman. The ombudsman is a  
13 full-time position in the classified service.

14           (c) The ombudsman may not have a financial interest in a long  
15 term care facility in the state. The commission shall adopt regula-  
16 tions to ensure that the ombudsman, and employees and volunteers of  
17 the office, do not have a conflict of interest or an appearance of a  
18 conflict of interest.

19           Sec. 44.21.232. DUTIES AND POWERS OF THE LONG TERM CARE OMBUDS-  
20 MAN. (a) The ombudsman shall investigate and resolve a complaint  
21 made by or on behalf of an older Alaskan who resides in a long term  
22 care facility in the state if the complaint relates to a decision,  
23 action, or failure to act by a provider or a representative of a  
24 provider of long term care services, or by a public agency or social  
25 services agency, that may adversely affect the health, safety, wel-  
26 fare, or rights of the older Alaskan.

27           (b) The ombudsman may investigate and resolve a complaint made  
28 by or on behalf of an older Alaskan relating to the long term care or  
29 residential circumstances of the older Alaskan. Complaints under this

1 subsection may relate to any issue not covered under (a) of this  
2 section, including the older Alaskan's landlord, senior citizen hous-  
3 ing, a public assistance program, a public grant program for services  
4 to older Alaskans, public utilities, health care facilities, and  
5 health care providers.

6 (c) The ombudsman may

7 (1) subpoena witnesses, compel their attendance, require  
8 the production of evidence, administer oaths, and examine any person  
9 under oath in connection with a complaint described under (a) of this  
10 section; the powers described in this paragraph shall be enforced by  
11 the superior court;

12 (2) pursue administrative, legal, or other appropriate  
13 remedies on behalf of an older Alaskan who resides in a long term care  
14 facility in the state.

15 Sec. 44.21.233. TRAINING AND CERTIFICATION OF STAFF. (a) The  
16 ombudsman shall provide for the training and certification of office  
17 staff, including volunteers and other representatives of the office.  
18 Training must include instruction in federal, state, and local laws  
19 and policies relating to long term care facilities in the state, and  
20 in investigative techniques. The ombudsman may require other appro-  
21 priate training. The ombudsman may decertify a person under this  
22 section for good cause in accordance with regulations adopted by the  
23 commission.

24 (b) An employee, volunteer, or other representative of the  
25 office may not investigate a complaint under AS 44.21.232 unless  
26 certified as having completed training under this section and approved  
27 by the ombudsman as qualified to investigate the complaint.

28 Sec. 44.21.234. ACCESS TO LONG TERM CARE FACILITIES, OLDER  
29 ALASKANS, AND RECORDS. (a) A person may not deny access to a long

1 term care facility or to an older Alaskan by the ombudsman or an  
2 employee, volunteer, or other representative of the office.

3 (b) Notwithstanding the provisions of AS 44.21.232(c)(1), the  
4 ombudsman may obtain medical or other records of an older Alaskan who  
5 resides in a long term care facility in the state only with the con-  
6 sent of the older Alaskan or the older Alaskan's legal guardian or, if  
7 the older Alaskan is unable or incompetent to consent and does not  
8 have a legal guardian, only with a court order.

9 Sec. 44.21.235. CONFIDENTIALITY. (a) Records obtained or  
10 maintained by the ombudsman are confidential, are not subject to  
11 inspection or copying under AS 09.25.110 - 09.25.120 and, except as  
12 provided in (b) of this section, may be disclosed only at the dis-  
13 cretion of the ombudsman.

14 (b) The identity of a complainant or an older Alaskan on whose  
15 behalf a complaint is made may not be disclosed without the consent of  
16 the identified person or the person's legal guardian, unless required  
17 by court order.

18 Sec. 44.21.236. IMMUNITY FROM LIABILITY. (a) A person who, in  
19 good faith, makes a complaint described in AS 44.21.232 is immune from  
20 civil or criminal liability that might otherwise exist for making the  
21 complaint.

22 (b) The ombudsman, or an employee, volunteer, or other represen-  
23 tative of the office, is immune from civil or criminal liability for  
24 the good faith performance of official duties.

25 Sec. 44.21.237. INTERFERENCE WITH THE LONG TERM CARE OMBUDSMAN  
26 AND RETALIATION PROHIBITED. (a) A person may not intentionally  
27 interfere with the ombudsman, or an employee, volunteer, or represen-  
28 tative of the office, in the performance of official duties under  
29 AS 44.21.232.

1           (b) If a person makes a good faith complaint described in  
2 AS 44.21.232, an employer or supervisor of the person, or a public or  
3 private agency or entity that provides benefits, services, or housing  
4 to the person, may not discharge, demote, transfer, reduce the pay or  
5 benefits or work privileges of, prepare a negative work performance  
6 evaluation of, deny or withhold benefits or services, evict, or take  
7 other detrimental action against the person because of the complaint.  
8 The person making the complaint may bring a civil action for compensa-  
9 tory and punitive damages against an employer, supervisor, agency, or  
10 entity that violates this subsection. In the civil action there is a  
11 rebuttable presumption that the detrimental action was retaliatory if  
12 it was taken within 90 days after the complaint was made.

13           (c) A person who violates this section is guilty of a class B  
14 misdemeanor.

15           Sec. 44.21.238. LEGAL COUNSEL FOR THE LONG TERM CARE OMBUDSMAN.  
16 The attorney general shall provide legal advice and representation in  
17 connection with any matter relating to the powers, duties, and opera-  
18 tion of the office, and in any legal action brought against the om-  
19 budsman or an employee, volunteer, or other representative of the  
20 office. If the attorney general cannot provide legal advice or repre-  
21 sentation because of a conflict of interest, the ombudsman may employ  
22 private legal counsel.

23           Sec. 44.21.239. COOPERATIVE AGREEMENTS. The commission shall  
24 enter into cooperative agreements concerning the operations of the  
25 office, including protocols for investigations, with state and local  
26 agencies that have jurisdiction over long term care facilities or over  
27 the abuse and neglect of older Alaskans.

28 \* Sec. 3. AS 44.21.240 is amended to read:

29           Sec. 44.21.240. DEFINITIONS. In AS 44.21.200 - 44.21.240,

- 1           (1) "commission" means the Older Alaskans Commission;  
2           (2) "long term care facility" means a foster home or other  
3           residential facility for dependent adults that is required to be  
4           licensed under AS 47.35 and a nursing home as defined in AS 08.70.180;  
5           (3) "office" means the office of the long term care ombuds-  
6           man;  
7           (4) "older Alaskan" means a resident who is 60 years of age  
8           or older;  
9           (5) "ombudsman" means the long term care ombudsman hired  
10           under AS 44.21.231;  
11           (6) "senior citizen housing" has the meaning given in  
12           AS 44.47.620(e).

13 \* Sec. 4. AS 47.24.010 is amended by adding a new subsection to read:

14           (h) If a person makes a good faith report of harm under this  
15           section, an employer or supervisor of the person, or a public or  
16           private agency or entity that provides benefits, services, or housing  
17           to the person, may not discharge, demote, transfer, reduce the pay or  
18           benefits or work privileges of, prepare a negative work performance  
19           evaluation of, deny or withhold benefits or services, evict, or take  
20           other detrimental action against the person because of the report.  
21           The person making the report may bring a civil action for compensatory  
22           and punitive damages against an employer, supervisor, agency, or  
23           entity that violates this subsection. In the civil action there is a  
24           rebuttable presumption that the detrimental action was retaliatory if  
25           it was taken within 90 days after the report of harm was made.

(A) by inserting “, or any separate organizational unit within such agency,” after “area” the first place it appears, and  
 (B) by striking “engage” and inserting “and will engage only”.

**SEC. 125. AREA PLANS.**

Section 306(a)(6)(A) of the Older Americans Act of 1965 (42 U.S.C. 3026(a)(6)(A)) is amended by inserting “, and public hearings on,” after “evaluations of”.

**SEC. 126. DAYCARE AND RESPITE SERVICES PROVIDED BY VOLUNTEERS.**

Section 306(a)(6)(E) of the Older Americans Act of 1965 (42 U.S.C. 3026(a)(6)(E)) is amended—

- (1) by inserting “or adults, and respite for families,” after “for children”, and
- (2) by inserting “, adults, and families” after “to children”.

**SEC. 127. COORDINATION OF CERTAIN PROGRAMS RELATING TO OLDER VICTIMS OF ALZHEIMER'S DISEASE.**

Section 306(a)(6) of the Older Americans Act of 1965 (42 U.S.C. 3026(a)(6)) is amended—

- (1) in subparagraph (J) by striking “and” at the end,
- (2) in subparagraph (K) by striking the period at the end and inserting “, and”, and
- (3) by adding at the end the following:

“(L) coordinate the categories of services specified in paragraph (2) for which the area agency on aging is required to expend funds under part B, with activities of community-based organizations established for the benefit of victims of Alzheimer's disease and the families of such victims.”.

**SEC. 128. PUBLIC HEARINGS.**

Section 307(a)(8) of the Older Americans Act of 1965 (42 U.S.C. 3027(a)(8)) is amended by inserting “, and public hearings on,” after “evaluations of”.

**SEC. 129. OMBUDSMAN OFFICE AND PROGRAM.**

(a) **TECHNICAL ASSISTANCE.**—Section 301 of the Older Americans Act of 1965 (42 U.S.C. 3021) is amended by adding at the end the following:

“(c) The Commissioner shall provide technical assistance and training (by contract, grant, or otherwise) to State long-term care ombudsman programs established under section 307(a)(12), and to individuals designated under such section to be representatives of a long-term care ombudsman, in order to enable such ombudsmen and such representatives to carry out the ombudsman program effectively.”.

(b) **STUDY OF OMBUDSMAN PROGRAM.**—(1) The Commissioner on Aging shall conduct a study concerning involvement in the ombudsman program established under section 307(a)(12) of the Older Americans Act of 1965 (42 U.S.C. 3027(a)(12)) and its impact upon issues and problems affecting—

- (A) residents of board and care facilities and other similar adult care homes who are older individuals (as defined in section 302(10) of such Act), including recommendations for

expanding and improving ombudsman services in such facilities, and

- (B) the effectiveness of recruiting, supervising, and retaining volunteer ombudsmen.

(2) The Commissioner shall prepare and submit a report to the Congress on the findings and recommendations of the study described in paragraph (1) not later than December 31, 1989.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—(1) Section 303(a) of the Older Americans Act of 1965 (42 U.S.C. 3023(a)), as amended by section 122(a), is amended—

- (A) by inserting “(1)” after “(a)”, and
- (B) by adding at the end the following:

“(2) Subject to subsection (h), there are authorized to be appropriated \$20,000,000 for fiscal year 1988 and such sums as may be necessary for each of the fiscal years 1989, 1990, and 1991 to carry out section 307(a)(12).”.

(2) Section 308(b)(5) of the Older Americans Act of 1965 (42 U.S.C. 3028(b)(5)) is amended—

- (A) in subparagraph (A) by striking “subsection (a)” and inserting “subsection (a)(1)”, and
- (B) in subparagraph (B) by inserting “subsections (a)(1) and (b) of” after “under” the first place it appears.

(d) **STATE PLANS.**—Section 307(a)(12) of the Older Americans Act of 1965 (42 U.S.C. 3027(a)(12)) is amended to read as follows:

“(12) The plan shall provide the following assurances, with respect to a long-term care ombudsman program:

“(A) The State agency will establish and operate, either directly or by contract or other arrangement with any public agency or other appropriate private nonprofit organization, other than an agency or organization which is responsible for licensing or certifying long-term care services in the State or which is an association (or an affiliate of such an association) of long-term care facilities (including any other residential facility for older individuals), an Office of the State Long-Term Care Ombudsman (in this paragraph referred to as the ‘Office’) and shall carry out through the Office a long-term care ombudsman program which provides an individual who will, on a full-time basis—

“(i) investigate and resolve complaints made by or on behalf of older individuals who are residents of long-term care facilities relating to action, inaction, or decisions of providers, or their representatives, of long-term care services, of public agencies, or of social service agencies, which may adversely affect the health, safety, welfare, or rights of such residents;

“(ii) provide for training staff and volunteers and promote the development of citizen organizations to participate in the ombudsman program; and

“(iii) carry out such other activities as the Commissioner deems appropriate.

“(B) The State agency will establish procedures for appropriate access by the ombudsman to long-term care facilities and patients' records, including procedures to protect the confidentiality of such records and ensure that the identity of any complainant or resident will not be disclosed without

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the written consent of such complainant or resident, or upon court order.

"(C) The State agency will establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems, with provision for submission of such data to the agency of the State responsible for licensing or certifying long-term care facilities in the State and to the Commissioner on a regular basis.

"(D) The State agency will establish procedures to assure that any files maintained by the ombudsman program shall be disclosed only at the discretion of the ombudsman having authority over the disposition of such files, except that the identity of any complainant or resident of a long-term care facility shall not be disclosed by such ombudsman unless—

"(i) such complainant or resident, or the individual's legal representative, consents in writing to such disclosure; or

"(ii) such disclosure is required by court order.

"(E) In planning and operating the ombudsman program, the State agency will consider the views of area agencies on aging, older individuals, and provider agencies.

"(F) The State agency will—

"(i) ensure that no individual involved in the designation of the long-term care ombudsman (whether by appointment or otherwise) or the designation of the head of any subdivision of the Office is subject to a conflict of interest;

"(ii) ensure that no officer, employee, or other representative of the Office is subject to a conflict of interest; and

"(iii) ensure that mechanisms are in place to identify and remedy any such or other similar conflicts.

"(G) The State agency will—

"(i) ensure that adequate legal counsel is available to the Office for advice and consultation and that legal representation is provided to any representative of the Office against whom suit or other legal action is brought in connection with the performance of such representative's official duties; and

"(ii) ensure that the Office has the ability to pursue administrative, legal, and other appropriate remedies on behalf of residents of long-term care facilities.

"(H) The State agency will require the Office to—

"(i) prepare an annual report containing data and findings regarding the types of problems experienced and complaints received by or on behalf of individuals residing in long-term care facilities, and to provide policy, regulatory, and legislative recommendations to solve such problems, resolve such complaints, and improve the quality of care and life in long-term care facilities;

"(ii) analyze and monitor the development and implementation of Federal, State, and local laws, regulations, and policies with respect to long-term care

facilities and services in that State, and recommend any changes in such laws, regulations, and policies deemed by the Office to be appropriate;

"(iii) provide information to public agencies, legislators, and others, as deemed necessary by the Office, regarding the problems and concerns, including recommendations related to such problems and concerns, of older individuals residing in long-term care facilities;

"(iv) provide for the training of the Office staff, including volunteers and other representatives of the Office, in—

"(I) Federal, State, and local laws, regulations, and policies with respect to long-term care facilities in the State;

"(II) investigative techniques; and

"(III) such other matters as the State deems appropriate;

"(v) coordinate ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illness established under part A of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001 et seq.) and under the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (Public Law 99-319); and

"(vi) include any area or local ombudsman entity designated by the State Long-Term Care Ombudsman as a subdivision of the Office. Any representative of an entity designated in accordance with the preceding sentence (whether an employee or an unpaid volunteer) shall be treated as a representative of the Office for purposes of this paragraph.

"(I) The State will ensure that no representative of the Office will be liable under State law for the good faith performance of official duties.

"(J) The State will—

"(i) ensure that willful interference with representatives of the Office in the performance of their official duties (as defined by the Commissioner) shall be unlawful;

"(ii) prohibit retaliation and reprisals by a long-term care facility or other entity with respect to any resident or employee for having filed a complaint with, or providing information to, the Office;

"(iii) provide for appropriate sanctions with respect to such interference, retaliation, and reprisals; and

"(iv) ensure that representatives of the Office shall have—

"(I) access to long-term care facilities and their residents; and

"(II) with the permission of a resident or resident's legal guardian, have access to review the resident's medical and social records or, if a resident is unable to consent to such review and has no legal guardian, appropriate access to the resident's medical and social records.

"(K) The State agency will prohibit any officer, employee, or other representative of the Office to investigate any

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complaint filed with the Office unless the individual has received such training as may be required under subparagraph (G)(iv) and has been approved by the long-term care ombudsman as qualified to investigate such complaints.”.

(e) **MINIMUM EXPENDITURE FOR OMBUDSMAN SERVICES.**—Section 307(a)(21) of the Older Americans Act of 1965 (42 U.S.C. 3027(a)(21)) is amended to read as follows:

“(21) The State plan shall provide that the State agency, from funds allotted under section 304(a) for part B and for paragraph (12) (relating to the State long-term care ombudsman) shall expend to carry out paragraph (12), for each fiscal year in which the allotment for part B for the State is not less than the allotment for fiscal year 1987 for part B for such State, an amount which is not less than the amount expended from funds received under this Act by such State in fiscal year 1987 to carry out paragraph (12) as in effect before the effective date of the Older Americans Act Amendments of 1987. This paragraph shall not apply to American Samoa, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.”.

#### SEC. 130. FLEXIBILITY OF SERVICES; LEGAL ASSISTANCE.

(a) **AREA PLANS.**—(1) Section 306(a)(2) of the Older Americans Act of 1965 (42 U.S.C. 3026(a)(2)) is amended by inserting “, as required under section 307(a)(22),” after “adequate proportion”.

(2) Section 306(b)(2) of the Older Americans Act of 1965 (42 U.S.C. 3026(b)(2)) is amended by adding at the end the following:

“(C) Whenever the State agency proposes to grant a waiver to an area agency under this subsection, the State agency shall publish the intention to grant such a waiver together with the justification for the waiver at least 30 days prior to the effective date of the decision to grant the waiver. An individual or a service provider from the area with respect to which the proposed waiver applies is entitled to request a hearing before the State agency on the request to grant such waiver. If, within the 30-day period described in the first sentence of this subparagraph, an individual or service provider requests a hearing under this subparagraph, the State agency shall afford such individual or provider an opportunity for a hearing.

“(D) If the State agency waives the requirement described in clause (2) of subsection (a), the State agency shall provide to the Commissioner—

“(i) a report regarding such waiver that details the demonstration made by the area agency on aging to obtain such waiver;

“(ii) a copy of the record of the public hearing conducted pursuant to subparagraph (A); and

“(iii) a copy of the record of any public hearing conducted pursuant to subparagraph (C).”.

(b) **MINIMUM EXPENDITURE OF FUNDS.**—Section 307(a) of the Older Americans Act of 1965 (42 U.S.C. 3027(a)) is amended by adding at the end the following:

“(22) The plan shall specify a minimum percentage of the funds received by each area agency for part B that will be expended, in the absence of the waiver granted under section 306(b)(1), by such area agency to provide each of the categories of services specified in section 306(a)(2).”.

State and local governments.

State and local governments.

#### SEC. 131. DOCUMENTATION REGARDING MINORITY PARTICIPATION.

(a) **AREA PLANS.**—Section 306(a)(5)(A) of the Older Americans Act of 1965 (42 U.S.C. 3026(a)(5)(A)) is amended—

(1) by inserting “(i)” after “(5)(A)”, and

(2) in subparagraph (A)(i), as so redesignated—

(A) by striking “and” at the end, and

(B) by inserting after clause (i) the following:

“(ii) provide assurances that the area agency will include in each agreement made with a provider of any service under this title, a requirement that such provider will—

“(I) specify how the provider intends to satisfy the service needs of low-income minority individuals in the area served by the provider; and

“(II) attempt to provide services to low-income minority individuals in at least the same proportion as the population of low-income minority older individuals bears to the population of older individuals of the area served by such provider; and

“(iii) with respect to the fiscal year preceding the fiscal year for which such plan is prepared—

“(I) identify the number of low-income minority older individuals in the planning and service area; and

“(II) describe the methods used to satisfy the service needs of such minority older individuals; and”.

(b) **STATE PLAN.**—Section 307(a) of the Older Americans Act of 1965 (42 U.S.C. 3027(a)), as amended by section 130(c), is amended by adding at the end the following:

“(23) The plan shall, with respect to the fiscal year preceding the fiscal year for which such plan is prepared—

“(A) identify the number of low-income minority older individuals in the State; and

“(B) describe the methods used to satisfy the service needs of such minority older individuals.”.

#### SEC. 132. TARGETING OF SERVICES.

(a) **ORGANIZATION.**—(1) Section 305(a)(1)(E) of the Older Americans Act of 1965 (42 U.S.C. 3025(a)(1)(E)) is amended—

(A) by striking “the distribution of older individuals who have low incomes residing in such areas”, and

(B) by inserting after “legal services,” the following: “the distribution of older individuals who have greatest economic need (with particular attention to low-income minority individuals) residing in such areas, the distribution of older individuals who have greatest social need (with particular attention to low-income minority individuals) residing in such areas.”.

(2) Section 305(a)(2) of the Older Americans Act of 1965 (42 U.S.C. 3025(a)(2)) is amended—

(A) in subparagraph (D) by striking “and” at the end,

(B) in subparagraph (E) by striking the period at the end and inserting “; and”, and

(C) by inserting after subparagraph (E) the following:

“(F) assure the use of outreach efforts that will identify individuals eligible for assistance under this Act, with special emphasis on older individuals with the greatest economic or social needs (with particular attention to low-income minority individuals) and inform such individuals of the availability of such assistance.”.

# Senator Rick Uehling

Senate District H  
Downtown, Elmendorf, Northeast Anchorage



Senate Finance Committee  
Chair, International Trade Committee  
Vice-Chair, State Affairs Committee  
Labor & Commerce Committee

April 25, 1988

## M E M O R A N D U M

To: Representative Albert P. Adams, Chair  
House Finance Committee

From: Senator Rick Uehling

Subject: CSSB 442 (State Affairs)

I have asked staff to provide the following background to CSSB 442, "an Act relating to the Older Alaskans Commission and the protection of elderly persons; and establishing the office of the long term care ombudsman."

The Older Alaskans Commission receives over \$4 million in federal funds under Titles III and IV of the Older Americans Act. The State of Alaska could lose these funds if it does not have an approved state plan which shows that Alaska is in compliance with the 1987 federal amendments to the Older Americans Act.

CSSB 442 (State Affairs) is designed, therefore, to do two things in order to bring the Older Alaskans Commission state statutes (AS 44.21.200 - 44.21.240) into compliance with federal 1987 amendments to the federal Older Americans Act of 1965.

1) to establish the Office of the State Long-Term Care Ombudsman.

2) to establish procedures for the protection of elderly persons in the State of Alaska.

The Older Alaskans Commission has heretofore voluntarily established the Office of the State Long-Term Care Ombudsman, but at this time the Office does not exist under state statute and thus has no statutory powers to investigate and resolve complaints. This bill, therefore, brings the Older Alaskans Commission into compliance with the 1987 federal amendments by establishing the Office of the State Long-Term Care Ombudsman and giving it duties and powers that are protected in statute.

This bill additionally meets the requirements of the 1987 amendments to the federal Older Americans Act of 1965 by adding a section which protects those who in good faith report instances of elderly abuse. This so-called "Whistleblowers" provision

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ensure that a person may bring a civil action for compensatory and punitive damages against an employer or supervisor who violates this subsection, and there is a rebuttable presumption that the detrimental action by the employer or supervisor was retaliatory if it was taken within 90 days of the complaint.

The State Affairs Committee substitute version of the bill incorporates the suggestions of the Older Alaskans Commission in broadening the scope of the Ombudsman's duties to include other types of "long-term care facilities," in addition to just nursing homes, such as adult residential care facilities and adult foster homes. These inclusions are in keeping with the intent of the 1987 federal legislation.

Further, the Committee substitute version of the bill allows the Ombudsman to continue some of the informal complaint investigation and resolution which he now performs for seniors in other areas closely related to the senior's ability to live as independently as possible. For instance, the Ombudsman would now be able to assist with senior' housing, utility or health care problems.



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## Older Alaskans Commission

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### POSITION PAPER

#### CSSB 442 (State Affairs) ESTABLISHING THE OFFICE OF THE LONG-TERM CARE OMBUDSMAN

The Older Alaskan Commission strongly supports the passage of CSSB 442, as it will enable Alaska to meet new mandatory requirements for receipt of federal funds under the Older Americans Act of 1987.

#### FEDERAL FUNDING REQUIREMENTS MET BY CSSB 442

The Older Alaskan Commission receives just over four million dollars in federal funds under Titles III and IV of the Older Americans Act. These federal dollars, plus three million in State General Funds, provide crucial home and community-based care services to over 19,000 senior citizens in Alaska.

In order to receive the Older Americans Funds, the State, through the Commission, must have in place an approved State Plan which provides assurances that Alaska meets all requirements in the Older Americans Act. Alaska's next State Plan is due in August 1988, and must show compliance--or good faith efforts to comply--with the 1987 federal changes.

The primary changes in the 1987 reauthorization of the Older Americans Act which would require state legislative action are all related to the long-term care ombudsman programs run by the states.

Although the Older Americans Act has mandated for nearly a decade that each state office on aging must operate an ombudsman program for the investigation of complaints made by nursing home residents, the 1987 federal statute requires each state government to put more "teeth" into its ombudsman program.

Specifically, in the 1987 Older Americans Act, Congress declared that every state Long-Term Care (LTC) Ombudsman program must meet these minimum criteria:

- a. "independence" of the LTC Ombudsman Office;
- b. legal authority for the LTC Ombudsman to bring administrative or legal actions on behalf of complainants;
- c. legal guarantee of Ombudsman access to LTC facilities, residents, and residents' records;

- d. legal guarantee of confidentiality for the records of the LTC Ombudsman;
- e. immunity from civil and criminal liability for persons who complain or report to the Ombudsman;
- f. legal prohibition and sanctions against interference with the work of the LTC Ombudsman; and
- g. legal prohibitions and sanctions to prevent "retaliation" against complainants or reporters to the Ombudsman ("whistle-blower protection").

CSSB 442 (State Affairs) will bring Alaska's Long-Term Care Ombudsman program into compliance with these new 1987 federal requirements, by providing requisite statutory authority to implement Congressional intent.

CSSB 442 also grants regulation-making authority to the Older Alaskans Commission, which will enable the OAC's LTC Ombudsman to comply with several other less significant technical changes in the 1987 federal act.

CSSB 442 not only strengthens and expands Alaska's senior ombudsman program, but it is also the first specific statutory foundation for the program. To date, the senior ombudsman program in Alaska has operated without any state statutory powers and the senior ombudsman handled complaints based solely on the power of persuasion.

#### BENEFITS TO SENIORS IN LONG-TERM CARE FACILITIES

This bill offers major new protections to residents of nursing homes, adult residential homes, and adult foster homes in Alaska. The Long-Term Care Ombudsman will be empowered to act as a personal advocate for these dependent senior citizens, a service not now available from any federal, state, or local agency.

Families of LTC residents will have additional assurance of quality care, and of an effective mechanism for curing individual grievances, through the Office of the LTC Ombudsman. Trained and certified local volunteer ombudsman will be a visible presence in each nursing or boarding home, available on a regular and frequent basis to concerned residents or families.

A valuable "extra" in CSSB 442 is the extension of protection against retaliation to any person who complains about or reports any type of elder abuse, whether or not in a LTC facility, under AS 47.24.010. The Commission applauds this enhancement to Alaska's Elder Abuse Law.

#### STAFFING OF THE ALASKA LONG-TERM CARE OMBUDSMAN OFFICE

The Older Alaskans Ombudsman program now consists of one staffer, operating out of Anchorage. He operates without clerical or administrative support, except for central administration from the Juneau office. Because of the

limited staff and travel funds, he does not visit long-term care facilities except when he receives a phone complaint. The Older Alaskans Commission believes that the LTC Ombudsman needs an assistant if he is to maintain his current caseload of senior complaint-handling and also recruit, train and supervise volunteers in every community where there is a long-term care facility.

Unfortunately, the 1987 Congress, while it passed the amendments which require a much more active and formal role for the LTC Ombudsman, did not appropriate new federal funds to the states for carrying out this new advocacy mission. States are expected to use either state funds or other Older American Act federal funds for the expanded Ombudsman program. Because the Commission's FY 89 budget is at maintenance level, the Commission felt it was more appropriate to seek new state general funds for this program rather than to reduce the FY 89 grants budgets for senior meals, transportation, or in-home care services.

If the bill is passed without the fiscal note, the LTC Ombudsman Office will attempt to meet the spirit of the new federal mandate, but will need to restrain its actual activities in keeping with its present staff of one. This would probably mean that it could take up to five years before the Ombudsman could develop training procedures and actually achieve trained volunteer corps in all communities with LTC facilities. Whether one person could ever adequately supervise that many volunteers is problematic.

If this bill passes without any additional funding, the Commission will probably need, in another year in the near future, to seek a position and funds again, or to divert funding from other grant programs.

#### CONCLUSION

The Older Alaskans Commission strongly supports CSSB 442 (State Affairs), whether or not the fiscal note passes with it this year. The Commission, and the State, must comply with these new federal requirements to keep federal funding from the Older Americans Act. More importantly, senior Alaskans in long-term care facilities deserve the same protection and advocacy services as will now be available throughout the nation. This bill is a great service to everyone concerned about quality long-term care.

APPROVED BY:

*Exec.*  
*for Connie Lake, Director*  
Dove M. Kull, Chair  
Legislative Committee  
Older Alaskans Commission

Date: March 25, 1988

REVIEWED BY:

*James S. Fox, Deputy Commissioner*  
*for* John M. Andrews, Commissioner  
Department of Administration

Date: March 25, 1988