

HOUSE BILL No. 5088

December 1, 2015, Introduced by Reps. Brinks, Yanez, Talabi, Darany, Driskell, LaVoy, Chang, Pagan, Cochran, Plawecki, Chirkun, Lane, Faris, Sarah Roberts, Townsend, Love, Hovey-Wright, Dianda, Schor, Derek Miller, Rutledge and Irwin and referred to the Committee on Government Operations.

A bill to create the office of the Michigan veterans' facility ombudsman; and to prescribe the powers and duties of the office, the ombudsman, the legislative council, and the department of military and veterans affairs.

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.

5 (b) "Complainant" means a resident veteran, guardian of a
6 resident veteran, family member of a resident veteran, or
7 legislator who files a complaint under section 4.

8 (c) "Council" means the legislative council established under
9 section 15 of article IV of the state constitution of 1963.

1 (d) "Department" means the department of military and veterans
2 affairs.

3 (e) "Guardian" means that term as defined in section 1104 of
4 the estates and protected individuals code, 1998 PA 386, MCL
5 700.1104.

6 (f) "Legislator" means a member of the senate or the house of
7 representatives of this state or an individual who serves on the
8 staff of a member of the senate or the house of representatives of
9 this state.

10 (g) "Michigan veterans' facility" or "facility" means a
11 Michigan veterans' facility established under 1885 PA 152, MCL 36.1
12 to 36.12.

13 (h) "Office" means the office of the Michigan veterans'
14 facility ombudsman created in section 2.

15 (i) "Ombudsman" means the Michigan veterans' facility
16 ombudsman.

17 (j) "Resident veteran" means a veteran who is a resident of a
18 Michigan veterans' facility.

19 (k) "Veteran" means that term as defined in section 2a of 1885
20 PA 152, MCL 36.2a.

21 Sec. 2. (1) The office of the Michigan veterans' facility
22 ombudsman is created within the legislative council.

23 (2) The principal executive officer of the office is the
24 Michigan veterans' facility ombudsman, who shall be appointed by
25 and serve at the pleasure of the council.

26 Sec. 3. The council shall establish procedures for approving
27 the budget of the office, for expending funds of the office, and

1 for the employment of personnel for the office.

2 Sec. 4. (1) The ombudsman may commence an investigation upon
3 his or her own initiative or upon receipt of a complaint from a
4 complainant concerning an administrative act or a condition
5 existing at a facility that is alleged to be contrary to law or
6 departmental policy or that poses a significant health or safety
7 issue for which there is no effective administrative remedy.

8 (2) Subject to approval of the council, the ombudsman shall
9 establish procedures for receiving and processing complaints,
10 conducting investigations, holding hearings, and reporting the
11 findings resulting from the investigations.

12 Sec. 5. (1) Upon request and without the requirement of any
13 release, the ombudsman shall be given access to all information,
14 records, and documents in the possession of the department or a
15 facility that the ombudsman considers necessary in an
16 investigation, including, but not limited to, resident veteran
17 medical health records, resident veteran mental health records, and
18 resident veteran mortality and morbidity records.

19 (2) Upon request and without notice, the ombudsman shall be
20 granted entrance to inspect at any time any Michigan veterans'
21 facility.

22 (3) The ombudsman may hold informal hearings and may request
23 that any person appear before the ombudsman or at a hearing and
24 give testimony or produce documentary or other evidence that the
25 ombudsman considers relevant to an investigation.

26 Sec. 6. (1) The ombudsman shall advise a complainant to pursue
27 all administrative remedies open to the complainant. The ombudsman

1 may request and shall receive from the department or from a
2 facility a progress report concerning the administrative processing
3 of a complaint. After administrative action on a complaint, the
4 ombudsman may conduct further investigation on the request of a
5 complainant or on his or her own initiative.

6 (2) The ombudsman is not required to conduct an investigation
7 on a complaint brought before the ombudsman. A complainant is not
8 entitled as a right to be heard by the ombudsman.

9 Sec. 7. Upon receiving a complaint under section 4 and
10 deciding to investigate the complaint, the ombudsman shall notify
11 the complainant, the resident veteran or resident veterans
12 affected, and the department. If the ombudsman declines to
13 investigate, the ombudsman shall notify the complainant, in
14 writing, and inform the resident veteran or resident veterans
15 affected of the reasons for the ombudsman's decision.

16 Sec. 8. Upon request of the ombudsman, the council may hold a
17 hearing. The council may administer oaths, subpoena witnesses, and
18 examine the books and records of the department or of a facility in
19 a matter that is or was a proper subject of investigation by the
20 ombudsman.

21 Sec. 9. (1) Correspondence between the ombudsman and a
22 complainant is confidential and is privileged communication.

23 (2) The ombudsman shall maintain confidentiality regarding all
24 matters under investigation and the identities of the complainants
25 or persons from whom information is acquired, except so far as
26 disclosure is necessary to enable the ombudsman to perform the
27 duties of the office and to support any recommendations resulting

1 from an investigation.

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

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

10 (a) A matter that should be considered by the department.

11 (b) An administrative act that should be modified or canceled.

12 (c) A statute or rule that should be altered.

13 (d) Administrative acts for which justification is necessary.

14 (e) Significant resident veteran health and safety issues as
15 determined by the council.

16 (f) Any other significant concerns as determined by the
17 council.

18 (2) Subject to section 11, the council may forward the report
19 prepared and submitted under subsection (1) to the department, the
20 resident veteran or resident veterans affected, or the complainant
21 who requested the report.

22 (3) In addition to preparing the report under subsection (1),
23 within 30 days after completing the investigation, the ombudsman
24 shall prepare for and provide to the resident veteran and the
25 complainant a resolution report that details the findings of the
26 investigation, the recommendations of the ombudsman, and any
27 actions that have been taken to address the resident veteran's

1 concerns.

2 Sec. 11. Before announcing a conclusion or recommendation that
3 expressly or by implication criticizes a person or facility or the
4 department, the ombudsman shall consult with that person or
5 facility or the department. When publishing an opinion adverse to a
6 person or facility or the department, the ombudsman shall include
7 in that publication a statement of reasonable length made to the
8 ombudsman by that person or facility or the department in defense
9 or mitigation of the finding if that statement is provided within a
10 reasonable period of time as determined by the council. The
11 ombudsman may request to be notified by a person or facility or the
12 department, within a specified time, of any action taken on any
13 recommendation presented. The ombudsman shall notify the
14 complainant of the actions taken by the person or facility or by
15 the department.

16 Sec. 12. (1) The ombudsman shall submit to the council and the
17 legislature an annual report on the conduct of the office.

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

20 (a) The number of complaints received.

21 (b) The number of complaints investigated.

22 (c) The number of complaints resolved.

23 (d) The nature of each incident that was the basis for the
24 complaint. However, personal identifying information shall not be
25 included.

26 (e) The average time period from the receipt of a complaint
27 until a resolution report is provided under section 10(3).

1 (f) The percentage of repeat complaints.

2 (g) Satisfaction feedback.

3 (h) Any additional information requested to be included in the
4 annual report by the council or considered relevant by the
5 ombudsman.

6 Sec. 13. (1) A complainant or other person shall not be
7 penalized in any way by a person or facility or the department as a
8 result of filing a complaint, complaining to a legislator, or
9 cooperating with the ombudsman in investigating a complaint.

10 (2) A person or facility or the department shall not hinder
11 the lawful actions of the ombudsman or employees of the office or
12 willfully refuse to comply with any lawful demand of the office.

13 Sec. 14. The authority granted the ombudsman under this act is
14 in addition to the authority granted under any other act or rule
15 under which a remedy or right of appeal or objection is provided
16 for a complainant, or any procedure provided for the inquiry into
17 or investigation of any matter concerning a facility. The authority
18 granted the ombudsman under this act does not limit or affect any
19 other remedy or right of appeal or objection and shall not be
20 deemed to be exclusionary.