

HOUSE BILL No. 4370

February 22, 2005, Introduced by Reps. Palmer, Gosselin, Stahl, Schuitmaker, Casperson, Pastor, Moore, Walker, Huizenga, Nitz and Stakoe and referred to the Committee on Natural Resources, Great Lakes, 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

1 SECTION 15 OF ARTICLE IV OF THE STATE CONSTITUTION OF 1963.

2 (D) "DEPARTMENT" MEANS THE DEPARTMENT OF ENVIRONMENTAL
3 QUALITY.

4 (E) "FUND" MEANS THE ENVIRONMENTAL OMBUDSMAN ADMINISTRATION
5 FUND CREATED IN SECTION 1216.

6 (F) "LEGISLATOR" MEANS A MEMBER OF THE SENATE OR THE HOUSE OF
7 REPRESENTATIVES OF THIS STATE.

8 (G) "OFFICE" MEANS THE OFFICE OF THE LEGISLATIVE ENVIRONMENTAL
9 OMBUDSMAN CREATED UNDER SECTION 1202.

10 (H) "OFFICIAL" MEANS AN OFFICIAL OR EMPLOYEE OF THE
11 DEPARTMENT.

12 (I) "OMBUDSMAN" MEANS THE PRINCIPAL EXECUTIVE OFFICER OF THE
13 OFFICE.

14 SEC. 1202. (1) THE OFFICE OF THE LEGISLATIVE ENVIRONMENTAL
15 OMBUDSMAN IS CREATED WITHIN THE LEGISLATIVE COUNCIL.

16 (2) THE PRINCIPAL EXECUTIVE OFFICER OF THE OFFICE IS THE
17 LEGISLATIVE ENVIRONMENTAL OMBUDSMAN, WHO SHALL BE APPOINTED BY AND
18 SERVE AT THE PLEASURE OF THE COUNCIL.

19 SEC. 1203. THE COUNCIL SHALL ESTABLISH PROCEDURES FOR
20 APPROVING THE BUDGET OF THE OFFICE, FOR EXPENDING FUNDS OF THE
21 OFFICE, AND FOR THE EMPLOYMENT OF PERSONNEL FOR THE OFFICE.

22 SEC. 1204. (1) THE OMBUDSMAN MAY COMMENCE AN INVESTIGATION
23 UPON EITHER OF THE FOLLOWING:

24 (A) RECEIPT OF A COMPLAINT FROM A LEGISLATOR OR OTHER PERSON,
25 OR ON THE OMBUDSMAN'S OWN INITIATIVE, CONCERNING AN ADMINISTRATIVE
26 ACT THAT IS ALLEGED BY A PERSON TO BE CONTRARY TO LAW OR CONTRARY
27 TO DEPARTMENTAL POLICY.

1 (B) THE OMBUDSMAN'S OWN INITIATIVE FOR SIGNIFICANT HEALTH AND
2 SAFETY ISSUES AND OTHER MATTERS FOR WHICH THERE IS NO EFFECTIVE
3 ADMINISTRATIVE REMEDY.

4 (2) SUBJECT TO APPROVAL OF THE COUNCIL, THE OMBUDSMAN SHALL
5 ESTABLISH PROCEDURES FOR RECEIVING AND PROCESSING COMPLAINTS,
6 CONDUCTING INVESTIGATIONS, HOLDING HEARINGS, AND REPORTING THE
7 FINDINGS RESULTING FROM THE INVESTIGATIONS.

8 SEC. 1205. (1) UPON REQUEST, THE OMBUDSMAN SHALL BE GIVEN
9 ACCESS TO ALL INFORMATION, RECORDS, AND DOCUMENTS IN THE POSSESSION
10 OF THE DEPARTMENT THAT THE OMBUDSMAN CONSIDERS NECESSARY IN AN
11 INVESTIGATION. THE DEPARTMENT SHALL ASSIST THE OMBUDSMAN IN
12 OBTAINING THE NECESSARY RELEASES OF THOSE DOCUMENTS THAT ARE
13 SPECIFICALLY RESTRICTED OR PRIVILEGED FOR USE BY THE OMBUDSMAN.

14 (2) UPON REQUEST AND WITHOUT NOTICE, THE OMBUDSMAN SHALL BE
15 GRANTED ENTRANCE TO INSPECT AT ANY TIME ANY PREMISES UNDER THE
16 CONTROL OF THE DEPARTMENT.

17 (3) THE OMBUDSMAN MAY HOLD INFORMAL HEARINGS AND MAY REQUEST
18 THAT ANY PERSON APPEAR BEFORE THE OMBUDSMAN OR AT A HEARING AND
19 GIVE TESTIMONY OR PRODUCE DOCUMENTARY OR OTHER EVIDENCE THAT THE
20 OMBUDSMAN CONSIDERS RELEVANT TO A MATTER UNDER INVESTIGATION.

21 SEC. 1206. (1) THE OMBUDSMAN SHALL ADVISE A COMPLAINANT TO
22 PURSUE ALL ADMINISTRATIVE REMEDIES OPEN TO THE COMPLAINANT. THE
23 OMBUDSMAN MAY REQUEST AND SHALL RECEIVE FROM THE DEPARTMENT A
24 PROGRESS REPORT CONCERNING THE ADMINISTRATIVE PROCESSING OF A
25 COMPLAINT. AFTER ADMINISTRATIVE ACTION ON A COMPLAINT, THE
26 OMBUDSMAN MAY CONDUCT FURTHER INVESTIGATION ON THE REQUEST OF A
27 COMPLAINANT OR ON HIS OR HER OWN INITIATIVE.

1 (2) THE OMBUDSMAN NEED NOT CONDUCT AN INVESTIGATION ON A
2 COMPLAINT BROUGHT BEFORE THE OMBUDSMAN. A PERSON IS NOT ENTITLED AS
3 A RIGHT TO BE HEARD BY THE OMBUDSMAN.

4 SEC. 1207. UPON RECEIVING A COMPLAINT UNDER SECTION 1204 AND
5 DECIDING TO INVESTIGATE THE COMPLAINT, THE OMBUDSMAN SHALL NOTIFY
6 THE COMPLAINANT, THE PERSON OR PERSONS AFFECTED, AND THE
7 DEPARTMENT. IF THE OMBUDSMAN DECLINES TO INVESTIGATE, THE OMBUDSMAN
8 SHALL NOTIFY THE COMPLAINANT, IN WRITING, AND INFORM THE PERSON OR
9 PERSONS AFFECTED OF THE REASONS FOR THE OMBUDSMAN'S DECISION.

10 SEC. 1208. UPON REQUEST OF THE OMBUDSMAN, THE COUNCIL MAY HOLD
11 A HEARING. THE COUNCIL MAY ADMINISTER OATHS, SUBPOENA WITNESSES,
12 AND EXAMINE THE BOOKS AND RECORDS OF THE DEPARTMENT OR OF A PERSON,
13 PARTNERSHIP, OR CORPORATION INVOLVED, IN ACCORDANCE WITH SECTION
14 104 OF THE LEGISLATIVE COUNCIL ACT, 1986 PA 268, MCL 4.1104, IN A
15 MATTER WHICH IS OR WAS A PROPER SUBJECT OF INVESTIGATION BY THE
16 OMBUDSMAN UNDER THIS PART.

17 SEC. 1209. (1) CORRESPONDENCE BETWEEN THE OMBUDSMAN AND A
18 PERSON IS CONFIDENTIAL AND SHALL BE PROCESSED AS PRIVILEGED
19 CORRESPONDENCE IN THE SAME MANNER AS LETTERS BETWEEN PERSONS AND
20 COURTS, ATTORNEYS, OR PUBLIC OFFICIALS.

21 (2) THE OMBUDSMAN SHALL MAINTAIN CONFIDENTIALITY WITH RESPECT
22 TO ALL MATTERS AND THE IDENTITIES OF THE COMPLAINANTS OR PERSONS
23 FROM WHOM INFORMATION IS ACQUIRED, EXCEPT SO FAR AS DISCLOSURES MAY
24 BE NECESSARY TO ENABLE THE OMBUDSMAN TO PERFORM THE DUTIES OF THE
25 OFFICE AND TO SUPPORT ANY RECOMMENDATIONS RESULTING FROM AN
26 INVESTIGATION.

27 (3) A REPORT PREPARED AND RECOMMENDATIONS MADE BY THE

1 OMBUDSMAN AND SUBMITTED TO THE COUNCIL UNDER SECTION 1210 ARE
2 EXEMPT FROM DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976
3 PA 442, MCL 15.231 TO 15.246.

4 SEC. 1210. (1) THE OMBUDSMAN SHALL PREPARE AND SUBMIT A REPORT
5 OF THE FINDINGS OF AN INVESTIGATION AND MAKE RECOMMENDATIONS TO THE
6 COUNCIL WITHIN 30 DAYS AFTER COMPLETING THE INVESTIGATION IF THE
7 OMBUDSMAN FINDS ANY OF THE FOLLOWING:

8 (A) A MATTER THAT SHOULD BE CONSIDERED BY THE DEPARTMENT.

9 (B) AN ADMINISTRATIVE ACT THAT SHOULD BE MODIFIED OR CANCELED.

10 (C) A STATUTE OR RULE THAT SHOULD BE ALTERED.

11 (D) ADMINISTRATIVE ACTS FOR WHICH JUSTIFICATION IS NECESSARY.

12 (E) SIGNIFICANT HEALTH AND SAFETY ISSUES AS DETERMINED BY THE
13 COUNCIL.

14 (F) ANY OTHER SIGNIFICANT CONCERNS AS DETERMINED BY THE
15 COUNCIL.

16 (2) SUBJECT TO SECTION 1211, THE COUNCIL MAY FORWARD THE
17 REPORT PREPARED AND SUBMITTED UNDER THIS SECTION TO THE DEPARTMENT,
18 THE PERSON OR PERSONS AFFECTED, OR THE COMPLAINANT WHO REQUESTED
19 THE REPORT.

20 SEC. 1211. BEFORE ANNOUNCING A CONCLUSION OR RECOMMENDATION
21 THAT EXPRESSLY OR BY IMPLICATION CRITICIZES A PERSON OR THE
22 DEPARTMENT, THE OMBUDSMAN SHALL CONSULT WITH THAT PERSON OR THE
23 DEPARTMENT. WHEN PUBLISHING AN OPINION ADVERSE TO THE DEPARTMENT OR
24 ANY PERSON, THE OMBUDSMAN SHALL INCLUDE IN THAT PUBLICATION A
25 STATEMENT OF REASONABLE LENGTH MADE TO HIM OR HER BY THE DEPARTMENT
26 OR PERSON IN DEFENSE OR MITIGATION OF THE ACTION IF THAT STATEMENT
27 IS PROVIDED WITHIN A REASONABLE PERIOD OF TIME AS DETERMINED BY THE

1 COUNCIL. THE OMBUDSMAN MAY REQUEST TO BE NOTIFIED BY THE
2 DEPARTMENT, WITHIN A SPECIFIED TIME, OF ANY ACTION TAKEN ON ANY
3 RECOMMENDATION PRESENTED. THE OMBUDSMAN SHALL NOTIFY THE
4 COMPLAINANT OF THE ACTIONS TAKEN BY THE OFFICE AND BY THE
5 DEPARTMENT.

6 SEC. 1212. THE OMBUDSMAN SHALL SUBMIT TO THE COUNCIL AND THE
7 LEGISLATURE AN ANNUAL REPORT ON THE CONDUCT OF THE OFFICE.

8 SEC. 1213. (1) A PERSON SHALL NOT BE PENALIZED IN ANY WAY BY
9 AN OFFICIAL OR THE DEPARTMENT AS A RESULT OF FILING A COMPLAINT,
10 COMPLAINING TO A LEGISLATOR, OR COOPERATING WITH THE OMBUDSMAN IN
11 INVESTIGATING A COMPLAINT.

12 (2) A PERSON OR THE DEPARTMENT SHALL NOT HINDER THE LAWFUL
13 ACTIONS OF THE OMBUDSMAN OR EMPLOYEES OF THE OFFICE OR WILLFULLY
14 REFUSE TO COMPLY WITH LAWFUL DEMANDS OF THE OFFICE.

15 SEC. 1214. THE AUTHORITY GRANTED THE OMBUDSMAN IS IN ADDITION
16 TO THE AUTHORITY GRANTED UNDER THE PROVISIONS OF ANY OTHER ACT OR
17 RULE UNDER WHICH THE REMEDY OR RIGHT OF APPEAL OR OBJECTION IS
18 PROVIDED FOR A PERSON OR ANY PROCEDURE PROVIDED FOR THE INQUIRY
19 INTO OR INVESTIGATION OF ANY MATTER. THE AUTHORITY GRANTED THE
20 OMBUDSMAN SHALL NOT BE CONSTRUED TO LIMIT OR AFFECT THE REMEDY OR
21 RIGHT OF APPEAL OR OBJECTION AND SHALL NOT BE CONSIDERED PART OF AN
22 EXCLUSIONARY PROCESS.

23 SEC. 1215. FROM CIVIL FINES COLLECTED UNDER THIS ACT THAT ARE
24 NOT OTHERWISE DEDICATED UNDER THIS ACT, \$200,000.00 SHALL BE
25 FORWARDED TO THE STATE TREASURER FOR DEPOSIT INTO THE FUND.

26 SEC. 1216. (1) THE ENVIRONMENTAL OMBUDSMAN ADMINISTRATION FUND
27 IS CREATED WITHIN THE STATE TREASURY.

1 (2) THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS FROM
2 ANY SOURCE FOR DEPOSIT INTO THE FUND. THE STATE TREASURER SHALL
3 DIRECT THE INVESTMENT OF THE FUND. THE STATE TREASURER SHALL CREDIT
4 TO THE FUND INTEREST AND EARNINGS FROM FUND INVESTMENTS.

5 (3) MONEY IN THE FUND AT THE CLOSE OF THE FISCAL YEAR SHALL
6 REMAIN IN THE FUND AND SHALL NOT LAPSE TO THE GENERAL FUND.

7 (4) THE COUNCIL SHALL EXPEND MONEY FROM THE FUND, UPON
8 APPROPRIATION, ONLY TO IMPLEMENT THIS PART.