

House Bill 2770

Sponsored by Representative THATCHER (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes Business Ombudsman. Directs ombudsman to receive comments from business concerns on regulatory actions undertaken by state agencies, maintain confidentiality of persons making comments but report substance of comments to affected state agencies, Governor and Legislative Assembly. Directs ombudsman to evaluate enforcement activities and responsiveness of state agencies to business concerns, and report findings to Governor, affected state agencies and Legislative Assembly.

A BILL FOR AN ACT

1
2 Relating to the Business Ombudsman.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Sections 2 to 8 of this 2011 Act may be cited as the Business Ombudsman**
5 **Act.**

6 **SECTION 2. As used in sections 2 to 8 of this 2011 Act:**

7 (1) "Ombudsman" means the Business Ombudsman appointed under section 3 of this 2011
8 Act and, depending on the context, any employees of the Oregon Business Development De-
9 partment who report to the Business Ombudsman.

10 (2) "State agency" means any organizational subdivision within the executive department,
11 as defined in ORS 174.112.

12 **SECTION 3. (1) The office of Business Ombudsman is established.**

13 (2) The Governor shall appoint the Business Ombudsman, who shall serve for a term of
14 four years.

15 (3) The appointment of the ombudsman is subject to confirmation by the Senate in the
16 manner prescribed in ORS 171.562 and 171.565.

17 (4) The ombudsman may be reappointed to successive terms and may continue after the
18 end of a current term until a successor is appointed and confirmed as ombudsman.

19 **SECTION 4. (1) The Business Ombudsman shall undertake all of the following:**

20 (a) Assist and monitor each state agency with regulatory authority over businesses to
21 ensure that business concerns that receive or are subject to an audit, on-site inspection,
22 compliance assistance effort, or other enforcement-related communication or contact by
23 agency personnel are provided with a means to comment on the enforcement activity con-
24 ducted by the agency.

25 (b) Receive comments from business concerns regarding actions by the state agency in
26 conducting compliance or enforcement activities with respect to the business concern. Under
27 appropriate circumstances, the ombudsman may refer the substance of these comments to
28 the director of the agency that is the subject of the comments while otherwise maintaining
29 the confidentiality of the identity of the person or business concern making comments under

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 this paragraph.

2 (c) Substantiate comments received under paragraph (b) of this subsection and, based on
 3 substantiated comments, annually report to the Legislative Assembly and affected state
 4 agencies. A report under this paragraph shall evaluate the enforcement activities of agency
 5 personnel, including an evaluation of the responsiveness to business of the various regional
 6 and program offices of each agency.

7 (d) Rate each state agency on the extent to which the agency notifies businesses about
 8 the ombudsman.

9 (e) Report to the Legislative Assembly on the extent to which a state agency has an es-
 10 tablished nonretaliatory policy for individuals who file comments with the ombudsman.

11 (f) Report annually to the Governor, to the directors of affected state agencies and to the
 12 Legislative Assembly on the activities, findings and recommendations of the ombudsman.

13 (g) Provide each state agency that is the subject of a report under this subsection with
 14 a preliminary report and an opportunity to comment, and include a section of the final report
 15 in which the agency's comments to the preliminary report are set forth.

16 (2) Comments given to the ombudsman under subsection (1)(b) of this section are confi-
 17 dential and exempt from disclosure under ORS 192.410 to 192.505.

18 **SECTION 5.** (1) The Oregon Business Development Department shall supply the Business
 19 Ombudsman with the office space, supplies, administrative support and staff necessary for
 20 the ombudsman to perform the duties set forth in sections 2 to 8 of this 2011 Act.

21 (2) All state agencies shall assist the ombudsman in performing the duties set forth in
 22 sections 2 to 8 of this 2011 Act.

23 (3) The ombudsman shall receive an annual salary that equals that of a circuit court
 24 judge under ORS 292.416.

25 **SECTION 6.** (1) A person who files a comment under section 4 of this 2011 Act or par-
 26 ticipates in any investigation or proceeding conducted by the Business Ombudsman may not
 27 be subject to a penalty, sanction or restriction in connection with the person's employment
 28 or be denied any right, privilege, or benefit because of the comments made, or investigation
 29 or other proceeding conducted by the ombudsman.

30 (2) A person who alleges a violation of subsection (1) of this section may maintain a civil
 31 action to obtain an injunction, damages or other appropriate relief, against any person al-
 32 leged to have violated subsection (1) of this section. Upon prevailing in such an action, the
 33 plaintiff may recover:

- 34 (a) Actual damages for injury or economic loss;
- 35 (b) Reasonable attorney fees; and
- 36 (c) Punitive damages not to exceed \$10,000.

37 **SECTION 7.** (1) The Business Ombudsman and any staff of the ombudsman or staff of
 38 the Oregon Business Development Department who are working on behalf of the ombudsman
 39 shall have the same immunities from civil and criminal liabilities as a judge of this state.

40 (2) The ombudsman and the staff of the ombudsman shall not be compelled to testify or
 41 produce evidence in any judicial or administrative proceeding with respect to any matter
 42 involving the exercise of their official duties except as may be necessary to enforce sections
 43 2 to 8 of this 2011 Act.

44 **SECTION 8.** If any person willfully obstructs or hinders the proper and lawful exercise
 45 of the Business Ombudsman's powers, or willfully misleads or attempts to mislead the om-

1 **budsman in investigations and proceedings under sections 2 to 8 of this 2011 Act, the judge**
2 **of the Circuit Court for Marion County, on application of the ombudsman, shall compel obe-**
3 **dience by proceedings for contempt as in the case of disobedience of the requirements of a**
4 **subpoena issued from such court or a refusal to testify therein.**

5 **SECTION 9. The Governor shall appoint a Business Ombudsman under section 3 of this**
6 **2011 Act within 180 days of the effective date of this 2011 Act.**

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