

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 3000

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QUEEN, CRISS, LEWIS, PAYNTER, MAYNARD, WARD AND
ATKINSON

[Introduced March 14, 2017; Referred
to the Committee on Government Organization then the
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §4-14-1, §4-14-2, §4-14-3, §4-14-4, §4-14-5, §4-14-6 and §4-14-7, all relating
 3 to the state Ombudsman; authorizing an ombudsman position; defining terms; operating
 4 a toll-free number for complaints; authorizing investigations and referrals; describing
 5 complaint record keeping; requiring an annual report; including penalties for
 6 noncompliance; and prohibiting retaliation.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article, designated §4-14-1, §4-14-2, §4-14-3, §4-14-4, §4-14-5, §4-14-6 and §4-14-7, all to read
 3 as follows:

ARTICLE 14. STATE OMBUDSMAN.

§4-14-1. State Ombudsman; short title; and scope.

1 (a) The position of State Ombudsman is authorized to act as an oversight, investigatory,
 2 referral, research and advisory function of the Legislature. This article shall be known as the "State
 3 Ombudsman Act".

4 (b) The Joint Committee on Government and Finance may employ a State Ombudsman,
 5 who is authorized to receive information, research, investigate, refer and report on matters and
 6 information related to oversight of the executive branch of state government pursuant to this
 7 article and as the Joint Committee on Government and Finance may prescribe.

8 (c) The State Ombudsman shall serve as an impartial investigator who is authorized to
 9 investigate any complaint made against an office in the executive branch of state government, or
 10 any spending unit of this state paid with public money, as authorized by this article.

§4-14-2. Complaint hot line; and confidential records.

1 (a) The State Ombudsman shall operate and maintain a toll-free hot line to receive
 2 information, including, but not limited to, anonymous complaints, referrals and other information
 3 as may be provided and necessary to carry out the provisions of this article.

4 (b) Referrals and information may be made by telephone, in writing, electronically, or
5 provided anonymously to the State Ombudsman: *Provided*, That a complaint, referral or
6 information submitted by an elected official or agency manager, director or department head must
7 be made in writing and provide name, title and relevant contact information of the person providing
8 the information.

9 (c) The ombudsman shall maintain all complaint and information sources confidentially in
10 respect to all matters, including the identities of the complainants or witnesses which shall be
11 exempt from disclosure pursuant to article one, chapter twenty-nine-b of this code.

§4-14-3. Definitions.

1 (a) "Ombudsman" means the State Ombudsman, as authorized by this article to serve as
2 an investigatory and advisory employee of the Legislature.

3 (b) "Spending unit" means any spending unit of this state, regardless if it is an agency,
4 authority, board, bureau, commission, department, division, or office, funded with public money.

§4-14-4. Investigation; and referral.

1 (a) Upon receipt of information, the ombudsman shall assign a case file number, and log
2 the nature of the complaint. Complaints on the same matter by different sources may be kept in
3 a single file and shall be referred to by the file number and by the nature of the complaint.

4 (b) The ombudsman shall investigate the matter, interview witnesses, and notify the head
5 of the spending unit of the issue or complaint and request a response. The head of a spending
6 unit shall have fifteen days to submit a written response: *Provided*, That upon receipt of criminal
7 activity, situations of imminent harm to the public, public property or any employee, the
8 ombudsman shall immediately refer the matter to the appropriate enforcement agencies prior to
9 seeking a response from the head of the spending unit.

10 (c) Upon review of the response of the spending unit the ombudsman shall evaluate the
11 information and:

12 (1) Open an investigation;

13 (2) Close the file; or

14 (3) Forward the issue to the appropriate:

15 (A) Legislative office: the Performance Evaluation and Research Division; the Post Audit
16 Division; or to the Commission on Special Investigations;

17 (B) Executive branch office: the Ethics Commission; the Office of Equal Opportunity; the
18 Human Rights Commission; law enforcement; or

19 (C) Constitutional Office; the State Auditor; or the State Treasurer.

20 (d) Inform the complainant on decision of investigation; if the ombudsman decides not to
21 investigate, he or she shall inform the complainant and state the reasons why; if it is decided to
22 investigate, the complainant and agency shall be notified of the intention to investigate.

23 (e) The ombudsman has jurisdiction to:

24 (1) Investigate any spending unit in the State of West Virginia, where public funds are
25 expended;

26 (2) Investigate the administrative acts of any agency; and

27 (3) Review any public employee grievance where the Division of Personnel is an
28 intervener.

29 (f) The ombudsman may investigate any spending unit for:

30 (1) Waste, fraud, abuse of discretionary authority or power;

31 (2) Decisions based on improper or irrelevant grounds;

32 (3) Decisions made arbitrarily and capriciously;

33 (4) For any failure to perform a statutory duty;

34 (5) For acts performed in an inefficient or unprofessional manner; or

35 (6) Any act that would serve to disparage or discredit the official, the spending unit, or the
36 reputation of the state.

§4-14-5. Record keeping.

1 The State Ombudsman shall assign each complaint a case number and keep a

2 confidential file. Each file shall:

- 3 (1) Include the nature of the complaint or referral;
- 4 (2) Include the date the complaint or referral was made;
- 5 (3) Identify the office to which a referral was made and any outcome; and
- 6 (4) Be maintained pursuant to the Generally Accepted Government Auditing Standards.

§4-14-6. Reports.

1 (a) The ombudsman shall report to the Joint Committee on Government and Finance on
2 or before December 31 of each year. The annual report shall contain:

- 3 (1) A summary describing the total number of complaints received in that preceding
4 calendar year;
- 5 (2) A summary of the nature of the complaints received in that preceding calendar year;
- 6 (3) A summary describing the status or disposition of all information received in that
7 preceding calendar year; including referrals and the outcomes if known; and
- 8 (4) Recommend changes to any laws, rules or policies that may be necessary to resolve
9 and prevent future issues related to a subject matter investigated.

10 (b) The annual report of the State Ombudsman is a public record.

§4-14-7. Obstruction and retaliation prohibited; penalties

1 (a) Every executive authority, board, commission, office, department or agency shall
2 cooperate with the State Ombudsman and his or her staff and provide access to all records,
3 documents, facilities and personnel in the investigation conducted pursuant to the authority
4 provided in this article.

5 (b) Obstructing or otherwise failing to comply with a request for information or refusing to
6 provide access to the public records as requested by the ombudsman is a misdemeanor and,
7 upon conviction thereof, the person found guilty of obstruction is personally liable and shall be
8 fined not less than \$500 nor more than \$1,000 per offense.

9 (c) A person who directs an employee he or she is responsible for supervising to obstruct

10 or otherwise refuse to comply with a request by the ombudsman is guilty of obstruction of justice,
11 a misdemeanor and, upon conviction thereof, shall be fined not less than \$2,500 nor more than
12 \$10,000. The conviction is grounds for termination of employment and the court may bar the
13 person from holding public office in this state.

14 (d) No person may retaliate against a witness or complaining party for participating as a
15 witness to a complaint, or for providing information to the ombudsman in good faith. Any person
16 who retaliates against a complainant or participant in any investigation conducted by the
17 ombudsman is guilty of reprisal and retaliation and is subject to disciplinary action up to and
18 including dismissal, and may be prohibited from holding public office or public employment.

NOTE: The purpose of this bill is to create a State Ombudsman, to investigate complaints against a state agency or spending unit of this state. It authorizes a toll free hot line for complaints, allows investigations and referrals, requires annual reports and includes penalties for obstruction.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.