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State of Minnesota
HOUSE OF REPRESENTATIVES
NINETIETH SESSION

H. F. No. 185

01/12/2017 Authored by Cornish
The bill was read for the first time and referred to the Committee on Government Operations and Elections Policy

1.1 A bill for an act
1.2 relating to state and local government; establishing the ombudsman division in
1.3 the Office of the Legislative Auditor; appropriating money; proposing coding for
1.4 new law in Minnesota Statutes, chapter 3.

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

1.6 Section 1. [3.9785] OMBUDSMAN DIVISION OF THE LEGISLATIVE AUDITOR'S
1.7 OFFICE.

1.8 Subdivision 1. Definitions. (a) For the purposes of this section, the definitions in
1.9 paragraphs (b) and (c) apply.

1.10 (b) "Agency" means the Department of Natural Resources, Department of Transportation,
1.11 the Pollution Control Agency, or a local government.

1.12 (c) "Local government" means a home rule charter or statutory city, town, county, or an
1.13 entity organized under chapter 469 or special law authorizing the exercise of powers in
1.14 chapter 469.

1.15 Subd. 2. Ombudsman division in the Office of the Legislative Auditor. The Office
1.16 of the Legislative Auditor shall include a division to provide the services of ombudsman as
1.17 provided in this section. The legislative auditor shall appoint a person as deputy legislative
1.18 auditor of the division to serve as ombudsman and oversee any other staff employed in the
1.19 division. The ombudsman has all powers available to the legislative auditor.

1.20 Subd. 3. No fees. The ombudsman must not charge a fee or any costs to a person
1.21 requesting an investigation or making a complaint.

2.1 Subd. 4. **Procedures; jurisdiction.** The ombudsman may develop procedures and forms
2.2 for the receipt, investigation, and resolution of complaints and requests for investigations
2.3 from any source relating to advice from, or the action or inaction of, an agency.

2.4 Subd. 5. **Investigation.** In response to a complaint or on the ombudsman's own
2.5 determination, the ombudsman may investigate an action or inaction of an agency that might
2.6 be:

2.7 (1) contrary to law or regulation;

2.8 (2) unreasonable, unfair, oppressive, or inconsistent with the general course of the
2.9 agency's functioning, even though in accordance with law;

2.10 (3) based on a mistake of law or arbitrary in ascertainment of fact; or

2.11 (4) unaccompanied by an adequate statement of reasons.

2.12 Subd. 6. **Intermediary; mediation.** (a) At the request of an agency or individual, the
2.13 ombudsman may act as intermediary between an individual and an agency in understanding
2.14 how a particular law, rule, regulation, ordinance, or other local control applies in a particular
2.15 situation. If the ombudsman determines to serve as an intermediary, the ombudsman must
2.16 document all communications for all parties.

2.17 (b) The ombudsman may require some or all of the parties in an investigation to
2.18 participate in mediation to resolve the matter, taking into account the resources available
2.19 to the ombudsman.

2.20 Subd. 7. **Determination not to investigate.** The ombudsman may determine not to
2.21 investigate a complaint or act as an intermediary if:

2.22 (1) the complainant has available another remedy or channel of complaint the complainant
2.23 reasonably could be expected to use;

2.24 (2) the complaint pertains to a matter outside the ombudsman's power;

2.25 (3) the complainant has no substantive or procedural interest which is directly affected
2.26 by the matter complained about;

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

2.28 (5) the ombudsman's resources are insufficient for adequate investigation of the specific
2.29 complaint; or

2.30 (6) the complaint has been delayed too long to justify present examination of the
2.31 complaint's merit.

3.1 Subd. 8. **Notice on decision whether to investigate.** The ombudsman must inform the
3.2 complainant, in a reasonable time, of the ombudsman's decision whether to investigate a
3.3 complaint or not. If the ombudsman decides to investigate, the ombudsman must inform
3.4 the agency as well as the complainant. If the ombudsman determines not to investigate, the
3.5 ombudsman must give the complainant reasons for that determination. The ombudsman
3.6 must keep the complainant reasonably informed on the status of any investigation.

3.7 Subd. 9. **Matters outside the ombudsman's jurisdiction.** The ombudsman does not
3.8 have jurisdiction or authority to investigate or consider complaints relating to adoption or
3.9 amendment of state agency administrative rules, employment matters, data practices, or
3.10 open meeting laws.

3.11 Subd. 10. **Referral.** After initial inquiry, the ombudsman may refer a request for
3.12 investigation or a complaint to the appropriate county attorney, attorney general, state
3.13 auditor, or other official with jurisdiction over the matter. If a matter is referred, the
3.14 ombudsman must inform the person requesting an investigation or making the complaint.

3.15 Subd. 11. **Timely investigation.** The ombudsman must conclude investigations in a
3.16 timely manner, taking into account the resources of the office and the scope of the
3.17 investigation.

3.18 Subd. 12. **Recommendations to an agency.** (a) Before announcing a conclusion or
3.19 recommendation, the ombudsman must consult with the agency and attach to every report
3.20 sent or made, under the provisions of this section, a copy of any unedited comments made
3.21 by or on behalf of the agency.

3.22 (b) The ombudsman must make recommendations to an agency if, after having considered
3.23 a complaint and material the ombudsman deems pertinent, the ombudsman finds
3.24 substantiating facts for any of the following:

3.25 (1) a matter should be further considered by the agency;

3.26 (2) an action should be modified or canceled;

3.27 (3) a rule on which an action is based should be altered;

3.28 (4) reasons should be given for an action or inaction; or

3.29 (5) any further action should be taken by the agency.

3.30 (c) If the ombudsman requests, the agency must, within 20 working days, notify the
3.31 ombudsman of any action taken on the recommendations or the reasons for not complying
3.32 with them.

4.1 (d) If the ombudsman believes that a law resulted in an action or inaction that is unfair
4.2 or otherwise objectionable, the ombudsman shall propose a change in the law to the governor
4.3 and the chairs and ranking minority members of the legislative committees with jurisdiction
4.4 over the subject matter.

4.5 Subd. 13. **Report.** By January 15 each year, beginning in 2019, the ombudsman must
4.6 report on the work and budget of the ombudsman to the Legislative Audit Commission and
4.7 the chairs and ranking minority members of the legislative committees with jurisdiction
4.8 over local government powers and duties, the Departments of Natural Resources, the
4.9 Department of Transportation, and the Pollution Control Agency. The ombudsman must
4.10 also submit the report to the governor and as provided in section 3.195.

4.11 Sec. 2. **APPROPRIATION.**

4.12 \$..... in fiscal year 2018 and \$..... in fiscal year 2019 are appropriated from the general
4.13 fund to the Office of the Legislative Auditor for the purposes of Minnesota Statutes, section
4.14 3.9785.