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BILL



ANALYSIS

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Senate Bill 809 (as introduced 2-18-16)

Sponsor: Senator Peter MacGregor

Committee: Veterans, Military Affairs and Homeland Security

Date Completed: 4-14-16

CONTENT

The bill would enact a new statute to create the Office of the Michigan Veterans' Facility Ombudsman in the Legislative Council, and do the following:

- **Require the Council to appoint a Michigan Veterans' Facility Ombudsman, who would be the principal executive officer of the Office.**
- **Authorize the Ombudsman to investigate complaints about an administrative act or a condition at a Michigan veterans' facility that allegedly was contrary to law or policy or posed a significant health or safety issue.**
- **Permit the Ombudsman to investigate on his or her own initiative or upon receiving a complaint from a complainant (a veteran who was a resident of a Michigan veterans' facility, a family member of such a veteran, or a legislator).**
- **Require the Ombudsman to be given access to residents' health records and other records in the possession of the Department of Military and Veterans Affairs (DMVA) or a veterans' facility.**
- **Require the Ombudsman to be granted access to inspect a facility at any time.**
- **Authorize the Ombudsman to hold informal hearings and request a person to appear and testify or give evidence.**
- **Permit the Legislative Council to hold a hearing upon the Ombudsman's request, subpoena witnesses, and examine records of the DMVA or a veterans' facility.**
- **Provide that the Ombudsman would not be required to conduct an investigation on a complaint, and a complainant would not be entitled as a right to be heard by the Ombudsman.**
- **Provide for confidentiality of communications between the Ombudsman and complainants and of matters under investigation.**
- **Require the Ombudsman to submit a report and make recommendations to the Council if he or she made certain findings after an investigation.**
- **Require the Ombudsman, when publishing an opinion adverse to a person or facility or the DMVA, to include a statement made by that person or facility or the Department in defense or mitigation of the Ombudsman's finding.**
- **Provide that a facility resident could not be penalized for making a complaint or cooperating in an investigation.**
- **Require the Ombudsman to submit to the Council and the Legislature an annual report on the conduct of the Office.**

(The Legislative Council is a body created by the Michigan Constitution and statute, and consists of six members of the Senate appointed by the Senate Majority Leader and six members of the House appointed by the Speaker of the House. At least two members appointed by each leader must be members of the minority party. The Council must appoint an administrator who is the chief executive officer of all Council agencies.)

Creation of the Office; Appointment of Ombudsman

The Office of the Michigan Veterans' Facility Ombudsman would be created within the Legislative Council. The principal executive officer of the Office would be the Michigan Veterans' Facility Ombudsman, who would have to be appointed by and serve at the pleasure of the Council. The Council would have to establish procedures for approval of the Office's budget, expenditure of funds of the Office, and the employment of personnel for the Office.

Subject to approval of the Legislative Council, the Ombudsman would have to establish procedures for receiving and processing complaints, conducting investigations, holding hearings, and reporting the findings from the investigations.

Investigation of Complaints; Hearings

The Ombudsman could begin investigation upon his or her own initiative or upon receiving a complaint from a complainant concerning an administrative act or a condition existing at a Michigan veterans' facility that was alleged to be contrary to law or departmental policy or that posed a significant health or safety issue for which there was no effective administrative remedy.

Upon request and without the requirement of any release, the Ombudsman would have to be given access to all information, records, and documents in the possession of the DMVA or a Michigan veterans' facility that the Ombudsman considered necessary in an investigation. These items would include medical health records, mental health records, and mortality and morbidity records of resident veterans (veterans residing in a Michigan veterans' facility).

Upon request and without notice, the Ombudsman would have to be granted access to inspect a Michigan veterans' facility at any time.

The Ombudsman could hold informal hearings and could request any person to appear before the Ombudsman or at a hearing and give testimony or produce documentary or other evidence that he or she considered relevant to an investigation.

The Ombudsman would have to advise a complainant to pursue all administrative remedies open to him or her. The Ombudsman could request and would have to receive from the DMVA or from a facility a progress report concerning the administrative processing of a complaint. After administrative action on a complaint, the Ombudsman could conduct further investigation on his or her own initiative or on the request of a complainant.

Upon receiving a complaint and deciding to investigate it, the Ombudsman would have to notify the complainant, the resident veteran or resident veterans affected, and the Department. If he or she declined to investigate, the Ombudsman would have to notify the complainant in writing, and inform the resident veteran or veterans affected of the reasons for that decision.

Upon the Ombudsman's request, the Legislative Council could hold a hearing. The Council could administer oaths, subpoena witnesses, and examine the books and records of the DMVA or of a facility in a matter that was a proper subject of investigation by the Ombudsman.

Confidentiality

Correspondence between the Ombudsman and a complainant would be confidential and would be privileged communication. The Ombudsman would have to maintain confidentiality regarding all matters under investigation and the identities of the complainants or people from whom information was acquired, except to the extent disclosure was necessary to enable

the Ombudsman to perform the duties of the Office and to support any recommendations resulting from an investigation.

Report of Investigation

The Ombudsman would have to prepare and submit a report of the findings of an investigation and make recommendations to the Legislative Council within 30 days after completing the investigation, if he or she found any of the following:

- A matter that should be considered by the Department.
- An administrative act that should be modified or canceled.
- A statute or rule that should be altered.
- Administrative acts for which justification was necessary.
- Significant resident veteran health and safety issues as determined by the Council.
- Any other significant concerns as determined by the Council.

The report and recommendations would be exempt from disclosure under the Freedom of Information Act. Subject to the following provisions, the Council could forward the report to the DMVA, the resident veteran or resident veterans affected, or the complainant who requested the report.

Before announcing a conclusion or recommendation that expressly or by implication criticized a person or facility or the DMVA, the Ombudsman would have to consult with that person or facility or the Department. When publishing an opinion adverse to a person or facility or the DMVA, the Ombudsman would have to include in that publication a statement of reasonable length made to him or her by that person or facility or the Department in defense or mitigation of the finding, if that statement were provided within a reasonable period of time as determined by the Council.

The Ombudsman could request to be notified by the person or facility or the DMVA, within a specified time, of any action taken on any recommendation presented. The Ombudsman would have to notify the complainant of the actions taken by the person or facility or the DMVA.

Prohibitions

A resident veteran could not be penalized in any way by a person or facility or the Department as a result of filing a complaint, complaining to a legislator, or cooperating with the Ombudsman in investigating a complaint.

A person or facility or the DMVA would be prohibited from hindering the lawful actions of the Ombudsman or employees of the Office, or willfully refusing to comply with any lawful demand of the Office.

Ombudsman's Authority

The authority granted to the Ombudsman under the proposed statute would be in addition to the authority granted under any other act or rule under which a remedy or right of appeal or objection is provided for a complainant, or any procedure provided for the inquiry into or investigation of any matter concerning a facility.

The authority granted to the Ombudsman could not be construed to limit or affect any other remedy or right of appeal or objection and could not be deemed to be exclusionary.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the State budget. As the bill would not appropriate funding for the implementation of its provisions, the fiscal impact would depend upon whether, and to what extent, the Legislature chose to appropriate funding for the proposed requirements.

Currently, the Legislature funds the Office of Legislative Corrections Ombudsman, created under Public Act 46 of 1975, within the Legislative Council. For fiscal year 2016-17, the Governor has recommended an appropriation of \$729,200 GF/GP for the Office. The Office has a staff of seven, consisting of the Ombudsman, a chief analyst, a senior analyst, three analysts, and an administrative secretary. The scope of the Office's responsibilities span over 30 correctional facilities in the State. Should the Legislature choose to mirror the structure of the Office of Legislative Corrections Ombudsman in providing appropriations for an Office of the Michigan Veterans' Facility Ombudsman, it is likely that the cost of providing ombudsman services would be significantly less for veteran's facilities than that required for correctional facilities since the scope of the proposed Ombudsman's responsibilities would cover only two facilities -- the Grand Rapids Home for Veterans and the D.J. Jacobetti Home for Veterans. It also is possible that the cost of an Office of the Michigan Veterans' Facility Ombudsman could be mitigated through the potential synergy of the two Offices working together and sharing resources to the extent feasible.

Fiscal Analyst: Bruce Baker
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.