

# HOUSE BILL No. 6304

November 4, 2004, Introduced by Rep. Palmer and referred to the Committee on Land Use and Environment.

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
(MCL 324.101 to 324.90106) by adding part 12.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

### PART 12 LEGISLATIVE ENVIRONMENTAL OMBUDSMAN

Sec. 1201. As used in this part:

(a) "Administrative act" includes an action, omission,  
decision, recommendation, practice, or other procedure of the  
department.

(b) "Complainant" means a legislator or other person who  
files a complaint under section 1204.

(c) "Council" means the legislative council established under  
section 15 of article IV of the state constitution of 1963.

(d) "Department" means the department of environmental  
quality.

1 (e) "Fund" means the environmental ombudsman administration  
2 fund created in section 1216.

3 (f) "Legislator" means a member of the senate or the house of  
4 representatives of this state.

5 (g) "Office" means the office of the legislative  
6 environmental ombudsman created under section 1202.

7 (h) "Official" means an official or employee of the  
8 department.

9 (i) "Ombudsman" means the principal executive officer of the  
10 office.

11 Sec. 1202. (1) The office of the legislative environmental  
12 ombudsman is created within the legislative council.

13 (2) The principal executive officer of the office is the  
14 legislative environmental ombudsman, who shall be appointed by  
15 and serve at the pleasure of the council.

16 Sec. 1203. The council shall establish procedures for  
17 approving the budget of the office, for expending funds of the  
18 office, and for the employment of personnel for the office.

19 Sec. 1204. (1) The ombudsman may commence an investigation  
20 upon either of the following:

21 (a) Receipt of a complaint from a legislator or other person,  
22 or on the ombudsman's own initiative, concerning an  
23 administrative act that is alleged by a person to be contrary to  
24 law or contrary to departmental policy.

25 (b) The ombudsman's own initiative for significant health and  
26 safety issues and other matters for which there is no effective  
27 administrative remedy.

1       (2) Subject to approval of the council, the ombudsman shall  
2 establish procedures for receiving and processing complaints,  
3 conducting investigations, holding hearings, and reporting the  
4 findings resulting from the investigations.

5       Sec. 1205. (1) Upon request, the ombudsman shall be given  
6 access to all information, records, and documents in the  
7 possession of the department that the ombudsman considers  
8 necessary in an investigation. The department shall assist the  
9 ombudsman in obtaining the necessary releases of those documents  
10 that are specifically restricted or privileged for use by the  
11 ombudsman.

12       (2) Upon request and without notice, the ombudsman shall be  
13 granted entrance to inspect at any time any premises under the  
14 control of the department.

15       (3) The ombudsman may hold informal hearings and may request  
16 that any person appear before the ombudsman or at a hearing and  
17 give testimony or produce documentary or other evidence that the  
18 ombudsman considers relevant to a matter under investigation.

19       Sec. 1206. (1) The ombudsman shall advise a complainant to  
20 pursue all administrative remedies open to the complainant. The  
21 ombudsman may request and shall receive from the department a  
22 progress report concerning the administrative processing of a  
23 complaint. After administrative action on a complaint, the  
24 ombudsman may conduct further investigation on the request of a  
25 complainant or on his or her own initiative.

26       (2) The ombudsman need not conduct an investigation on a  
27 complaint brought before the ombudsman. A person is not entitled

1 as a right to be heard by the ombudsman.

2       Sec. 1207. Upon receiving a complaint under section 1204  
3 and deciding to investigate the complaint, the ombudsman shall  
4 notify the complainant, the person or persons affected, and the  
5 department. If the ombudsman declines to investigate, the  
6 ombudsman shall notify the complainant, in writing, and inform  
7 the person or persons affected of the reasons for the ombudsman's  
8 decision.

9       Sec. 1208. Upon request of the ombudsman, the council may  
10 hold a hearing. The council may administer oaths, subpoena  
11 witnesses, and examine the books and records of the department or  
12 of a person, partnership, or corporation involved, in accordance  
13 with section 104 of the legislative council act, 1986 PA 268, MCL  
14 4.1104, in a matter which is or was a proper subject of  
15 investigation by the ombudsman under this part.

16       Sec. 1209. (1) Correspondence between the ombudsman and a  
17 person is confidential and shall be processed as privileged  
18 correspondence in the same manner as letters between persons and  
19 courts, attorneys, or public officials.

20       (2) The ombudsman shall maintain secrecy with respect to all  
21 matters and the identities of the complainants or persons from  
22 whom information is acquired, except so far as disclosures may be  
23 necessary to enable the ombudsman to perform the duties of the  
24 office and to support any recommendations resulting from an  
25 investigation.

26       (3) A report prepared and recommendations made by the  
27 ombudsman and submitted to the council under section 1210 are

1 exempt from disclosure under the freedom of information act, 1976  
2 PA 442, MCL 15.231 to 15.246.

3 Sec. 1210. (1) The ombudsman shall prepare and submit a  
4 report of the findings of an investigation and make  
5 recommendations to the council within 30 days after completing  
6 the investigation if the ombudsman finds any of the following:

7 (a) A matter that should be considered by the department.

8 (b) An administrative act that should be modified or  
9 canceled.

10 (c) A statute or rule that should be altered.

11 (d) Administrative acts for which justification is  
12 necessary.

13 (e) Significant health and safety issues as determined by the  
14 council.

15 (f) Any other significant concerns as determined by the  
16 council.

17 (2) Subject to section 1211, the council may forward the  
18 report prepared and submitted under this section to the  
19 department, the person or persons affected, or the complainant  
20 who requested the report.

21 Sec. 1211. Before announcing a conclusion or recommendation  
22 that expressly or by implication criticizes a person or the  
23 department, the ombudsman shall consult with that person or the  
24 department. When publishing an opinion adverse to the department  
25 or any person, the ombudsman shall include in that publication a  
26 statement of reasonable length made to him or her by the  
27 department or person in defense or mitigation of the action if

1 that statement is provided within a reasonable period of time as  
2 determined by the council. The ombudsman may request to be  
3 notified by the department, within a specified time, of any  
4 action taken on any recommendation presented. The ombudsman  
5 shall notify the complainant of the actions taken by the office  
6 and by the department.

7 Sec. 1212. The ombudsman shall submit to the council and  
8 the legislature an annual report on the conduct of the office.

9 Sec. 1213. (1) A person shall not be penalized in any way  
10 by an official or the department as a result of filing a  
11 complaint, complaining to a legislator, or cooperating with the  
12 ombudsman in investigating a complaint.

13 (2) A person or the department shall not hinder the lawful  
14 actions of the ombudsman or employees of the office or willfully  
15 refuse to comply with lawful demands of the office.

16 Sec. 1214. The authority granted the ombudsman is in  
17 addition to the authority granted under the provisions of any  
18 other act or rule under which the remedy or right of appeal or  
19 objection is provided for a person or any procedure provided for  
20 the inquiry into or investigation of any matter. The authority  
21 granted the ombudsman shall not be construed to limit or affect  
22 the remedy or right of appeal or objection and shall not be  
23 considered part of an exclusionary process.

24 Sec. 1215. From civil fines collected under this act that  
25 are not otherwise dedicated under this act, \$200,000.00 shall be  
26 forwarded to the state treasurer for deposit into the fund.

27 Sec. 1216. (1) The environmental ombudsman administration

1 fund is created within the state treasury.

2       (2) The state treasurer may receive money or other assets  
3 from any source for deposit into the fund. The state treasurer  
4 shall direct the investment of the fund. The state treasurer  
5 shall credit to the fund interest and earnings from fund  
6 investments.

7       (3) Money in the fund at the close of the fiscal year shall  
8 remain in the fund and shall not lapse to the general fund.

9       (4) The council shall expend money from the fund, upon  
10 appropriation, only to implement this part.