

# HOUSE BILL No. 5462

March 15, 2016, Introduced by Reps. Neeley, Rutledge, Phelps, Chang, Garrett, Brunner, Hoadley, Guerra, Schor, Faris, Durhal, Dianda, Geiss, LaVoy, Hovey-Wright, Irwin, Brinks and Moss and referred to the Committee on Natural Resources.

A bill to create the office of the water ombudsman; to provide a process for the investigation and evaluation of 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".

3       Sec. 2. As used in this act:

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

7       (b) "Complainant" means a person that submits a complaint to

1 the ombudsman under this act.

2 (c) "Council" means the legislative council established under  
3 section 15 of article IV of the state constitution of 1963.

4 (d) "Department" means the department of environmental  
5 quality.

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

8 (f) "Ombudsman" means the water ombudsman appointed under  
9 section 3.

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

12 (h) "Public water supply" means that term as defined in  
13 section 2 of the safe drinking water act, 1976 PA 399, MCL  
14 325.1002.

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

18 (j) "Supplier of water" means that term as defined in section  
19 2 of the state drinking water act, 1976 PA 399, MCL 325.1002.

20 Sec. 3. (1) The office of the water ombudsman is created  
21 within the legislative council.

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

25 Sec. 4. The council shall establish procedures for approving  
26 the budget of the office, for expending funds of the office, and  
27 for the employment of 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 person concerning an administrative act related to the person's  
4 drinking water or the quality of water from a public water supply.  
5 The complaint may allege a violation of law or departmental policy  
6 or a water quality condition that poses a significant health or  
7 safety issue for which there is no effective administrative remedy.

8       (2) Subject to approval of the council, the ombudsman shall  
9 establish procedures for receiving and processing complaints,  
10 conducting investigations, holding hearings, and reporting the  
11 findings resulting from the investigations.

12       Sec. 6. (1) Upon request and without the requirement of any  
13 release, the ombudsman shall be given access to all information,  
14 records, and documents in the possession of the department or a  
15 supplier of water that the ombudsman considers necessary in an  
16 investigation, including, but not limited to:

17       (a) Procedures for collecting water samples.

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

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

21       (d) Evidence of violations of the safe drinking water act,  
22 1976 PA 399, MCL 325.1001 to 325.1023.

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

26       (3) The ombudsman may hold informal hearings and may request  
27 that any person appear before the ombudsman or at a hearing and

1 give testimony or produce documentary or other evidence that the  
2 ombudsman considers relevant to an investigation.

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

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

13       Sec. 8. Upon receiving a complaint under this act and deciding  
14 to investigate the complaint, the ombudsman shall notify the  
15 complainant and the department. If the ombudsman declines to  
16 investigate, the ombudsman shall notify the complainant, in  
17 writing, of the reasons for the ombudsman's decision.

18       Sec. 9. Upon request of the ombudsman, the council may hold a  
19 hearing. The council may administer oaths, subpoena witnesses, and  
20 examine the books and records of the department or of a supplier of  
21 water in a matter that is or was a proper subject of investigation  
22 by the ombudsman.

23       Sec. 10. (1) Subject to subsection (2), correspondence between  
24 the ombudsman and a complainant is confidential, is privileged  
25 communication, and is exempt from disclosure under the freedom of  
26 information act, 1976 PA 442, MCL 15.231 to 15.246.

27       (2) The ombudsman shall maintain confidentiality regarding all

1 matters under investigation and the identities of the complainants  
2 or persons from whom information is acquired, unless disclosure is  
3 necessary to enable the ombudsman to perform the duties of the  
4 office and to support any recommendations resulting from an  
5 investigation.

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

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

14 (a) A matter that should be considered by the department.

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

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

17 (d) Administrative acts for which justification is necessary.

18 (e) Significant health and safety issues due to the quality of  
19 drinking water provided by a public water supply.

20 (f) Any other significant concerns as determined by the  
21 council.

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

25 (3) In addition to preparing the report under subsection (1),  
26 within 30 days after completing the investigation, the ombudsman  
27 shall prepare and provide to the complainant a resolution report

1 that details the findings of the investigation, the recommendations  
2 of the ombudsman, and any actions that have been taken to address  
3 the complainant's concerns.

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

19       Sec. 13. (1) The ombudsman shall submit to the council and the  
20 legislature an annual report on the conduct of the office.

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

23       (a) The number of complaints received.

24       (b) The number of complaints investigated.

25       (c) The number of complaints resolved.

26       (d) The nature of each incident that was the basis for the  
27 complaint. However, personal identifying information shall not be

1 included.

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

4 (f) The percentage of repeat complaints.

5 (g) Satisfaction feedback.

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

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

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

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

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

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

1 date it is enacted into law.