

SENATE BILL NO. 481

September 04, 2019, Introduced by Senators WOJNO, HERTEL, ANANICH, BULLOCK, BRINKS, ALEXANDER, POLEHANKI, BAYER, GEISS, MCCANN and HOLLIER and referred to the Committee on Government Operations.

A bill to create the office of the state employee ombudsman; to provide a process for investigating and evaluating reports of suspected violations of law, conduct or decisions that may endanger public health or safety, and gross mismanagement of public funds; 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 "state

1 employee ombudsman act".

2 Sec. 2. As used in this act:

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

6 (b) "Complainant" means an individual who submits a complaint
7 to the ombudsman under this act.

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

12 (d) "Office" means the office of the state employee ombudsman
13 created in section 3.

14 (e) "Ombudsman" means the state employee ombudsman appointed
15 under section 3.

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

18 (g) "State department or agency" means a state department or
19 other agency within the executive branch.

20 (h) "State employee" means a full-time or part-time employee
21 of a state department or agency.

22 Sec. 3. (1) The office of the state employee ombudsman is
23 created within the legislative council.

24 (2) The principal executive officer of the office is the state
25 employee ombudsman, who must be appointed by and serve at the
26 pleasure of the council.

27 Sec. 4. The council shall establish procedures for approving
28 the budget of the office, for expending funds of the office, and
29 for employing personnel for the office.

1 Sec. 5. (1) The ombudsman may commence an investigation upon
2 his or her own initiative or upon receipt of a complaint from a
3 state employee concerning an administrative act.

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 investigations.

8 Sec. 6. (1) Upon request, the ombudsman must be given access
9 to all information, records, and documents in the possession of a
10 state department or agency that the ombudsman considers necessary
11 in an investigation, including, but not limited to, all of the
12 following:

13 (a) Violations or suspected violations of law.

14 (b) Conduct by a state department or agency that will, or is
15 substantially likely to, endanger public health or safety.

16 (c) Gross mismanagement or waste of public funds.

17 (2) The ombudsman may hold informal hearings and may request
18 that any individual 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 an investigation.

21 Sec. 7. (1) The ombudsman shall advise a complainant to pursue
22 all administrative remedies open to the complainant. Upon request
23 from the ombudsman, a state department or agency shall provide a
24 progress report concerning the administrative processing of a
25 complaint submitted to the state department or agency. After the
26 state department or agency takes administrative action on a
27 complaint, the ombudsman may conduct further investigation at the
28 request of a complainant or on his or her own initiative.

29 (2) The ombudsman is not required to conduct an investigation

1 on a complaint brought before the ombudsman. A complainant is not
2 entitled to have an investigation conducted by the ombudsman.

3 Sec. 8. Upon receiving a complaint under this act and deciding
4 to investigate the complaint, the ombudsman shall notify the
5 complainant and the state department or agency. If the ombudsman
6 declines to investigate, the ombudsman shall notify the
7 complainant, in writing, of the reasons for the ombudsman's
8 decision.

9 Sec. 9. Upon request of the ombudsman, the council may hold a
10 hearing. The council may administer oaths, subpoena witnesses, and
11 examine the books and records of the state department or agency
12 that is or was a proper subject of investigation by the ombudsman.

13 Sec. 10. (1) Subject to subsection (2), correspondence between
14 the office and a complainant is confidential, is privileged
15 communication, and is exempt from disclosure under the freedom of
16 information act, 1976 PA 442, MCL 15.231 to 15.246.

17 (2) The office shall maintain confidentiality regarding all
18 matters under investigation and the identities of the complainants
19 or persons from whom information is acquired, unless disclosure is
20 necessary to enable the ombudsman to perform the duties of the
21 office or to support any recommendations resulting from an
22 investigation.

23 Sec. 11. (1) Within 30 days after completing the
24 investigation, the ombudsman shall prepare and provide to the
25 complainant a resolution report that details the findings of the
26 investigation, the recommendations of the ombudsman, and any
27 actions that have been taken to address the complainant's concerns.
28 The ombudsman may request that a state department or agency notify
29 the ombudsman within a specified time of any action taken on any

1 recommendation presented. The ombudsman shall notify the
2 complainant of the actions a state department or agency takes to
3 address the complaint.

4 (2) In addition to the report prepared under subsection (1),
5 within 30 days after completing an investigation, the ombudsman
6 shall prepare and submit a report of its findings to the council.
7 The report must include recommendations if the ombudsman finds any
8 of the following:

9 (a) Conduct that will or is substantially likely to endanger
10 public health or safety.

11 (b) A violation or a suspected violation of law.

12 (c) The gross mismanagement or waste of public funds.

13 (d) A matter that the state department or agency should
14 consider.

15 (e) An administrative act that should be modified or canceled.

16 (f) A statute or rule that should be altered.

17 (g) An administrative act for which justification is
18 necessary.

19 (h) Any other significant concern as determined by the
20 ombudsman.

21 (3) Subject to section 12, the council may forward the report
22 prepared and submitted under subsection (2) to the state department
23 or agency and the complainant who requested the report.

24 (4) A report prepared and recommendations made by the
25 ombudsman and submitted to the council under subsection (2) are
26 exempt from disclosure under the freedom of information act, 1976
27 PA 442, MCL 15.231 to 15.246.

28 Sec. 12. Before announcing to the general public a conclusion
29 or recommendation that expressly or by implication criticizes a

1 state department or agency, the ombudsman shall consult with the
2 state department or agency. If the ombudsman publishes an opinion
3 adverse to a state department or agency, the ombudsman shall
4 include in that publication a statement of reasonable length made
5 to the ombudsman by the state department or agency in defense or
6 mitigation of the finding if that statement is provided within a
7 reasonable time as determined by the council.

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

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

13 (a) The number of complaints received.

14 (b) The number of complaints investigated.

15 (c) The number of complaints resolved.

16 (d) The nature of each incident that was the basis for the
17 complaint. However, personal identifying information must not be
18 included.

19 (e) The average time from the receipt of a complaint until a
20 resolution report is provided under section 11(1).

21 (f) The percentage of repeat complaints.

22 (g) Satisfaction feedback.

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

25 Sec. 14. (1) A state department or agency shall not penalize
26 in any way a complainant for filing a complaint, providing
27 information to the council or a legislator, or cooperating with the
28 ombudsman in investigating a complaint.

29 (2) A state department or agency or any person shall not

1 hinder the lawful actions of the ombudsman or employees of the
2 office or willfully refuse to comply with any lawful demand of the
3 office.

4 Sec. 15. The authority granted to the ombudsman under this act
5 is in addition to other authority granted by law to any other
6 office or agency relative to a remedy or right of appeal or
7 objection for a complainant, or any procedure provided for the
8 inquiry into, or investigation of, any matter. The authority
9 granted to the ombudsman under this act does not limit or affect
10 any other remedy or right of appeal or objection provided by law
11 and must not be considered to be exclusionary.

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

15 Enacting section 1. This act takes effect 90 days after the
16 date it is enacted into law.