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BILL ANALYSIS

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Senate Bill 2 (Substitute S-2 as reported)  
Senate Bill 340 (Substitute S-2 as reported)  
Sponsor: Senator Alan Sanborn (S.B. 2)  
Senator Patricia L. Birkholz (S.B. 340)  
Committee: Economic Development and Regulatory Reform

Date Completed: 9-8-09

### **RATIONALE**

Businesses in Michigan must comply with a variety of State laws and regulations, including environmental regulations and licensing and permitting requirements. A number of different State agencies are responsible for enforcing those regulations, and some business owners reportedly have complained about the difficulty of navigating the State's regulatory structure, or have had disputes over how certain regulations have been applied. It has been suggested that the State should designate an ombudsman to help businesses through the regulatory process and resolve any disagreements. Although the Michigan Economic Development Corporation (MEDC) has a business ombudsman who currently fills a similar role, some people believe that the position should be codified as an independent entity within the Michigan Strategic Fund, with explicit duties and authority.

### **CONTENT**

**The bills would create Chapter 7A of the Michigan Strategic Fund Act to establish the Office of Business Ombudsman as an autonomous entity within the Strategic Fund, empowered to investigate and review the actions of Michigan regulatory agencies.**

**Senate Bill 2 (S-2) would do all of the following:**

- **Require the Business Ombudsman to be appointed with the advice and consent of the Senate, and allow the**

**Governor to remove the Ombudsman for cause.**

- **Provide that the individual serving in the capacity of Business Ombudsman on the bill's effective date would have to continue serving in that capacity, subject to the advice and consent of the Senate.**
- **Require the Office to receive, investigate, and resolve complaints and disputes from businesses against departments and agencies of the State; and specify additional powers and duties of the Office and the Ombudsman.**

**Senate Bill 340 (S-2) would do the following:**

- **Require all departments, agencies, boards, committees, commissions, or officers of the State or any political subdivision of the State to give any assistance requested by the Office of Business Ombudsman in the performance of its duties.**
- **Allow the Office to bring an action in circuit court to enforce the proposed chapter.**
- **Require the Ombudsman, after an investigation, to present any conclusions and recommendations to the department or agency involved.**
- **Require the department or agency, at the Ombudsman's request, to inform the Ombudsman about the actions taken on the recommendations or the reasons for not complying with them.**

- **Permit the Ombudsman to submit his or her conclusions or recommendations to the Legislature, the Governor, a grand jury, the public, or any other appropriate authority.**
- **Require information obtained by the Office from businesses to be held in confidence, to the extent authorized under the Freedom of Information Act.**

The two bills are tie-barred to one another.

### **Senate Bill 2 (S-2)**

#### Office of Business Ombudsman

The bill would create the Office of the Business Ombudsman as an autonomous entity in the Michigan Strategic Fund. The Office would be an independent, impartial State office empowered to investigate and review the actions of Michigan regulatory agencies. The Office would have to monitor and ensure compliance with relevant laws and policies and recommend appropriate changes in policy, procedure, and legislation.

The Office's principal executive would be the Business Ombudsman, who would be appointed by the Governor with the advice and consent of the Senate. The person who was serving in the capacity of Business Ombudsman on the bill's effective date would continue to serve as the Business Ombudsman, subject to the advice and consent of the Senate.

The appointed individual would have to be qualified by training and experience to perform the duties and exercise the powers of the Ombudsman and the Office as provided in the bill. The Governor could remove the Ombudsman from office for cause, including incompetence, official misconduct, habitual or willful neglect of duty, or other misfeasance or malfeasance in connection with the operation of the Office. The Governor would have to report the reason for the Ombudsman's removal to the Legislature.

The Ombudsman could not be actively involved in political party activities or publicly endorse, solicit funds for, or make contributions to political parties or candidates for elective office. The

Ombudsman could not engage in any other occupation, business, or profession likely to detract from the full-time performance of his or her duties as Ombudsman or to result in a conflict of interest or an appearance of impropriety or partiality.

#### Powers & Duties

The Office would have to receive, investigate, and resolve complaints and disputes from businesses against Michigan departments and agencies. Any individual could submit a complaint to the Office, and the Office would have sole discretion and authority to determine if a complaint fell within its powers and duties to investigate. The Office also could initiate an investigation without receiving a complaint. Complainants would be entitled to receive the Ombudsman's recommendations, and the department's or agency's response to the recommendations, consistent with State and Federal law.

The Office could coordinate or do all of the following:

- Conduct independent evaluations of all of its administrative activities (described below).
- Review and provide comments and recommendations to the Federal government and State departments and agencies regarding the development and implementation of regulatory requirements that affect businesses.
- Facilitate and promote the participation of businesses in the development of rules that affect businesses.
- Assist in providing reports to the Governor and Legislature and the public regarding the applicability of State laws and regulations to business.
- Aid in the dissemination of information to businesses and other interested parties.
- Participate in or sponsor meetings and conferences with State and local regulatory officials, industry groups, and business representatives.
- Work with trade associations and businesses to bring about voluntary compliance with regulatory laws and rules.
- Work with private sector financial institutions to assist businesses in locating sources of funds to comply with State regulation.

- Conduct studies to evaluate the impact of State regulation on the State economy, local economies, and businesses.
- Work with other states to establish a network for sharing information on businesses and their efforts to comply with state regulations.
- Make recommendations to the department and the Legislature concerning the reduction of any fees required under State law to take into account the financial resources of businesses.

The Office also could work with regional and State offices of the Small Business Administration, the U.S. Department of Commerce, the U.S. Department of Agriculture, the Michigan Strategic Fund, the MEDC, and other Federal and State agencies that may have programs to provide financial assistance to businesses that are in need of funds to comply with State regulation.

The Ombudsman would have to establish procedures for the Office for budgeting, spending money, and employing personnel according to the Management and Budget Act. Subject to annual appropriations, the Ombudsman would have to employ sufficient personnel to carry out the duties and powers prescribed by the Act.

The Office could develop mechanisms for all of the following:

- Developing, collecting, and coordinating information on compliance methods and technologies for businesses.
- Assisting business with information regarding alternative technologies, process changes, and products and methods of operation that would help to ensure compliance with State regulation.
- Establishing a compliance assistance program that would assist businesses in determining applicable requirements for compliance and the procedures for obtaining permits efficiently in a timely manner under State law.

The Office would have to develop adequate mechanisms for all of the following:

- Encouraging lawful cooperation among businesses and other people to further compliance with State regulatory laws and for receiving and processing

complaints about the administration of those laws by State departments and agencies.

- Providing mechanisms and access to information so that businesses received notification of their rights under State law in a manner and form that assured reasonably adequate time to evaluate their compliance methods or applicable proposed or final rules or standards.
- Providing information on how to obtain consideration from a State department or agency on requests from businesses for modifications of any work practice or technological method of compliance.

The Office also would have to develop an adequate mechanism to inform businesses of their obligations under State law, including mechanisms for referring businesses to qualified auditors or to the State, if the State elected to provide audits to determine compliance with State law. To the extent permissible by State and Federal law, audits would have to be separate from the formal inspection and compliance program.

### **Senate Bill 340 (S-2)**

#### Investigations

The bill would require all departments, agencies, boards, committees, commissions, or officers of this State or any political subdivision of the State, to the extent compatible with their duties, to give the Office of the Business Ombudsman any assistance it requested in the performance of the Office's duties. All of those entities would have to provide the Office free access to agency personnel and any book, record, or document in their custody, relating to investigation of a complaint by the Office, other than information exempted under Section 13 of the Freedom of Information Act. (That section describes records that a public body may exempt from disclosure.)

A person could not interfere with, prevent, or prohibit the Ombudsman from carrying out his or her powers or duties. The Office could bring an action in the Circuit Court for Ingham County to enforce proposed Chapter 7A.

A State department or agency could not discriminate against a person because a complaint against the department or agency

had been or could be filed with the Office by or on behalf of the person.

Information obtained by the Office from businesses that used its services would have to be held in confidence by those employed by the Office to the extent authorized under the Freedom of Information Act, including those provisions pertaining to exemptions from disclosure for trade secrets and commercial and financial information.

### Conclusions & Recommendations

If, after investigation, the Ombudsman believed that a department or agency should consider the matter further, alter a regulation, practice, or ruling, explain more fully the action in question, rectify an omission, or take any further action, the Ombudsman would have to state any conclusions or recommendations, and reasons for them, to the department or agency involved. At his or her request, the department or agency would have to inform the Ombudsman, within the time specified, about the action taken on recommendations or the reasons for not complying with them.

After a reasonable period of time, the Ombudsman could issue his or her conclusions or recommendations to the Legislature, the Governor, a grand jury, the public, or any other appropriate authority. The Ombudsman would have to include any brief statement the agency provided in response to the investigation.

If the Ombudsman believed that an action by the department or agency had been dictated by laws whose results were unfair or otherwise objectionable, and that could be revised by legislative action, the Ombudsman would have to notify the Secretary of the Senate and the clerk of the House of Representatives and the agency of desirable statutory change.

If the Ombudsman believed that any agency official or employee had acted in a manner warranting criminal or disciplinary proceedings, he or she would have to refer the matter to the appropriate authorities without notice to that person.

Proposed MCL 125.2079a-125.2079d (S.B. 2)  
Proposed MCL 125.2079e-125.2079g (S.B. 340)

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The Business Ombudsman would serve as an advocate for business owners and operators, helping them to comply with the State's regulatory requirements. For some entrepreneurs, particularly those running small businesses with limited resources, the regulatory system can seem overwhelming. The businesses often must deal with multiple agencies, which have different requirements and may make conflicting demands. The Ombudsman would have the power to coordinate actions among the different regulatory bodies, resolving any disputes and negotiating a satisfactory outcome. The Ombudsman also could help to expedite permitting and approval processes, enabling businesses to obtain the necessary permits or licenses more quickly and with less effort. By assisting State government in working effectively with businesses, the Ombudsman could make Michigan a more desirable business location, helping to revitalize the State's economy.

When there were disputes over regulatory issues, the Ombudsman could investigate the situation and determine the underlying causes. He or she would be in an ideal position to observe flaws in the regulatory structure or places where the process could be made easier or more effective. Based on the information gathered from investigations, the Ombudsman could recommend improvements to the State's laws and regulatory requirements, helping to prevent recurring problems and further streamlining the process.

While the current business ombudsman position within the MEDC was created to perform a similar function, that position does not have statutory authority and lacks a specific mandate to help businesses overcome regulatory hurdles. The bills would provide that authority and would give the Ombudsman the tools to do the job effectively. In addition, the bills would require the Ombudsman to be appointed by the Governor with the advice and consent of the Senate, giving the Senate a voice in the process and helping to ensure that the

person chosen had a broad measure of support. The Ombudsman would have to be independent and impartial, key qualities if the person were to deal effectively with the broad variety of regulatory agencies and the business community in Michigan.

### **Opposing Argument**

The bills would create a new position in statute and impose expanded responsibilities beyond those of the current business ombudsman, but there are no provisions for funding the Office. At a time when there are ongoing efforts to shrink State government, it would be unwise to codify a new position.

**Response:** The MEDC already has a business ombudsman, and that position was paid for out of the Corporation's existing budget. Since the Ombudsman created under the bills would replace the existing ombudsman and fill a similar role, it is not clear that the position would require additional funding.

Legislative Analyst: Curtis Walker

### **FISCAL IMPACT**

The bills would have an indeterminate fiscal impact on State government. The bills would require creation of the Office of Business Ombudsman within the Michigan Strategic Fund (MSF) and establish specific duties for the Office, including the investigation and resolution of complaints from businesses against State agencies. Currently, the Michigan Economic Development Corporation, an independent agency created by an interlocal agreement between the MSF and local partners, has a full-time business ombudsman funded from the MEDC's corporate revenue at a salary of \$85,000 plus benefits. Under the bills, the Office of Business Ombudsman would have expanded authority and duties, which would be expected to increase the cost of the Office.

As a comparison, the Office of the Legislative Corrections Ombudsman was created within the Legislative Council at a cost of approximately \$400,000 in FY 2008-09. The bills, however, do not provide any additional appropriation for the proposed Office. The year-to-date appropriations for the MSF total \$148,031,000 in FY 2008-09, of which \$27,741,100 is from General Fund/General Purpose revenue.

Under the bills, all State agencies and offices and political subdivisions of the State would be required to cooperate (to the extent compatible with their duties) with the Office of Business Ombudsman and provide free access to personnel and documents. This would increase the cost of State and local government by an unknown amount.

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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.