

HOUSE BILL No. 5554

February 13, 2018, Introduced by Reps. Reilly, Lucido, Ellison, Sneller, Howrylak, Dianda, Hornberger, Graves, Barrett, Kelly, Inman, Greimel and Zemke and referred to the Committee on Education Reform.

A bill to create the office of the higher education ombudsman; to prescribe the powers and duties of the office, the ombudsman, and the legislative council; and to make an appropriation.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "higher education ombudsman act".

3 Sec. 2. As used in this act:

4 (a) "Administrative act" includes an action, omission,
5 decision, recommendation, practice, or other procedure of the
6 governing board of a public university.

7 (b) "Complainant" means a legislator who files a complaint
8 under section 5.

9 (c) "Council" means the legislative council established under

1 section 15 of article IV of the state constitution of 1963.

2 (d) "Legislator" means a member of the senate or the house of
3 representatives of this state.

4 (e) "Office" means the office of the higher education
5 ombudsman created under this act.

6 (f) "Ombudsman" means the higher education ombudsman.

7 (g) "Public university" means an institution of higher
8 education described in section 4, 5, or 6 of article VIII of the
9 state constitution of 1963.

10 Sec. 3. (1) The office of the higher education ombudsman is
11 created within the legislative council.

12 (2) The principal executive officer of the office is the
13 higher education ombudsman, who shall be appointed by and serve at
14 the pleasure of the council.

15 Sec. 4. The council shall establish procedures for approving
16 the budget of the office, for expending funds of the office, and
17 for the employment of personnel for the office.

18 Sec. 5. (1) The ombudsman may commence an investigation upon
19 his or her own initiative or upon receipt of a complaint from a
20 complainant concerning an administrative act or an allegation of a
21 civil rights violation, sexual misconduct, or any other violation
22 of the law for which a public university or any of its employees,
23 agents, or officials, acting in the scope of their duties, may be
24 directly or indirectly responsible. The ombudsman may interview any
25 individual whom the ombudsman considers necessary in an
26 investigation, including, but not limited to:

27 (a) An individual employed by or retained under contract by a

1 public university.

2 (b) A past, present, or prospective student of a public
3 university.

4 (2) Subject to approval of the council, the ombudsman shall
5 establish procedures for receiving and processing complaints,
6 conducting investigations, holding hearings, and reporting the
7 findings resulting from the investigations.

8 Sec. 6. (1) Upon request and without the requirement of any
9 release, a public university shall provide access to all
10 information, and the ombudsman shall be given access to all
11 information, records, and documents in the possession of the public
12 university that the ombudsman deems necessary in an investigation.

13 (2) Upon request and without notice, the ombudsman shall be
14 granted entrance to inspect at any time the premises of any public
15 university.

16 (3) The ombudsman may hold informal hearings and may request
17 that any person appear before the ombudsman or at a hearing and
18 give testimony or produce documentary or other evidence that the
19 ombudsman deems relevant to an investigation.

20 Sec. 7. (1) The ombudsman may request and shall receive from a
21 public university a progress report concerning the administrative
22 processing of a complaint. After administrative action on a
23 complaint, the ombudsman may conduct further investigation on the
24 request of a complainant or on his or her own initiative.

25 (2) The ombudsman is not required to conduct an investigation
26 or hold a hearing on a complaint brought before the ombudsman.

27 Sec. 8. Upon receiving a complaint under section 5 and

1 deciding to investigate the complaint, within 10 business days the
2 ombudsman shall notify the complainant. If the ombudsman declines
3 to investigate, the ombudsman shall notify the complainant within
4 10 business days, in writing, and inform the complainant of the
5 reasons for the ombudsman's decision.

6 Sec. 9. Upon request of the ombudsman, the council may hold a
7 hearing. The council may administer oaths, subpoena witnesses, and
8 examine the books and records of a public university in a matter
9 that is or was a proper subject of investigation by the ombudsman.

10 Sec. 10. (1) Correspondence between the ombudsman and a
11 complainant is confidential and is privileged communication.

12 (2) A report prepared and recommendations made by the
13 ombudsman and submitted to the council under section 11 and any
14 record of the ombudsman are exempt from disclosure under the
15 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

16 Sec. 11. (1) The ombudsman shall prepare and submit a report
17 of the findings of an investigation and make recommendations to the
18 council within 10 business days after completing the investigation
19 if the ombudsman finds any of the following:

20 (a) A matter that should be considered by the governing board
21 of a public university.

22 (b) An administrative act that should be modified or canceled.

23 (c) Administrative acts for which justification is necessary.

24 (d) Significant health and safety issues for students
25 attending a public university.

26 (e) Any other significant concerns.

27 (2) Subject to section 12, the council shall forward the

1 report prepared and submitted under this section to the public
2 university and to the complainant who requested the report.

3 Sec. 12. Before submitting a report with a conclusion or
4 recommendation that expressly or by implication criticizes a person
5 or a public university, the ombudsman shall consult with that
6 person or the governing board of that public university. When
7 publishing an opinion adverse to a person or public university, the
8 ombudsman shall include in that publication a statement of
9 reasonable length made to the ombudsman by that person or the
10 governing board of that public university in defense or mitigation
11 of the finding if that statement is provided within a reasonable
12 period of time as determined by the council. The ombudsman may
13 request to be notified by a person or the governing board of a
14 public university, within a specified time, of any action taken on
15 any recommendation presented. The ombudsman shall notify the
16 complainant of the actions taken by the person or the governing
17 board of the public university.

18 Sec. 13. The ombudsman shall submit to the council and the
19 legislature a semiannual report on the conduct of the office. A
20 report under this section must include all of the following
21 information for each public university during the immediately
22 preceding 6 months, at a minimum:

23 (a) The number of complaints received.

24 (b) The number of complaints concerning each of the following
25 categories:

26 (i) The modification or cancellation of, or justification for,
27 an administrative act.

1 (ii) Significant student health issues.

2 (iii) Significant student safety issues.

3 (c) The number of complaints resulting in the initiation of an
4 investigation.

5 (d) The number of investigations initiated by the ombudsman.

6 (e) The number of hearings.

7 (f) The number of reports of findings issued.

8 Sec. 14. (1) A public university shall not penalize in any way
9 a student, employee, agent, or official who communicates a
10 complaint to a legislator or cooperates with the ombudsman in
11 investigating a complaint.

12 (2) A public university or an employee, agent, or official of
13 a public university shall not hinder the lawful actions of the
14 ombudsman or employees of the office or willfully refuse to comply
15 with any lawful demand of the office.

16 Sec. 15. The authority granted the ombudsman under this act is
17 in addition to the authority granted under any other act or rule
18 under which a remedy or right of appeal or objection is provided
19 for a complainant, or any procedure provided for the inquiry into
20 or investigation of any matter concerning a public university. The
21 authority granted the ombudsman under this act does not limit or
22 affect any other remedy or right of appeal or objection and is not
23 exclusionary of any other remedy or right of appeal or objection.

24 Sec. 16. For the fiscal year ending September 30, 2018, there
25 is appropriated from the general fund to the council an amount
26 necessary to implement this act but not to exceed the amount
27 appropriated to the council for the office of the Michigan

- 1 veterans' facility ombudsman created in section 2 of 2016 PA 198,
- 2 MCL 4.772, for the fiscal year ending September 30, 2018.