

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 529

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H.P. 408

House of Representatives, February 6, 2001

**An Act to Create the Office of Ombudsman.**

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Reference to the Committee on State and Local Government suggested and ordered printed.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Representative STANLEY of Medway.

Cosponsored by Representatives: CARR of Lincoln, DUNLAP of Old Town, MATTHEWS of Winslow, PINEAU of Jay, SHERMAN of Hodgdon, TRACY of Rome, Senator: President MICHAUD of Penobscot.

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

4 Sec. 1. 5 MRSA c. 376 is enacted to read:

6 CHAPTER 376

8 THE MAINE OMBUDSMAN ACT

10 §11051. Short title

12 This chapter may be known and cited as the "Maine Ombudsman Act."

14 §11052. Definitions

16 As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

18 1. Administrative act. "Administrative act" means every  
20 action of an administrative agency, including, but not limited  
22 to, decisions, omissions, recommendations, practices and  
procedures.

24 2. Administrative agency. "Administrative agency" means  
26 any department or other governmental unit, official or employee  
of the State acting or purporting to act by reason of connection  
28 with the State, but it does not include:

30 A. The Judicial Department or any court or judge or  
appurtenant judicial staff;

32 B. The Legislature or legislative staff;

34 C. The Governor or the Governor's personal staff;

36 D. An instrumentality of any political subdivision of the  
38 State; or

40 E. An instrumentality formed pursuant to an interstate  
compact and answerable to more than one state.

42 3. Ombudsman. "Ombudsman" means the person appointed to  
44 administer this chapter under section 11054.

46 §11053. Establishment of the office

48 The Office of Ombudsman is established as an independent  
agency of the State.

50 §11054. Appointment

2 The Governor shall appoint the ombudsman subject to review  
3 by the joint standing committee of the Legislature having  
4 jurisdiction over state government matters and by the Legislature.

6 **§11055. Qualifications**

8 The ombudsman must be a person well equipped to analyze  
9 problems of law, administration and public policy and may not be  
10 actively involved in partisan affairs.

12 **§11056. Term of office**

14 The ombudsman serves a term of 5 years unless removed by  
15 vote of 2/3 of the members of each chamber of the Legislature  
16 upon a determination that the ombudsman has become incapacitated  
17 or has been guilty of neglect of duty or misconduct.

18 1. Vacancy. If the Office of Ombudsman becomes vacant for  
19 any cause, the deputy ombudsman shall serve as acting ombudsman  
20 until an ombudsman has been appointed for a full term.

22 **§11057. Salary**

24 The ombudsman receives the same salary, allowances and  
25 related benefits as the Chief Justice of the Maine Supreme  
26 Judicial Court.

28 **§11058. Organization of the office**

30 In order to execute the provisions of this chapter, the  
31 ombudsman shall:

32 1. Staff. Select, appoint and compensate as the ombudsman  
33 sees fit, within the funds available, any assistants and  
34 employees the ombudsman determines necessary. Employees are  
35 subject to the personnel laws of the State;

36 2. Deputy. Designate one of the ombudsman's assistants to  
37 be the deputy ombudsman with the authority to act in the  
38 ombudsman's stead in the event that the ombudsman is disabled or  
39 protractedly absent; and

40 3. Delegation of duties. Delegate to other members of the  
41 staff, as the ombudsman determines necessary, any of the  
42 ombudsman's authority or duties under this chapter except the  
43 power of delegation and the duty of formally making  
44 recommendations to administrative agencies or reports to the  
45 Governor or the Legislature.

46 **§11059. Authority**

2           The ombudsman has the authority to:

4           1. Investigations. Investigate, on complaint or on the  
6           ombudsman's own motion, any administrative act of an  
          administrative agency;

8           2. Procedures. Prescribe the methods by which complaints  
10          are to be made, received and acted upon; determine the scope and  
12          manner of investigations to be made; and, subject to the  
          requirements of this Act, determine the form, frequency and  
          distribution of the ombudsman's conclusions and recommendations;

14          3. Requests for information. Request and receive from each  
16          administrative agency the assistance and information the  
18          ombudsman determines necessary for carrying out the purposes of  
          this chapter. The ombudsman may examine the records and  
          documents of all administrative agencies and may enter and  
20          inspect the premises within any administrative agency's control;

22          4. Subpoena. Issue a subpoena to compel any person to  
24          appear, give sworn testimony or produce documentary or other  
          evidence the ombudsman determines relevant to a matter under  
          inquiry; and

26          5. Participate in studies. Participate in or cooperate  
28          with general studies or inquiries, whether or not related to any  
30          particular administrative agency or any particular administrative  
          act, if the ombudsman believes that they may enhance knowledge  
          about or lead to improvements in the functioning of  
          administrative agencies.

32           §11060. Matters appropriate for investigation

34           1. Selecting acts to investigate. The ombudsman may  
36           investigate administrative acts that might be:

38           A. Contrary to law or rule;

40           B. Unreasonable, unfair, oppressive or inconsistent with  
42           the general course of an administrative agency's functioning;

44           C. Mistaken in law or arbitrary in fact-finding;

46           D. Improper in motivation or based on irrelevant  
          considerations;

48           E. Unclear or inadequately explained;

50           F. Inefficiently performed; or

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G. Otherwise objectionable.

**§11061. Duties**

**1. Action on complaints.** The ombudsman may receive a complaint from any source concerning an administrative act and shall conduct a suitable investigation into the complaint unless the ombudsman believes that:

- A. The complainant has available another reasonable remedy or channel of complaint;
- B. The grievance pertains to a matter outside the ombudsman's power;
- C. The complainant's interest is insufficiently related to the subject matter;
- D. The complaint is trivial, frivolous, vexatious or not made in good faith;
- E. Other complaints are more worthy of attention;
- F. The ombudsman's resources are insufficient for adequate investigation; or
- G. The complaint has been delayed too long to justify the present examination of its merit.

Declining to investigate a complaint does not bar the ombudsman from proceeding on the ombudsman's own motion to inquire into the matter complained about or into related problems.

**2. Notification.** After completing consideration of a complaint, whether or not it has been investigated, the ombudsman shall inform the complainant and when appropriate the administrative agency or agencies involved.

**3. Review certain correspondence.** A letter to the ombudsman from a person in a place of detention or in a hospital or other institution under the control of an administrative agency must be forwarded immediately, unopened, to the ombudsman for the ombudsman's review.

**4. Consultation with agency.** Before announcing a conclusion or recommendation that criticizes an administrative agency or an official, the ombudsman shall consult with that agency or person.

2 5. Recommendations. The ombudsman shall state the  
3 recommendations to the administrative agency if, having  
4 considered a complaint and whatever materials the ombudsman  
5 determines pertinent, the ombudsman is of the opinion that an  
6 administrative agency should:

7 A. Consider the matter further;

8 B. Modify or cancel an administrative act;

9 C. Alter a rule or ruling;

10 D. Explain more fully the administrative act in question; or

11 E. Take any other step.

12 6. Publication of recommendations. The ombudsman may  
13 publish the conclusions, recommendations and suggestions by  
14 transmitting them to the Governor, the Legislature or any of its  
15 committees, the press and others who may be concerned. When  
16 publishing an opinion adverse to an administrative agency or  
17 official, the ombudsman shall, unless excused by the agency or  
18 official affected, include the substance of any statement the  
19 administrative agency or official made to the ombudsman to  
20 explain past difficulties or present rejection of the ombudsman's  
21 proposals.

22 7. Reports. In addition to whatever reports the ombudsman  
23 makes from time to time, on or before February 15th of each year  
24 the ombudsman shall report to the joint standing committee of the  
25 Legislature having jurisdiction over state government matters and  
26 to the Governor concerning the exercise of the ombudsman's  
27 responsibilities during the preceding calendar year. In  
28 discussing matters with which the ombudsman has dealt, the  
29 ombudsman need not identify those immediately concerned if to do  
30 so would cause needless hardship. So far as the annual report  
31 may criticize named agencies or officials, it must also include  
32 the substance of their replies to the criticism.

33 8. Disciplinary action against public personnel. If the  
34 ombudsman has reason to believe that a public official, employee  
35 or other person has acted in a manner warranting a criminal or  
36 disciplinary proceeding, the ombudsman shall refer the matter to  
37 the appropriate authorities.

38 **§11062. Information on actions**

39 If the ombudsman so requests, an agency that receives a  
40 recommendation, within the time specified, shall inform the

2 ombudsman about the action taken on the recommendation or the  
3 reasons for not complying with the recommendation.

4 **§11063. Proceedings brought to enforce Act**

6 This section applies to proceedings brought to enforce this  
7 chapter.

8 **1. Immunity.** The ombudsman has immunity as provided in  
10 this subsection.

12 A. A proceeding, opinion or expression of the ombudsman is  
13 not reviewable in any court.

14 B. A civil action may not lie against the ombudsman or any  
16 member of the ombudsman's staff for anything done, said or  
17 omitted in performing the actions necessary to carry out the  
18 purposes of this chapter.

20 C. Neither the ombudsman nor any member of the ombudsman's  
21 staff is required to testify or produce evidence in any  
22 judicial proceeding concerning matters within the  
23 ombudsman's official cognizance except a proceeding brought  
24 to enforce this chapter.

26 **2. Rights and duties of witnesses.** This subsection applies  
27 to witnesses in proceedings brought to enforce this chapter.

28 A. A person required by the ombudsman to appear in person  
30 to provide information must be paid the same fees and travel  
31 allowances as those extended to witnesses whose attendance  
32 is required in the courts of this State.

34 B. A person who, with or without service of compulsory  
35 process, provides oral or documentary information requested  
36 by the ombudsman must be accorded the same privileges and  
37 immunities as those extended to witnesses in the courts of  
38 this State and is entitled to be accompanied and advised by  
39 counsel while being questioned.

40 C. If a person refuses to respond to the ombudsman's  
41 subpoena, refuses to be examined or engages in obstructive  
42 misconduct, the ombudsman shall certify the facts to the  
43 District Court. The court shall thereupon issue an order  
44 directing the person to appear before the court to show  
45 cause why the person should not be punished for contempt.  
46 The order and a copy of the ombudsman's certified statement  
47 must be served on that person. Thereafter, the court has  
48 jurisdiction over the matter, and the same proceedings may  
49 be held, the same penalties may be imposed and the person  
50 may be held in contempt.



2           charged may be purged of the contempt charge in the trial of  
3           a civil action before the court.

4           3. Obstruction; fines. A person who willfully obstructs or  
5           hinders proper exercise of the ombudsman's functions or who  
6           willfully misleads in the ombudsman's inquiries must be fined an  
7           amount not to exceed \$1,000.

8           **§11064. Relation to other laws**

9           This chapter does not in any way limit or affect any other  
10           law under which a remedy or right of appeal is provided for a  
11           person or under which a procedure is provided for the inquiry  
12           into or investigation of any matter.

13           **Sec. 2. Effective date.** This Act takes effect January 1, 2003.

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### SUMMARY

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16           This bill establishes the Office of Ombudsman. The  
17           ombudsman shall oversee and hear complaints regarding the actions  
18           of administrative agencies of the State. This Act takes effect  
19           January 1, 2003.

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