

# SENATE BILL REPORT

## SB 5456

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As of June 16, 2009

**Title:** An act relating to the office of the citizen advocate.

**Brief Description:** Creating the office of the citizen advocate.

**Sponsors:** Senator Oemig.

**Brief History:**

**Committee Activity:** Government Operations & Elections: 2/23/09.

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Staff:** Sharon Swanson (786-7447)

**Background:** Generally, an ombudsman is an impartial government official tasked with representing claims by citizens against a government entity. Powers and duties vary, and an ombudsman may serve as facilitator, confidential advisor, advocate, or investigator.

Washington currently has seven issue-specific ombudsmen:

- Industrial/Self-Insurance Ombudsman;
- Special Education Ombudsman;
- Office of the Education Ombudsman;
- Office of the Family and Children's Ombudsman;
- Mental Health Ombudsman;
- Long-Term Care Ombudsman; and
- Open Government Ombudsman.

**Summary of Bill:** The Office of the Citizen Advocate is created within the legislative branch. The citizen advocate serves a six-year term, and is chosen by a selection committee, made up of nine members: four members of the House of Representatives, four members of the Senate, and one appointed by the Governor. Staff support is provided by Senate Committee Services and the House Office of Program Research.

The salary and benefits for the citizen advocate are equivalent to those of a superior court judge.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The citizen advocate may not be actively involved in political party activities or publicly endorse, solicit funds, or make contributions to political parties or candidates for elective office. The citizen advocate may not engage in any activity likely to detract from full-time performance of duties or likely to result in a conflict of interest or appearance of impropriety. The citizen advocate may not hold or run for any other elective or appointive public office. A person may not apply for the position while serving as a member of the Washington Legislature.

The citizen advocate may only be removed by a two-third vote of both houses, and may only be removed for mental or physical incapacity to perform the duties of the office, neglect of duty, or upon conviction of willful misconduct or malfeasance of office.

The citizen advocate may select, employ, and fix the salary of the chief deputy citizen advocate, and other issue-specific citizen advocates.

The citizen advocate may investigate, upon receipt of a complaint or upon the citizen advocate's own initiative, any administrative act of an agency, regardless of finality of the act. The citizen advocate has subpoena power, may keep any matter confidential, and may enter and inspect the premises of an agency without prior notice.

Confidential documents provided to the citizen advocate remain confidential. Agencies may not restrict the citizen advocate's access to agency personnel, and the citizen advocate may examine and copy any agency records. The citizen advocate does not have access to records in which the custodian can demonstrate that examination would violate federal law or result in a loss of federal funding, sealed court records, active criminal investigation records, records that could disclose the identity of a confidential police informant, and records protected by attorney-client privilege.

Records held by the citizen advocate are available to a currently serving member of the Legislature upon written request. The request must be signed, state a reason, and the legislator must agree to keep the records confidential.

The citizen advocate must conduct an investigation of a complaint that is an appropriate subject for investigation. An appropriate subject for investigation includes when the citizen advocate believes an administrative act might be contrary to law or rule, based on mistaken facts or irrelevant considerations, unsupported by adequate reasons, performed in an inefficient manner, or otherwise erroneous or unfair.

The citizen advocate may decide not to investigate because a reasonable alternative is available, the complaint is trivial, the complaint has been delayed too long, resources are insufficient, or other complaints are more worthy of attention. The citizen advocate may not investigate whistleblower claims.

An individual need not exhaust other remedies, and the citizen advocate may not charge fees.

The citizen advocate must provide notice to the complainant, and if requested in writing, report the status of the investigation. Written notice must be supplied upon conclusion.

Letters between the citizen advocate and a person in custody must be forwarded immediately and unopened. Phone calls and personal contacts must not be prohibited or monitored.

The citizen advocate must consult with an agency before issuing a critical conclusion or recommendation. Any conclusion or recommendation supplied is confidential.

The citizen advocate must state any conclusion or recommendation following investigation. The citizen advocate may report this to the Legislature, the Governor, a grand jury, the public, or any other appropriate authority. The citizen advocate must notify the Legislature if an unfair result could be revised by legislative action. The substantive content of any report is not reviewable in court, and no person on the citizen advocate's staff can be compelled to testify.

If the citizen advocate believes an agency official's activity warrants discipline or criminal charges, the citizen advocate can refer the matter to authorities without notice to the person. Willful obstruction of the citizen advocate is official misconduct, and punishable as a gross misdemeanor.

Reprisals are prohibited, and persons aggrieved have a right of civil action. Remedies provided by the Office of the Citizen Advocate are in addition to other remedies or rights of appeal.

The Citizen Advocate Administrative Account is created to be used solely for the payment of operating costs. Monies may be spent only after appropriation, and expenditures must not exceed one-third of the operating costs. Annual premiums are assessed from state agencies.

By January 1, 2011, the citizen advocate must review the powers and duties of the Office of Mental Health Ombudsman, and make recommendations as to whether it should be repealed and the duties assumed by the citizen advocate.

By January 1, 2012, the citizen advocate must review the powers and duties of the Long Term Care Ombudsman, and make recommendations as to whether it should be repealed and the duties assumed by the citizen advocate.

Effective July 10, 2011, the Office of Family and Children's Ombudsman is eliminated. The citizen advocate must review the powers and duties, and determine by January 1, 2011, if it is appropriate for the citizen advocate to engage in those duties.

Effective July 10, 2010, the Education Ombudsman and the Special Education Ombudsman are abolished.

Effective immediately, the Ombudsman for Workers of Industrial Insurance Self-Employers is abolished.

For all abolished boards, all materials and appropriations are to be transferred to the Office of the Citizen Advocate. All contracts and obligations will remain in full force, and no existing bargaining unit is altered.

The citizen advocate must provide statistical data annually to the Legislature.

Twenty-eight statutes are repealed, and four definitions are added.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** Yes.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: If a citizen has a complaint against a private company, the citizen has an advocate through the Attorney General's Office and through the Consumer Protection Act. If a citizen has a complaint against the government, there is no entity in place to act as an advocate. There should be one place that citizens can go to, and one number they can call to get assistance when their government has not helped them or has harmed them. This bill attempts to set up a single entity for people to turn to. Creating one central location for people to turn to will help bridge the gap between the government and the people.

CON: Bigger is not always better. Each of the existing ombudsman in Washington State has a particular expertise and a great deal of experience with that ombudsman's subject matters. One person or one office cannot serve all the areas that are necessary. A long-term care ombudsman and a special education ombudsman are not interchangeable. Their training, experiences, and knowledge are not comparable. Each ombudsman brings accountability to his or her area of concern.

OTHER: King County has a countywide ombudsman and that program seems to be working. This bill is about streamlining a process, not eliminating existing programs. An ombudsman allows the average citizen to speak up against injustices.

**Persons Testifying:** PRO: Senator Oemig, prime sponsor; John Dick, citizen.

CON: Owen Linch, Teamsters 28; Lucinda Young, Washington Education Association; Lark Van Stone, Children's Home Society.

OTHER: Jason Mercier, Washington Policy Center; Vickie Kennedy, Department of Labor & Industries; Tess Thomas, foster parent.