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**SENATE BILL 5978**

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**State of Washington 65th Legislature 2017 3rd Special Session**

**By** Senators McCoy and Hunt

AN ACT Relating to creating an office of the state ombuds; amending RCW 43.03.028, 43.06A.010, 43.06B.010, 43.190.030, 43.382.005, and 51.14.300; reenacting and amending RCW 42.56.240; adding a new chapter to Title 43 RCW; repealing RCW 43.06A.020, 51.14.310, and 51.14.320; and providing an effective date.

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

NEW SECTION. **Sec.**  It is the intent of the legislature to establish, in addition to other remedies or rights of appeal of any person under state law, an independent, impartial, state office, readily available to the public, responsible to the legislature, empowered to investigate the acts of state administrative agencies and to recommend appropriate changes toward the goals of safeguarding the rights of persons and of promoting higher standards of competency, efficiency, and justice in the administration of state laws.

Therefore, the legislature finds it necessary to create an office of the state ombuds within the office of the governor to foster confidence in government and improve government services.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1)(a) "Administrative act" means an action, decision, failure to act, omission, rule or regulation, interpretation, recommendation, practice, policy, or procedure of an agency.

(b) "Administrative act" does not include the preparation or presentation of legislation, the substantive content of a judicial order, decision, or opinion, or an agency's actions under chapter 42.30 or 42.56 RCW.

(2) "Agency" means every state department, division, bureau, board, commission, or other state agency.

(3) "Confidential information" means (a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law.

(4) "Record" means all records, documents, books, papers, files, photographs, microfilms, sound recordings, video recordings, magnetic storage media, computer data, and all other materials, regardless of physical form or characteristics, created, generated, recorded, received, possessed, or controlled by or on behalf of any agency.

NEW SECTION. **Sec.**  (1) The office of the state ombuds is created.

(2) The state ombuds must be a person of recognized judgment, independence, objectivity, and integrity, and who is qualified in training and experience.

(3) A candidate for state ombuds must be nominated by the affirmative vote of a majority of the ombuds nomination committee. The governor shall either affirm or return for reconsideration the nomination of the committee. The ombuds nomination committee is composed of the following members:

(a) One member from each of the two largest caucuses in the house of representatives, appointed by the speaker of the house of representatives; and

(b) One member from each of the two largest caucuses in the senate, appointed by the president of the senate.

(4) The legislature, by a vote of two-thirds of the members of each house present and voting, may remove the ombuds from office, but only for mental or physical incapacity to perform the duties of office, or other grounds sufficient for removal of a judge from any state court. If the position of state ombuds becomes vacant for any reason, the deputy ombuds shall serve as acting ombuds until an ombuds has been appointed to serve the remainder of the unexpired term.

(5) The state ombuds may employ a deputy ombuds and a confidential secretary and such staff as are necessary, or contract with another state agency pursuant to chapter 39.34 RCW, for support in carrying out the purposes of this chapter.

(6) The person appointed ombuds shall hold office for a term of five years and shall continue to hold office until reappointed or until his or her successor is appointed. He or she may be appointed to a second term, but for no additional terms thereafter. The governor may remove the ombuds only for neglect of duty, misconduct, or inability to perform duties. Any vacancy must be filled by similar appointment for the remainder of the unexpired term.

(7) A person may not serve as state ombuds within one year of having served as an elected officer. During his or her tenure, the state ombuds is prohibited from engaging in any of the following activities, either within or outside the state of Washington:

(a) Holding or campaigning for elective office;

(b) Serving as an officer of any political party or political committee;

(c) Permitting his or her name to be used in support of or in opposition to a candidate or proposition;

(d) Soliciting or making contributions to a candidate or in support of or in opposition to any candidate or proposition;

(e) Participating in any way in any election campaign; or

(f) Lobbying, employing, or assisting a lobbyist, except that the staff of the office may lobby to the limited extent permitted by RCW 42.17A.635 on matters directly affecting this chapter.

(8) Salaries for staff of the state ombuds must be equitable across departmental assignments, if any, and based solely on qualification and experience. The salary of the state ombuds may not be diminished during the state ombuds's term of office, unless by general law applying to all salaried officers of the state.

NEW SECTION. **Sec.**  The state ombuds shall perform the following duties:

(1) Investigate, upon his or her own initiative or upon receipt of a complaint, an administrative act of any agency alleged to meet any of the grounds for investigation set forth in section 5 of this act, without regard to the finality of the administrative act.

(2) Undertake, participate in, or cooperate with persons and agencies in such conferences, inquiries, meetings, or studies which might improve the functioning of agencies or lessen the risks that objectionable administrative acts will occur.

(3) Make such inquiries and obtain such assistance and information from any agency or person as the ombuds shall require for the discharge of its duties.

(4) Notwithstanding any other provision of state law, have access to and to examine and copy, without payment of a fee, any agency records, including records which are confidential by state law.

(5) Refer matters to the attorney general for civil or criminal enforcement.

(6) Submit annually to the legislature and the governor, by December 31st of each year, a report that contains a summary of the office's activities during the previous year. This report must include the following:

(a) The state ombuds's mission statement;

(b) The number of matters investigated, and the number of matters in which the state ombuds recommended each course of action in section 7(2) of this act;

(c) Legislative issues affecting the state ombuds;

(d) Selected case studies illustrating the work of the state ombuds and reasons for complaints;

(e) Staff contact information; and

(f) Any other information the state ombuds determines may be of interest or assistance in fulfilling the purposes of this chapter.

(7) Notify the director or administrator of the agency in writing of the office's intention to investigate a complaint unless notification would unduly hinder the investigation, make the investigation ineffective, or otherwise frustrate the purposes of this chapter.

(8) Adopt rules necessary to implement this chapter.

NEW SECTION. **Sec.**  (1) Upon receiving a complaint, the state ombuds shall conduct an investigation of a complaint that is an appropriate subject for an investigation. An appropriate subject for investigation by the state ombuds includes any administrative act which the state ombuds has reason to believe may be:

(a) Contrary to law, rule, or regulation;

(b) Unreasonable, unfair, oppressive, arbitrary, capricious, an abuse of discretion, unnecessarily discriminatory, or otherwise objectionable, even though in accordance with law;

(c) Based on a mistake of fact;

(d) Based on improper or irrelevant grounds;

(e) Unsupported by an adequate statement of reasons;

(f) Performed in an inefficient or discourteous manner; or

(g) Otherwise erroneous.

(2) Nothing in this section affects the responsibilities or powers of the joint administrative rules review committee under chapter 34.05 RCW.

(3) Upon receiving a complaint, the state ombuds may refuse to investigate an administrative act of an agency that otherwise qualifies for investigation under this section if:

(a) The complainant could reasonably be expected to use another remedy or channel for resolving the complaint;

(b) The complaint relates to a matter that is outside the duties of the state ombuds;

(c) The complaint relates to an administrative act that the complainant has had knowledge of for at least one year before filing the complaint;

(d) The complainant does not have a sufficient personal interest in the subject matter of the complaint; or

(e) The complaint is trivial, frivolous, vexatious, or made in bad faith.

(4) The ombuds declining to investigate a complaint does not bar the ombuds from proceeding on his or her own initiative to investigate an administrative act, whether or not included in the complaint.

(5) On receiving a complaint that involves confidential information, the state ombuds shall either:

(a) Obtain a power of attorney from the complainant to access confidential information specific to the complainant from the relevant state agency; or

(b) Work with an employee of the relevant state agency who is authorized to access confidential information.

NEW SECTION. **Sec.**  (1) All complaints must be addressed to the state ombuds. If an agency receives correspondence between a complainant and the state ombuds, it shall hold that correspondence in trust and shall promptly forward the correspondence, unopened, to the state ombuds.

(2) If requested by the complainant, the ombuds shall suitably report the status of his or her investigation to the complainant.

(3) Within thirty days of receipt of the complaint, the state ombuds shall notify the complainant of the decision to investigate or not to investigate the complaint. If the state ombuds decides not to investigate and if requested by the complainant, the state ombuds shall provide the reasons for not investigating in writing.

(4) The state ombuds shall not charge any fees for investigations or complaints.

(5) In an investigation, the state ombuds may:

(a) Make inquires and obtain information considered necessary, subject to the restrictions in section 5(5) of this act;

(b) Enter without notice to inspect agency premises with agency staff on the premises;

(c) Have access to all state agency records, including confidential records, except the following records:

(i) Sealed court records, unless the state ombuds obtains a subpoena;

(ii) Active criminal investigation records;

(iii) Records that could lead to disclosure of the identity of confidential police informants;

(iv) Attorney work product and communications protected under attorney-client privilege;

(v) Confidential taxpayer information under RCW 82.32.330;

(vi) Information protected by section 6103(d), 6103(p)(8), or 7213 of the internal revenue code; and

(vii) Health care information protected from disclosure under RCW 70.02.020; and

(d) Issue subpoenas if necessary to compel the attendance and testimony of witnesses and the production of books, records, documents, and other evidence to which the state ombuds may have access pursuant to this section. The state ombuds may only issue a subpoena if the state ombuds has previously requested testimony or evidence and the person or agency to which the request was made has failed to comply with the request in a reasonable amount of time.

(5) If requested by the complainants or witnesses, the state ombuds shall maintain confidentiality with respect to those matters necessary to protect the identities of the complainants or witnesses. The state ombuds shall ensure that confidential records are not disclosed. The state ombuds shall maintain the confidentiality of an agency record.

NEW SECTION. **Sec.**  (1) After investigation of a complaint, the state ombuds shall suitably inform the complainant of his or her conclusion or recommendation and, if appropriate, any action taken or to be taken by the agency involved.

(2) The state ombuds shall report the state ombuds's opinion and recommendations to an agency, if the state ombuds finds, after investigation, that:

(a) A matter should be further considered by that agency;

(b) A statute or rule on which an administrative act is based should be amended;

(c) An administrative act should be modified or canceled;

(d) Reasons should be given for an administrative act;

(e) There are no grounds or there are insufficient grounds for action by the agency;

(f) Any other action should be taken by the agency; or

(g) The agency's action was arbitrary or capricious, constituted an abuse of discretion or was not according to law.

(3) If an opinion or recommendation of the state ombuds is critical of a person or agency, the state ombuds shall first consult with the person or agency before rendering the opinion or recommendation and permit the agency reasonable time to reply. A preliminary opinion or preliminary recommendation is confidential and may not be publicly disclosed by any party.

(4) The state ombuds may request the agency to notify the office within a specified time of any action taken on the ombuds's recommendations.

(5) The state ombuds shall notify the complainant of the ombuds's recommendations and the actions taken by the agency.

(6) If the state ombuds believes there is a breach of duty or misconduct by an officer or employee of an agency in the conduct of the officer's or employee's duty, the state ombuds shall refer the matter to the director or administrator of the agency or to the attorney general without notice to that officer or employee.

(7) After a reasonable time has elapsed, the state ombuds may issue his or her conclusions or recommendations to the legislature, the governor, the public, or any other appropriate authority. The state ombuds shall include any brief statement the agency may provide if an opportunity to reply is required by this act.

(8) If the state ombuds believes that an action has been dictated by laws whose results are unfair or otherwise objectionable, and could be revised by legislative action, the state ombuds shall notify both houses of the legislature and the agency of desirable statutory change.

NEW SECTION. **Sec.**  (1) The substantive content of any finding, conclusion, recommendation, or report of the state ombuds or member of his or her staff are not reviewable in any court.

(2) The state ombuds and his or her staff have the same immunities from civil and criminal liabilities as a judge of this state.

(3) The state ombuds and his or her staff may not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to any matter involving the exercise of their official duties except as may be necessary to enforce this chapter.

(4) Records and files maintained by the state ombuds, other than final investigation reports, are exempt from disclosure under chapter 42.56 RCW. The information contained in these records and files that were prepared pursuant to an investigation conducted under this chapter are not subject to disclosure except to the attorney general or the director or administrator of an agency in connection with an investigation that has been referred to the attorney general or the director or administrator of an agency.

(5) Any person who provides information under this act may be accompanied and advised by counsel of his or her choice and must be paid the same fees and travel allowances and accorded the same privileges and immunities as witnesses whose attendance has been required in Thurston county superior court. However, a representative of an agency providing information under this act during business hours is not entitled to receive such fees and allowances.

NEW SECTION. **Sec.**  (1) No person who files a complaint or participates in any investigation or proceeding pursuant to this chapter is subject to any penalties, sanctions, or restrictions in connection with his or her employment, nor may any person be denied any right, privilege, or benefit because of such action. A person who alleges a violation of this part may bring a civil action for appropriate injunctive relief, actual damages, and punitive damages. Punitive damages may not exceed ten thousand dollars.

(2) A person who knowingly hinders the lawful actions of the state ombuds or the staff of the state ombuds or who knowingly refuses to comply with their lawful demands is guilty of a gross misdemeanor.

NEW SECTION. **Sec.**  The provisions of this chapter are in addition to and do not in any manner limit or affect any other provisions of law under which any remedy or right of appeal is provided for any person, or any procedure is provided for the inquiry into or investigation of any matter. The powers conferred on the state ombuds may be exercised notwithstanding any provision of law to the effect that any administrative action shall be final or unappealable.

**Sec.**  RCW 42.56.240 and 2017 c 261 s 7 and 2017 c 72 s 3 are each reenacted and amended to read as follows:

The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:

(1) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy;

(2) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath;

(3) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b);

(4) License applications under RCW 9.41.070; copies of license applications or information on the applications may be released to law enforcement or corrections agencies;

(5) Information revealing the identity of child victims of sexual assault who are under age eighteen. Identifying information means the child victim's name, address, location, photograph, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator;

(6) Information contained in a local or regionally maintained gang database as well as the statewide gang database referenced in RCW 43.43.762;

(7) Data from the electronic sales tracking system established in RCW 69.43.165;

(8) Information submitted to the statewide unified sex offender notification and registration program under RCW 36.28A.040(6) by a person for the purpose of receiving notification regarding a registered sex offender, including the person's name, residential address, and email address;

(9) Personally identifying information collected by law enforcement agencies pursuant to local security alarm system programs and vacation crime watch programs. Nothing in this subsection shall be interpreted so as to prohibit the legal owner of a residence or business from accessing information regarding his or her residence or business;

(10) The felony firearm offense conviction database of felony firearm offenders established in RCW 43.43.822;

(11) The identity of a state employee or officer who has in good faith filed a complaint with an ethics board, as provided in RCW 42.52.410, or who has in good faith reported improper governmental action, as defined in RCW 42.40.020, to the auditor or other public official, as defined in RCW 42.40.020;

(12) The following security threat group information collected and maintained by the department of corrections pursuant to RCW 72.09.745: (a) Information that could lead to the identification of a person's security threat group status, affiliation, or activities; (b) information that reveals specific security threats associated with the operation and activities of security threat groups; and (c) information that identifies the number of security threat group members, affiliates, or associates;

(13) The global positioning system data that would indicate the location of the residence of an employee or worker of a criminal justice agency as defined in RCW 10.97.030;

(14) Body worn camera recordings to the extent nondisclosure is essential for the protection of any person's right to privacy as described in RCW 42.56.050, including, but not limited to, the circumstances enumerated in (a) of this subsection. A law enforcement or corrections agency shall not disclose a body worn camera recording to the extent the recording is exempt under this subsection.

(a) Disclosure of a body worn camera recording is presumed to be highly offensive to a reasonable person under RCW 42.56.050 to the extent it depicts:

(i)(A) Any areas of a medical facility, counseling, or therapeutic program office where:

(I) A patient is registered to receive treatment, receiving treatment, waiting for treatment, or being transported in the course of treatment; or

(II) Health care information is shared with patients, their families, or among the care team; or

(B) Information that meets the definition of protected health information for purposes of the health insurance portability and accountability act of 1996 or health care information for purposes of chapter 70.02 RCW;

(ii) The interior of a place of residence where a person has a reasonable expectation of privacy;

(iii) An intimate image as defined in RCW 9A.86.010;

(iv) A minor;

(v) The body of a deceased person;

(vi) The identity of or communications from a victim or witness of an incident involving domestic violence as defined in RCW 10.99.020 or sexual assault as defined in RCW 70.125.030, or disclosure of intimate images as defined in RCW 9A.86.010. If at the time of recording the victim or witness indicates a desire for disclosure or nondisclosure of the recorded identity or communications, such desire shall govern; or

(vii) The identifiable location information of a community-based domestic violence program as defined in RCW 70.123.020, or emergency shelter as defined in RCW 70.123.020.

(b) The presumptions set out in (a) of this subsection may be rebutted by specific evidence in individual cases.

(c) In a court action seeking the right to inspect or copy a body worn camera recording, a person who prevails against a law enforcement or corrections agency that withholds or discloses all or part of a body worn camera recording pursuant to (a) of this subsection is not entitled to fees, costs, or awards pursuant to RCW 42.56.550 unless it is shown that the law enforcement or corrections agency acted in bad faith or with gross negligence.

(d) A request for body worn camera recordings must:

(i) Specifically identify a name of a person or persons involved in the incident;

(ii) Provide the incident or case number;

(iii) Provide the date, time, and location of the incident or incidents; or

(iv) Identify a law enforcement or corrections officer involved in the incident or incidents.

(e)(i) A person directly involved in an incident recorded by the requested body worn camera recording, an attorney representing a person directly involved in an incident recorded by the requested body worn camera recording, a person or his or her attorney who requests a body worn camera recording relevant to a criminal case involving that person, or the executive director from either the Washington state commission on African-American affairs, Asian Pacific American affairs, or Hispanic affairs, has the right to obtain the body worn camera recording, subject to any exemption under this chapter or any applicable law. In addition, an attorney who represents a person regarding a potential or existing civil cause of action involving the denial of civil rights under the federal or state Constitution, or a violation of a United States department of justice settlement agreement, has the right to obtain the body worn camera recording if relevant to the cause of action, subject to any exemption under this chapter or any applicable law. The attorney must explain the relevancy of the requested body worn camera recording to the cause of action and specify that he or she is seeking relief from redaction costs under this subsection (14)(e).

(ii) A law enforcement or corrections agency responding to requests under this subsection (14)(e) may not require the requesting individual to pay costs of any redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring any portion of a body worn camera recording.

(iii) A law enforcement or corrections agency may require any person requesting a body worn camera recording pursuant to this subsection (14)(e) to identify himself or herself to ensure he or she is a person entitled to obtain the body worn camera recording under this subsection (14)(e).

(f)(i) A law enforcement or corrections agency responding to a request to disclose body worn camera recordings may require any requester not listed in (e) of this subsection to pay the reasonable costs of redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring any portion of the body worn camera recording prior to disclosure only to the extent necessary to comply with the exemptions in this chapter or any applicable law.

(ii) An agency that charges redaction costs under this subsection (14)(f) must use redaction technology that provides the least costly commercially available method of redacting body worn camera recordings, to the extent possible and reasonable.

(iii) In any case where an agency charges a requestor for the costs of redacting a body worn camera recording under this subsection (14)(f), the time spent on redaction of the recording shall not count towards the agency's allocation of, or limitation on, time or costs spent responding to public records requests under this chapter, as established pursuant to local ordinance, policy, procedure, or state law.

(g) For purposes of this subsection (14):

(i) "Body worn camera recording" means a video and/or sound recording that is made by a body worn camera attached to the uniform or eyewear of a law enforcement or corrections officer from a covered jurisdiction while in the course of his or her official duties and that is made on or after June 9, 2016, and prior to July 1, 2019; and

(ii) "Covered jurisdiction" means any jurisdiction that has deployed body worn cameras as of June 9, 2016, regardless of whether or not body worn cameras are being deployed in the jurisdiction on June 9, 2016, including, but not limited to, jurisdictions that have deployed body worn cameras on a pilot basis.

(h) Nothing in this subsection shall be construed to restrict access to body worn camera recordings as otherwise permitted by law for official or recognized civilian and accountability bodies or pursuant to any court order.

(i) Nothing in this section is intended to modify the obligations of prosecuting attorneys and law enforcement under *Brady v. Maryland,* 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), *Kyles v. Whitley*, 541 U.S. 419, 115 S. Ct. 1555, 131 L. Ed.2d 490 (1995), and the relevant Washington court criminal rules and statutes.

(j) A law enforcement or corrections agency must retain body worn camera recordings for at least sixty days and thereafter may destroy the records;

(15) Any records and information contained within the statewide sexual assault kit tracking system established in RCW 43.43.545; ((~~and~~))

(16)(a) Survivor communications with, and survivor records maintained by, campus-affiliated advocates.

(b) Nothing in this subsection shall be construed to restrict access to records maintained by a campus-affiliated advocate in the event that:

(i) The survivor consents to inspection or copying;

(ii) There is a clear, imminent risk of serious physical injury or death of the survivor or another person;

(iii) Inspection or copying is required by federal law; or

(iv) A court of competent jurisdiction mandates that the record be available for inspection or copying.

(c) "Campus-affiliated advocate" and "survivor" have the definitions in RCW 28B.112.--- (section 2, chapter 72, Laws of 2017); ((~~and~~))

(17) Information and records prepared, owned, used, or retained by the Washington association of sheriffs and police chiefs and information and records prepared, owned, used, or retained by the Washington state patrol pursuant to chapter 261, Laws of 2017; and

(18) Records and files maintained by the state ombuds, other than final investigation reports.

**Sec.**  RCW 43.03.028 and 2011 1st sp.s. c 43 s 451 are each amended to read as follows:

(1) The office of financial management shall study the duties and salaries of the directors of the several departments and the members of the several boards and commissions of state government, who are subject to appointment by the governor or whose salaries are fixed by the governor, and of the chief executive officers of the following agencies of state government:

The arts commission; the human rights commission; the board of accountancy; the eastern Washington historical society; the Washington state historical society; the recreation and conservation office; the criminal justice training commission; the traffic safety commission; the horse racing commission; the public disclosure commission; the state conservation commission; the commission on Hispanic affairs; the commission on Asian Pacific American affairs; the state board for volunteer firefighters and reserve officers; the transportation improvement board; the public employment relations commission; ((~~and~~)) the energy facilities site evaluation council; and the state ombuds.

(2) The office of financial management shall report to the governor or the chairperson of the appropriate salary fixing authority at least once in each fiscal biennium on such date as the governor may designate, but not later than seventy-five days prior to the convening of each regular session of the legislature during an odd-numbered year, its recommendations for the salaries to be fixed for each position.

**Sec.**  RCW 43.06A.010 and 2013 c 23 s 71 are each amended to read as follows:

((~~There is hereby created an~~)) The functions and duties of the office of the family and children's ombuds ((~~within the office of the governor for the purpose of promoting public awareness and understanding of family and children services, identifying system issues and responses for the governor and the legislature to act upon, and monitoring and ensuring compliance with administrative acts, relevant statutes, rules, and policies pertaining to family and children's services and the placement, supervision, and treatment of children in the state's care or in state-licensed facilities or residences. The ombuds shall report directly to the governor and shall exercise his or her powers and duties independently of the secretary~~)) shall be performed by the office of the state ombuds.

**Sec.**  RCW 43.06B.010 and 2013 c 23 s 82 are each amended to read as follows:

(1) ((~~There is hereby created~~)) The functions and duties of the office of the education ombuds ((~~within the office of the governor for the purposes of providing information to parents, students, and others regarding their rights and responsibilities with respect to the state's public elementary and secondary education system, and advocating on behalf of elementary and secondary students.~~

~~(2)(a) The governor shall appoint an ombuds who shall be a person of recognized judgment, independence, objectivity, and integrity and shall be qualified by training or experience or both in the following areas:~~

~~(i) Public education law and policy in this state;~~

~~(ii) Dispute resolution or problem resolution techniques, including mediation and negotiation; and~~

~~(iii) Community outreach.~~

~~(b) The education ombuds may not be an employee of any school district, the office of the superintendent of public instruction, or the state board of education while serving as an education ombuds.~~

~~(3) Before the appointment of the education ombuds, the governor shall share information regarding the appointment to a six-person legislative committee appointed and comprised as follows:~~

~~(a) The committee shall consist of three senators and three members of the house of representatives from the legislature.~~

~~(b) The senate members of the committee shall be appointed by the president of the senate. Two members shall represent the majority caucus and one member the minority caucus.~~

~~(c) The house of representatives members of the committee shall be appointed by the speaker of the house of representatives. Two members shall represent the majority caucus and one member the minority caucus~~)) shall be performed by the office of the state ombuds.

((~~(4)~~)) (2) If sufficient appropriations are provided, the ((~~education~~)) state ombuds shall delegate and certify regional education ombuds. The ((~~education~~)) state ombuds shall ensure that the regional ombuds selected are appropriate to the community in which they serve ((~~and hold the same qualifications as in subsection (2)(a) of this section~~)). The ((~~education~~)) state ombuds may not contract with the superintendent of public instruction, or any school, school district, or current employee of a school, school district, or the office of the superintendent of public instruction for the provision of regional ombuds services.

**Sec.**  RCW 43.190.030 and 2013 c 23 s 89 are each amended to read as follows:

There is created the office of the state long-term care ombuds. The ((~~department of commerce~~)) state ombuds shall contract with a private nonprofit organization to provide long-term care ombuds services as specified under, and consistent with, the federal older Americans act as amended, federal mandates, the goals of the state, and the needs of its citizens. The ((~~department of commerce~~)) state ombuds shall ensure that all program and staff support necessary to enable the ombuds to effectively protect the interests of residents, patients, and clients of all long-term care facilities is provided by the nonprofit organization that contracts to provide long-term care ombuds services. The ((~~department of commerce~~)) state ombuds shall adopt rules to carry out this chapter and the long-term care ombuds provisions of the federal older Americans act, as amended, and applicable federal regulations. The long-term care ombuds program shall have the following powers and duties:

(1) To provide services for coordinating the activities of long-term care ombuds throughout the state;

(2) Carry out such other activities as the ((~~department of commerce~~)) state ombuds deems appropriate;

(3) Establish procedures consistent with RCW 43.190.110 for appropriate access by long-term care ombuds to long-term care facilities and patients' records, including procedures to protect the confidentiality of the records and ensure that the identity of any complainant or resident will not be disclosed without the written consent of the complainant or resident, or upon court order;

(4) Establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems, with provision for submission of such data to the department of social and health services and to the federal department of health and human services, or its successor agency, on a regular basis; and

(5) Establish procedures to assure that any files maintained by ombuds programs shall be disclosed only at the discretion of the ombuds having authority over the disposition of such files, except that the identity of any complainant or resident of a long-term care facility shall not be disclosed by such ombuds unless:

(a) Such complainant or resident, or the complainant's or resident's legal representative, consents in writing to such disclosure; or

(b) Such disclosure is required by court order.

**Sec.**  RCW 43.382.005 and 2016 c 172 s 5 are each amended to read as follows:

(1) There is created an office of the developmental disabilities ombuds. The ((~~department of commerce~~)) state ombuds shall contract with a private, independent nonprofit organization to provide developmental disability ombuds services. The ((~~department of commerce~~)) state ombuds shall designate, by a competitive bidding process, the nonprofit organization that will contract to operate the ombuds. The selection process must include consultation of stakeholders in the development of the request for proposals and evaluation of bids. The selected organization must have experience and the capacity to effectively communicate regarding developmental disabilities issues with policymakers, stakeholders, and the general public and must be prepared and able to provide all program and staff support necessary, directly or through subcontracts, to carry out all duties of the office.

(2) The contracting organization and its subcontractors, if any, are not state agencies or departments, but instead are private, independent entities operating under contract with the state.

(3) The governor or state may not revoke the designation of the organization contracted to provide the services of the ombuds except upon a showing of neglect of duty, misconduct, or inability to perform duties.

(4) The ((~~department of commerce~~)) state ombuds shall ensure that the ombuds staff has access to sufficient training or experience with issues relating to persons with developmental disabilities and the program and staff support necessary to enable the ombuds to effectively protect the interests of persons with developmental disabilities. The office of the developmental disabilities ombuds shall have the powers and duties to do the following:

(a) Provide information as appropriate on the rights and responsibilities of persons receiving developmental ((~~disability [disabilities]~~)) disabilities administration services or other state services, and on the procedures for providing these services;

(b) Investigate, upon its own initiative or upon receipt of a complaint, an administrative act related to a person with developmental disabilities alleged to be contrary to law, rule, or policy, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds; however, the ombuds may decline to investigate any complaint;

(c) Monitor the procedures as established, implemented, and practiced by the department to carry out its responsibilities in the delivery of services to a person with developmental disabilities, with a view toward appropriate preservation of families and ensuring health and safety;

(d) Review periodically the facilities and procedures of state institutions which serve persons with developmental disabilities and state-licensed facilities or residences;

(e) Recommend changes in the procedures for addressing the needs of persons with developmental disabilities;

(f) Submit annually, by November 1st, to the governor and appropriate committees of the legislature a report analyzing the work of the office, including recommendations;

(g) Establish procedures to protect the confidentiality of records and sensitive information to ensure that the identity of any complainant or person with developmental disabilities will not be disclosed without the written consent of the complainant or person, or upon court order;

(h) Maintain independence and authority within the bounds of the duties prescribed by this chapter, insofar as this independence and authority is exercised in good faith and within the scope of contract; and

(i) Carry out such other activities as determined by the ((~~department of commerce~~)) state ombuds within the scope of this chapter.

(5) The developmental disabilities ombuds must consult with stakeholders to develop a plan for future expansion of the ombuds into a model of individual ombuds services akin to the operations of the long-term care ombuds. The developmental disabilities ombuds shall report its progress and recommendations related to this subsection to the governor and appropriate committees of the legislature by November 1, 2019.

**Sec.**  RCW 51.14.300 and 2013 c 23 s 105 are each amended to read as follows:

The functions and duties of the office of the ombuds for workers of industrial insurance self‑insured employers ((~~is created. The ombuds shall be appointed by the governor and report directly to the director of the department. 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 industrial insurance division~~)) shall be performed by the office of the state ombuds.

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1)RCW 43.06A.020 (Ombuds—Appointment, term of office) and 2013 c 23 s 72, 1998 c 288 s 7, & 1996 c 131 s 3;

(2)RCW 51.14.310 (Ombuds—Term of office—Removal—Vacancies) and 2013 c 23 s 106 & 2007 c 281 s 2; and

(3)RCW 51.14.320 (Ombuds—Training or experience qualifications) and 2013 c 23 s 107 & 2007 c 281 s 3.

NEW SECTION. **Sec.**  Sections 1 through 10 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  This act takes effect January 1, 2019.

**--- END ---**