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SENATE BILL 5547

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By Senators Kline, Delvin, Fairley, Kohl-Welles, Keiser, Pflug, Franklin, Brandland, Marr, Regala, Rasmussen, Roach, Parlette, Shin, McAuliffe and Hewitt

Read first time 01/23/2007. Referred to Committee on Health & Long-Term Care.

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.** An office of the ombudsman for persons with  
5 developmental disabilities is created within the office of the governor  
6 for the purpose of promoting public awareness and understanding of  
7 developmental disabilities, identifying system issues and responses for  
8 the governor and the legislature to act upon, monitoring and ensuring  
9 compliance with administrative acts, relevant statutes, rules, and  
10 policies pertaining to services for persons with developmental  
11 disabilities, and to ensure that services and supports are of good  
12 quality and improve a person's quality of life.

13 The ombudsman shall be an independent function within state  
14 government and shall exercise his or her powers and duties without  
15 interference from either public or private agencies or organizations.

16 NEW SECTION. **Sec. 2.** (1) The governor shall appoint a  
17 developmental disabilities ombudsman from a list of six to ten  
18 candidates certified by the developmental disabilities council as

1 qualified for the position. Each certified candidate shall be a person  
2 of recognized judgment, independence, objectivity, and integrity, and  
3 shall be qualified by training or experience, or both, in developmental  
4 disability services law, policy, and advocacy within the community  
5 system of developmental disabilities services. Prior to certifying  
6 qualified candidates, the developmental disabilities council shall  
7 consult with, and may receive recommendations from the appropriate  
8 committees of the legislature and developmental disabilities  
9 stakeholders, regarding candidates for consideration as the ombudsman.

10 (2) The person appointed developmental disabilities ombudsman shall  
11 hold office for a term of five years and shall continue to hold office  
12 until reappointed or until his or her successor is appointed. The  
13 governor may remove the ombudsman only for neglect of duty, misconduct,  
14 or inability to perform duties. Any vacancy shall be filled by similar  
15 appointment for the remainder of the unexpired term. The governor  
16 shall solicit recommendations from the developmental disabilities  
17 council and the developmental disabilities ombudsman advisory  
18 committee, established in section 11 of this act, as to whether or not  
19 to reappoint the ombudsman to another five-year term. If the governor  
20 decides not to reappoint the developmental disabilities ombudsman the  
21 process set forth in subsection (1) of this section will be used to  
22 appoint a new ombudsman.

23 NEW SECTION. **Sec. 3.** The developmental disabilities ombudsman  
24 shall perform the following duties:

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

28 (2) Impartially investigate, upon his or her own initiative, or  
29 upon receipt of a complaint, an administrative act alleged to be  
30 contrary to law, rule, or policy, imposed without an adequate statement  
31 of reason, develop findings in each case and, to the extent the  
32 findings favor the complainant with a developmental disability, follow  
33 through on behalf of the complainant to the resolution of the  
34 complaint, or based on irrelevant, immaterial, or erroneous grounds;  
35 however, the ombudsman may decline to investigate any complaint as  
36 provided by rules adopted under this chapter;

1 (3) Monitor the procedures as established, implemented, and  
2 practiced by the department of social and health services or other  
3 public or private agency to carry out their responsibilities in  
4 delivering services and supports to persons with developmental  
5 disabilities;

6 (4) Review periodically the procedures for providing services and  
7 supports to individuals with developmental disabilities and their  
8 families, including programs or individuals under contract to provide  
9 services, state licensed facilities, and state institutions serving  
10 persons with developmental disabilities;

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

14 (6) Grant the appropriate committees of the legislature access to  
15 all relevant records in the possession of the ombudsman unless  
16 prohibited by law; and

17 (7) Adopt rules necessary to implement this chapter.

18 NEW SECTION. **Sec. 4.** The developmental disabilities ombudsman  
19 shall treat all matters under investigation, including the identities  
20 of service recipients, complainants, and individuals from whom  
21 information is acquired, as confidential, except as far as disclosures  
22 may be necessary to enable the ombudsman to perform the duties of the  
23 office and to support any recommendations resulting from an  
24 investigation. Upon receipt of information that by law is confidential  
25 or privileged, the developmental disabilities ombudsman shall maintain  
26 the confidentiality of the information and shall not further disclose  
27 or disseminate the information, except as provided by applicable state  
28 or federal law. Investigative records of the office of the  
29 developmental disabilities ombudsman are confidential and are exempt  
30 from public disclosure under chapter 42.56 RCW.

31 NEW SECTION. **Sec. 5.** Neither the developmental disabilities  
32 ombudsman nor the ombudsman's staff may be compelled, in any judicial  
33 or administrative proceeding, to testify or to produce evidence  
34 regarding the exercise of the official duties of the ombudsman or of  
35 the ombudsman's staff. All related memoranda, work product, notes, and  
36 case files of the developmental disabilities ombudsman's office are

1 confidential, are not subject to discovery, judicial or administrative  
2 subpoena, or other method of legal compulsion, and are not admissible  
3 in evidence in a judicial or administrative proceeding.

4 NEW SECTION. **Sec. 6.** (1) Identifying information about  
5 complainants or witnesses shall not be subject to any method of legal  
6 compulsion, nor shall such information be revealed to the governor  
7 except under the following circumstances:

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

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

21 NEW SECTION. **Sec. 7.** The privilege described in section 5 of this  
22 act does not apply when:

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

33 NEW SECTION. **Sec. 8.** (1) An employee of the office of the  
34 ombudsman for persons with developmental disabilities is not liable for  
35 good faith performance of responsibilities under this chapter.

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

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

17 NEW SECTION. **Sec. 9.** When the ombudsman or ombudsman's staff  
18 member has reasonable cause to believe that any public official,  
19 employee, or other person has acted in a manner warranting criminal or  
20 disciplinary proceedings, the ombudsman or ombudsman's staff member  
21 shall report the matter, or cause a report to be made, to the  
22 appropriate authorities.

23 NEW SECTION. **Sec. 10.** The department of social and health  
24 services shall:

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

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

33 (3) Upon the ombudsman's request, grant the ombudsman or the  
34 ombudsman's designee the right to access, inspect, and copy all  
35 relevant information, records, or documents in the possession or

1 control of the department that the ombudsman considers necessary in an  
2 investigation.

3 NEW SECTION. **Sec. 11.** A developmental disabilities ombudsman  
4 consumer advisory committee of nine people shall be established, a  
5 majority of the composition being individuals with developmental  
6 disabilities or family members of individuals with developmental  
7 disabilities. Five of the members shall be appointed by the governor;  
8 at least one of the governor's appointees shall be an immediate family  
9 member of a person with a developmental disability living in an  
10 institution and at least one of the governor's appointees shall be an  
11 immediate family member of a person with a developmental disability in  
12 a noninstitutional setting. Two of the members shall be appointed by  
13 the developmental disabilities council and two of the members shall be  
14 appointed by the Washington protection and advocacy system. At least  
15 one each of the appointees of the governor, developmental disabilities  
16 council, and Washington protection and advocacy system shall be  
17 individuals with developmental disabilities. The developmental  
18 disabilities ombudsman shall submit a written progress report in  
19 formats accessible to advisory committee members at least two weeks  
20 prior to each of four quarterly meetings. The advisory committee will  
21 produce an annual written evaluation of the developmental disabilities  
22 ombudsman program which shall be approved by a majority of the advisory  
23 committee and submitted to the governor no later than August 31st of  
24 each year. Three months prior to the end of the developmental  
25 disabilities ombudsman term, the advisory council will submit a  
26 recommendation to the governor and developmental disabilities council  
27 as to whether or not they believe the developmental disabilities  
28 ombudsman should be reappointed with a explanation as to why they  
29 reached this conclusion. Advisory committee members shall serve for  
30 three-year terms with a limit of two consecutive terms. Initial  
31 members shall be appointed to term lengths necessary to assure the  
32 terms of three members expire each year. Members appointed to a  
33 vacancy that came about prior to the expiration of a three-year term  
34 shall be appointed to complete that term. Members who serve less than  
35 one-half of their predecessor's term may be appointed to two more  
36 terms. Advisory council meetings shall be open and allow time for  
37 public comment.

1        NEW SECTION.    **Sec. 12.**    The developmental disabilities ombudsman  
2 shall collaborate with the long-term care ombudsman, the family and  
3 children ombudsman, the Washington protection and advocacy system, and  
4 the special education ombudsman to clarify authority in those  
5 situations where their mandates overlap.

6        The developmental disabilities ombudsman may recommend changes in  
7 the procedures for addressing the needs of persons with developmental  
8 disabilities and share them with the developmental disabilities council  
9 and the Washington protection and advocacy system.

10       NEW SECTION.    **Sec. 13.**    The developmental disabilities ombudsman  
11 shall give priority for its services to clients of the department of  
12 social and health services division of developmental disabilities who  
13 are receiving, are eligible for, or have applied for services.

14       NEW SECTION.    **Sec. 14.**    Sections 1 through 13 of this act  
15 constitute a new chapter in Title 43 RCW.

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