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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 1399

02/18/2019 Authored by Considine and Poston The bill was read for the first time and referred to the Committee on Ways and Means

1.1 A bill for an act
1.2 relating to corrections; reestablishing the ombudsman for corrections; establishing
1.3 the powers and duties of the ombudsman; requiring a report; appropriating money;
1.4 amending Minnesota Statutes 2018, sections 15A.0815, subdivision 3; 243.48,
1.5 subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 241.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2018, section 15A.0815, subdivision 3, is amended to read:

1.8 Subd. 3. Group II salary limits. The salary for a position listed in this subdivision shall
1.9 not exceed 120 percent of the salary of the governor. This limit must be adjusted annually
1.10 on January 1. The new limit must equal the limit for the prior year increased by the percentage
1.11 increase, if any, in the Consumer Price Index for all urban consumers from October of the
1.12 second prior year to October of the immediately prior year. The commissioner of management
1.13 and budget must publish the limit on the department's website. This subdivision applies to
1.14 the following positions:

- 1.15 Executive director of Gambling Control Board;
1.16 Commissioner of Iron Range resources and rehabilitation;
1.17 Commissioner, Bureau of Mediation Services;
1.18 Ombudsman for mental health and developmental disabilities;
1.19 Ombudsman for corrections;
1.20 Chair, Metropolitan Council;
1.21 School trust lands director;

2.1 Executive director of pari-mutuel racing; and

2.2 Commissioner, Public Utilities Commission.

2.3 **Sec. 2. [241.90] OFFICE OF OMBUDSMAN; CREATION; QUALIFICATIONS;**
 2.4 **FUNCTION.**

2.5 The Office of Ombudsman for the Department of Corrections is hereby created. The
 2.6 ombudsman shall serve at the pleasure of the governor in the unclassified service, shall be
 2.7 selected without regard to political affiliation, and shall be a person highly competent and
 2.8 qualified to analyze questions of law, administration, and public policy. No person may
 2.9 serve as ombudsman while holding any other public office. The ombudsman for corrections
 2.10 shall be accountable to the governor and shall have the authority to investigate decisions,
 2.11 acts, and other matters of the Department of Corrections so as to promote the highest
 2.12 attainable standards of competence, efficiency, and justice in the administration of
 2.13 corrections.

2.14 **Sec. 3. [241.91] DEFINITION.**

2.15 For the purposes of sections 241.90 to 241.95, "administrative agency" or "agency"
 2.16 means any division, official, or employee of the Department of Corrections, the commissioner
 2.17 of corrections, the Board of Pardons, and any regional or local correctional facility licensed
 2.18 or inspected by the commissioner of corrections, whether public or private, established and
 2.19 operated for the detention and confinement of adults or juveniles, including but not limited
 2.20 to programs or facilities operating under chapter 401, adult halfway homes, group foster
 2.21 homes, secure juvenile detention facilities, juvenile residential facilities, municipal holding
 2.22 facilities, juvenile temporary holdover facilities, regional or local jails, lockups, work houses,
 2.23 work farms, and detention and treatment facilities, but does not include:

2.24 (1) any court or judge;

2.25 (2) any member of the senate or house of representatives of the state;

2.26 (3) the governor or the governor's personal staff;

2.27 (4) any instrumentality of the federal government; or

2.28 (5) any interstate compact.

2.29 **Sec. 4. [241.92] ORGANIZATION OF OFFICE OF OMBUDSMAN.**

2.30 Subdivision 1. **Employee selection.** The ombudsman may select, appoint, and compensate
 2.31 out of available funds assistants and employees as deemed necessary to discharge

3.1 responsibilities. The ombudsman and full-time staff shall be members of the Minnesota
 3.2 State Retirement Association.

3.3 Subd. 2. **Assistant ombudsman.** The ombudsman may appoint an assistant ombudsman
 3.4 in the unclassified service.

3.5 Subd. 3. **Delegation of duties.** The ombudsman may delegate to staff members any of
 3.6 the ombudsman's authority or duties except the duty of formally making recommendations
 3.7 to an administrative agency or reports to the Office of the Governor or to the legislature.

3.8 Sec. 5. **[241.93] POWERS OF OMBUDSMAN; INVESTIGATIONS; ACTION ON**
 3.9 **COMPLAINTS; RECOMMENDATIONS.**

3.10 Subdivision 1. **Powers.** The ombudsman may:

3.11 (1) prescribe the methods by which complaints are to be made, reviewed, and acted
 3.12 upon; provided, however, that the ombudsman may not levy a complaint fee;

3.13 (2) determine the scope and manner of investigations to be made;

3.14 (3) except as otherwise provided, determine the form, frequency, and distribution of
 3.15 conclusions, recommendations, and proposals; provided, however, that the governor or a
 3.16 representative may, at any time the governor deems necessary, request and receive
 3.17 information from the ombudsman. Neither the ombudsman nor any member of the
 3.18 ombudsman's staff shall be compelled to testify or to produce evidence in any judicial or
 3.19 administrative proceeding with respect to any matter involving the exercise of the
 3.20 ombudsman's official duties except as may be necessary to enforce the provisions of sections
 3.21 241.90 to 241.95;

3.22 (4) investigate, upon a complaint or upon personal initiative, any action of an
 3.23 administrative agency;

3.24 (5) request and be given access to information in the possession of an administrative
 3.25 agency deemed necessary for the discharge of responsibilities;

3.26 (6) examine the records and documents of an administrative agency;

3.27 (7) enter and inspect, at any time, premises within the control of an administrative agency;

3.28 (8) subpoena any person to appear, give testimony, or produce documentary or other
 3.29 evidence that the ombudsman deems relevant to a matter under inquiry, and may petition
 3.30 the appropriate state court to seek enforcement with the subpoena; provided, however, that
 3.31 any witness at a hearing or before an investigation shall possess the same privileges reserved
 3.32 to a witness in the courts or under the laws of this state;

4.1 (9) bring an action in an appropriate state court to provide the operation of the powers
4.2 provided in this subdivision. The ombudsman may use the services of legal assistance to
4.3 Minnesota prisoners for legal counsel. The provisions of sections 241.90 to 241.95 are in
4.4 addition to other provisions of law under which any remedy or right of appeal or objection
4.5 is provided for any person, or any procedure provided for inquiry or investigation concerning
4.6 any matter. Nothing in sections 241.90 to 241.95 shall be construed to limit or affect any
4.7 other remedy or right of appeal or objection nor shall it be deemed part of an exclusionary
4.8 process; and

4.9 (10) be present at commissioner of corrections parole, supervised release, and parole
4.10 revocation hearings and deliberations.

4.11 Subd. 2. **Actions against ombudsman.** No proceeding or civil action except removal
4.12 from office or a proceeding brought pursuant to chapter 13 shall be commenced against the
4.13 ombudsman for actions taken under the provisions of sections 241.90 to 241.95, unless the
4.14 act or omission is actuated by malice or is grossly negligent.

4.15 Subd. 3. **Matters appropriate for investigation.** (a) In selecting matters for attention,
4.16 the ombudsman should particularly address actions of an administrative agency that may
4.17 be:

4.18 (1) contrary to law or rule;

4.19 (2) unreasonable, unfair, oppressive, or inconsistent with any policy or judgment of an
4.20 administrative agency;

4.21 (3) mistaken in law or arbitrary in the ascertainment of facts;

4.22 (4) unclear or inadequately explained when reasons should have been revealed; or

4.23 (5) inefficiently performed.

4.24 (b) The ombudsman may also be concerned with strengthening procedures and practices
4.25 that lessen the risk that objectionable actions of the administrative agency will occur.

4.26 Subd. 4. **Complaints.** (a) The ombudsman may receive a complaint from any source
4.27 concerning an action of an administrative agency. The ombudsman may, on personal motion
4.28 or at the request of another, investigate any action of an administrative agency.

4.29 (b) The ombudsman may exercise powers without regard to the finality of any action of
4.30 an administrative agency; however, the ombudsman may require a complainant to pursue
4.31 other remedies or channels of complaint open to the complainant before accepting or
4.32 investigating the complaint.

5.1 (c) After completing investigation of a complaint, the ombudsman shall inform the
5.2 complainant, the administrative agency, and the official or employee of the action taken.

5.3 (d) A letter to the ombudsman from a person in an institution under the control of an
5.4 administrative agency shall be forwarded immediately and unopened to the ombudsman's
5.5 office. A reply from the ombudsman to the person shall be promptly delivered unopened
5.6 to the person after its receipt by the institution.

5.7 (e) No complainant shall be punished nor shall the general condition of the complainant's
5.8 confinement or treatment be unfavorably altered as a result of the complainant having made
5.9 a complaint to the ombudsman.

5.10 Subd. 5. **Investigation of adult local jails and detention facilities.** Either the
5.11 ombudsman or the jail inspection unit of the Department of Corrections may investigate
5.12 complaints involving local adult jails and detention facilities. The ombudsman and
5.13 Department of Corrections must enter into an arrangement with one another that ensures
5.14 that they are not duplicating services.

5.15 Subd. 6. **Recommendations.** (a) If, after duly considering a complaint and whatever
5.16 material the ombudsman deems pertinent, the ombudsman is of the opinion that the complaint
5.17 is valid, the ombudsman may recommend that an administrative agency should:

5.18 (1) consider the matter further;

5.19 (2) modify or cancel its actions;

5.20 (3) alter a ruling;

5.21 (4) explain more fully the action in question; or

5.22 (5) take any other step that the ombudsman recommends to the administrative agency
5.23 involved.

5.24 If the ombudsman so requests, the agency shall, within the time the ombudsman specifies,
5.25 inform the ombudsman about the action taken on the ombudsman's recommendations or
5.26 the reasons for not complying with it.

5.27 (b) If the ombudsman has reason to believe that any public official or employee has
5.28 acted in a manner warranting criminal or disciplinary proceedings, the ombudsman may
5.29 refer the matter to the appropriate authorities.

5.30 (c) If the ombudsman believes that an action upon which a valid complaint is founded
5.31 has been dictated by a statute, and that the statute produces results or effects that are unfair

6.1 or otherwise objectionable, the ombudsman shall bring to the attention of the governor and
6.2 the legislature the ombudsman's view concerning desirable statutory change.

6.3 Subd. 7. **Grants.** The ombudsman may apply for and receive grants from public and
6.4 private entities for purposes of carrying out the ombudsman's powers and duties under
6.5 sections 241.90 to 241.95.

6.6 **Sec. 6. [241.94] ACCESS BY OMBUDSMAN TO DATA.**

6.7 Notwithstanding section 13.384 or 13.85, the ombudsman has access to corrections and
6.8 detention data and medical data maintained by an agency and classified as private data on
6.9 individuals or confidential data on individuals when access to the data is necessary for the
6.10 ombudsman to perform the powers under section 241.93.

6.11 **Sec. 7. [241.95] PUBLICATION OF RECOMMENDATIONS; REPORTS.**

6.12 Subdivision 1. **Publication.** The ombudsman may publish conclusions and suggestions
6.13 by transmitting them to the Office of the Governor. Before announcing a conclusion or
6.14 recommendation that expressly or impliedly criticizes an administrative agency or any
6.15 person, the ombudsman shall consult with that agency or person. When publishing an opinion
6.16 adverse to an administrative agency or any person, the ombudsman shall include in the
6.17 publication any statement of reasonable length made to the ombudsman by that agency or
6.18 person in defense or mitigation of the action.

6.19 Subd. 2. **Annual report.** In addition to whatever reports the ombudsman may make on
6.20 an ad hoc basis, the ombudsman shall report to the governor at the end of each year on the
6.21 ombudsman's functions during the preceding year.

6.22 **Sec. 8. Minnesota Statutes 2018, section 243.48, subdivision 1, is amended to read:**

6.23 **Subdivision 1. **General searches.**** The commissioner of corrections, the governor,
6.24 lieutenant governor, members of the legislature, ~~and~~ state officers, and the ombudsman for
6.25 corrections may visit the inmates at pleasure, but no other persons without permission of
6.26 the chief executive officer of the facility, under rules prescribed by the commissioner. A
6.27 moderate fee may be required of visitors, other than those allowed to visit at pleasure. All
6.28 fees so collected shall be reported and remitted to the commissioner of management and
6.29 budget under rules as the commissioner may deem proper, and when so remitted shall be
6.30 placed to the credit of the general fund.

7.1 Sec. 9. APPROPRIATION.

7.2 \$..... in fiscal year 2020 and \$..... in fiscal year 2021 are appropriated from the general
7.3 fund to the commissioner of corrections to administer sections 2 to 7.