

H. B. 2904

(By Delegates Kump, Canterbury, Faircloth, Rowan, Howell, Ambler, Folk, Romine and R. Smith)

[Introduced March 12, 2013; referred to the Committee on Government Organization then Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §4-14-1, §4-14-2, §4-14-3, §4-14-4 and §4-14-5, all relating to the Office of State Employee Ombudsman; creating a State Employee Ombudsman; describing the qualifications of the State Employee Ombudsman; providing for powers and duties; specifying investigatory powers; describing complaint procedures; requiring annual reports; describing penalties for noncompliance; and allowing for enforcement.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §4-14-1, §4-14-2, §4-14-3, §4-14-4 and §4-14-5, all to read as follows:

ARTICLE 14. STATE EMPLOYEE OMBUDSMAN.

§4-14-1. Authority of State Employee Ombudsman; short title; purpose.

1 (a) The West Virginia Legislature creates and establishes the
2 Office of State Employee Ombudsman to act as an advisory office to
3 the Legislature in order to provide oversight of executive branch
4 employment issues. This article shall be known as the "State
5 Employee Ombudsman Act".

6 (b) The State Employee Ombudsman is responsible for research,
7 investigations, training and reporting on employment issues
8 specific to the executive branch of state government. The State
9 Employee Ombudsman shall make recommendations, provide training and
10 produce reports pursuant to this article and as directed by the
11 Joint Committee on Government and Finance in order to resolve
12 complaints made against a public agency, department or person
13 employed with public funds.

14 (c) The purpose of the State Employee Ombudsman is to serve as
15 an impartial investigator and advocate for executive branch
16 employees who request an investigation into employee issues in the
17 executive branch of state government. The State Employee Ombudsman
18 may investigate any office in the executive branch of state
19 government or any person paid with public money, for compliance
20 with any law, rule or policy related to employment issues.

21 **§4-14-2. Qualifications of State Employee Ombudsman; office**
22 **staff; toll free hotline.**

23 (a) A qualified State Employee Ombudsman shall be employed by
24 the Joint Committee on Government and Finance. The State Employee

1 Ombudsman appointed shall have the following minimum
2 qualifications:

3 (1) Is a citizen of the United States and a resident of the
4 State of West Virginia;

5 (2) (A) Have earned a bachelor's degree from an accredited
6 college or university; or

7 (B) Has successfully completed a course on generally accepted
8 government auditing standards;

9 (3) Has not been an officer of a political party for a minimum
10 of one year prior to employment; and

11 (4) Has not held an elected political office for a minimum of
12 one year prior to employment.

13 (b) The State Employee Ombudsman shall provide, operate and
14 maintain a toll free anonymous hot line for the purpose of
15 receiving complaints, referrals and information as necessary to
16 carry out the provisions of this article. Referrals and
17 information may be made in writing or provided anonymously except
18 that a complaint, referral or information filed by an elected
19 official or agency manager, director or department head must be
20 made in writing and provide name, title and relevant contact
21 information.

22 **§4-14-3. Powers and duties; procedures; required training.**

23 (a) The State Employee Ombudsman has the authority to initiate
24 and investigate complaints, referrals and information related to

1 employment issues of executive branch employees. The State

2 Employee Ombudsman may:

3 (1) Initiate investigations related to employment issues of
4 executive branch employees as directed or based on information that
5 may be received anonymously, telephonically, in writing or at the
6 request of an appointed or elected officer of state government;

7 (2) Report and make recommendations to the Legislature, the
8 Joint Committee on Government and Finance, the Commission on
9 Special Investigations, the Ethics Commission, the Human Rights
10 Commission, the Equal Employment Opportunity Office, the West
11 Virginia Public Employees Grievance Board or to law enforcement or
12 prosecuting attorneys, as appropriate, in order to resolve an issue
13 or violation of law, rule or policy; and

14 (3) Compel an agency, department, office, board, commission or
15 other public or quasi-public entity in this state, including a
16 contractor paid with public funds, to produce any records and
17 documents for inspection as requested. Upon request of the State
18 Employee Ombudsman pursuant to an officially recognized
19 investigation, an agency, department, office, board, commission or
20 other public or quasi-public entity in this state, including a
21 contractor paid with public funds, shall provide access to all
22 records.

23 (b) The State Employee Ombudsman shall:

24 (1) Keep accurate records of all complaints, referrals and

1 information including the nature of the complaint, referral and
2 information; the date the complaint, referral and information was
3 made; the method of filing; and, other records to be maintained
4 pursuant to the generally accepted government auditing standards,
5 as necessary, to investigate and resolves complaints, referrals and
6 informations;

7 (2) Report promptly to the proper authorities upon a finding
8 that a state or federal law, rule or policy has been violated;

9 (3) Make written recommendations or written findings
10 describing the nature of the complaint, referral or information and
11 the actions necessary to resolve each; and

12 (4) Maintain all investigation files confidentially, to the
13 maximum extent practical, in order to protect the identity of
14 individuals.

15 (c) Upon a finding of probable cause, the State Employee
16 Ombudsman shall report, in writing, recommendations as may be
17 necessary to resolve an issue.

18 (d) The State Employee Ombudsman may recommend, provide or
19 require appropriate training necessary to resolve an issue.

20 (e) The State Employee Ombudsman may recommend certain
21 compliance and performance measures and make written
22 recommendations that stipulate continuing education, sensitivity
23 training, management training, ethics training or other remediation
24 as appropriate to resolve or prevent future issues.

1 **§4-14-4. Reports of the State Employee Ombudsman.**

2 (a) Any person may provide information regarding issues
3 related to any person paid by the executive branch with public
4 money. The State Employee Ombudsman shall evaluate the information
5 and:

6 (1) Open an investigation;

7 (2) Close the file; or

8 (3) Forward the issue to an appropriate law-enforcement or
9 regulatory agency.

10 (b) The State Employee Ombudsman shall produce an
11 investigation report for each investigation initiated or authorized
12 in each calendar year or as directed. Each investigation report
13 shall include the status of the investigation and describe either
14 a recommendation to close an investigation or describe the
15 recommendations as may be necessary to resolve the issue.

16 (c) The State Employee Ombudsman shall report annually to the
17 Joint Committee on Government and Finance on or before January 1 of
18 each year. The annual report shall contain:

19 (1) A summary describing the total number of issues reported
20 received in that preceding calendar year;

21 (2) A summary of the nature of the reports received in that
22 preceding calendar year;

23 (3) Copies of the executive summary or written recommendations
24 made regarding each issue received in that preceding calendar year;

1 (4) A summary describing the status or disposition of all
2 reports received in that preceding calendar year;

3 (5) A summary of the status of all issues that are continued
4 from previous years; and

5 (6) Recommend changes to any laws, rules or policies that may
6 be necessary to resolve and prevent future issues related to a
7 subject matter investigated.

8 (d) The annual report of the State Employee Ombudsman is a
9 public record.

10 **§4-14-5. Compliance and enforcement; penalties.**

11 (a) Every executive branch, office, department or agency shall
12 cooperate with the State Employee Ombudsman and his or her staff
13 and provide access to all records, documents, facilities and
14 personnel in the investigation of an open investigation conducted
15 pursuant to the authority provided in this article.

16 (b) Obstructing or otherwise failing to comply with a request
17 for information or refusing to provide access to the public
18 resources requested by the State Employee Ombudsman and his or her
19 staff is a misdemeanor and, upon conviction thereof, the person
20 charged shall be fined not less than \$500 nor more than \$1,000 per
21 offense. An employer who directs his or her employees to obstruct
22 or otherwise refuse to comply with a request by the State Employee
23 Ombudsman and his or her staff is guilty of obstruction of justice,
24 a misdemeanor and, upon conviction thereof, shall be fined not less

1 than \$2,500 nor more than \$10,000 and is grounds for termination of
2 employment.

3 (c) The State Employee Ombudsman may petition the Circuit
4 Court of Kanawha County for orders as necessary to enforce the
5 provisions of this article.

NOTE: The purpose of this bill is to create a State Employee Ombudsman, describe the qualifications of the State Employee Ombudsman, provide for powers and duties of the ombudsman and specify investigatory powers, describe complaint procedures, require annual reports, establish penalties for noncompliance and allowing for enforcement.

This article is new; therefore, it has been completely underscored.