

# HOUSE BILL No. 6073

November 29, 2012, Introduced by Rep. McMillin and referred to the Committee on Education.

A bill to create the office of the legislative education ombudsman; to prescribe the powers and duties of the office, the ombudsman, the legislative council, and the department of education; and to provide remedies from administrative acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. As used in this act:

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

5           (b) "Complainant" means a person who files a complaint under  
6 section 4.

7           (c) "Council" means the legislative council established under  
8 section 15 of article IV of the state constitution of 1963 and  
9 section 3 of the legislative council act, 1986 PA 268, MCL 4.1103.

1 (d) "Department" means the department of education.

2 (e) "Legislator" means a member of the senate or of the house  
3 of representatives of this state.

4 (f) "Office" means the office of the legislative education  
5 ombudsman created under this act.

6 (g) "Ombudsman" means the legislative education ombudsman.

7 (h) "Official" means an official or employee of the  
8 department.

9 (i) "Superintendent" means the superintendent of public  
10 instruction.

11 Sec. 2. (1) The office of the legislative education ombudsman  
12 is created within the legislative council.

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

17 Sec. 3. The council shall establish procedures for approving  
18 the budget of the office, for expending funds of the office, and  
19 for the employment of personnel for the office.

20 Sec. 4. (1) The ombudsman may commence an investigation upon  
21 either of the following:

22 (a) Receipt of a complaint from a legislator or other person,  
23 or on the ombudsman's own initiative, concerning an administrative  
24 act which is alleged to be contrary to law or contrary to  
25 departmental policy.

26 (b) The ombudsman's own initiative for significant matters for  
27 which there is no effective administrative remedy.

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 the investigations.

5           Sec. 5. (1) Upon request and without the requirement of any  
6 release, the ombudsman shall be given access to all information,  
7 records, and documents in the possession of the department or  
8 superintendent that the ombudsman considers necessary in an  
9 investigation, including, but not limited to, student records.

10           (2) Upon request and without notice, the ombudsman shall be  
11 granted entrance to inspect at any time any premises under the  
12 control of the department.

13           (3) The ombudsman may hold informal hearings and may request  
14 that any person appear before the ombudsman, or at a hearing, and  
15 give testimony or produce documentary or other evidence which the  
16 ombudsman considers relevant to a matter under investigation.

17           Sec. 6. (1) The ombudsman shall advise a complainant to pursue  
18 all administrative remedies open to the complainant. The ombudsman  
19 may request and shall receive from the department a progress report  
20 concerning the administrative processing of a complaint. After  
21 administrative action on a complaint, the ombudsman may conduct  
22 further investigation on the request of a complainant or on his or  
23 her own initiative.

24           (2) The ombudsman is not required to conduct an investigation  
25 on a complaint brought before the ombudsman. A person is not  
26 entitled as a right to be heard by the ombudsman.

27           Sec. 7. Upon receiving a complaint from a legislator or

1 another person under section 4 and deciding to investigate the  
2 complaint, the ombudsman shall notify the complainant, the person  
3 or persons affected, and the department. If the ombudsman declines  
4 to investigate, the ombudsman shall notify the complainant, in  
5 writing, and inform the complainant of the reasons for the  
6 ombudsman's decision.

7       Sec. 8. Upon request of the ombudsman, the council may hold a  
8 hearing. The council may administer oaths, subpoena witnesses, and  
9 examine the books and records of the department or superintendent  
10 or of a person, partnership, or corporation involved in a matter  
11 that is or was a proper subject of investigation by the ombudsman  
12 under this act, as provided under section 4 of the legislative  
13 council act, 1986 PA 268, MCL 4.1104.

14       Sec. 9. (1) The ombudsman shall maintain secrecy with respect  
15 to all matters in an investigation and shall not disclose the  
16 identities of the complainants or persons from whom information is  
17 acquired, except so far as disclosures may be necessary to enable  
18 the ombudsman to perform the duties of the office and to support  
19 any recommendations resulting from an investigation.

20       (2) A report prepared and recommendations made by the  
21 ombudsman and submitted to the council under section 10 are exempt  
22 from disclosure under the freedom of information act, 1976 PA 442,  
23 MCL 15.231 to 15.246.

24       Sec. 10. (1) The ombudsman shall prepare and submit a report  
25 of the findings of an investigation and make recommendations to the  
26 council within 30 days after completing the investigation if the  
27 ombudsman finds any of the following:

- 1 (a) A matter that should be considered by the department.  
2 (b) An administrative act that should be modified or canceled.  
3 (c) A statute or rule that should be altered.  
4 (d) Administrative acts for which justification is necessary.  
5 (e) Significant health and safety issues as determined by the  
6 council.  
7 (f) Any other significant concerns as determined by the  
8 council.

9 (2) Subject to section 11, the council may forward the report  
10 prepared and submitted under this section to the department, the  
11 person or persons affected, or the complainant who requested the  
12 report.

13 Sec. 11. Before announcing a conclusion or recommendation that  
14 expressly or by implication criticizes a person or the department,  
15 the ombudsman shall consult with that person or the department.  
16 When publishing an opinion adverse to the department or any person,  
17 the ombudsman shall include in that publication a statement of  
18 reasonable length made to him or her by the department or person in  
19 defense or mitigation of the action if that statement is provided  
20 within a reasonable period of time as determined by the council.  
21 The ombudsman may request to be notified by the department, within  
22 a specified time, of any action taken on any recommendation  
23 presented. The ombudsman shall notify the complainant of the  
24 actions taken by the office and by the department or  
25 superintendent.

26 Sec. 12. The ombudsman shall submit to the council and the  
27 legislature an annual report on the conduct of the office.

1           Sec. 13. (1) A person shall not be penalized in any way by an  
2 official or the department as a result of filing a complaint,  
3 complaining to a legislator, or cooperating with the ombudsman in  
4 investigating a complaint.

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

8           Sec. 14. The authority granted the ombudsman under this act is  
9 in addition to the authority granted under the provisions of any  
10 other act or rule under which the remedy or right of appeal or  
11 objection is provided for a person or any procedure provided for  
12 the inquiry into or investigation of any matter. The authority  
13 granted the ombudsman does not limit or affect the remedy or right  
14 of appeal or objection and shall not be considered to be part of an  
15 exclusionary process.