

**SUBSTITUTE FOR
HOUSE BILL NO. 4064**

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



1 department or agency.

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

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

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

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

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

14 (g) "Personal identifying information" means information that
15 could be used to identify a specific individual, including, but not
16 limited to, the individual's name, initials, email address, Social
17 Security number, telephone number, or home address.

18 (h) "State department or agency" means a state department or
19 other agency within the executive branch.

20 (i) "State employee" means a full-time or part-time employee
21 of a state department or agency.

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

24 (2) The principal executive officer of the office is the state
25 employee ombudsman, who will be appointed by and will serve at the
26 pleasure of the council.

27 Sec. 4. The council shall establish procedures for approving
28 the budget of the office, for expending funds of the office, and
29 for employing 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 state employee concerning an administrative act.

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

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

13 (a) Violations or suspected violations of law.

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

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

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

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

29 (2) The ombudsman is not required to conduct an investigation



1 on a complaint brought before the ombudsman. A complainant is not
2 entitled to have an investigation conducted by the ombudsman.

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

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

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

17 (2) Except as otherwise provided in this subsection, the
18 office shall maintain confidentiality regarding all matters under
19 investigation and shall not disclose personal identifying
20 information to others, including all personal identifying
21 information of the complainant, persons from whom information is
22 acquired, and any state employee. If disclosure of personal
23 identifying information is necessary for the ombudsman to perform
24 the duties of the office or to support any recommendations
25 resulting from an investigation, the ombudsman shall only disclose
26 the personal identifying information to the minimum extent
27 necessary to perform the duties of the office or to support a
28 recommendation.

29 Sec. 11. (1) Within 30 days after completing the



1 investigation, the ombudsman shall prepare and provide to the
 2 complainant a resolution report that details the findings of the
 3 investigation, the recommendations of the ombudsman, and any
 4 actions that have been taken to address the complainant's concerns.
 5 The resolution report required under this subsection must not
 6 include or disclose any personal identifying information of state
 7 employees or persons from whom information is acquired. The
 8 ombudsman may request that a state department or agency notify the
 9 ombudsman within a specified time of any action taken on any
 10 recommendation presented. The ombudsman shall notify the
 11 complainant of the actions a state department or agency takes to
 12 address the complaint.

13 (2) In addition to the report prepared under subsection (1),
 14 within 30 days after completing an investigation, the ombudsman
 15 shall prepare and submit a report of its findings to the council.
 16 The report required under this subsection must not include or
 17 disclose any personal identifying information of state employees or
 18 persons from whom information is acquired. The report must include
 19 recommendations if the ombudsman finds any of the following:

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

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

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

24 (d) A matter that the state department or agency should
 25 consider.

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

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

28 (g) An administrative act for which justification is
 29 necessary.



1 (h) Any other significant concern as determined by the
2 ombudsman.

3 (3) The recommendations under subsection (2) may include
4 recommended corrective actions for a violation of section 14(1).

5 (4) Subject to section 12, the council may forward the report
6 prepared and submitted under subsection (2) to the state department
7 or agency and the complainant who requested the report.

8 (5) A report prepared and recommendations made by the
9 ombudsman and submitted to the council under subsection (2) are
10 exempt from disclosure under the freedom of information act, 1976
11 PA 442, MCL 15.231 to 15.246.

12 Sec. 12. Before announcing to the general public a conclusion
13 or recommendation that expressly or by implication criticizes a
14 state department or agency, the ombudsman shall consult with the
15 state department or agency. If the ombudsman publishes an opinion
16 adverse to a state department or agency, the ombudsman shall
17 include in that publication a statement of reasonable length made
18 to the ombudsman by the state department or agency in defense or
19 mitigation of the finding if that statement is provided within a
20 reasonable time as determined by the council.

21 Sec. 13. (1) The ombudsman shall submit to the council and the
22 legislature an annual report on the conduct of the office that
23 contains information required by the council. The report required
24 under this subsection must not include or disclose any personal
25 identifying information of state employees or persons from whom
26 information is acquired.

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

29 (a) The number of complaints received.



1 (b) The number of complaints investigated.

2 (c) The number of complaints resolved.

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

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

8 (f) The percentage of repeat complaints.

9 (g) Satisfaction feedback.

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

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

16 (2) A state department or agency or any person shall not
17 hinder the lawful actions of the ombudsman or employees of the
18 office or willfully refuse to comply with any lawful demand of the
19 office.

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

28 Sec. 16. A person that violates this act is guilty of a
29 misdemeanor punishable by imprisonment for not more than 1 year or



1 a fine of not more than \$1,000.00, or both.

