

HOUSE BILL No. 6028

November 9, 2016, Introduced by Rep. Chang and referred to the Committee on Government Operations.

A bill to create the office of the air ombudsman; to provide for complaints and investigations related to air quality; 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 "air
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
8 the ombudsman under this act.

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

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

5 (e) "Emitting facility" means a stationary source as defined
6 in section 302(z) of title III of the clean air act, 42 USC 7602.

7 (f) "Office" means the office of the air ombudsman created in
8 section 3.

9 (g) "Ombudsman" means the air ombudsman appointed under
10 section 3.

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

13 Sec. 3. (1) The office of the air ombudsman is created within
14 the legislative council.

15 (2) The principal executive officer of the office is the air
16 ombudsman, who shall be appointed by and serve at the pleasure of
17 the council.

18 Sec. 4. The council shall establish procedures for approving
19 the budget of the office, for expending funds of the office, and
20 for the employment of personnel for the office.

21 Sec. 5. (1) The ombudsman may commence an investigation upon
22 his or her own initiative or upon receipt of a complaint from a
23 person concerning an administrative act related to air quality. The
24 complaint may allege a violation of law or departmental policy or
25 an air quality condition that poses a significant health or safety
26 issue for which there is no effective administrative remedy.

27 (2) Subject to approval of the council, the ombudsman shall

1 establish procedures for receiving and processing complaints,
2 conducting investigations, holding hearings, and reporting the
3 findings resulting from the investigations.

4 (3) The ombudsman may request that the attorney general
5 institute an action for injunctive relief or civil damages relative
6 to a complaint.

7 Sec. 6. (1) Upon request and without the requirement of any
8 release, the ombudsman shall be given access to all information,
9 records, and documents in the possession of the department or an
10 emitting facility that the ombudsman considers necessary in an
11 investigation, including, but not limited to:

12 (a) Procedures for collecting air samples.

13 (b) Results of the analysis of air samples.

14 (c) Results of an analysis of air samples indicating
15 noncompliance with emissions standards.

16 (d) Evidence of violations of part 55 of the natural resources
17 and environmental protection act, 1994 PA 451, MCL 324.5501 to
18 324.5542, or a rule promulgated or permit or order issued under
19 that part.

20 (2) If necessary in an investigation, the ombudsman may
21 request entrance to inspect an emitting facility.

22 (3) If the ombudsman is refused access under subsection (1) to
23 information, records, or documents in the possession of an emitting
24 facility or is refused entry under subsection (2), the attorney
25 general may do either of the following:

26 (a) Petition a court of appropriate jurisdiction for a warrant
27 authorizing the entry.

1 (b) Commence a civil action to compel compliance with a
2 request for entry and to authorize entry.

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

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

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

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

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

27 Sec. 10. (1) Subject to subsection (2), correspondence between

1 the ombudsman and a complainant is confidential, is privileged
2 communication, and is exempt from disclosure under the freedom of
3 information act, 1976 PA 442, MCL 15.231 to 15.246.

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

10 (3) A report prepared by the ombudsman under section 11 is
11 exempt from disclosure under the freedom of information act, 1976
12 PA 442, MCL 15.231 to 15.246.

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

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

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

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

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

21 (e) Significant health and safety issues related to air
22 quality.

23 (f) Any other significant concerns as determined by the
24 council.

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

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

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

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

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.

1 (c) The number of complaints resolved.

2 (d) The nature of each incident that was the basis for the
3 complaint. However, personal identifying information shall not be
4 included.

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

7 (f) The percentage of repeat complaints.

8 (g) Satisfaction feedback.

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

11 Sec. 14. (1) The department or an emitting facility shall not
12 penalize in any way a complainant or other person for filing a
13 complaint, providing information to the council or a legislator, or
14 cooperating with the ombudsman in investigating a complaint.

15 (2) The department, an emitting facility, or any other person
16 shall not hinder the lawful actions of the ombudsman or employees
17 of the office or willfully refuse to comply with any lawful demand
18 of the office.

19 Sec. 15. The authority granted to the ombudsman under this act
20 is in addition to other authority granted by law relative to a
21 remedy or right of appeal or objection for a complainant, or any
22 procedure provided for the inquiry into, or investigation of, any
23 matter concerning an emitting facility. The authority granted to
24 the ombudsman under this act does not limit or affect any other
25 remedy or right of appeal or objection provided by law and is not
26 exclusionary.

27 Sec. 16. A person that violates this act is guilty of a

1 misdemeanor punishable by imprisonment for not more than 1 year or
2 a fine of not more than \$1,000.00, or both.

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