

SENATE BILL No. 788

January 30, 2018, Introduced by Senators STAMAS, ANANICH, HUNE, BIEDA, HOPGOOD, JONES, HORN, HOOD, COLBECK and GREGORY 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
2 employee 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 a state
6 department or agency.

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

3 (c) "Council" means the legislative council provided for in
4 section 15 of article IV of the state constitution of 1963 and
5 created in section 103 of the legislative council act, 1986 PA 268,
6 MCL 4.1103.

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

9 (e) "Ombudsman" means the state employee ombudsman appointed
10 under section 3.

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

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

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

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

19 (2) The principal executive officer of the office is the state
20 employee ombudsman, who shall be appointed by and serve at the
21 pleasure of the council.

22 Sec. 4. The council shall establish procedures for approving
23 the budget of the office, for expending funds of the office, and
24 for employing personnel for the office.

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

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

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

10 (a) Violations or suspected violations of law.

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

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

14 (2) The ombudsman may hold informal hearings and may request
15 that any individual appear before the ombudsman or at a hearing and
16 give testimony or produce documentary or other evidence that the
17 ombudsman considers relevant to an investigation.

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

26 (2) The ombudsman is not required to conduct an investigation
27 on a complaint brought before the ombudsman. A complainant is not

1 entitled to have an investigation conducted by the ombudsman.

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

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

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

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

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

1 the ombudsman within a specified time of any action taken on any
2 recommendation presented. The ombudsman shall notify the
3 complainant of the actions a state department or agency takes to
4 address the complaint.

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

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

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

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

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

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

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

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

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

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

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

1 PA 442, MCL 15.231 to 15.246.

2 Sec. 12. Before announcing to the general public a conclusion
3 or recommendation that expressly or by implication criticizes a
4 state department or agency, the ombudsman shall consult with the
5 state department or agency. If the ombudsman publishes an opinion
6 adverse to a state department or agency, the ombudsman shall
7 include in that publication a statement of reasonable length made
8 to the ombudsman by the state department or agency in defense or
9 mitigation of the finding if that statement is provided within a
10 reasonable time as determined by the council.

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

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

16 (a) The number of complaints received.

17 (b) The number of complaints investigated.

18 (c) The number of complaints resolved.

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

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

24 (f) The percentage of repeat complaints.

25 (g) Satisfaction feedback.

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

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

5 (2) A state department or agency or any person shall not
6 hinder the lawful actions of the ombudsman or employees of the
7 office or willfully refuse to comply with any lawful demand of the
8 office.

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

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

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