

1 *Murphy* **HOUSE** BILL NO. *411* *Stall*
 2 INTRODUCED BY *VINCENT Kiser Harper Palmer*
 3 *Suebeck* *TEBBE Hussain Lindgren Stall Bradley*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFICE OF
 5 MONTANA OMBUDSMAN TO PROVIDE REPRESENTATION OF CITIZEN
 6 PROBLEMS BEFORE STATE AGENCIES; AND APPROPRIATING MONEY TO
 7 THE OFFICE."
 8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Short title. This act may be cited as the
11 "Montana Ombudsman Act".

12 Section 2. Definitions. As used in this act, unless
13 the context otherwise requires: (1) "Administrative
14 agency" means any department, board, commission, or other
15 governmental unit, any official, or any employee of the
16 state of Montana acting or purporting to act by reason of
17 connection with the state of Montana; but shall not include

- 18 (a) any court,
- 19 (b) any member of the legislature or the legislative
20 council,
- 21 (c) the governor or his personal staff,
- 22 (d) any political subdivision or entity thereof,
- 23 (e) any instrumentality formed pursuant to an
24 interstate compact and answerable to more than one state, or
25 (f) any entity of the federal government.

1 (2) "Administrative act" includes every action, rule,
2 regulation, order, omission, decision, recommendation,
3 practice, or procedure of an administrative agency.

4 Section 3. Office of ombudsman established. The
5 office of ombudsman is hereby established to exercise the
6 authority and perform the duties provided by this act.

7 Section 4. Legislative committee for the protection of
8 citizens rights -- composition terms. (1) There is a
9 legislative committee for the protection of citizens' rights
10 consisting of four (4) members of the senate and four (4)
11 members of the house of representatives.

12 (2) Members of the first committee shall be appointed
13 within fifteen days after the passage and approval of this
14 act in the same manner as standing committees of the
15 respective houses are appointed. Subsequent members shall
16 be appointed in the same manner before the sixtieth
17 legislative day of the legislative session following the
18 expiration of the terms of the members of the committee.

19 (3) A vacancy on the committee occurring when the
20 legislature is not in session shall be filled by the
21 selection of a legislator by the remaining members of the
22 committee.

23 (4) No more than two (2) of the appointees of each
24 house may be members of the same political party.

25 (5) A member shall serve until his term of office as a

1 legislator ends and until his successor is appointed.

2 (6) The committee shall elect one (1) of its members
3 as chairman and such other officers as it determines
4 necessary.

5 Section 5. Selection of the ombudsman. The ombudsman
6 shall be appointed by the legislative committee for the
7 protection of the citizens rights created under section 4 of
8 this act. The selection shall be made from nominations
9 numbering not less than three (3) nor more than five (5)
10 qualified candidates submitted by the legislature and shall
11 be chosen without regard to political affiliation.

12 Section 6. Qualifications for office of ombudsman.
13 The ombudsman shall: (1) be a person well equipped to
14 analyze problems of law, administration, and public policy,
15 and during this term of office shall not be actively
16 involved in partisan affairs;

17 (2) not be appointed within two (2) years of the last
18 day on which he served as a member of the legislature;

19 (3) not serve as ombudsman while he is a candidate for
20 or holds any other state office;

21 (4) not serve as ombudsman while he is engaged in any
22 other occupation for reward or profit.

23 Section 7. Term of service -- removal. The ombudsman
24 shall serve for a term of six (6) years, unless removed by
25 vote of two-thirds (2/3) of each house of the legislature

1 upon their determination that he is incapacitated or is
2 guilty of neglect or misconduct.

3 Section 8. Vacancy in office -- acting ombudsman. If
4 the office of ombudsman becomes vacant for any cause, the
5 first assistant ombudsman shall serve as acting ombudsman
6 until an ombudsman is appointed for a full term.

7 Section 9. Compensation. The ombudsman shall receive
8 the same compensation as a district court judge.

9 Section 10. Staff of ombudsman. The ombudsman may
10 select, appoint, and compensate as he may see fit, within
11 the amount available by appropriation, such assistants and
12 employees as he may deem necessary to discharge his
13 responsibilities under this act, and shall designate one of
14 his assistants to be the first assistant ombudsman. The
15 ombudsman may delegate to members of his staff any of his
16 authority or duty under this act except the power of
17 delegation and the duty of formally making recommendations
18 to administrative agencies or reports to the governor or the
19 legislature.

20 Section 11. Powers and duties of ombudsman. The
21 ombudsman shall have the following powers: (1) He may
22 investigate, on complaint or on his own motion, any
23 administrative act of any administrative agency.

24 (2) He may prescribe the methods by which complaints
25 are to be made, received, and acted upon; he may determine

1 the scope and manner of investigation to be made; and,
 2 subject to the requirements of this act, he may determine
 3 the form, frequency, and distribution of his conclusions,
 4 recommendations, and proposals.

5 (3) He may request and shall be given by each
 6 administrative agency the assistance and information he
 7 deems necessary for the discharge of his responsibilities;
 8 he may inspect and examine the records and documents of all
 9 administrative agencies; and he may enter and inspect
 10 premises within any administrative agency's control.

11 (4) He may issue a subpoena, enforceable by action in
 12 an appropriate court, to compel any person to appear, give
 13 sworn testimony, or produce documentary or other evidence he
 14 considers relevant to a matter under his inquiry. A person
 15 thus required to provide information shall be paid the same
 16 fees and travel allowances and shall be accorded the same
 17 privileges and immunities as are extended to witnesses in
 18 the district courts of this state, and shall be entitled to
 19 have counsel present while being questioned.

20 (5) He may undertake, participate in, or cooperate
 21 with general studies or inquiries, whether or not related to
 22 any particular administrative agency or any particular
 23 administrative act, if he believes that they may enhance
 24 knowledge about or lead to improvements in the functioning
 25 of administrative agencies.

1 Section 12. Objectionable administrative acts to be
 2 reviewed by ombudsman. In selecting matters for his
 3 attention, the ombudsman shall address himself particularly
 4 to administrative acts which may be: (1) contrary to law
 5 or regulation;

6 (2) unreasonable, unfair, oppressive, or inconsistent
 7 with the general course of an administrative agency's
 8 judgments;

9 (3) based on arbitrary findings of fact;

10 (4) based on improper, unethical, or irrelevant
 11 motivations or considerations;

12 (5) unclear or inadequately explained when reasons
 13 should have been revealed; or

14 (6) unreasonably delayed or performed in a manner
 15 which has adverse impact on a citizen's rights.

16 Section 13. Complaints -- investigations. The
 17 ombudsman may receive a complaint from any person concerning
 18 an administrative act. He shall conduct a suitable
 19 investigation into the things complained of unless he
 20 believes that: (1) the complainant has available to him
 21 another remedy which he could reasonably be expected to use;

22 (2) the grievance pertains to a matter outside his
 23 power;

24 (3) the complainant's interest is insufficiently
 25 related to the subject matters;

1 (4) the complaint is trivial, frivolous, vexatious, or
2 not made in good faith;

3 (5) other complaints are more worthy of attention;

4 (6) his resources are insufficient for adequate
5 investigation; or

6 (7) the complaint has been too long delayed to justify
7 present examination of its merit.

8 Section 14. Refusal to investigate complaint -- notice
9 to complainant. If the ombudsman refuses to investigate, he
10 shall inform the complainant of that decision and shall
11 state his reasons in writing. The ombudsman's declining to
12 investigate a complaint shall not bar the complainant from
13 proceeding on his own motion to inquire into related
14 problems. After completing his consideration of a
15 complaint, whether or not it has been investigated, the
16 ombudsman shall suitably inform the complainant and the
17 administrative agency involved.

18 Section 15. Consultation with state agencies. Before
19 announcing a conclusion or recommendation that expressly or
20 implicitly criticizes an administrative agency or any
21 person, the ombudsman shall consult with that agency or
22 person.

23 Section 16. Informational requests. The ombudsman
24 shall answer any informational request concerning
25 governmental operation and shall refer any complainants

1 whose complaints fall outside of his jurisdiction to the
2 proper authorities who may give the complainant aid.

3 Section 17. Recommendations to agencies and
4 legislature. (1) If having considered a complaint and
5 whatever material he considers pertinent, the ombudsman is
6 of the opinion that an administrative agency should

7 (a) consider the matter further,

8 (b) modify or cancel an administrative act,

9 (c) alter an administrative order or rule,

10 (d) explain more fully the administrative act in
11 question, or

12 (e) take or refrain from taking any other
13 administrative action, he shall state his recommendations to
14 the administrative agency. If the ombudsman so requests,
15 the agency shall, within a reasonable time specified by the
16 ombudsman, inform him about the action taken on his
17 recommendations or the reasons for not complying with them.

18 (2) If the ombudsman finds that an administrative
19 action has been dictated by a statute whose results are
20 unfair or otherwise objectionable, he shall recommend to the
21 legislature statutory changes designed to prevent such
22 unfair or objectionable results.

23 Section 18. Publication of ombudsman's recommendations
24 -- inclusion of agency replies. The ombudsman may publish
25 his conclusions and suggestions by transmitting them to the

1 governor, the legislature or any of its committees, the
 2 press, and others who may be concerned. When publishing an
 3 opinion adverse to an administrative agency, he shall
 4 include a statement of reasonable length submitted by the
 5 agency to explain its past actions or its rejection of the
 6 ombudsman's proposals.

7 Section 19. Biennial report. In addition to whatever
 8 reports he may make from time to time, the ombudsman shall
 9 on or about February 15 of each odd-numbered year report to
 10 the legislature and to the governor concerning the exercise
 11 of his functions during the preceding two calendar years.
 12 In discussing matters with which he has dealt, the ombudsman
 13 need not identify those immediately concerned if to do so
 14 would cause needless hardship. So far as the biennial
 15 report may criticize named agencies or officials, it must
 16 include also agency replies specified in section 18 of this
 17 act.

18 Section 20. Referral of evidence of criminal
 19 activities. If the ombudsman has reason to believe that any
 20 officer or employee has acted in a manner warranting
 21 criminal or disciplinary proceedings, he shall transmit a
 22 written statement of his findings to the appropriate
 23 authorities.

24 Section 21. Judicial proceedings. No proceeding,
 25 opinion, or expression of the ombudsman shall be reviewable

1 in any court. Neither the ombudsman nor any member of his
 2 staff shall be required to testify or produce evidence in
 3 any judicial or administrative proceeding concerning matters
 4 within his official cognizance, except in a proceeding
 5 brought to enforce this act.

6 Section 22. Agencies prohibited from opening
 7 ombudsman's mail. Agencies may not open letters to the
 8 ombudsman. A letter to the ombudsman from a person held in
 9 custody by an agency shall be forwarded immediately,
 10 unopened, to the ombudsman.

11 Section 23. Penalties. A person who willfully
 12 obstructs or hinders the proper exercise of the ombudsman's
 13 functions, or who willfully misleads or attempts to mislead
 14 the ombudsman in his inquiries, shall be guilty of a
 15 misdemeanor and, upon conviction thereof, shall be fined not
 16 more than one thousand dollars (\$1,000). No employee of the
 17 state of Montana who files a complaint under this act shall
 18 be subject to any penalties, sanctions, or restrictions in
 19 connection with his employment because of such complaint.

20 Section 24. Assignment to legislative council for
 21 administrative purposes only. The office of ombudsman shall
 22 be assigned to the legislative council for administrative
 23 purposes only.

24 Section 25. Appropriation of moneys. There is
 25 appropriated from the general fund one hundred twenty

1 thousand dollars (\$120,000) to the office of ombudsman for
2 the biennium ending June 30, 1977. The appropriation in
3 this act is intended to provide for: (1) personal
4 services;

5 (2) the maintenance and operation of a toll free
6 telephone to receive inquiries from the public;

7 (3) adequate publicity to inform the public of the
8 existence and purpose of the office;

9 (4) all other ordinary and necessary expenditures for
10 the operation of the office.

11 Section 26. Severability. If a part of this act is
12 invalid, all valid parts that are severable from the invalid
13 part remain in effect. If a part of this act is invalid in
14 one or more of its applications, the part remains in effect
15 in all valid applications that are severable from the
16 invalid applications.

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