

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

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**Legislative Document**

**No. 194**

H. P. 139

House of Representatives, January 14, 1971

Referred to Committee on State Government. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Rollins of Dixfield.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-ONE

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**AN ACT to Create the Office of Ombudsman.**

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Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 5, c. 308, additional. Title 5 of the Revised Statutes is amended by adding a new chapter 308 to read as follows:

**CHAPTER 308**

**OFFICE OF OMBUDSMAN**

§ 2501. Definitions

1. **Administrative act.** "Administrative act" includes any action, omission, decision, recommendation, practice or procedure of any agency.

2. **Agency.** "Agency" includes any state governmental entity, department, institution, board, commission, or organization, and any officer, employee or member thereof acting or purporting to act in the exercise of his official duties, except

- A. A court;
- B. The Legislature, its committees and its staff;
- C. A political subdivision of the State or an entity thereof;
- D. An entity of the Federal Government;
- E. A multistate governmental entity;
- F. A penal institution; and
- G. The Governor and his personal staff.

**§ 2502. Establishment**

The Office of Ombudsman is established.

**§ 2503. Nomination and confirmation**

The Ombudsman shall be appointed by the Governor, with the advice and consent of the Council.

**§ 2504. Qualifications**

The Ombudsman shall be a person of some legal training and experience, and of recognized judgment and objectivity.

No person may serve as Ombudsman

1. Legislature. Within 4 years after having served as a member of the Legislature;
2. State office. While he is a candidate for or holds any other state office;
3. Other occupation. While he is engaged in any other occupation for reward or profit.

No person having served as Ombudsman may hold any elective office within 6 years thereafter, with the exception of those offices whose qualifications are provided for by the Constitution.

**§ 2505. Term of office and vacancy**

The Ombudsman shall be appointed for a term of 6 years and shall serve until he is reappointed or his successor is duly nominated, confirmed and qualified. The Governor, with the advice and consent of the Council, shall fill any vacancy in the office by appointment for a full 6-year term. No person shall serve as Ombudsman for more than 3 terms.

**§ 2506. Removal**

The Ombudsman may be subject to removal for cause, neglect of duty, disability or disqualification by a majority vote of the Governor and the individual members of the Council acting as one body, after notice and public hearing.

**§ 2507. Compensation**

The Ombudsman shall receive an annual salary of \$18,000.

**§ 2508. Staff and delegation**

The Ombudsman may employ such assistance as may be necessary to carry out this chapter and is entitled to an office in the State Capitol and adequate facilities for the transaction of business of his department.

**§ 2509. Procedure**

The Ombudsman may establish procedures for receiving and processing complaints, conducting investigations and reporting his findings. He may not levy fees for the submission or investigation of complaints.

**§ 2510. Jurisdiction**

The Ombudsman has jurisdiction to investigate the administrative acts of agencies.

The Ombudsman may exercise his powers without regard to the finality of any administrative act.

**§ 2511. Investigation of complaints**

The Ombudsman shall investigate any complaint indicating an appropriate subject for investigation under section 2515 unless he believes that

1. Adequate remedy. There is presently available an adequate remedy for the grievance stated in the complaint;

2. No jurisdiction. The complaint relates to a matter that is outside his jurisdiction;

3. Laches. The complaint relates to an administrative act of which the complainant has had knowledge for too long a time before the complaint was submitted;

4. No personal interest. The complainant does not have a sufficient personal interest in the subject matter of the complaint;

5. Trivial. The complaint is trivial or made in bad faith;

6. Insufficient facilities. The facilities of his office are insufficient for adequate investigation; or

7. Other complaints. There are other complaints more worthy of his attention.

**§ 2512. Investigation on the Ombudsman's motion**

The Ombudsman may investigate any administrative action on his own motion if he reasonably believes that an appropriate subject for investigation under section 2515 exists.

**§ 2513. Notice to complainant**

If the Ombudsman decides not to investigate, he shall inform the complainant of that decision and shall state his reasons unless he reasonably believes it is inappropriate to do so.

If the Ombudsman decides to investigate, he shall notify the complainant of his decision.

**§ 2514. Notice to the agency**

If the Ombudsman decides to investigate, he shall notify the agency of his intention to investigate.

**§ 2515. Appropriate subjects for investigation**

1. Appropriate subject. An appropriate subject for investigation is an administrative act of an agency which might be

- A. Contrary to law;
- B. Unreasonable, unfair, oppressive or unnecessarily discriminatory, even though in accordance with law;
- C. Based on a mistake of fact;
- D. Based on improper or irrelevant grounds;
- E. Unreasonably unaccompanied by an adequate statement of the grounds therefor;
- F. Performed in an inefficient manner; or
- G. Otherwise erroneous.

2. Remedy or recommendations. The Ombudsman may investigate to find an appropriate remedy, or to formulate recommendations regarding future administrative actions, or both.

#### § 2516. Investigation procedures

In an investigation, the Ombudsman may

- 1. Inquiries. Make such inquiries and obtain such information as he thinks fit;
- 2. Inspection. Enter without notice to inspect the premises of an agency; and
- 3. Private hearings. Hold private hearings.

#### § 2517. Powers

1. Privilege. Subject to the privileges which witnesses have in the courts of this State, the Ombudsman may

A. Compel at a specific time and place, by a subpoena, the appearance and sworn testimony of any person who he reasonably believes may be able to give information relating to a matter under investigation; and

B. Compel any person to produce documents, papers or objects which he reasonably believes may relate to a matter under investigation. The Ombudsman may compel any person, including state agencies to produce documents, papers, objects or other writings, without regard to the confidentiality thereof or the application of any confidentiality provision or statute thereto when he reasonably believes they may relate to a matter under investigation.

2. Notice. The Ombudsman may bring suit in an appropriate state court to enforce these powers.

#### § 2518. Consultation with agency

Before giving any opinion or recommendation that is critical of an agency or person or making the same public, the Ombudsman shall consult with that agency or person, giving ample opportunity for rebuttal, explanation or suggestion for amendment to the same.

**§ 2519. Procedure after investigation**

If, after investigation, the Ombudsman finds that

1. Further consideration. A matter should be further considered by the agency;
2. Modification. An administrative act should be modified or cancelled;
3. Statute altered. A statute or regulation on which an administrative act is based or the procedure by which the same is effectuated should be altered;
4. Reasons. Reasons should be given for an administrative act; or
5. Other action. Any other action should be taken by the agency; he shall report his opinion or recommendations to the agency. He may request the agency to notify him, within a specified time, of any action taken on his recommendations.

**§ 2520. Publication of recommendations**

After a reasonable time has elapsed, the Ombudsman may when he deems appropriate present his opinion or recommendations to the Governor, the Legislature, the public or any of these. He shall include with his opinion or recommendations any reply made by the agency.

**§ 2521. Notice to the complainant**

After a reasonable time has elapsed, the Ombudsman shall notify the complainant of the actions taken by him and by the agency.

**§ 2522. Misconduct by agency personnel**

If the Ombudsman, in the course of an investigation, believes that there is involved a breach of duty or misconduct by any officer or employee of an agency, he may refer the matter to the appropriate authorities after consultation with that agency.

**§ 2523. Annual report**

The Ombudsman shall submit to the Legislature and the public an annual report discussing his activities under this chapter.

**§ 2524. Judicial review**

No proceeding or decision of the Ombudsman may be reviewed in any court, unless it contravenes this chapter.

**§ 2525. Ombudsman's privilege not to testify**

The Ombudsman and his staff shall not testify in any court with respect to matters coming to their attention in the exercise or purported exercise of their official duties nor produce documents or other information relating thereto except as may be necessary to enforce their chapter.

**§ 2526. Penalty for obstruction**

A person who willfully hinders the lawful actions of the Ombudsman or his staff, or willfully refuses to comply with their lawful demands, shall be punished by a fine of not more than \$1,000.

**Sec. 2. Appropriation.** There is appropriated from the General Fund to the Office of Ombudsman the sum of \$28,616 for the fiscal year ending June 30, 1972 and the sum of \$27,376 for the fiscal year ending June 30, 1973 to carry out the purposes of this Act. The breakdown shall be as follows:

		1971-72	1972-73
OFFICE OF OMBUDSMAN			
Personal Services	(2)	\$23,616	\$23,876
Capital		2,000	500
All Other		3,000	3,000
		\$28,616	\$27,376

STATEMENT OF FACT

The purpose of this bill is to provide a method of bridging the gap between the people and its government. Government should be kept as close to the people as possible, that they may have a voice in government.