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**SUBSTITUTE SENATE BILL 5547**

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**State of Washington**

**60th Legislature**

**2007 Regular Session**

**By** Senate Committee on Health & Long-Term Care (originally sponsored by Senators Kline, Delvin, Fairley, Kohl-Welles, Keiser, Pflug, Franklin, Brandland, Marr, Regala, Rasmussen, Roach, Parlette, Shin, McAuliffe and Hewitt)

READ FIRST TIME 02/15/07.

1 AN ACT Relating to the office of the ombudsman for persons with  
2 developmental disabilities; and adding a new chapter to Title 43 RCW.

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

4 NEW SECTION. **Sec. 1.** The definitions in this section apply  
5 throughout this chapter unless the context clearly requires otherwise.

6 (1) "Advisory committee" means the developmental disabilities  
7 ombudsman consumer advisory committee established in section 4 of this  
8 act.

9 (2) "Council" means the developmental disabilities council.

10 (3) "Office" means the office of the ombudsman for persons with  
11 developmental disabilities.

12 (4) "Ombudsman" means the ombudsman for persons with developmental  
13 disabilities.

14 NEW SECTION. **Sec. 2.** An office of the ombudsman for persons with  
15 developmental disabilities is created for the purpose of promoting  
16 public awareness and understanding of developmental disabilities,  
17 identifying system issues, and monitoring and ensuring compliance with  
18 administrative acts, relevant statutes, rules, and policies pertaining

1 to services for persons with developmental disabilities and to ensure  
2 that services and supports are of good quality and improve a person's  
3 quality of life. The ombudsman shall be an independent function within  
4 state government and shall exercise his or her powers and duties  
5 without interference from either public or private agencies or  
6 organizations.

7 NEW SECTION. **Sec. 3.** (1) The council shall select the ombudsman  
8 and contract with a nonprofit agency to house the office. The  
9 ombudsman shall be a person of recognized judgment, independence,  
10 objectivity, and integrity, and shall be qualified by training or  
11 experience, or both, in developmental disability services law, policy,  
12 and advocacy within the system of developmental disabilities services.  
13 Prior to selecting the ombudsman, the council shall consult with, and  
14 may receive recommendations from, the appropriate committees of the  
15 legislature and developmental disabilities stakeholders regarding  
16 candidates for consideration as the ombudsman. The nonprofit agency  
17 housing the office shall: (a) Not be a provider of supports or  
18 services to persons with developmental disabilities; (b) agree to  
19 assume fiduciary responsibility for the office; and (c) agree not to  
20 interfere with the independence of the ombudsman in his or her  
21 performance of the duties set forth in section 4 of this act.

22 (2) The person selected to be the ombudsman shall hold the position  
23 for a term of five years and shall continue to hold the position until  
24 reappointed or until his or her successor is appointed. The council  
25 may remove the ombudsman only for neglect of duty, misconduct, or  
26 inability to perform duties. Any vacancy shall be filled by similar  
27 selection for the remainder of the unexpired term. The council shall  
28 solicit recommendations from the developmental disabilities ombudsman  
29 advisory committee, established in section 5 of this act, as to whether  
30 or not to reappoint the ombudsman to another five-year term. If the  
31 council decides not to reappoint the ombudsman, the process set forth  
32 in subsection (1) of this section will be used to select a new  
33 ombudsman.

34 NEW SECTION. **Sec. 4.** The ombudsman shall perform the following  
35 duties:

1 (1) Provide information as appropriate on the rights and  
2 responsibilities of individuals with developmental disabilities  
3 receiving services, and on the procedures for providing these services;

4 (2) Impartially investigate, upon his or her own initiative, or  
5 upon receipt of a complaint, an administrative act alleged to be  
6 contrary to law, rule, or policy, imposed without an adequate statement  
7 of reason, or based on irrelevant, immaterial, or erroneous grounds,  
8 including acts related to the administration of trust funds for special  
9 needs that result from a medical malpractice or personal injury  
10 settlement; develop findings in each case; and, to the extent the  
11 findings favor the complainant with a developmental disability, follow  
12 through on behalf of the complainant to the resolution of the  
13 complaint. However, the ombudsman may decline to investigate any  
14 complaint as provided by rules adopted under this chapter;

15 (3) Submit a written progress report in formats accessible to  
16 advisory committee members at least two weeks prior to each of four  
17 quarterly meetings of the advisory committee;

18 (4) Submit an annual report to the governor and the legislature  
19 describing issues and concerns regarding the policies, procedures, and  
20 practices within the developmental disabilities service delivery system  
21 that may need to be addressed through system reform. The developmental  
22 disabilities service delivery system includes but is not limited to  
23 programs or individuals under contract to provide services, state  
24 licensed facilities, and state institutions serving persons with  
25 developmental disabilities.

26 (5) Grant the appropriate committees of the legislature access to  
27 all relevant records in the possession of the ombudsman unless  
28 prohibited by law; and

29 (6) Adopt rules necessary to implement this chapter.

30 NEW SECTION. **Sec. 5.** A developmental disabilities ombudsman  
31 consumer advisory committee of nine people shall be established with a  
32 majority of the composition being individuals with developmental  
33 disabilities or family members of individuals with developmental  
34 disabilities. Five of the members shall be appointed by the governor;  
35 at least one of the governor's appointees shall be an immediate family  
36 member of a person with a developmental disability living in an  
37 institution and at least one of the governor's appointees shall be an

1 immediate family member of a person with a developmental disability in  
2 a noninstitutional setting. Two of the members shall be appointed by  
3 the council, and two of the members shall be appointed by the  
4 Washington protection and advocacy system. At least one each of the  
5 appointees of the council and the Washington protection and advocacy  
6 system shall be individuals with developmental disabilities. The  
7 advisory committee shall produce an annual written evaluation of the  
8 ombudsman program which shall be approved by a majority of the advisory  
9 committee and submitted to the council no later than August 31st of  
10 each year. Three months prior to the end of the ombudsman term, the  
11 advisory committee shall submit a recommendation to the council as to  
12 whether or not they believe the ombudsman should be reappointed with an  
13 explanation as to why they reached this conclusion. Advisory committee  
14 members shall serve for three-year terms with a limit of two  
15 consecutive terms. Initial members shall be appointed to term lengths  
16 necessary to assure that the terms of three members expire each year.  
17 Members appointed to a vacancy that came about prior to the expiration  
18 of a three-year term shall be appointed to complete that term. Members  
19 who serve less than one-half of their predecessor's term may be  
20 appointed to two more terms. Advisory council meetings shall be open  
21 and allow time for public comment.

22 NEW SECTION. **Sec. 6.** The ombudsman shall treat all matters under  
23 investigation, including the identities of service recipients,  
24 complainants, and individuals from whom information is acquired, as  
25 confidential, except as far as disclosures may be necessary to enable  
26 the ombudsman to perform the duties of the office and to support any  
27 recommendations resulting from an investigation. Upon receipt of  
28 information that by law is confidential or privileged, the ombudsman  
29 shall maintain the confidentiality of the information and shall not  
30 further disclose or disseminate the information, except as provided by  
31 applicable state or federal law. Investigative records of the office  
32 are confidential and are exempt from public disclosure under chapter  
33 42.56 RCW.

34 NEW SECTION. **Sec. 7.** Neither the ombudsman nor the ombudsman's  
35 staff may be compelled, in any judicial or administrative proceeding,  
36 to testify or to produce evidence regarding the exercise of the

1 official duties of the ombudsman or of the ombudsman's staff. All  
2 related memoranda, work product, notes, and case files of the  
3 ombudsman's office are confidential, are not subject to discovery,  
4 judicial or administrative subpoena, or other method of legal  
5 compulsion, and are not admissible in evidence in a judicial or  
6 administrative proceeding.

7 NEW SECTION. **Sec. 8.** (1) Identifying information about  
8 complainants or witnesses shall not be subject to any method of legal  
9 compulsion, nor shall such information be revealed to the governor  
10 except under the following circumstances:

- 11 (a) The complainant or witness waives confidentiality;
- 12 (b) Under a legislative subpoena when there is a legislative  
13 investigation for neglect of duty or misconduct by the ombudsman or  
14 ombudsman's office when the identifying information is necessary to the  
15 investigation of the ombudsman's acts;
- 16 (c) Under an investigation or inquiry by the governor as to neglect  
17 of duty or misconduct by the ombudsman or ombudsman's office when the  
18 identifying information is necessary to the investigation of the  
19 ombudsman's acts.

20 (2) For the purposes of this section, "identifying information"  
21 includes the complainant's or witness's name, location, telephone  
22 number, likeness, social security number or other identification  
23 number, or identification of immediate family members.

24 NEW SECTION. **Sec. 9.** The privilege described in section 7 of this  
25 act does not apply when:

- 26 (1) The ombudsman or ombudsman's staff member has direct knowledge  
27 of an alleged crime, and the testimony, evidence, or discovery sought  
28 is relevant to that allegation;
- 29 (2) The ombudsman or a member of the ombudsman's staff has received  
30 a threat of, or becomes aware of a risk of, imminent serious harm to  
31 any person, and the testimony, evidence, or discovery sought is  
32 relevant to that threat or risk; or
- 33 (3) The ombudsman has been asked to provide general information  
34 regarding the general operation of, or the general processes employed  
35 at, the ombudsman's office.

1        NEW SECTION.    **Sec. 10.**    (1) An employee of the office is not liable  
2 for good faith performance of responsibilities under this chapter.

3        (2) No discriminatory, disciplinary, or retaliatory action may be  
4 taken against an employee of the department of social and health  
5 services, an employee of a contracting agency of the department of  
6 social and health services, or a family member or recipient of  
7 developmental disabilities services for any communication made, or  
8 information given or disclosed, to aid the office in carrying out its  
9 responsibilities, unless the communication or information is made,  
10 given, or disclosed maliciously or without good faith. This subsection  
11 is not intended to infringe on the rights of the employer to supervise,  
12 discipline, or terminate an employee for other reasons.

13        (3) All communications by an ombudsman, if reasonably related to  
14 the requirements of that individual's responsibilities under this  
15 chapter and done in good faith, are privileged under RCW 9.58.070 and  
16 that privilege shall serve as a defense in any action in libel or  
17 slander.

18        NEW SECTION.    **Sec. 11.**    When the ombudsman or ombudsman's staff  
19 member has reasonable cause to believe that any public official,  
20 employee, or other person has acted in a manner warranting criminal or  
21 disciplinary proceedings, the ombudsman or ombudsman's staff member  
22 shall report the matter, or cause a report to be made, to the  
23 appropriate authorities.

24        NEW SECTION.    **Sec. 12.**    The department of social and health  
25 services shall:

26        (1) Allow the ombudsman or the ombudsman's designee to communicate  
27 privately with any person with developmental disabilities who is  
28 receiving services through the department for the purposes of carrying  
29 out its duties under this chapter;

30        (2) Permit the ombudsman or the ombudsman's designee physical  
31 access to state institutions serving persons with developmental  
32 disabilities, and state-licensed facilities or residences for the  
33 purposes of carrying out its duties under this chapter; and

34        (3) Upon the ombudsman's request, grant the ombudsman or the  
35 ombudsman's designee the right to access, inspect, and copy all

1 relevant information, records, or documents in the possession or  
2 control of the department that the ombudsman considers necessary in an  
3 investigation.

4 NEW SECTION. **Sec. 13.** The ombudsman shall collaborate and have  
5 memoranda of agreement with the long-term care ombudsman, the family  
6 and children ombudsman, the Washington protection and advocacy system,  
7 the mental health ombudsmen, and the special education ombudsman to  
8 clarify authority in those situations where their mandates overlap.  
9 The ombudsman shall report to the legislature on the content of the  
10 memoranda of agreement and how overlapping authority has been clarified  
11 by January 1, 2008.

12 The ombudsman may recommend changes in the procedures for  
13 addressing the needs of persons with developmental disabilities and  
14 share them with the council and the Washington protection and advocacy  
15 system.

16 NEW SECTION. **Sec. 14.** The ombudsman shall give priority for its  
17 services to clients of the department of social and health services  
18 division of developmental disabilities who are receiving, are eligible  
19 for, or have applied for services.

20 NEW SECTION. **Sec. 15.** Sections 1 through 14 of this act  
21 constitute a new chapter in Title 43 RCW.

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