S-1837.2

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUBSTITUTE SENATE BILL 5719**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 65th Legislature 2017 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Baumgartner and Rolfes)

AN ACT Relating to creating a labor and industries ombuds within the department of commerce; adding new sections to chapter 43.330 RCW; and providing an expiration date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  A new section is added to chapter 43.330 RCW to read as follows:

(1) The ombuds for employers is created in the department of commerce. The ombuds is appointed by the governor and reports directly to the director of the department of commerce. The office of the ombuds may be openly and competitively contracted by the governor in accordance with chapter 39.26 RCW but shall not be physically housed within the department of labor and industries.

(2) The person appointed ombuds shall hold office for a term of six years and shall continue to hold office until reappointed or until his or her successor is appointed. The governor may remove the ombuds only for neglect of duty, misconduct, or inability to perform duties. Any vacancy shall be filled by similar appointment for the remainder of the unexpired term.

(3) Any ombuds appointed under this section shall have training or experience, or both, in the following areas:

(a) Programs administered by the department of labor and industries, including industrial insurance, occupational safety and health, and employment standards;

(b) The Washington state legal system; and

(c) Dispute or problem resolution techniques, including investigation, mediation, and negotiation.

(4) The ombuds shall integrate information explaining the ombuds program and contact information into existing brochures and materials provided by the department of labor and industries to employers.

NEW SECTION. **Sec.**  A new section is added to chapter 43.330 RCW to read as follows:

The ombuds has the following powers and duties:

(1) To act as an advocate for employers in interactions with the department of labor and industries;

(2) To offer and provide information on department of labor and industries programs as appropriate to employers;

(3) To identify, investigate, and facilitate resolution of employer complaints relating to department of labor and industries programs; and

(4) To maintain a statewide toll‑free telephone number for the receipt of complaints and inquiries.

NEW SECTION. **Sec.**  A new section is added to chapter 43.330 RCW to read as follows:

(1) The ombuds is not liable for good faith performance of responsibilities under this chapter.

(2) No discriminatory or retaliatory action may be taken against any employer for any communication made, or information given or disclosed, to assist the ombuds in carrying out its duties and responsibilities.

(3) All communications by the ombuds, if reasonably related to the requirements of his or her responsibilities under this chapter and done in good faith, are privileged and confidential.

(4) The ombuds is exempt from being required to testify as to any privileged or confidential matters except as the court may deem necessary to enforce this chapter.

(5) All records and files of the ombuds relating to any complaint or investigation made pursuant to carrying out its duties and the identities of complainants, witnesses, or workers shall remain confidential unless disclosure is authorized by the employer or the employer's legal representative. No disclosures may be made outside the office of the ombuds without the consent of the employer.

NEW SECTION. **Sec.**  A new section is added to chapter 43.330 RCW to read as follows:

(1) The ombuds shall provide the governor with an annual report that includes the following:

(a) A description of the issues addressed during the past year and a very brief description of case scenarios in a form that does not compromise confidentiality;

(b) An accounting of the monitoring activities by the ombuds; and

(c) An identification of opportunities to streamline employer interactions with programs administered by the department of labor and industries, and recommendations for policy or process improvements.

(2) The first annual report is due on or before October 1, 2017. Subsequent reports are due on or before October 1st.

NEW SECTION. **Sec.**  A new section is added to chapter 43.330 RCW to read as follows:

This section is the state spending performance statement for the new program created in this act. This performance statement is only intended to be used for subsequent evaluation of this new program. It is not intended to create a private right of action by any party or be used to determine eligibility for the services provided by the program.

(1) It is the legislature's specific public policy objective to provide employers with an independent resource to help them understand and navigate interactions with the department of labor and industries. By creating the ombuds for employers at the department of commerce, the legislature intends to achieve the following outcomes:

(a) Improve the customer service aspects for employers doing business with the department of labor and industries;

(b) Reduce the average time to resolve employer disputes with the department of labor and industries;

(c) Improve the knowledge employers have of industrial insurance, workplace safety, and workplace standards laws and regulations; and

(d) Improve the identification of common areas of miscommunication or bottlenecks in processes administered by the department of labor and industries and provide recommendations for change.

(2) If a review by the joint legislative audit and review committee finds that the multiple outcomes identified in subsection (1) of this section have been achieved, then the legislature intends to extend the expiration of the ombuds for employers.

(3) In order for the joint legislative audit and review committee to obtain the data necessary to review the performance of the ombuds for employers created in this act, the joint legislative audit and review committee may require the ombuds and the department of labor and industries to collect and quantify information and data regarding employer complaints filed with the ombuds. The joint legislative audit and review committee may also survey employers, employer associations, and users of the ombuds services to assess the performance of the ombuds.

(4) No later than January 1, 2027, the joint legislative audit and review committee must review the program created by the act, determine its effectiveness, and provide a recommendation to the fiscal committees of the legislature as to whether the program should be continued without modification, modified, scheduled for sunset review at a future date, or terminated immediately. If the committee determines that the program does not achieve any of the outcomes specified in subsection (1) of this section, the committee shall recommend termination of the program. The committee may recommend accountability standards for the future review of the spending program.

NEW SECTION. **Sec.**  This act expires July 1, 2027.

**--- END ---**