
SENATE BILL 5456

State of Washington

61st Legislature

2009 Regular Session

By Senator Oemig

Read first time 01/22/09. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to the office of the citizen advocate; amending RCW
2 42.40.020; adding a new section to chapter 42.56 RCW; adding a new
3 chapter to Title 44 RCW; creating new sections; repealing RCW
4 51.14.300, 51.14.310, 51.14.320, 51.14.330, 51.14.340, 51.14.350,
5 51.14.360, 51.14.370, 51.14.380, 51.14.390, 51.14.400, 43.06B.010,
6 43.06B.020, 43.06B.030, 43.06B.040, 43.06B.050, 43.06A.010, 43.06A.020,
7 43.06A.030, 43.06A.050, 43.06A.060, 43.06A.070, 43.06A.080, 43.06A.085,
8 43.06A.090, 43.06A.100, 43.06A.110, and 43.06A.900; and providing
9 effective dates.

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

11 NEW SECTION. **Sec. 1.** INTENT. It is the intent of the legislature
12 to establish, in addition to other remedies or rights of appeal of any
13 person under state law, an independent, impartial state office, readily
14 available to the public and accountable to the legislature. The office
15 shall be empowered to investigate the acts of state administrative
16 agencies and to recommend appropriate changes toward the goals of
17 safeguarding the rights of persons and of achieving higher levels of
18 competency, efficiency, and justice in the administration of state
19 laws.

1 NEW SECTION. **Sec. 2.** SHORT TITLE. This chapter may be known and
2 cited as the Washington citizen advocate act.

3 NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this
4 section apply throughout this chapter unless the context clearly
5 requires otherwise.

6 (1) "Administrative act" means any action, decision, adjudication,
7 failure to act, omission, rule, interpretation, recommendation, policy,
8 practice, or procedure of any agency.

9 (2) "Agency" means any department, organization, board, commission,
10 council, bureau, administrative tribunal, facility, public institution
11 of higher education, or other governmental entity of the state
12 government, any person who is providing services to individuals under
13 contract with a state agency, and any official, officer, administrative
14 hearing examiner, or employee of the state, whether elected or
15 appointed, acting or purporting to act by reason of connection with the
16 state, except:

17 (a) Any judge and the judge's staff;

18 (b) The legislature, its members, its committees and its employees;

19 (c) The governor and the governor's personal staff;

20 (d) Local agencies, locally elected officials and their personal
21 staff including a county, city, school district, town, municipal
22 corporation, quasi-municipal corporation, or special purpose district,
23 or any other political subdivision of the state; and

24 (e) Any multistate governmental entity.

25 (3) "Person" means any individual, aggregate of individuals,
26 corporation, partnership, or unincorporated association.

27 (4) "Record" means all records, documents, books, papers, files,
28 photographs, microfilms, sound recordings, video recordings, magnetic
29 storage media, computer data, and all other materials, regardless of
30 physical form or characteristics, relating to the conduct of government
31 or the performance of any governmental or proprietary function
32 prepared, owned, used, or retained by or on behalf of any agency.

33 NEW SECTION. **Sec. 4.** CITIZEN ADVOCATE--OFFICE CREATED. There is
34 hereby created an office within the legislative branch to be known as
35 the citizen advocate.

1 NEW SECTION. **Sec. 5.** NOMINATION--APPOINTMENT. (1) When there is
2 a vacancy in the office of the citizen advocate, or within twelve
3 months before the expiration of the term of office, a citizen advocate
4 selection committee shall be convened. The committee shall consist of
5 nine members to be selected as follows:

6 (a) Four members of the house of representatives, two from each
7 major caucus, and four members of the senate, two from each major
8 caucus, to be appointed by the speaker of the house of representatives
9 and the president of the senate, respectively; and

10 (b) One member appointed by the governor.

11 (2) The appointing officers shall appoint the members of the
12 committee when a vacancy occurs in the office of citizen advocate. The
13 committee shall receive applications and nominate by a majority vote
14 one candidate for citizen advocate according to its adopted procedures.

15 (3) The appointment of the citizen advocate from this nomination is
16 made by passage of a bill on a roll call vote of sixty percent vote of
17 the membership of each house of the legislature. Membership on the
18 citizen advocate selection committee expires when the appointment is
19 approved.

20 (4) If the bill for appointment fails to receive the required sixty
21 percent vote, the committee shall reconvene with its same membership to
22 nominate another candidate by majority vote. The committee may not
23 renominate the same candidate.

24 (5) Meetings of the committee are subject to the open public
25 meetings act, chapter 42.30 RCW, open to the public except for meetings
26 to interview candidates and to make preliminary choices among the
27 candidates. The meeting held to vote for the nominee shall be open to
28 the public.

29 (6) The identity of all candidates shall be public.

30 (7) Each member of the committee shall be compensated in accordance
31 with RCW 43.03.240. The nonlegislative member shall be reimbursed for
32 travel expenses incurred in carrying out the duties of the committee in
33 accordance with RCW 43.03.050 and 43.03.060. The legislative members
34 shall be reimbursed for travel expenses in accordance with RCW
35 44.04.120.

36 (8) The committee shall receive staff support from the house office
37 of program research and senate committee services.

1 NEW SECTION. **Sec. 6.** QUALIFICATIONS. (1) The citizen advocate
2 shall be a person of recognized judgment, objectivity, and integrity
3 who is well-equipped to analyze problems of law, administration, and
4 public policy.

5 (2) No person while serving as citizen advocate may:

6 (a) Be actively involved in political party activities or publicly
7 endorse, solicit funds for, or make contributions to political parties
8 or candidates for elective office;

9 (b) Be a candidate for or hold any other elective or appointive
10 public office; or

11 (c) Engage in any other occupation, business, or profession likely
12 to detract from the full-time performance of his or her duties as
13 citizen advocate or to result in a conflict of interest or an
14 appearance of impropriety or partiality.

15 (3) A person may not submit an application for citizen advocate
16 while serving as a member of the Washington legislature.

17 NEW SECTION. **Sec. 7.** TERM OF OFFICE. The citizen advocate shall
18 serve for a term of six years and until his or her successor is
19 appointed and qualified. He or she may be reappointed for additional
20 terms.

21 NEW SECTION. **Sec. 8.** REMOVAL--VACANCY. (1) The removal of the
22 citizen advocate is made by passage of a bill on a roll call vote of
23 two-thirds vote of the membership of each house of the legislature.
24 The legislature may remove the citizen advocate from office only for
25 mental or physical incapacity to perform the duties of the office,
26 neglect of duty, or upon conviction of willful misconduct or
27 malfeasance in office. The reasons for removal, if requested, shall be
28 provided in writing to the citizen advocate at least one week before
29 passage of the bill in either house of the legislature.

30 (2) If the position of citizen advocate becomes vacant for any
31 reason, the chief deputy citizen advocate shall serve as acting citizen
32 advocate until a citizen advocate has been appointed for a full term.

33 NEW SECTION. **Sec. 9.** COMPENSATION. The citizen advocate shall
34 receive a salary and benefits that are equivalent to that received by

1 a superior court judge. The salary of the citizen advocate shall not
2 be diminished during the citizen advocate's term of office, unless by
3 general law applying to all salaried officers of the state.

4 NEW SECTION. **Sec. 10.** ORGANIZATION OF OFFICE. (1) The citizen
5 advocate shall:

6 (a) Select, employ, and fix the salary of the chief deputy citizen
7 advocate;

8 (b) Select, employ, and fix the salary of an issue-specific deputy
9 citizen advocate who shall be fully dedicated to children's and family
10 issues and who shall be responsible for coordinating the transition
11 from the existing family and children's ombudsman office to the new
12 office of the citizen advocate;

13 (c) For at least the first three years of operation, select,
14 employ, and fix the salary of an issue-specific deputy citizen advocate
15 who shall be at least half-time dedicated to education issues and who
16 shall be responsible for coordinating the transition from the existing
17 education ombudsmen office to the new office of the citizen advocate;
18 and

19 (d) Have the authority to select, employ, and fix the salaries of
20 such other officers and employees as the citizen advocate may deem
21 necessary to discharge the office of the citizen advocate's
22 responsibilities under this chapter. Salaries shall be approved by the
23 legislature and fixed within the amount available by appropriation.
24 All officers and employees shall serve at the citizen advocate's
25 pleasure and are exempt from the provisions of the state civil service
26 law, chapter 41.06 RCW.

27 (2) The citizen advocate may delegate to staff members any
28 authority, power, or duty except the power of delegation and the
29 citizen advocate's duty to make any report under this chapter.
30 However, the citizen advocate may authorize the chief deputy citizen
31 advocate to act in the citizen advocate's stead in the event of
32 illness, absence, leave, or disability, or when, in the citizen
33 advocate's sole discretion, an appearance of impropriety or partiality
34 or a conflict of interest prevents the citizen advocate from
35 discharging his or her duty in a particular matter.

36 (3) The citizen advocate and his or her staff are entitled to

1 participate in any employee benefit or retirement plan available to
2 state employees.

3 NEW SECTION. **Sec. 11.** POWERS. The office of the citizen
4 advocate's powers and duties include but are not limited to the
5 following:

6 (1) To investigate, on complaint or on the citizen advocate's own
7 initiative, any administrative act of an agency, without regard to the
8 finality of the administrative act, however this authority to
9 investigate does not apply to those complaints that fall under the
10 jurisdiction of chapter 42.40 RCW and must be reported to the state
11 auditor;

12 (2) To undertake, participate in, or cooperate with persons and
13 agencies in conferences, inquiries, meetings, or studies that might
14 improve the functioning of agencies or lessen the risks that
15 objectionable administrative acts will occur;

16 (3) To make such inquiries and obtain such assistance and
17 information from any agency or person as the citizen advocate requires
18 for the discharge of the citizen advocate's duties. Agencies shall not
19 restrict the citizen advocate's access to agency personnel;

20 (4) Notwithstanding any other provision of state law, to have
21 access to and to examine and copy, without payment of a fee, any agency
22 records, including records that are confidential under state law.
23 Confidential documents provided to the office of the citizen advocate
24 by other agencies shall continue to maintain their confidential status.
25 The citizen advocate shall not disclose confidential records and is
26 subject to the same penalties as the legal custodian of the records for
27 any unlawful or unauthorized disclosure. This right to access and
28 examine records does not apply to the following:

29 (a) Those records in which the custodian can demonstrate that the
30 examination of the record would violate federal law or result in the
31 denial of federal funds to the agency;

32 (b) Sealed court records without a subpoena;

33 (c) Active criminal investigation records without a subpoena,
34 except that the names of officers involved in the investigation and the
35 cause of the investigation shall be released unless it is information
36 in records subject to (d) of this subsection;

1 (d) Those records that could lead to the identity of a confidential
2 police informant; and

3 (e) Attorney work product and communications that are protected
4 under attorney-client privilege without a subpoena;

5 (5) To enter and inspect without prior notice the premises of any
6 agency;

7 (6) To subpoena any person to appear, to give sworn testimony, or
8 to produce documentary or other evidence that is reasonably relevant to
9 the matters under investigation;

10 (7) To maintain confidential any matter related to complaints and
11 investigations, including the identities of the complainants and
12 witnesses, except as the citizen advocate deems necessary to discharge
13 the citizen advocate's duties and except as required by RCW 42.40.040;

14 (8) To bring suit in the appropriate state court to enforce this
15 chapter;

16 (9) To adopt, amend, and rescind rules required for the discharge
17 of the citizen advocate's duties, including procedures for receiving
18 and processing complaints, conducting investigations, and reporting
19 findings, conclusions, and recommendations; and

20 (10) To prepare and administer a budget for the office of the
21 citizen advocate.

22 NEW SECTION. **Sec. 12.** COMPLAINTS--INVESTIGATION. (1) The citizen
23 advocate shall conduct a suitable investigation of a complaint that is
24 an appropriate subject for investigation, except as provided by
25 subsection (2) of this section. An appropriate subject for
26 investigation by the citizen advocate includes any administrative act
27 that the citizen advocate believes might be:

28 (a) Contrary to law or rule;

29 (b) Based on mistaken facts or irrelevant considerations;

30 (c) Unsupported by an adequate statement of reasons;

31 (d) Performed in an inefficient manner;

32 (e) Unreasonable, unfair, or otherwise objectionable, even though
33 in accordance with law; or

34 (f) Otherwise erroneous.

35 (2) The citizen advocate in the citizen advocate's discretion may
36 decide not to investigate because:

1 (a) The complainant could reasonably be expected to use another
2 remedy or channel;

3 (b) The complaint is trivial, frivolous, vexatious, or not made in
4 good faith;

5 (c) The complaint has been delayed too long to justify present
6 examination;

7 (d) The complainant is not personally aggrieved by the subject
8 matter of the complaint;

9 (e) Resources are insufficient for adequate investigation; or

10 (f) Other complaints are more worthy of attention.

11 (3) The citizen advocate's declining to investigate a complaint
12 does not bar the citizen advocate from proceeding on his or her own
13 initiative to investigate an administrative act whether or not included
14 in the complaint.

15 (4) An individual need not exhaust other administrative remedies
16 before filing a complaint with the citizen advocate.

17 (5) The citizen advocate may not levy any fees for the submission
18 or investigation of complaints.

19 NEW SECTION. **Sec. 13.** COMPLAINANT'S RIGHTS. (1) After the
20 citizen advocate has decided whether or not to investigate a complaint,
21 the citizen advocate shall inform the complainant in writing of the
22 decision.

23 (2) The citizen advocate shall, if requested in writing by the
24 complainant, report the status of his or her investigation to the
25 complainant in writing.

26 (3) After investigation of a complaint, the citizen advocate shall
27 inform the complainant of his or her conclusion or recommendation in
28 writing and, if appropriate, any action taken or to be taken by the
29 agency involved.

30 (4) A letter to the citizen advocate from a person held in custody,
31 including by detention, incarceration, or hospitalization by an agency,
32 shall be forwarded immediately, unopened, to the citizen advocate. A
33 letter from the citizen advocate to such person shall be immediately
34 delivered, unopened, to the person. Telephone and personal contacts
35 between the citizen advocate and a person in custody shall not be
36 prohibited or monitored.

1 NEW SECTION. **Sec. 14.** AGENCY RIGHTS. Before formally issuing a
2 conclusion or recommendation that is significantly critical or adverse
3 to an agency, the citizen advocate shall have consulted with that
4 agency and permitted the agency reasonable opportunity to reply. If
5 the citizen advocate makes a conclusion or recommendation available to
6 the agency in order to facilitate a reply, the conclusion or
7 recommendation is confidential and is not subject to public disclosure
8 under chapter 42.56 RCW. The conclusion or recommendation may not be
9 disclosed to the public by the agency unless the citizen advocate
10 releases it.

11 NEW SECTION. **Sec. 15.** PROCEDURE AFTER INVESTIGATION. (1) After
12 investigation, the citizen advocate shall state any conclusions,
13 recommendations, and reasons therefor to the agency if the citizen
14 advocate is of the opinion that an agency should consider the matter
15 further; modify or cancel an act; alter a rule, practice, or ruling;
16 explain more fully the act in question; rectify an omission; or take
17 any other action. If the citizen advocate so requests, the agency
18 shall, within the time specified, inform the citizen advocate about the
19 action taken on recommendations or the reasons for not complying with
20 them.

21 (2) After a reasonable period of time has elapsed, the citizen
22 advocate may issue his or her conclusions or recommendations to the
23 legislature, the governor, a grand jury, the public, or any other
24 appropriate authority. The citizen advocate shall include any brief
25 statement the agency may provide if an opportunity to reply is required
26 by this chapter.

27 (3) If the citizen advocate believes that an action has been
28 dictated by laws whose results are unfair or otherwise objectionable
29 and could be revised by legislative action, the citizen advocate shall
30 notify the legislature and the agency of the desirable statutory
31 change.

32 (4) If the citizen advocate believes that any agency official or
33 employee has acted in a manner warranting criminal or disciplinary
34 proceedings, the citizen advocate shall refer the matter to the
35 appropriate authorities without notice to that person.

1 NEW SECTION. **Sec. 16.** REPORTS. (1) The citizen advocate may
2 issue special or general interim reports at his or her discretion to
3 the governor, the legislature, the public, or agencies.

4 (2) The citizen advocate shall annually report on his or her
5 activities to the governor, the legislature, the public, and, in the
6 citizen advocate's discretion, agencies. The annual report shall
7 include at a minimum:

8 (a) The number of complaints received;

9 (b) The number of complaints investigated;

10 (c) The number of complaints that have been resolved;

11 (d) The number of complaints that still involve ongoing
12 investigations; and

13 (e) The number of complaints dismissed.

14 (3) The information in subsection (2) of this section shall be
15 reported both as statewide numbers as well as broken down by agency.
16 Additional details for complaints that are dismissed shall be provided
17 in the report, such as the type of complaint and the reason the
18 complaint was dismissed.

19 NEW SECTION. **Sec. 17.** CITIZEN ADVOCATE--IMMUNITIES. (1) The
20 substantive content of any finding, conclusion, recommendation, or
21 report of the citizen advocate or member of the citizen advocate's
22 staff shall not be reviewable in any court.

23 (2) The citizen advocate and the citizen advocate's staff have the
24 same immunities from civil and criminal liabilities as a judge of this
25 state.

26 (3) The citizen advocate and the citizen advocate's staff shall not
27 be compelled to testify or produce evidence in any judicial or
28 administrative proceeding with respect to any matter involving the
29 exercise of their official duties except as may be necessary to enforce
30 this chapter.

31 (4) Records and files maintained by the office of the citizen
32 advocate that are related to complaints taken by the office of the
33 citizen advocate or related to investigations conducted by the office
34 of the citizen advocate are not subject to public disclosure under
35 chapter 42.56 RCW, except that any currently serving member of the
36 legislature may require disclosure of any matter and shall have
37 complete access to the records and files of the citizen advocate upon

1 written request to view such records or files. The request must
2 include the reason for the request and must be signed by the legislator
3 making the request. The legislator must agree in the request to keep
4 the information viewed confidential except to the extent the
5 information is part of the reason to remove the citizen advocate under
6 the provisions of section 8 of this act.

7 NEW SECTION. **Sec. 18.** WITNESSES' PRIVILEGES. Any person who
8 provides information under this chapter may be accompanied and advised
9 by counsel of his or her choice and shall be paid the same fees and
10 travel allowances and accorded the same privileges and immunities as
11 witnesses whose attendance has been required in superior court.
12 However, a representative of an agency providing information under this
13 chapter during business hours is not entitled to receive such fees and
14 allowances.

15 NEW SECTION. **Sec. 19.** OBSTRUCTION. Any person who willfully
16 obstructs or hinders the proper and lawful actions of the citizen
17 advocate or the citizen advocate's staff, or willfully misleads or
18 attempts to mislead the citizen advocate or his or her staff in the
19 citizen advocate's inquiries, is guilty of official misconduct under
20 RCW 9A.80.010.

21 NEW SECTION. **Sec. 20.** REPRISALS PROHIBITED. (1) No person who
22 files a complaint or participates in any investigation or proceeding
23 under this chapter may be subject to any penalties, sanctions, or
24 restrictions in connection with his or her employment or be denied any
25 right, privilege, or benefit because of such action.

26 (2) A person who alleges a violation of this section may bring a
27 civil action for appropriate injunctive relief, actual damages, and
28 punitive damages. Punitive damages may not exceed ten thousand
29 dollars.

30 NEW SECTION. **Sec. 21.** CONSTRUCTION. The provisions of this
31 chapter are in addition to and do not in any manner limit or affect any
32 other provisions of law under which any remedy or right of appeal is
33 provided for any person, or any procedure is provided for the inquiry
34 into or investigation of any matter. The powers conferred on the

1 citizen advocate may be exercised notwithstanding any provision of law
2 to the effect that any administrative action shall be final or
3 unappealable.

4 NEW SECTION. **Sec. 22.** CITIZEN ADVOCATE ADMINISTRATIVE ACCOUNT.

5 (1) The citizen advocate administrative account is created in the state
6 treasury. The account is to be used solely for the payment of the
7 operating costs of the office of the citizen advocate. Moneys in the
8 account may be spent only after appropriation.

9 (2) Expenditures from the account shall not exceed one-third of the
10 operating costs of the office in any fiscal biennium. The account
11 shall be financed through annual premiums assessed to state agencies
12 under the jurisdiction of the office.

13 (a) For the 2009-2011 fiscal biennium, the annual premium assessed
14 to each state agency shall be based solely on the appropriation from
15 the account, prorated on the basis of the number of full-time
16 equivalent employees of each agency, as determined by the office of
17 financial management.

18 (b) For the 2011-2013 fiscal biennium, the annual premium of each
19 agency under the jurisdiction of the office shall be based on the
20 prorated share of the workload of the office related to each agency, as
21 determined by the citizen advocate. To avoid significant fluctuations
22 in the agency premiums, the workload data used to prorate the annual
23 premiums shall be based on a three-year rolling average, to the extent
24 that such data are available, and no agency premium may be increased by
25 more than twenty percent in any fiscal year.

26 NEW SECTION. **Sec. 23.** (1) No later than January 1, 2011, the
27 office of the citizen advocate shall review the powers and duties of
28 the mental health ombudsman created by RCW 71.24.350 and based on that
29 review make recommendations to the legislature regarding the continued
30 existence of the mental health ombudsman office including whether the
31 statute should be repealed and the duties assumed by the citizen
32 advocate. The citizen advocate shall consider both governmental
33 efficiency as well as adequacy of service to citizens in developing its
34 recommendations.

35 (2) No later than January 1, 2011, the office of the citizen

1 advocate shall review the powers and duties of the office of family and
2 children's ombudsman as authorized by chapter 43.06A RCW and based on
3 that review:

4 (a) Make finding as to whether any of the powers and duties listed
5 in RCW 43.06A.030 are not powers and duties that the office of the
6 citizen advocate is authorized to engage in; and

7 (b) For each power or duty the citizen advocate does not have
8 authority to engage in, make a recommendation to the legislature as to
9 whether the citizen advocate should have that authority.

10 (3) No later than January 1, 2012, the office of the citizen
11 advocate shall review the powers and duties of the long-term care
12 ombudsman created by chapter 43.190 RCW and based on that review make
13 recommendations to the legislature regarding the continued existence of
14 the long-term care ombudsman office as a separate office or whether the
15 office should be incorporated into the citizen advocate. The citizen
16 advocate shall consider both governmental efficiency as well as
17 adequacy of service to citizens in developing its recommendations and
18 shall consider any relevant federal requirements or implications
19 related to incorporating the long-term care ombudsman into the office
20 of the citizen advocate.

21 NEW SECTION. **Sec. 24.** A new section is added to chapter 42.56 RCW
22 to read as follows:

23 (1) Records and files maintained by the office of the citizen
24 advocate that are related to complaints taken by the office of the
25 citizen advocate or related to investigations conducted by the office
26 of the citizen advocate are exempt from disclosure under this chapter.

27 (2) Conclusions or recommendations made available to an agency
28 under section 14 of this act are exempt from disclosure under this
29 chapter.

30 NEW SECTION. **Sec. 25.** (1) The office of the ombudsman for workers
31 of industrial insurance self-insured employers, as established in
32 chapter 51.14 RCW, is hereby abolished.

33 (2)(a) All reports, documents, surveys, books, records, files,
34 papers, or written material in the possession of the office of the
35 ombudsman for workers of industrial insurance self-insured employers
36 shall be delivered to the custody of the office of the citizen

1 advocate. All cabinets, furniture, office equipment, motor vehicles,
2 and other tangible property employed by the office of the ombudsman for
3 workers of industrial insurance self-insured employers shall be made
4 available to the office of the citizen advocate. All funds, credits,
5 or other assets held by the office of the ombudsman for workers of
6 industrial insurance self-insured employers shall be assigned to the
7 office of the citizen advocate.

8 (b) Any appropriations made to the office of the ombudsman for
9 workers of industrial insurance self-insured employers shall, on the
10 effective date of this section, be transferred and credited to the
11 office of the citizen advocate.

12 (c) If any question arises as to the transfer of any funds, books,
13 documents, records, papers, files, equipment, or other tangible
14 property used or held in the exercise of the powers and the performance
15 of the duties and functions transferred, the director of financial
16 management shall make a determination as to the proper allocation and
17 certify the same to the state agencies concerned.

18 (3) All rules and all pending business before the office of the
19 ombudsman for workers of industrial insurance self-insured employers
20 shall be continued and acted upon by the office of the citizen advocate
21 in the discretion of and to the extent it is within the authority of
22 the citizen advocate. All existing contracts and obligations shall
23 remain in full force and shall be performed by the office of the
24 citizen advocate.

25 (4) The abolition of the office of the ombudsman for workers of
26 industrial insurance self-insured employers shall not affect the
27 validity of any act performed before the effective date of this
28 section.

29 (5) If apportionments of budgeted funds are required because of the
30 transfers directed by this section, the director of financial
31 management shall certify the apportionments to the agencies affected,
32 the state auditor, and the state treasurer. Each of these shall make
33 the appropriate transfer and adjustments in funds and appropriation
34 accounts and equipment records in accordance with the certification.

35 (6) Nothing contained in this section may be construed to alter any
36 existing collective bargaining unit or the provisions of any existing
37 collective bargaining agreement until the agreement has expired or

1 until the bargaining unit has been modified by action of the public
2 employment relations commission as provided by law.

3 NEW SECTION. **Sec. 26.** (1) Effective July 10, 2010, the office of
4 the education ombudsman, as established in chapter 43.06B RCW, is
5 hereby abolished.

6 (2)(a) All reports, documents, surveys, books, records, files,
7 papers, or written material in the possession of the office of the
8 education ombudsman shall be delivered to the custody of the office of
9 the citizen advocate. All cabinets, furniture, office equipment, motor
10 vehicles, and other tangible property employed by the office of the
11 education ombudsman shall be made available to the office of the
12 citizen advocate. All funds, credits, or other assets held by the
13 office of the education ombudsman shall be assigned to the office of
14 the citizen advocate.

15 (b) Any appropriations made to the office of the education
16 ombudsman shall, on the effective date of this section, be transferred
17 and credited to the office of the citizen advocate.

18 (c) If any question arises as to the transfer of any funds, books,
19 documents, records, papers, files, equipment, or other tangible
20 property used or held in the exercise of the powers and the performance
21 of the duties and functions transferred, the director of financial
22 management shall make a determination as to the proper allocation and
23 certify the same to the state agencies concerned.

24 (3) All rules and all pending business before the office of the
25 education ombudsman shall be continued and acted upon by the office of
26 the citizen advocate in the discretion of and to the extent it is
27 within the authority of the citizen advocate. All existing contracts
28 and obligations shall remain in full force and shall be performed by
29 the office of the citizen advocate.

30 (4) The abolition of the office of the education ombudsman shall
31 not affect the validity of any act performed before the effective date
32 of this section.

33 (5) If apportionments of budgeted funds are required because of the
34 transfers directed by this section, the director of financial
35 management shall certify the apportionments to the agencies affected,
36 the state auditor, and the state treasurer. Each of these shall make

1 the appropriate transfer and adjustments in funds and appropriation
2 accounts and equipment records in accordance with the certification.

3 (6) Nothing contained in this section may be construed to alter any
4 existing collective bargaining unit or the provisions of any existing
5 collective bargaining agreement until the agreement has expired or
6 until the bargaining unit has been modified by action of the public
7 employment relations commission as provided by law.

8 NEW SECTION. **Sec. 27.** (1) Effective July 10, 2010, the special
9 education ombudsman program located within the office of the
10 superintendent of public instruction is hereby abolished.

11 (2)(a) All reports, documents, surveys, books, records, files,
12 papers, or written material in the possession of the special education
13 ombudsman program shall be delivered to the custody of the office of
14 the citizen advocate. All cabinets, furniture, office equipment, motor
15 vehicles, and other tangible property employed by the special education
16 ombudsman program shall be made available to the office of the citizen
17 advocate. All funds, credits, or other assets dedicated to the special
18 education ombudsman program shall be assigned to the office of the
19 citizen advocate.

20 (b) Any appropriations made to the special education ombudsman
21 program shall, on the effective date of this section, be transferred
22 and credited to the office of the citizen advocate.

23 (c) If any question arises as to the transfer of any funds, books,
24 documents, records, papers, files, equipment, or other tangible
25 property used or held in the exercise of the powers and the performance
26 of the duties and functions transferred, the director of financial
27 management shall make a determination as to the proper allocation and
28 certify the same to the state agencies concerned.

29 (3) All rules and all pending business before the special education
30 ombudsman program shall be continued and acted upon by the office of
31 the citizen advocate in the discretion of and to the extent it is
32 within the authority of the citizen advocate. All existing contracts
33 and obligations shall remain in full force and shall be performed by
34 the office of the citizen advocate.

35 (4) The elimination of the special education ombudsman program
36 shall not affect the validity of any act performed before the effective
37 date of this section.

1 (5) If apportionments of budgeted funds are required because of the
2 transfers directed by this section, the director of financial
3 management shall certify the apportionments to the agencies affected,
4 the state auditor, and the state treasurer. Each of these shall make
5 the appropriate transfer and adjustments in funds and appropriation
6 accounts and equipment records in accordance with the certification.

7 (6) Nothing contained in this section may be construed to alter any
8 existing collective bargaining unit or the provisions of any existing
9 collective bargaining agreement until the agreement has expired or
10 until the bargaining unit has been modified by action of the public
11 employment relations commission as provided by law.

12 NEW SECTION. **Sec. 28.** (1) Effective July 10, 2011, the office of
13 the family and children's ombudsman, as established in chapter 43.06A
14 RCW is hereby abolished. All references to the ombudsman or the office
15 of the family and children's ombudsman in the Revised Code of
16 Washington shall be construed to mean the citizen advocate or the
17 office of the citizen advocate.

18 (2)(a) All reports, documents, surveys, books, records, files,
19 papers, or written material in the possession of the office of the
20 family and children's ombudsman shall be delivered to the custody of
21 the office of the citizen advocate. All cabinets, furniture, office
22 equipment, motor vehicles, and other tangible property employed by the
23 office of the family and children's ombudsman shall be made available
24 to the office of the citizen advocate. All funds, credits, or other
25 assets held by the office of the family and children's ombudsman shall
26 be assigned to the office of the citizen advocate.

27 (b) Any appropriations made to the office of the family and
28 children's ombudsman shall, on the effective date of this section, be
29 transferred and credited to the office of the citizen advocate.

30 (c) If any question arises as to the transfer of any funds, books,
31 documents, records, papers, files, equipment, or other tangible
32 property used or held in the exercise of the powers and the performance
33 of the duties and functions transferred, the director of financial
34 management shall make a determination as to the proper allocation and
35 certify the same to the state agencies concerned.

36 (3) All rules and all pending business before the office of the
37 family and children's ombudsman shall be continued and acted upon by

1 the office of the citizen advocate to the extent it is within the
2 authority of the citizen advocate. All existing contracts and
3 obligations shall remain in full force and shall be performed by the
4 office of the citizen advocate.

5 (4) The abolition of the office of the family and children's
6 ombudsman shall not affect the validity of any act performed before the
7 effective date of this section.

8 (5) If apportionments of budgeted funds are required because of the
9 transfers directed by this section, the director of financial
10 management shall certify the apportionments to the agencies affected,
11 the state auditor, and the state treasurer. Each of these shall make
12 the appropriate transfer and adjustments in funds and appropriation
13 accounts and equipment records in accordance with the certification.

14 (6) Nothing contained in this section may be construed to alter any
15 existing collective bargaining unit or the provisions of any existing
16 collective bargaining agreement until the agreement has expired or
17 until the bargaining unit has been modified by action of the public
18 employment relations commission as provided by law.

19 **Sec. 29.** RCW 42.40.020 and 2008 c 266 s 2 are each amended to read
20 as follows:

21 As used in this chapter, the terms defined in this section shall
22 have the meanings indicated unless the context clearly requires
23 otherwise.

24 (1) "Auditor" means the office of the state auditor.

25 (2) "Employee" means any individual employed or holding office in
26 any department or agency of state government.

27 (3) "Good faith" means the individual providing the information or
28 report of improper governmental activity has a reasonable basis in fact
29 for reporting or providing the information. An individual who
30 knowingly provides or reports, or who reasonably ought to know he or
31 she is providing or reporting, malicious, false, or frivolous
32 information, or information that is provided with reckless disregard
33 for the truth, or who knowingly omits relevant information is not
34 acting in good faith.

35 (4) "Gross mismanagement" means the exercise of management
36 responsibilities in a manner grossly deviating from the standard of

1 care or competence that a reasonable person would observe in the same
2 situation.

3 (5) "Gross waste of funds" means to spend or use funds or to allow
4 funds to be used without valuable result in a manner grossly deviating
5 from the standard of care or competence that a reasonable person would
6 observe in the same situation.

7 (6)(a) "Improper governmental action" means any action by an
8 employee undertaken in the performance of the employee's official
9 duties:

10 (i) Which is a gross waste of public funds or resources as defined
11 in this section;

12 (ii) Which is in violation of federal or state law or rule, if the
13 violation is not merely technical or of a minimum nature;

14 (iii) Which is of substantial and specific danger to the public
15 health or safety;

16 (iv) Which is gross mismanagement; or

17 (v) Which prevents the dissemination of scientific opinion or
18 alters technical findings without scientifically valid justification,
19 unless state law or a common law privilege prohibits disclosure. This
20 provision is not meant to preclude the discretion of agency management
21 to adopt a particular scientific opinion or technical finding from
22 among differing opinions or technical findings to the exclusion of
23 other scientific opinions or technical findings. Nothing in this
24 subsection prevents or impairs a state agency's or public official's
25 ability to manage its public resources or its employees in the
26 performance of their official job duties. This subsection does not
27 apply to de minimis, technical disagreements that are not relevant for
28 otherwise improper governmental activity. Nothing in this provision
29 requires the auditor to contract or consult with external experts
30 regarding the scientific validity, invalidity, or justification of a
31 finding or opinion.

32 (b) "Improper governmental action" does not include personnel
33 actions, for which other remedies exist, including but not limited to
34 employee grievances, complaints, appointments, promotions, transfers,
35 assignments, reassignments, reinstatements, restorations,
36 reemployments, performance evaluations, reductions in pay, dismissals,
37 suspensions, demotions, violations of the state civil service law,
38 alleged labor agreement violations, reprimands, claims of

1 discriminatory treatment, or any action which may be taken under
2 chapter 41.06 RCW, or other disciplinary action except as provided in
3 RCW 42.40.030.

4 (7) "Public official" means the attorney general's designee or
5 designees; the director, or equivalent thereof in the agency where the
6 employee works; an appropriate number of individuals designated to
7 receive whistleblower reports by the head of each agency; the office of
8 the citizen advocate; or the executive ethics board.

9 (8) "Substantial and specific danger" means a risk of serious
10 injury, illness, peril, or loss, to which the exposure of the public is
11 a gross deviation from the standard of care or competence which a
12 reasonable person would observe in the same situation.

13 (9) "Use of official authority or influence" includes threatening,
14 taking, directing others to take, recommending, processing, or
15 approving any personnel action such as an appointment, promotion,
16 transfer, assignment including but not limited to duties and office
17 location, reassignment, reinstatement, restoration, reemployment,
18 performance evaluation, determining any material changes in pay,
19 provision of training or benefits, tolerance of a hostile work
20 environment, or any adverse action under chapter 41.06 RCW, or other
21 disciplinary action.

22 (10)(a) "Whistleblower" means:

23 (i) An employee who in good faith reports alleged improper
24 governmental action to the auditor or other public official, as defined
25 in subsection (7) of this section, initiating an investigation by the
26 auditor under RCW 42.40.040; or

27 (ii) An employee who is perceived by the employer as reporting,
28 whether they did or not, alleged improper governmental action to the
29 auditor or other public official, as defined in subsection (7) of this
30 section, initiating an investigation by the auditor under RCW
31 42.40.040.

32 (b) For purposes of the provisions of this chapter and chapter
33 49.60 RCW relating to reprisals and retaliatory action, the term
34 "whistleblower" also means:

35 (i) An employee who in good faith provides information to the
36 auditor or other public official, as defined in subsection (7) of this
37 section, in connection with an investigation under RCW 42.40.040 and an
38 employee who is believed to have reported asserted improper

1 governmental action to the auditor or other public official, as defined
2 in subsection (7) of this section, or to have provided information to
3 the auditor or other public official, as defined in subsection (7) of
4 this section, in connection with an investigation under RCW 42.40.040
5 but who, in fact, has not reported such action or provided such
6 information; or

7 (ii) An employee who in good faith identifies rules warranting
8 review or provides information to the rules review committee, and an
9 employee who is believed to have identified rules warranting review or
10 provided information to the rules review committee but who, in fact,
11 has not done so.

12 NEW SECTION. **Sec. 30.** The following acts or parts of acts are
13 each repealed:

14 (1) RCW 51.14.300 (Ombudsman office created--Appointment--Open and
15 competitive contracting) and 2007 c 281 s 1;

16 (2) RCW 51.14.310 (Ombudsman--Term of office--Removal--Vacancies)
17 and 2007 c 281 s 2;

18 (3) RCW 51.14.320 (Ombudsman--Training or experience
19 qualifications) and 2007 c 281 s 3;

20 (4) RCW 51.14.330 (Ombudsman office--Staffing level) and 2007 c 281
21 s 4;

22 (5) RCW 51.14.340 (Ombudsman office--Powers and duties) and 2007 c
23 281 s 5;

24 (6) RCW 51.14.350 (Ombudsman office--Referral procedures--
25 Department response to referred complaints) and 2007 c 281 s 6;

26 (7) RCW 51.14.360 (Ombudsman liability--Discriminatory,
27 disciplinary, or retaliatory actions--Communications privileged and
28 confidential--Testimony) and 2007 c 281 s 7;

29 (8) RCW 51.14.370 (Confidentiality of ombudsman records and files--
30 Disclosure prohibited--Exception) and 2007 c 281 s 8;

31 (9) RCW 51.14.380 (Explaining ombudsman program--Posters and
32 brochures) and 2007 c 281 s 9;

33 (10) RCW 51.14.390 (Ombudsman office--Funding) and 2007 c 281 s 10;
34 and

35 (11) RCW 51.14.400 (Ombudsman--Annual report to governor) and 2007
36 c 281 s 12.

1 NEW SECTION. **Sec. 31.** The following acts or parts of acts, as now
2 existing or hereafter amended, are each repealed, effective July 1,
3 2010:

4 (1) RCW 43.06B.010 (Office created--Purposes--Appointment--Regional
5 education ombudsmen) and 2006 c 116 s 3;

6 (2) RCW 43.06B.020 (Powers and duties) and 2008 c 165 s 2 & 2006 c
7 116 s 4;

8 (3) RCW 43.06B.030 (Liability for good faith performance--
9 Privileged communications) and 2006 c 116 s 5;

10 (4) RCW 43.06B.040 (Confidentiality) and 2006 c 116 s 6; and

11 (5) RCW 43.06B.050 (Annual reports) and 2006 c 116 s 7.

12 NEW SECTION. **Sec. 32.** The following acts or parts of acts, as now
13 existing or hereafter amended, are each repealed, effective July 1,
14 2011:

15 (1) RCW 43.06A.010 (Office created--Purpose) and 1996 c 131 s 2;

16 (2) RCW 43.06A.020 (Ombudsman--Appointment, term of office) and
17 1998 c 288 s 7 & 1996 c 131 s 3;

18 (3) RCW 43.06A.030 (Duties) and 1996 c 131 s 4;

19 (4) RCW 43.06A.050 (Confidentiality) and 2005 c 274 s 294 & 1996 c
20 131 s 6;

21 (5) RCW 43.06A.060 (Admissibility of evidence--Testimony regarding
22 official duties) and 1998 c 288 s 1;

23 (6) RCW 43.06A.070 (Release of identifying information) and 1998 c
24 288 s 2;

25 (7) RCW 43.06A.080 (Inapplicability of privilege in RCW 43.06A.060)
26 and 1998 c 288 s 3;

27 (8) RCW 43.06A.085 (Liability for good faith performance--
28 Privileged communications) and 1999 c 390 s 7;

29 (9) RCW 43.06A.090 (Report of conduct warranting criminal or
30 disciplinary proceedings) and 1998 c 288 s 4;

31 (10) RCW 43.06A.100 (Communication with children in custody of
32 department of social and health services--Access to information in
33 possession or control of department or state institutions) and 2008 c
34 211 s 3 & 1999 c 390 s 5;

35 (11) RCW 43.06A.110 (Child fatality review recommendations--Annual
36 report) and 2008 c 211 s 2; and

37 (12) RCW 43.06A.900 (Construction) and 1998 c 288 s 5.

1 NEW SECTION. **Sec. 33.** Captions used in this chapter are not any
2 part of the law.

3 NEW SECTION. **Sec. 34.** Sections 1 through 23, 28, and 33 of this
4 act constitute a new chapter in Title 44 RCW.

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