

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 315

H. P. 267

House of Representatives, January 22, 1975

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

EDWIN H. PERT, Clerk

Presented by Mr. Jackson of Yarmouth.

Cosponsors: Rollins of Dixfield, Greenlaw of Stonington and Cooney of Sabattus.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Create the Office of Ombudsman.

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

Sec. 1. 5 MRSA, c. 308 is enacted to read:

CHAPTER 308

OFFICE OF OMBUDSMAN

§ 2501. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings:

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, organization or institution, 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 any entity thereof;
- D. An entity of the Federal Government;

E. A multistate governmental entity and

F. The Governor and his personal staff.

§ 2502. Establishment

The office of Ombudsman is established.

§ 2503. Nomination and confirmation

The Ombudsman shall be nominated by the Judicial Council and he shall be elected and take office upon confirmation by majority vote of the Legislature acting in joint convention. In the event that a nomination fails of confirmation, the Judicial Council shall, within 10 days thereafter, place a different name in nomination.

§ 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 2 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.

§ 2505. Term of office and vacancy

The Ombudsman shall be elected for a term of 6 years, from the 2nd Wednesday in January of the year of his election, and until he is reelected or his successor is duly nominated and elected. If he dies, resigns or becomes ineligible to serve, the Judicial Council shall thereafter nominate an Acting Ombudsman who shall serve as Ombudsman until he or his successor is elected as aforesaid. No person shall serve as Ombudsman for more than 3 terms.

§ 2506. Removal

The Legislature, by a $\frac{2}{3}$ vote in each House, may remove or suspend the Ombudsman from office, but only for neglect of duty, misconduct or disability.

§ 2507. Compensation

The Ombudsman is entitled to compensation equal to that of the Chief Justice of the Supreme Judicial Court.

§ 2508. Duties

1. Employees. The Ombudsman may employ such assistance as may be necessary to carry out this chapter.

2. Delegation. The Ombudsman may delegate to his appointees any of his duties, except those specified in sections 2520 and 2521.

3. Oath. The Ombudsman and his staff delegates shall take an oath affirming their obligations and responsibility.

§ 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 discriminate, 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 any agency and, if the agency objects to the entry, the Ombudsman may obtain a search warrant; and
- 3. Private hearings. Hold private hearings.

§ 2517. Privilege; suits

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.

2. Suits. The Ombudsman may bring suit in an appropriate state court to enforce these powers, which suits will be brought by the Attorney Gen-

eral of the State of Maine on behalf of the office of the Ombudsman.

§ 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 20 days 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 to notify him, within a specified time, of any action taken on his recommendations.

§ 2520. Publication of recommendation

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 shall 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. Proceeding or decision

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 this 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.

§ 2527. Immunity of the Ombudsman

The Ombudsman has the same immunities from civil and criminal liability as a judge of this State.

§ 2528. Agencies may not open letters to Ombudsman

A letter to the Ombudsman from a person held in custody by an agency shall be forwarded immediately, unopened, to the Ombudsman.

Sec. 2. Appropriation. There is appropriated from the General Fund to the Office of Ombudsman the sum of \$85,500. The breakdown shall be as follows:

	1975-76	1976-77
OFFICE OF OMBUDSMAN		
Personal Services	(3) \$34,750	(3) \$34,750
All Other	8,000	8,000
	\$42,750	\$42,750

STATEMENT OF FACT

The purpose of this bill is to create an independent government official who will receive complaints against government agencies and officials from aggrieved persons, who investigates, and who, if the complaints are justified, makes recommendations to remedy the complaint. This office will operate to relieve the congestion plaguing the administration of justice in the State of Maine and will further provide better services for the various Legislators' constituents relating to queries made by the general public.