

2SSB 5489 - H AMD TO APP COMM AMD (H-2877.1/19) **747**
By Representative Maycumber

NOT CONSIDERED 12/23/2019

1 On page 8, after line 22, insert the following:

2 "NEW SECTION. **Sec. 7.** A new section is added to chapter 43.10
3 RCW to read as follows:

4 (1) The position of environmental justice ombuds is created in
5 the consumer protection division of the office of the attorney
6 general. The ombuds is an advocate for owners of property impacted by
7 restrictions arising from the shoreline management act, chapter 90.58
8 RCW, the growth management act, chapter 36.70A RCW, local
9 government's comprehensive plans, shoreline master programs,
10 development regulations, or actions implementing the growth
11 management act or shoreline management act, and appellate court
12 decisions interpreting the shoreline management act, growth
13 management act, local governments' comprehensive plans, or
14 development regulations. The ombuds must be a member in good standing
15 of the Washington state bar association.

16 (2) The attorney general is directed to assemble an advisory
17 panel and obtain the advisory panel's approval prior to hiring a
18 specific person to the position of environmental justice ombuds. The
19 advisory panel must include:

20 (a) At least two members of the legislature of differing
21 political affiliations that serve on a policy committee with
22 jurisdiction over the office of the attorney general;

23 (b) A Washington state licensed attorney in private practice with
24 extensive knowledge of land use and constitutional takings
25 jurisprudence who resides east of the crest of the Cascade mountain
26 range; and

27 (c) A Washington state licensed attorney in private practice with
28 extensive knowledge of land use and constitutional takings
29 jurisprudence who resides west of the crest of the Cascade mountain
30 range.

31 (3) (a) The environmental justice ombuds must administer the
32 payments from the environmental justice claims account created in

1 section 9 of this act. The money in the account must be used for the
2 purpose of ensuring that the implementation of the growth management
3 act and shoreline management act do not violate constitutional
4 protections and respond to claims arising from court decisions
5 interpreting the growth management act that started as petitions for
6 review before the growth management hearings board and meet the
7 requirements in (b) and (c) of this subsection.

8 (b) The person requesting the environmental ombuds' review of a
9 claim must:

10 (i) Pay a review fee of one hundred dollars to be retained by the
11 office of the attorney general. The office of the attorney general
12 may waive the review fee for a person whose income is at or below
13 fifty percent of median income, adjusted for household size, for the
14 county where the property is located;

15 (ii) Identify the shoreline hearings board or growth management
16 hearings board decision or court case opinion and how it impacts the
17 person's property; and

18 (iii) Present substantiated claims that satisfy the legal
19 requirements for: Inverse condemnation; deprivation of economically
20 viable use of property; extractions or government requirements that
21 do not meet the requirements of nexus and proportionality; violations
22 of the Fifth Amendment of the United States Constitution; violations
23 of Article I, section 16 of the state Constitution; or claims arising
24 when counties have required property owners to do the county's duty
25 to find legal availability of water by having the property owners
26 establish legal availability of water for a permit exempt well as
27 authorized in RCW 90.44.050.

28 (c) If the ombuds determines the person's claim satisfies the
29 legal and factual requirements for inverse condemnation, deprivation
30 of economically viable use of property, extractions or government
31 requirements that do not meet the requirements of nexus and
32 proportionality, violations of the Fifth Amendment of the United
33 States Constitution, violations of Article I, section 16 of the state
34 Constitution, or a county has shifted its legal duty onto the
35 property owner seeking to rely on a permit exempt well pursuant to
36 RCW 90.44.050 for a building permit, the ombuds must take one or more
37 of the following actions:

38 (i) Advocate on the person's behalf to the local government for
39 correction of the violation;

40 (ii) Participate in court actions seeking relief for the claims;

1 (iii) Provide the claimant with the ombuds' legal recommendation
2 of the presented claim; or

3 (iv) Pay amounts from the environmental justice claims account
4 created in section 9 of this act at the discretion of the ombuds in a
5 manner to facilitate the resolution of claims set forth in this
6 subsection. No payment may exceed five thousand dollars and no
7 payment may be made to corporations, companies, businesses,
8 organizations, associations, government agencies, or any legal entity
9 that is not a natural person.

10 (d) The attorney general must create a form for claimants to use
11 to seek the environmental justice ombuds' review. The form must
12 identify the current legal requirements that would be needed to
13 satisfy the claims identified in (b) of this subsection if filed in a
14 Washington state court of law.

15 (e) The attorney general may limit the intake of the amount of
16 claims for review to no more than thirty per month to be addressed by
17 the ombuds.

18 (f) The attorney general and ombuds may not obligate or disperse
19 amounts that are not available in the environmental justice claims
20 account.

21 **Sec. 8.** RCW 36.70A.290 and 2011 c 277 s 1 are each amended to
22 read as follows:

23 (1) All requests for review to the growth management hearings
24 board shall be initiated by filing a petition that includes a
25 detailed statement of issues presented for resolution by the board.
26 The board shall collect an assessment of two hundred fifty dollars
27 from the requester of the review to be remitted to the state
28 treasurer and placed in the environmental justice claims account
29 created in section 9 of this act. The board shall render written
30 decisions articulating the basis for its holdings. The board shall
31 not issue advisory opinions on issues not presented to the board in
32 the statement of issues, as modified by any prehearing order.

33 (2) All petitions relating to whether or not an adopted
34 comprehensive plan, development regulation, or permanent amendment
35 thereto, is in compliance with the goals and requirements of this
36 chapter or chapter 90.58 or 43.21C RCW must be filed within sixty
37 days after publication as provided in (a) through (c) of this
38 subsection.

1 (a) Except as provided in (c) of this subsection, the date of
2 publication for a city shall be the date the city publishes the
3 ordinance, or summary of the ordinance, adopting the comprehensive
4 plan or development regulations, or amendment thereto, as is required
5 to be published.

6 (b) Promptly after adoption, a county shall publish a notice that
7 it has adopted the comprehensive plan or development regulations, or
8 amendment thereto.

9 Except as provided in (c) of this subsection, for purposes of
10 this section the date of publication for a county shall be the date
11 the county publishes the notice that it has adopted the comprehensive
12 plan or development regulations, or amendment thereto.

13 (c) For local governments planning under RCW 36.70A.040, promptly
14 after approval or disapproval of a local government's shoreline
15 master program or amendment thereto by the department of ecology as
16 provided in RCW 90.58.090, the department of ecology shall publish a
17 notice that the shoreline master program or amendment thereto has
18 been approved or disapproved. For purposes of this section, the date
19 of publication for the adoption or amendment of a shoreline master
20 program is the date the department of ecology publishes notice that
21 the shoreline master program or amendment thereto has been approved
22 or disapproved.

23 (3) Unless the board dismisses the petition as frivolous or finds
24 that the person filing the petition lacks standing, or the parties
25 have filed an agreement to have the case heard in superior court as
26 provided in RCW 36.70A.295, the board shall, within ten days of
27 receipt of the petition, set a time for hearing the matter.

28 (4) The board shall base its decision on the record developed by
29 the city, county, or the state and supplemented with additional
30 evidence if the board determines that such additional evidence would
31 be necessary or of substantial assistance to the board in reaching
32 its decision.

33 (5) The board, shall consolidate, when appropriate, all petitions
34 involving the review of the same comprehensive plan or the same
35 development regulation or regulations.

36 NEW SECTION. **Sec. 9.** The environmental justice claims account
37 is created in the custody of the state treasury. All receipts from
38 the assessment in RCW 36.70A.290 must be deposited into the account.
39 Only the attorney general or the environmental justice ombuds may

1 authorize expenditures from the account. Expenditures from the
2 account must be used only for the purposes identified in section 7 of
3 this act. The account is subject to allotment procedures under
4 chapter 43.88 RCW, but an appropriation is not required for
5 expenditures. The account is subject to audit by the state auditor.

6 **Sec. 10.** RCW 43.79A.040 and 2018 c 260 s 28, 2018 c 258 s 4, and
7 2018 c 127 s 6 are each reenacted and amended to read as follows:

8 (1) Money in the treasurer's trust fund may be deposited,
9 invested, and reinvested by the state treasurer in accordance with
10 RCW 43.84.080 in the same manner and to the same extent as if the
11 money were in the state treasury, and may be commingled with moneys
12 in the state treasury for cash management and cash balance purposes.

13 (2) All income received from investment of the treasurer's trust
14 fund must be set aside in an account in the treasury trust fund to be
15 known as the investment income account.

16 (3) The investment income account may be utilized for the payment
17 of purchased banking services on behalf of treasurer's trust funds
18 including, but not limited to, depository, safekeeping, and
19 disbursement functions for the state treasurer or affected state
20 agencies. The investment income account is subject in all respects to
21 chapter 43.88 RCW, but no appropriation is required for payments to
22 financial institutions. Payments must occur prior to distribution of
23 earnings set forth in subsection (4) of this section.

24 (4)(a) Monthly, the state treasurer must distribute the earnings
25 credited to the investment income account to the state general fund
26 except under (b), (c), and (d) of this subsection.

27 (b) The following accounts and funds must receive their
28 proportionate share of earnings based upon each account's or fund's
29 average daily balance for the period: The 24/7 sobriety account, the
30 Washington promise scholarship account, the Gina Grant Bull memorial
31 legislative page scholarship account, the Washington advanced college
32 tuition payment program account, the Washington college savings
33 program account, the accessible communities account, the Washington
34 achieving a better life experience program account, the community and
35 technical college innovation account, the agricultural local fund,
36 the American Indian scholarship endowment fund, the foster care
37 scholarship endowment fund, the foster care endowed scholarship trust
38 fund, the contract harvesting revolving account, the Washington state
39 combined fund drive account, the commemorative works account, the

1 county enhanced 911 excise tax account, the toll collection account,
2 the developmental disabilities endowment trust fund, the energy
3 account, the fair fund, the family and medical leave insurance
4 account, the fish and wildlife federal lands revolving account, the
5 natural resources federal lands revolving account, the food animal
6 veterinarian conditional scholarship account, the forest health
7 revolving account, the fruit and vegetable inspection account, the
8 future teachers conditional scholarship account, the game farm
9 alternative account, the GET ready for math and science scholarship
10 account, the Washington global health technologies and product
11 development account, the grain inspection revolving fund, the
12 environmental justice claims account, the Washington history day
13 account, the industrial insurance rainy day fund, the juvenile
14 accountability incentive account, the law enforcement officers' and
15 firefighters' plan 2 expense fund, the local tourism promotion
16 account, the low-income home rehabilitation revolving loan program
17 account, the multiagency permitting team account, the northeast
18 Washington wolf-livestock management account, the pilotage account,
19 the produce railcar pool account, the regional transportation
20 investment district account, the rural rehabilitation account, the
21 Washington sexual assault kit account, the stadium and exhibition
22 center account, the youth athletic facility account, the self-
23 insurance revolving fund, the children's trust fund, the Washington
24 horse racing commission Washington bred owners' bonus fund and
25 breeder awards account, the Washington horse racing commission class
26 C purse fund account, the individual development account program
27 account, the Washington horse racing commission operating account,
28 the life sciences discovery fund, the Washington state heritage
29 center account, the reduced cigarette ignition propensity account,
30 the center for childhood deafness and hearing loss account, the
31 school for the blind account, the Millersylvania park trust fund, the
32 public employees' and retirees' insurance reserve fund, the school
33 employees' benefits board insurance reserve fund, (~~(the)~~) the
34 public employees' and retirees' insurance account, (~~(the)~~) the
35 school employees' insurance account, and the radiation perpetual
36 maintenance fund.

37 (c) The following accounts and funds must receive eighty percent
38 of their proportionate share of earnings based upon each account's or
39 fund's average daily balance for the period: The advanced right-of-
40 way revolving fund, the advanced environmental mitigation revolving

1 account, the federal narcotics asset forfeitures account, the high
2 occupancy vehicle account, the local rail service assistance account,
3 and the miscellaneous transportation programs account.

4 (d) Any state agency that has independent authority over accounts
5 or funds not statutorily required to be held in the custody of the
6 state treasurer that deposits funds into a fund or account in the
7 custody of the state treasurer pursuant to an agreement with the
8 office of the state treasurer shall receive its proportionate share
9 of earnings based upon each account's or fund's average daily balance
10 for the period.

11 (5) In conformance with Article II, section 37 of the state
12 Constitution, no trust accounts or funds shall be allocated earnings
13 without the specific affirmative directive of this section.

14 **Sec. 11.** RCW 42.56.240 and 2018 c 285 s 1 and 2018 c 171 s 7 are
15 each reenacted and amended to read as follows:

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

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

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

35 (3) Any records of investigative reports prepared by any state,
36 county, municipal, or other law enforcement agency pertaining to sex
37 offenses contained in chapter 9A.44 RCW or sexually violent offenses
38 as defined in RCW 71.09.020, which have been transferred to the

1 Washington association of sheriffs and police chiefs for permanent
2 electronic retention and retrieval pursuant to RCW 40.14.070(2)(b);

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

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

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

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

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

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

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

30 (11) The identity of a state employee or officer who has in good
31 faith filed a complaint with an ethics board, as provided in RCW
32 42.52.410, or who has in good faith reported improper governmental
33 action, as defined in RCW 42.40.020, to the auditor or other public
34 official, as defined in RCW 42.40.020;

35 (12) The following security threat group information collected
36 and maintained by the department of corrections pursuant to RCW
37 72.09.745: (a) Information that could lead to the identification of a
38 person's security threat group status, affiliation, or activities;
39 (b) information that reveals specific security threats associated
40 with the operation and activities of security threat groups; and (c)

1 information that identifies the number of security threat group
2 members, affiliates, or associates;

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

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

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

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

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

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

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

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

28 (iii) An intimate image;

29 (iv) A minor;

30 (v) The body of a deceased person;

31 (vi) The identity of or communications from a victim or witness
32 of an incident involving domestic violence as defined in RCW
33 10.99.020 or sexual assault as defined in RCW 70.125.030, or
34 disclosure of intimate images as defined in RCW 9A.86.010. If at the
35 time of recording the victim or witness indicates a desire for
36 disclosure or nondisclosure of the recorded identity or
37 communications, such desire shall govern; or

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

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

3 (c) In a court action seeking the right to inspect or copy a body
4 worn camera recording, a person who prevails against a law
5 enforcement or corrections agency that withholds or discloses all or
6 part of a body worn camera recording pursuant to (a) of this
7 subsection is not entitled to fees, costs, or awards pursuant to RCW
8 42.56.550 unless it is shown that the law enforcement or corrections
9 agency acted in bad faith or with gross negligence.

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

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

13 (ii) Provide the incident or case number;

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

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

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

37 (ii) A law enforcement or corrections agency responding to
38 requests under this subsection (14)(e) may not require the requesting
39 individual to pay costs of any redacting, altering, distorting,

1 pixelating, suppressing, or otherwise obscuring any portion of a body
2 worn camera recording.

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

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

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

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

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

27 (i) "Body worn camera recording" means a video and/or sound
28 recording that is made by a body worn camera attached to the uniform
29 or eyewear of a law enforcement or corrections officer while in the
30 course of his or her official duties; and

31 (ii) "Intimate image" means an individual or individuals engaged
32 in sexual activity, including sexual intercourse as defined in RCW
33 9A.44.010 and masturbation, or an individual's intimate body parts,
34 whether nude or visible through less than opaque clothing, including
35 the genitals, pubic area, anus, or postpubescent female nipple.

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

1 (i) Nothing in this section is intended to modify the obligations
2 of prosecuting attorneys and law enforcement under *Brady v. Maryland*,
3 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), *Kyles v.*
4 *Whitley*, 541 U.S. 419, 115 S. Ct. 1555, 131 L. Ed.2d 490 (1995), and
5 the relevant Washington court criminal rules and statutes.

6 (j) A law enforcement or corrections agency must retain body worn
7 camera recordings for at least sixty days and thereafter may destroy
8 the records in accordance with the applicable records retention
9 schedule;

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

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

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

17 (i) The survivor consents to inspection or copying;

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

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

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

23 (c) "Campus-affiliated advocate" and "survivor" have the
24 definitions in RCW 28B.112.030;

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

30 (18) Any and all audio or video recordings of child forensic
31 interviews as defined in chapter 26.44 RCW. Such recordings are
32 confidential and may only be disclosed pursuant to a court order
33 entered upon a showing of good cause and with advance notice to the
34 child's parent, guardian, or legal custodian. However, if the child
35 is an emancipated minor or has attained the age of majority as
36 defined in RCW 26.28.010, advance notice must be to the child.
37 Failure to disclose an audio or video recording of a child forensic
38 interview as defined in chapter 26.44 RCW is not grounds for
39 penalties or other sanctions available under this chapter; and

1 (19) All records submitted to the attorney general's office for
2 review by the environmental justice ombuds as part of a claim under
3 section 7(3) of this act, and any records created by the department
4 of commerce related to the claim. However, information detailing
5 activity in the environmental justice claims account created in
6 section 9 of this act must be disclosed, including the name of any
7 person receiving a payment from the account, the amount of the
8 payment, the determination made by the ombuds justifying and
9 authorizing the payment, and any settlement or agreement connected to
10 a payment from the account."

11 Renumber the remaining sections consecutively, correct any
12 internal references accordingly, and correct the title.

EFFECT: Creates an environmental justice ombuds in the consumer protection division of the Attorney General's Office. Makes the ombuds responsible for reviewing and paying claims related to constitutional violations related to the implementation of the Shoreline Management Act and the Growth Management Act, including inverse condemnation, violations of the Fifth Amendment of the United States Constitution, and other specified legal grounds. Establishes a \$250 charge for petitions for review of a Growth Management Act decision by the Growth Management Hearings Board, and deposits the money in an environmental justice claims account for use in paying claims of up to \$5,000 for violations of constitutional protections occurring under the Growth Management Act, Shoreline Management Act, and related court interpretations.

--- END ---