

Legislative Analysis



HIGHER EDUCATION OMBUDSMAN

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5603 (proposed substitute H-1)

Sponsor: Rep. John Reilly

Committee: Education

Complete to 6-16-20

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5603 would create the Oversight of Higher Education Act, which would establish the Office of the Higher Education Ombudsman in the Michigan Department of Education (MDE). Generally, an ombudsman is an official appointed to investigate complaints of maladministration and to provide oversight to (typically, public) institutions. The principal executive officer of the office would be the ombudsman, appointed by and serving at the pleasure of the governor. The act would take effect on October 1, 2021.

[Note: The bill's *enacting section 2* provides that the act would not take effect unless the legislature appropriated sufficient funds from the General Fund to MDE for payment of the costs necessary to implement the act. It is unclear who would make the determination as to sufficiency of funds, but it is anticipated that the task would fall to a party such as MDE.]

Responsibilities of the office

The office would serve as a resource for students, faculty, and staff to report problems with a public university or any of its employees, agents, or officials. It could also assist, through mediation or other voluntary actions, individuals and organizations with resolving conflicts with an agent of a public university. Finally, it would coordinate with the U.S. Department of Justice, MDE, the Michigan attorney general, and other relevant agencies, and would refer cases when appropriate.

MDE would establish procedures for budget approval, expenditure of funds, and employment of personnel for the office.

Investigations and remedies provided by the office of the ombudsman would be in addition to any other remedy or right of appeal or objection for a complainant and any other investigation concerning a public university.

Investigations

The ombudsman could commence investigations on his or her own initiative or upon receipt of a complaint concerning an administrative act or allegation of a civil rights violation, sexual misconduct, or any other violation of the law for which a public university or any of its employees, agents, or officials, acting in the scope of their duties, may be directly or indirectly responsible. However, he or she would not be required to conduct an investigation or hold a hearing on a complaint.

The ombudsman could interview employees or contracted individuals, as well as past, present, or prospective students of a public university. The ombudsman could also hold informal

hearings and request that any person appear, give testimony, and produce evidence the ombudsman considers relevant.

The bill states that the provisions regarding investigations, described above, are not intended to authorize any actions by the ombudsman that would be contrary to federal or state privacy laws, including the freedom from unreasonable search and seizure.

Subject to MDE approval, the ombudsman would establish procedures for receiving complaints, conducting interviews, holding hearings, and reporting the results of investigations.

Within 10 business days after receiving a complaint, the ombudsman would have to notify the complainant of his or her decision to investigate or not to investigate, with reasons provided if he or she declines to investigate. This communication would be confidential and privileged.

Upon request of the ombudsman, MDE could hold a hearing as appropriate to the ombudsman's investigation.

Responsibilities of universities

Upon request, universities would have to provide the ombudsman access to all records and information necessary for an investigation and would have to grant the ombudsman entrance to inspect the premises of the university at any time. If requested by the ombudsman, a university would have to provide a progress report on the administrative processing of a complaint.

A university could not penalize in any way a student, employee, agent, or official who complained to a legislator or cooperated with the ombudsman in investigating a complaint. A university or employee, agent, or official of a university could not hinder the legal actions of the office of the ombudsman or refuse to comply with a demand of the office.

Reporting on investigations

Within 10 business days after completing an investigation, the ombudsman would have to prepare and submit a report of the findings and make recommendations to MDE if any of the following were found:

- A matter that should be considered by the university's governing board.
- An administrative act that should be modified or canceled.
- Administrative acts for which justification is necessary.
- Significant health and safety issues for students attending a public university.
- Any other significant concerns.

However, before submitting a report with a conclusion or recommendation that expressly or implicitly criticizes a person or a public university, the ombudsman would have to consult with that person or the university's governing board. When publishing an adverse opinion, the ombudsman would have to include a statement by that person or university in defense or mitigation. The ombudsman could request to be notified of any action taken by the person or university and would have to notify the complainant of those actions.

MDE would have to forward the report to the university and the complainant. The report and any record of the ombudsman would be exempt from disclosure under the Freedom of Information Act (FOIA).

Annual report

The ombudsman would have to submit an annual report to MDE and the legislature, including at least all of the following for each public university during the preceding 12 months:

- Number of complaints received and demographic information of complainants, persons accused, and other involved parties.
- Number of complaints concerning administrative acts, significant student health issues, and significant student safety issues.
- Number of complaints that led to investigations.
- Number of investigations initiated by the ombudsman, categorized by complaint.
- Number of hearings.
- Number of reports of findings issued.

Campus climate survey

Every three years, the office of the ombudsman would have to compile a campus climate survey and report those findings to the legislature. The anonymous survey would have to be issued to at least 20% of all students, 20% of all staff, and 20% of all faculty at each public university, chosen at random. It would have to include questions on the quality of classroom experiences, usage of student services, crimes committed on campus, student demographics, discrimination, and other questions determined by the ombudsman.

BACKGROUND:

There are currently several ombudsmen in Michigan, including the following:

- Office of Legislative Corrections Ombudsman,¹ which investigates complaints regarding the state prison system.
- Office of Children's Ombudsman,² which investigates complaints about children involved with Michigan's child welfare system because of abuse or neglect issues.
- Office of the Michigan Veterans' Facility Ombudsman,³ which investigates complaints about veterans' homes and other facilities.
- Energy Ombudsman,⁴ which investigates rate-making and energy issues.
- Nonpublic Schools Ombudsman,⁵ which ensures equity of Title I and Title VIII funds of the federal Every Student Succeeds Act (ESSA) for private school children, teachers, and other educational personnel.

¹ [http://www.legislature.mi.gov/\(S\(jm24tlalw3wrzj5awjcgz3g\)\)/documents/mcl/pdf/mcl-Act-46-of-1975.pdf](http://www.legislature.mi.gov/(S(jm24tlalw3wrzj5awjcgz3g))/documents/mcl/pdf/mcl-Act-46-of-1975.pdf)

² [http://www.legislature.mi.gov/\(S\(jm24tlalw3wrzj5awjcgz3g\)\)/documents/mcl/pdf/mcl-Act-204-of-1994.pdf](http://www.legislature.mi.gov/(S(jm24tlalw3wrzj5awjcgz3g))/documents/mcl/pdf/mcl-Act-204-of-1994.pdf)

³ [http://www.legislature.mi.gov/\(S\(jm24tlalw3wrzj5awjcgz3g\)\)/documents/mcl/pdf/mcl-Act-198-of-2016.pdf](http://www.legislature.mi.gov/(S(jm24tlalw3wrzj5awjcgz3g))/documents/mcl/pdf/mcl-Act-198-of-2016.pdf)

⁴ <http://legislature.mi.gov/doc.aspx?mcl-460-10ff>

⁵ https://www.house.mi.gov/hfa/Archives/PDF/Summaries/17h4323h1cr1_Education_ArticleVI_Conference_Report_Summary.pdf

FISCAL IMPACT:

House Bill 5603 would increase costs for the state and for public universities.

MDE would incur costs to employ a higher education ombudsman, establish the office, approve its budget, employ personnel, and fulfill other administrative duties required by the bill on behalf of the Office of the Higher Education Ombudsman.

Based on the requirements in the bill, MDE provided an estimated total budget of \$1.0 million for the office that would include the following: \$910,000 for salary, benefits, and office supplies/travel for the ombudsman, an administrative assistant, and three staff analysts; and \$100,000 for services from the Attorney General and the Michigan Office of Administrative Hearings and Rules (MOAHR) to hold hearings and conduct investigations on behalf of the Office of the Higher Education Ombudsman.

Since the bill is subject to *enacting section 2* (see above summary), it would require a sufficient general fund appropriation by the legislature to MDE to take effect. It is unclear what a sufficient general fund appropriation would be or who would make that determination.

The bill would impose unknown costs on public universities. Universities would face a cost to comply with requests made by the office of the ombudsman in terms of providing documents and records request. Universities would also face a cost in implementing a climate survey required by the office every three years. Some of the potential costs may be absorbed under current funding levels, but some institutions may face a high cost to survey 20% of the populations specified in the bill or be unable to absorb those costs. How universities would address any costs exceeding current resources likely would vary by university. Universities could increase revenue through higher tuition and fees, lower costs in other program areas, or seek reimbursement from the state through an increase in operation grants.

In addition, the potential costs placed on the universities raise questions around constitutional autonomy under Article VIII, sections 5 and 6, which give university boards of control the “general supervision of its institution and the control and direction of all expenditures from the institution’s funds.” As the bill instructs universities to comply with all requests made by the office and directs universities to implement a campus climate survey, these requests may be seen as infringing on the authority around supervision and expenditures given to university boards.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.