

# HOUSE BILL NO. 4065

January 17, 2019, Introduced by Reps. Neeley, Cherry, Lasinski, Sneller, Clemente, Elder, Cynthia Johnson, Sowerby, Hertel, Brenda Carter, Wittenberg, Anthony, Tyrone Carter, Garza, Garrett, Byrd, Ellison, Love, Robinson, Hammoud and Hoadley and referred to the Committee on Natural Resources and Outdoor Recreation.

A bill to create the office of the water ombudsman; to provide a process for investigating and evaluating the quality of drinking water provided by public water supplies; to prescribe the powers and duties of the office, the ombudsman, the legislative council, and certain other state agencies and officials; and to prescribe penalties and provide remedies.

## **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the "water  
2   ombudsman act".

1       Sec. 2. As used in this act:

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

5       (b) "Complainant" means a person that submits a complaint to  
6 the ombudsman under this act.

7       (c) "Council" means the legislative council established under  
8 section 15 of article IV of the state constitution of 1963 and  
9 provided for in section 103 of the legislative council act, 1986 PA  
10 268, MCL 4.1103.

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

13       (e) "Office" means the office of the water ombudsman created  
14 in section 3.

15       (f) "Ombudsman" means the water ombudsman appointed under  
16 section 3.

17       (g) "Person" means an individual, partnership, corporation,  
18 association, governmental entity, or other legal entity.

19       (h) "Public water supply" means that term as defined in  
20 section 2 of the safe drinking water act, 1976 PA 399, MCL  
21 325.1002.

22       (i) "State drinking water standards" means that term as  
23 defined in section 2 of the safe drinking water act, 1976 PA 399,  
24 MCL 325.1002.

25       (j) "Supplier of water" means that term as defined in section  
26 2 of the safe drinking water act, 1976 PA 399, MCL 325.1002.

27       (k) "Waterworks system" means that term as defined in section  
28 2 of the safe drinking water act, 1976 PA 399, MCL 325.1002.

29       Sec. 3. (1) The office of the water ombudsman is created

1 within the legislative council.

2 (2) The principal executive officer of the office is the water  
3 ombudsman, who shall be appointed by and serve at the pleasure of  
4 the council.

5 Sec. 4. The council shall establish procedures for approving  
6 the budget of the office, for expending funds of the office, and  
7 for employing personnel for the office.

8 Sec. 5. (1) The ombudsman may commence an investigation on his  
9 or her own initiative or on receipt of a complaint from a person  
10 concerning an administrative act related to the person's drinking  
11 water or the quality of water from a public water supply. The  
12 complaint may allege a violation of law or departmental policy or a  
13 water quality condition that poses a significant health or safety  
14 issue for which there is no effective administrative remedy.

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

19 Sec. 6. (1) Upon request and without the requirement of any  
20 release, the ombudsman must be given access to all information,  
21 records, and documents in the possession of the department or a  
22 supplier of water that the ombudsman considers necessary in an  
23 investigation, including, but not limited to:

24 (a) Procedures for collecting water samples.

25 (b) Results of the analysis of water samples.

26 (c) Results of an analysis of water samples indicating  
27 noncompliance with state drinking water standards.

28 (d) Evidence of violations of the safe drinking water act,  
29 1976 PA 399, MCL 325.1001 to 325.1023.

1           (2) Upon request and without notice, the ombudsman must be  
2 granted entrance to inspect at any time any waterworks system  
3 providing water for a public water supply.

4           (3) The ombudsman may hold informal hearings and may request  
5 that any person appear before the ombudsman or at a hearing and  
6 give testimony or produce documentary or other evidence that the  
7 ombudsman considers relevant to an investigation.

8           Sec. 7. (1) The ombudsman shall advise a complainant to pursue  
9 all administrative remedies open to the complainant. Upon request  
10 from the ombudsman, the department shall provide a progress report  
11 concerning the administrative processing of a complaint submitted  
12 to the department. After the department takes administrative action  
13 on a complaint, the ombudsman may conduct further investigation at  
14 the request of a complainant or on his or her own initiative.

15           (2) The ombudsman is not required to conduct an investigation  
16 on a complaint brought before the ombudsman. A complainant is not  
17 entitled to have an investigation conducted by the ombudsman.

18           Sec. 8. Upon receiving a complaint under this act and deciding  
19 to investigate the complaint, the ombudsman shall notify the  
20 complainant and the department. If the ombudsman declines to  
21 investigate, the ombudsman shall notify the complainant, in  
22 writing, of the reasons for the ombudsman's decision.

23           Sec. 9. Upon request of the ombudsman, the council may hold a  
24 hearing. The council may administer oaths, subpoena witnesses, and  
25 examine the books and records of the department or of a supplier of  
26 water in a matter that is or was a proper subject of investigation  
27 by the ombudsman.

28           Sec. 10. (1) Subject to subsection (2), correspondence between  
29 the ombudsman and a complainant is confidential, is privileged

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

3 (2) The ombudsman shall maintain confidentiality regarding all  
4 matters under investigation and the identities of the complainants  
5 or persons from whom information is acquired, unless disclosure is  
6 necessary to enable the ombudsman to perform the duties of the  
7 office or to support any recommendations resulting from an  
8 investigation.

9 (3) A report prepared and recommendations made by the  
10 ombudsman and submitted to the council under section 11 are exempt  
11 from disclosure under the freedom of information act, 1976 PA 442,  
12 MCL 15.231 to 15.246.

13 Sec. 11. (1) Within 30 days after completing an investigation,  
14 the ombudsman shall prepare and submit a report of its findings to  
15 the council. The report must include recommendations if the  
16 ombudsman finds any of the following:

17 (a) A matter that the department should consider.

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

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

20 (d) An administrative act for which justification is  
21 necessary.

22 (e) A significant health and safety issue due to the quality  
23 of drinking water provided by a public water supply.

24 (f) Any other significant concern as determined by the  
25 ombudsman.

26 (2) Subject to section 12, the council may forward the report  
27 prepared and submitted under subsection (1) to the department and  
28 the complainant who requested the report.

29 (3) In addition to preparing the report under subsection (1),

1 within 30 days after completing the investigation, the ombudsman  
2 shall prepare and provide to the complainant a resolution report  
3 that details the findings of the investigation, the recommendations  
4 of the ombudsman, and any actions that have been taken to address  
5 the complainant's concerns.

6 Sec. 12. Before announcing a conclusion or recommendation that  
7 expressly or by implication criticizes the department, a supplier  
8 of water, or other person, the ombudsman shall consult with the  
9 department, the supplier of water, or the other person. If the  
10 ombudsman publishes an opinion adverse to the department, a  
11 supplier of water, or other person, the ombudsman shall include in  
12 that publication a statement of reasonable length made to the  
13 ombudsman by the department, the supplier of water, or the other  
14 person in defense or mitigation of the finding if that statement is  
15 provided within a reasonable time as determined by the council. The  
16 ombudsman may request that the department, a supplier of water, or  
17 other person notify it within a specified time of any action taken  
18 on any recommendation presented. The ombudsman shall notify the  
19 complainant of the actions the department, the supplier of water,  
20 or the other person takes to address the complaint.

21 Sec. 13. (1) The ombudsman shall submit to the council and the  
22 legislature an annual report on the conduct of the office that  
23 contains information required by the council.

24 (2) The ombudsman shall annually post on its website a report  
25 that contains all of the following:

- 26 (a) The number of complaints received.
- 27 (b) The number of complaints investigated.
- 28 (c) The number of complaints resolved.
- 29 (d) The nature of each incident that was the basis for the

1 complaint. However, personal identifying information must not be  
2 included.

3 (e) The average time from the receipt of a complaint until a  
4 resolution report is provided under section 11(3).

5 (f) The percentage of repeat complaints.

6 (g) Satisfaction feedback.

7 (h) Any additional information the council requests to be  
8 included in the annual report or the ombudsman considers relevant.

9 Sec. 14. (1) The department or a supplier of water shall not  
10 penalize in any way a complainant or other person for filing a  
11 complaint, providing information to the council or a legislator, or  
12 cooperating with the ombudsman in investigating a complaint.

13 (2) The department, a supplier of water, or any person shall  
14 not hinder the lawful actions of the ombudsman or employees of the  
15 office or willfully refuse to comply with any lawful demand of the  
16 office.

17 Sec. 15. The authority granted to the ombudsman under this act  
18 is in addition to other authority granted by law to any other  
19 office or agency relative to a remedy or right of appeal or  
20 objection for a complainant, or any procedure provided for the  
21 inquiry into, or investigation of, any matter concerning a public  
22 water supply. The authority granted to the ombudsman under this act  
23 does not limit or affect any other remedy or right of appeal or  
24 objection provided by law and shall not be considered to be  
25 exclusionary.

26 Sec. 16. A person that violates this act is guilty of a  
27 misdemeanor punishable by imprisonment for not more than 1 year or  
28 a fine of not more than \$1,000.00, or both.

29 Enacting section 1. This act takes effect 90 days after the

**1** date it is enacted into law.