

Senate Bill 605

Sponsored by Senator WINTERS (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes office of State Ombudsman. Provides for State Ombudsman to be appointed by vote of Legislative Assembly. Authorizes State Ombudsman to investigate administrative acts of executive department agencies and make recommendations to agency and Legislative Assembly.

Directs State Ombudsman to report annually to Governor, Legislative Assembly and public.

A BILL FOR AN ACT

1
2 Relating to the State Ombudsman.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Definitions. As used in sections 1 to 15 of this 2019 Act:**

5 (1) "Administrative act" means any order, action, decision, adjudication, failure to act,
6 omission, rule, interpretation, recommendation, policy, practice or procedure of any agency.

7 (2) "Agency" means an agency of the executive department as defined in ORS 174.112.

8 (3) "Record" means all records, documents, books, papers, files, photographs, microfilms,
9 sound recordings, video recordings, magnetic storage media, computer data and all other
10 materials, regardless of physical form or characteristics, created, generated, recorded, re-
11 ceived, possessed or controlled by or on behalf of any agency.

12 **SECTION 2. Establishment of office; appointment. (1) The office of the State Ombudsman**
13 **is established.**

14 (2) The Legislative Assembly shall appoint the State Ombudsman by a majority vote of
15 all members of each house.

16 (3) The State Ombudsman shall receive the salary of a judge of a circuit court as pro-
17 vided in ORS 292.416. The salary of the State Ombudsman may not be diminished during the
18 State Ombudsman's term of office, unless by general law applying to all salaried officers of
19 the state.

20 **SECTION 3. Qualifications. (1) The State Ombudsman must be a person of recognized**
21 **judgment, objectivity and integrity who is well-equipped to analyze problems of law, admin-**
22 **istration and public policy.**

23 (2) The State Ombudsman may not:

24 (a) Be actively involved in political party activities or publicly endorse, solicit funds for
25 or make contributions to political parties or candidates for elective office; or

26 (b) Be a candidate for or hold any other elective or appointive public office; or

27 (c) Engage in any other occupation, business or profession likely to detract from the
28 full-time performance of the State Ombudsman's duties or to result in a conflict of interest
29 or an appearance of impropriety or partiality.

30 **SECTION 4. Term; removal. (1) The State Ombudsman shall serve for a term of four**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 years. The State Ombudsman may be reappointed.

2 (2) The Legislative Assembly by a majority vote of all members of each house may re-
 3 move the State Ombudsman from office, but only for mental or physical incapacity to per-
 4 form the duties of the office or for one of the grounds for removal of a judge listed in Article
 5 VII (Amended), section 8, of the Oregon Constitution.

6 (3) If the position of State Ombudsman becomes vacant for any reason, the Deputy State
 7 Ombudsman shall serve as acting State Ombudsman until a new State Ombudsman has been
 8 appointed for a full term.

9 **SECTION 5. Compensation; Deputy State Ombudsman; staff.** (1) The State Ombudsman
 10 shall select, appoint and fix the compensation of a person as Deputy State Ombudsman and
 11 may select, appoint and fix the compensation of other officers and employees the State Om-
 12 budsman deems necessary to discharge the State Ombudsman’s responsibilities under
 13 sections 1 to 15 of this 2019 Act.

14 (2) The State Ombudsman may delegate to staff members any authority, power or duty
 15 except this power of delegation and the State Ombudsman’s duty to make any report under
 16 sections 1 to 15 of this 2019 Act.

17 (3) Notwithstanding subsection (2) of this section, the State Ombudsman may authorize
 18 the Deputy State Ombudsman to act in the State Ombudsman’s stead in the event of illness,
 19 absence, leave or disability, or when, in the State Ombudsman’s sole discretion, an appear-
 20 ance of impropriety or partiality or a conflict of interest prevents the State Ombudsman
 21 from discharging a duty in a particular matter.

22 **SECTION 6. Powers and duties of State Ombudsman.** The State Ombudsman’s powers
 23 and duties include but are not limited to the following:

24 (1) To investigate, on complaint or on the State Ombudsman’s own initiative, any ad-
 25 ministrative act of an agency, without regard to the finality of the administrative act.

26 (2) To undertake, participate in or cooperate with persons and agencies in conferences,
 27 inquiries, meetings or studies that might improve the functioning of agencies or lessen the
 28 risks that objectionable administrative acts will occur.

29 (3) To make inquiries and obtain assistance and information from any agency or person
 30 the State Ombudsman shall require for the discharge of the State Ombudsman’s duties.
 31 Agencies may not restrict the State Ombudsman’s access to agency personnel.

32 (4) Notwithstanding any other provision of state law, to have access to and to examine
 33 and copy, without payment of a fee, any agency records, including records that are confi-
 34 dential by state law. The State Ombudsman may not disclose confidential records and is
 35 subject to the same penalties as the legal custodian of the records for any unlawful or un-
 36 authorized disclosure.

37 (5) To enter and inspect without prior notice the premises of any agency.

38 (6) To subpoena any person to appear, to give sworn testimony or to produce documen-
 39 tary or other evidence that is reasonably relevant to the matters under investigation.

40 (7) To maintain confidential any matter related to complaints and investigations, includ-
 41 ing the identities of the complainants and witnesses, except as the State Ombudsman deems
 42 necessary to discharge the State Ombudsman’s duties.

43 (8) To bring suit in the circuit court of Marion County to enforce the provisions of
 44 sections 1 to 15 of this 2019 Act.

45 (9) To adopt rules as required for the discharge of the State Ombudsman’s duties, in-

1 cluding procedures for receiving and processing complaints, conducting investigations and
 2 reporting findings, conclusions and recommendations, but the State Ombudsman may not
 3 impose any fees for the submission or investigation of complaints.

4 **SECTION 7. Investigation of complaints.** (1) The State Ombudsman shall conduct a suit-
 5 able investigation of a complaint that is an appropriate subject for investigation. An appro-
 6 priate subject for investigation by the State Ombudsman includes any administrative act that
 7 the State Ombudsman believes might be:

- 8 (a) Contrary to law or rule;
- 9 (b) Based on mistaken facts or irrelevant considerations;
- 10 (c) Unsupported by an adequate statement of reasons;
- 11 (d) Performed in an inefficient manner;
- 12 (e) Unreasonable, unfair, or otherwise objectionable, even though in accordance with law;
- 13 or
- 14 (f) Otherwise erroneous.

15 (2) The State Ombudsman in the State Ombudsman’s discretion may decide not to in-
 16 vestigate because:

- 17 (a) The complainant could reasonably be expected to use another remedy or channel;
- 18 (b) The complaint is trivial, frivolous, vexatious or not made in good faith;
- 19 (c) The complaint has been too long delayed to justify present examination;
- 20 (d) The complainant is not personally aggrieved by the subject matter of the complaint;
- 21 (e) Resources are insufficient for adequate investigation; or
- 22 (f) Other complaints are more worthy of attention.

23 (3) The State Ombudsman’s declining to investigate a complaint does not bar the State
 24 Ombudsman from proceeding on the State Ombudsman’s own initiative to investigate an
 25 administrative act whether or not included in the complaint.

26 **SECTION 8. Notice; communication with incarcerated persons.** (1) After the State Om-
 27 budsman has decided whether or not to investigate a complaint, the State Ombudsman shall
 28 suitably inform the complainant.

29 (2) The State Ombudsman shall, if requested by the complainant, suitably report the
 30 status of his or her investigation to the complainant.

31 (3) After investigation of a complaint, the State Ombudsman shall suitably inform the
 32 complainant of his or her conclusion or recommendation and, if appropriate, any action
 33 taken or to be taken by the agency involved.

34 (4) A letter to the State Ombudsman from an incarcerated person shall be forwarded
 35 immediately, unopened, by the institution of incarceration to the State Ombudsman. A letter
 36 from the State Ombudsman to an incarcerated person shall be immediately delivered, un-
 37 opened, to the person. Telephone and personal contacts between the State Ombudsman and
 38 an incarcerated person may not be prohibited or monitored.

39 **SECTION 9. Rights of agency.** Before formally issuing a conclusion or recommendation
 40 that is significantly critical or adverse to an agency, the State Ombudsman shall consult with
 41 the agency and permit the agency reasonable opportunity to reply. If the State Ombudsman
 42 makes a conclusion or recommendation available to the agency to facilitate a reply, the
 43 conclusion or recommendation is confidential and may not be disclosed to the public by the
 44 agency unless the State Ombudsman releases it.

45 **SECTION 10. Procedure after investigation.** (1) If, after investigation, the State Om-

1 budsman is of the opinion that an agency should consider the matter further, modify or
2 cancel an administrative act, alter an administrative act, rule, practice or order, explain
3 more fully the administrative act in question, rectify an omission or take any other action,
4 the State Ombudsman shall state any conclusions and recommendations to the agency. If the
5 State Ombudsman so requests, the agency shall, within the time specified, inform the State
6 Ombudsman about the action taken on recommendations or the reasons for not complying
7 with them.

8 (2) After a reasonable period of time has elapsed, the State Ombudsman may issue con-
9 clusions or recommendations to the Legislative Assembly, the Governor, a grand jury, the
10 public or any other appropriate authority. The State Ombudsman shall include any brief
11 statement the agency provides if an opportunity to reply is required by sections 1 to 15 of
12 this 2019 Act.

13 (3) If the State Ombudsman believes that an action has been dictated by laws of which
14 results are unfair or otherwise objectionable, and could be revised by legislative action, the
15 State Ombudsman shall notify an appropriate committee or interim committee of the Legis-
16 lative Assembly and the agency of the desirable statutory change.

17 (4) If the State Ombudsman believes that any agency official or employee has acted in a
18 manner warranting criminal or disciplinary proceedings, the State Ombudsman shall refer
19 the matter to the appropriate authorities without notice to that person.

20 SECTION 11. Reports. The State Ombudsman shall annually report on the State
21 Ombudsman's activities to the Governor, to an appropriate committee or interim committee
22 of the Legislative Assembly, to the public and, in the State Ombudsman's discretion, to
23 agencies.

24 SECTION 12. Review; immunity from liability; State Ombudsman may not be compelled
25 to testify. (1) The substantive content of any finding, conclusion, recommendation or report
26 of the State Ombudsman or member of the State Ombudsman's staff is not reviewable in any
27 court.

28 (2) The State Ombudsman and the State Ombudsman's staff have the same immunities
29 from civil and criminal liabilities as a judge of this state.

30 (3) The State Ombudsman and the State Ombudsman's staff may not be compelled to
31 testify or produce evidence in any judicial or administrative proceeding with respect to any
32 matter involving the exercise of their official duties except as may be necessary to enforce
33 sections 1 to 15 of this 2019 Act.

34 SECTION 13. Compensation and reimbursement of persons providing information. (1)
35 Except as provided in subsection (2) of this section, any person who provides information
36 under sections 1 to 15 of this 2019 Act may be accompanied and advised by counsel of the
37 person's choice and shall be paid the same compensation and reimbursements and accorded
38 the same privileges and immunities as witnesses whose attendance has been required in the
39 circuit court.

40 (2) A representative of an agency providing information under sections 1 to 15 of this 2019
41 Act during business hours is not entitled to receive compensation and reimbursements under
42 this section.

43 SECTION 14. Obstruction. Any person who willfully obstructs or hinders the proper and
44 lawful exercise of the State Ombudsman's powers, or willfully misleads or attempts to mis-
45 lead the State Ombudsman in the State Ombudsman's inquiries, is guilty of a class A

1 **misdemeanor.**

2 **SECTION 15. Reprisals prohibited.** (1) A person who files a complaint or participates in
3 any investigation or proceeding pursuant to sections 1 to 15 of this 2019 Act is not subject
4 to any penalties, sanctions or restrictions in connection with the person's employment and
5 may not be denied any right, privilege or benefit because of such action.

6 (2) A person who alleges a violation of this section may bring a civil action for appro-
7 priate injunctive relief, actual damages, and punitive damages. Punitive damages awarded
8 under this section may not exceed \$10,000.

9 **SECTION 16.** The section captions used in this 2019 Act are provided only for the con-
10 venience of the reader and do not become part of the statutory law of this state or express
11 any legislative intent in the enactment of this 2019 Act.

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