

By: Wu

H.B. No. 2218

A BILL TO BE ENTITLED

AN ACT

relating to the office of independent ombudsman for the Department of Family and Protective Services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle D, Title 2, Human Resources Code, is amended by adding Chapter 45 to read as follows:

CHAPTER 45. OFFICE OF INDEPENDENT OMBUDSMAN FOR DEPARTMENT OF
FAMILY AND PROTECTIVE SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 45.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of Family and Protective Services.

(2) "Independent ombudsman" means the individual appointed under this chapter as ombudsman for the office.

(3) "Office" means the office of independent ombudsman for the department.

Sec. 45.002. INDEPENDENCE. The independent ombudsman in the performance of the ombudsman's duties and powers under this chapter acts independently of the department.

Sec. 45.003. SUNSET PROVISION. The office is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2025.

SUBCHAPTER B. APPOINTMENT AND MANAGEMENT OF OFFICE

1 Sec. 45.051. APPOINTMENT. The governor shall appoint the
2 independent ombudsman to serve at the will of the governor.

3 Sec. 45.052. ASSISTANTS. The independent ombudsman may
4 appoint assistants to perform, under the direction of the
5 independent ombudsman, the same duties and exercise the same powers
6 as the independent ombudsman.

7 Sec. 45.053. CONFLICT OF INTEREST. A person may not serve
8 as independent ombudsman or as an assistant ombudsman if the person
9 or the person's spouse:

10 (1) is employed by or participates in the management
11 of a business entity or other organization receiving funds from the
12 department;

13 (2) owns or controls, directly or indirectly, any
14 interest in a business entity or other organization receiving funds
15 from the department; or

16 (3) is required to register as a lobbyist under
17 Chapter 305, Government Code, because of the person's activities
18 for compensation on behalf of a profession related to the operation
19 of the department.

20 Sec. 45.054. REPORT. On or before January 1 of each year,
21 the independent ombudsman shall submit to the governor, the
22 lieutenant governor, and each member of the legislature a report
23 that describes, for the one-year period preceding the report:

24 (1) the work of the ombudsman, including a summary of
25 each complaint the ombudsman investigated, the ombudsman's
26 recommendation on the complaint, and whether the complaint was
27 resolved or required further action;

1 (2) the ombudsman's recommendations relating to the
2 ombudsman's duties; and

3 (3) the ombudsman's recommendations for improving the
4 operation of the department.

5 Sec. 45.055. COMMUNICATION AND CONFIDENTIALITY. (a) The
6 department shall allow any department employee and any child in the
7 conservatorship of the department to communicate with the
8 independent ombudsman. The communication:

9 (1) may be in person, by mail, or by any other means;
10 and

11 (2) is confidential and privileged.

12 (b) The records of the independent ombudsman and the office
13 are confidential, except that the ombudsman shall disclose the
14 office's records if required by a court order on a showing of good
15 cause.

16 (c) The independent ombudsman may make public reports
17 relating to an investigation after the investigation is complete,
18 but only if the names of all children, parents, and employees are
19 redacted from the report and remain confidential.

20 Sec. 45.056. PROMOTION OF OFFICE. The independent
21 ombudsman shall promote awareness among the public, children in the
22 conservatorship of the department, and facilities licensed by the
23 department of:

24 (1) how the office may be contacted;

25 (2) the purpose of the office; and

26 (3) the services the office provides.

27 SUBCHAPTER C. DUTIES AND POWERS

1 Sec. 45.101. DUTIES AND POWERS. (a) The independent
2 ombudsman serves as a neutral party in assisting persons with a
3 complaint against the department regarding case-specific
4 activities of the programs of the department, including adult
5 protective services, child protective services, child-care
6 licensing, and statewide intake. The independent ombudsman shall:

7 (1) review complaints filed with the ombudsman
8 concerning the actions of the department and investigate each
9 complaint, other than complaints alleging criminal offenses or the
10 abuse, neglect, or exploitation of a child or adult, in which it
11 appears that a person may be in need of assistance from the
12 ombudsman or that raises the possibility of a systemic issue in the
13 department's provision of services;

14 (2) require the department to provide access to all
15 records, data, and other information under the control of the
16 department that the ombudsman determines are necessary to
17 investigate a complaint;

18 (3) review any reports produced by the department
19 regarding a complaint referred by the ombudsman;

20 (4) issue a final report with the ombudsman's final
21 determination of a complaint's merit; and

22 (5) monitor and evaluate the department's actions
23 relating to the ombudsman's recommendations under Subsection (b).

24 (b) The independent ombudsman's final determination in a
25 report described by Subsection (a)(4) must include a determination
26 of whether there was wrongdoing or negligence by the department or
27 an agent of the department or whether the complaint was frivolous

1 and without merit. If the independent ombudsman determines there
2 was wrongdoing or negligence, the independent ombudsman shall
3 recommend corrective actions to be taken by the department.

4 Sec. 45.102. ACCESS TO INFORMATION. (a) The department
5 shall allow the independent ombudsman access to the department's
6 records that relate to a complaint the ombudsman is investigating.

7 (b) The independent ombudsman may subpoena the records of a
8 private entity that relate to a complaint the ombudsman is
9 investigating.

10 Sec. 45.103. RETALIATION PROHIBITED. The department may
11 not retaliate against a department employee or any other person who
12 in good faith makes a complaint to the office or cooperates with the
13 office in an investigation.

14 SUBCHAPTER D. DISPUTES REGARDING FOSTER CHILDREN

15 Sec. 45.151. REFERRAL OF DISPUTE REGARDING FOSTER CHILD.
16 If a child's foster parent, attorney ad litem, or guardian ad litem,
17 or an employee of the child-placing agency responsible for the
18 child, has a dispute regarding the child's placement or the
19 permanency plan for the child, that person may request, in writing,
20 that the child-placing agency responsible for the child refer the
21 dispute to the independent ombudsman.

22 Sec. 45.152. APPROVAL OF REFERRAL. The request for
23 referral under Section 45.151 must be approved in writing by the
24 person designated by the child-placing agency to perform those
25 duties. An approved request must state that:

26 (1) the designated person has reviewed the current
27 placement of the child;

1 (2) it is probable that there has been wrongdoing, a
2 violation of law, a violation of internal policy, negligence, or
3 reckless action by an individual involved with the case; and

4 (3) it is in the child's best interest to suspend the
5 judicial proceedings until the complaint has been reviewed by the
6 independent ombudsman.

7 Sec. 45.153. COMPLAINT FILED WITH INDEPENDENT OMBUDSMAN.

8 (a) The child-placing agency shall refer a dispute to the
9 independent ombudsman by filing a complaint with the ombudsman not
10 later than the next business day after the date a signed request is
11 received.

12 (b) The complaint filed with the independent ombudsman must
13 include a clear explanation of the complaint and the requested
14 remedy.

15 (c) The independent ombudsman shall give preference to a
16 complaint filed under this section over other complaints filed with
17 the office. The ombudsman shall expedite the process for handling
18 the complaint.

19 Sec. 45.154. SUSPENSION OF JUDICIAL PROCEEDINGS. Not later
20 than the next business day after the date a complaint under this
21 section is received, the independent ombudsman shall notify the
22 court of the complaint and request that the court suspend any
23 scheduled proceeding in the child's case until the 15th day after
24 the date the complaint is filed with the ombudsman. The court in
25 the child's case shall suspend the judicial proceedings as provided
26 by this section.

27 Sec. 45.155. JUDICIAL RESOLUTION OF DISPUTE. If the

1 independent ombudsman is not able to resolve the dispute, the
2 parties may request a hearing before the judge. In making a
3 determination, the court may consider the ombudsman's findings and
4 recommendations, if any.

5 SECTION 2. This Act takes effect September 1, 2013.