

SENATE BILL NO. 185

INTRODUCED BY B. WILLIAMS, HALLIGAN, MILES

BY REQUEST OF THE DEPARTMENT OF  
SOCIAL AND REHABILITATION SERVICES

IN THE SENATE

JANUARY 21, 1987                   INTRODUCED AND REFERRED TO COMMITTEE  
ON PUBLIC HEALTH, WELFARE & SAFETY.

FEBRUARY 10, 1987                   COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 11, 1987                   PRINTING REPORT.

FEBRUARY 13, 1987                   SECOND READING, DO PASS.

FEBRUARY 14, 1987                   ENGROSSING REPORT.

FEBRUARY 16, 1987                   THIRD READING, PASSED.  
AYES, 48; NOES, 2.

TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 18, 1987                   INTRODUCED AND REFERRED TO COMMITTEE  
ON HUMAN SERVICES & AGING.

MARCH 13, 1987                   COMMITTEE RECOMMEND BILL BE  
CONCURRED IN. REPORT ADOPTED.

MARCH 17, 1987                   SECOND READING, CONCURRED IN.

MARCH 18, 1987                   THIRD READING, CONCURRED IN.  
AYES, 94; NOES, 0.

RETURNED TO SENATE.

IN THE SENATE

MARCH 19, 1987                   RECEIVED FROM HOUSE.

SENT TO ENROLLING.

1 Senate BILL NO. 185  
 2 INTRODUCED BY William H. Miles  
 3 BY REQUEST OF THE DEPARTMENT OF  
 4 SOCIAL AND REHABILITATION SERVICES

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 6 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AN OFFICE  
 7 OF LEGAL AND LONG-TERM CARE OMBUDSMAN SERVICES; SPECIFYING  
 8 THE OMBUDSMAN'S POWERS AND DUTIES; PROVIDING FOR THE  
 9 OMBUDSMAN'S ACCESS TO LONG-TERM CARE FACILITIES; AND  
 10 PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Purpose. The legislature finds that many  
 14 disabled and elderly Montana citizens reside in long-term  
 15 care facilities in Montana and because of their isolated and  
 16 vulnerable condition are dependent on others for care and  
 17 protection. It is the intent of the legislature that,  
 18 contingent on receipt of federal funds for the purpose, the  
 19 office of legal and long-term care ombudsman services:

- 20 (1) monitor the quality of care and life for residents
- 21 of long-term care facilities;
- 22 (2) develop and coordinate legal services for elderly
- 23 citizens; and
- 24 (3) through necessary investigations, reports, and
- 25 corrective action, ensure that a good quality of care and

1 life be maintained for residents of long-term care  
 2 facilities.

3 Section 2. Definitions. In [sections 1 through 5], the  
 4 following definitions apply:

5 (1) "Local ombudsman" means a person officially  
 6 designated by the long-term care ombudsman to act as his  
 7 local representative.

8 (2) "Long-term care facility" means a facility or part  
 9 thereof that provides skilled nursing care, intermediate  
 10 nursing care, or personal care, as these terms are defined  
 11 in 50-5-101.

12 (3) "Long-term care ombudsman" means the individual  
 13 appointed under 42 U.S.C. 3027(a)(12) to fulfill the federal  
 14 requirement that the state provide an advocate for residents  
 15 of long-term care facilities.

16 Section 3. Office of legal and long-term care  
 17 ombudsman services. Contingent on receipt of federal funds  
 18 for the purpose, there is an office of legal and long-term  
 19 care ombudsman services in the department of social and  
 20 rehabilitation services. As required by the Older Americans  
 21 Act of 1965, as amended (42 U.S.C. 3001, et seq.), and the  
 22 regulations adopted pursuant thereto, the office:

- 23 (1) serves as an advocate for Montana citizens
- 24 residing in long-term care facilities, regardless of their
- 25 age or source of payment for care, to ensure that their

1 rights are protected, that they receive quality care, and  
2 that they reside in a safe environment; and

3 (2) coordinates legal services for the elderly.

4 Section 4. Access to long-term care facilities.

5 (1) The long-term care ombudsman or local ombudsman shall  
6 have access without advance notice to any long-term care  
7 facility, including private access to any resident, for the  
8 purpose of meeting with residents, investigating and  
9 resolving complaints, and advising residents on their  
10 rights.

11 (2) Access must be granted during normal visiting  
12 hours or at any time the ombudsman considers necessary to  
13 perform the duties described in [section 3].

14 (3) The ombudsman shall carry out the duties described  
15 in [section 3] in a manner that is least disruptive to  
16 resident care and activities.

17 Section 5. Enforcement of access. (1) A person who  
18 violates the provisions of [section 4] is subject to a civil  
19 penalty not to exceed \$1,000. Each day of violation  
20 constitutes a separate violation. The department of health  
21 and environmental sciences or, upon request of that  
22 department, the county attorney of the county in which the  
23 long-term care facility in question is located may petition  
24 the district court to impose, assess, and recover the civil  
25 penalty. Money collected as a civil penalty must be

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11 5, apply to sections 1 through 5.

12 Section 7. Extension of authority. Any existing  
13 authority of the department of health and environmental  
14 sciences to make rules on the subject of the provisions of  
15 sections 4 and 5 is extended to the provisions of sections 4  
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17 Section 8. Effective date. This act is effective on  
18 passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB185, as introduced.

**DESCRIPTION OF PROPOSED LEGISLATION:**

An act establishing an office of legal and long-term care ombudsman services; specifying the ombudsman's powers and duties; providing for the ombudsman's access to long-term care facilities; and providing an immediate effective date.

**ASSUMPTIONS:**

1. This bill codifies the requirement for an existing program within the Department of Social and Rehabilitation Services that is administratively established. There will be no expenditure impact within the SRS budget.
2. The proposed bill could cause expenditures within the department of Health and Environmental Sciences to increase slightly as DHES is responsible to pursue injunctions or civil penalties to enforce ombudsman access. This expense should be entirely offset by fine income.
3. It is assumed that two suits will be pursued by DHES annually, requiring about eight hours of preparatory time, ten hour of travel and court time, and one overnight stay for each case. Attorney time cost is \$45.00 per hour.
4. Awards are estimated to be at least \$1,000 per case.

**FISCAL IMPACT:**

	<u>FY88/FY89</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<b>Expenditures:</b>			
SRS - Personal Services	\$ 52,075	\$ 52,075	\$ 0
Operating Expenses	24,592	24,592	0
Health- Personal Services	0	1,620	1,620
Operating Expenses	0	169	169
TOTAL	<u>\$ 76,667</u>	<u>\$ 78,456</u>	<u>\$ 1,789</u>
<b>Revenues:</b>			
Federal Aging Grant (SRS)	\$ 70,000	\$ 70,000	\$ 0
General Fund Match for Federal Grant (SRS)	6,667	6,667	0
Penalty Income (Civil actions)	0	2,000	2,000
TOTAL	<u>\$ 76,667</u>	<u>\$ 78,667</u>	<u>\$ 2,000</u>
 Net general fund impact	 \$ 0	 \$ 211	 \$ 211

*David L. Hunter* DATE 1/24/87  
 DAVID L. HUNTER, BUDGET DIRECTOR  
 Office of Budget and Program Planning

*Bob Williams* DATE Jan 26 87  
 BOB WILLIAMS, PRIMARY SPONSOR

Fiscal Note for SB185, as introduced.

**SB-185**

Fiscal Note Request, SB185, as introduced.

Form BD-15

Page 2

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

If a county attorney brought an enforcement action on behalf of the ombudsman, the county would pay for the attorney's time, but would not be reimbursed since the penalties are deposited to the state general fund.

SB-185

APPROVED BY COMMITTEE  
ON PUBLIC HEALTH, WELFARE  
& SAFETY

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