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# A BILL FOR AN ACT

RELATING TO THE OMBUDSMAN.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Chapter 96, Hawaii Revised Statutes, is amended  
2 as follows:

3 1. By amending section 96-1 to read:

4 "**§96-1 Definitions.** [~~a~~] For purposes of this chapter,  
5 unless the context clearly requires otherwise:

6 "Administrative act" includes any action, omission,  
7 decision, recommendation, practice, or procedure, but does not  
8 include the preparation or presentation of legislation.

9 "Agency" includes any permanent governmental entity,  
10 department, organization, or institution, and any officer,  
11 employee, or member thereof acting or purporting to act in the  
12 exercise of the officer's, employee's, or member's official  
13 duties, except:

- 14 (1) The judiciary and its staff;  
15 (2) The legislature, its committees, and its staff;  
16 (3) An entity of the federal government;  
17 (4) A multistate governmental entity;  
18 (5) The governor and the governor's personal staff;



- 1 (6) The lieutenant governor and the lieutenant governor's  
2 personal staff;
- 3 (7) The mayors of the various counties; and
- 4 (8) The councils of the various counties.

5 [~~(b) "Administrative act" includes any action, omission,  
6 decision, recommendation, practice, or procedure, but does not  
7 include the preparation or presentation of legislation.~~]

8 "Private provider" means any private, nongovernmental  
9 entity or organization that provides health or human services  
10 under contract to an agency."

11 2. By amending section 96-2 to read:

12 **"§96-2 Ombudsman; office established, appointment, tenure,**  
13 **removal, qualifications, salary, vacancy.** The office of  
14 ombudsman is established. The legislature, by a majority vote  
15 of each house in joint session, shall appoint an ombudsman who  
16 shall serve for a period of six years and thereafter until a  
17 successor shall have been appointed. An ombudsman may be  
18 reappointed but may not serve for more than three terms. The  
19 legislature, by two-thirds vote of the members in joint session,  
20 may remove or suspend the ombudsman from office, but only for  
21 neglect of duty, misconduct, or disability.



1 No person may serve as ombudsman within two years of the  
2 last day on which the person served as a member of the  
3 legislature, or while the person is a candidate for or holds any  
4 other state office, or while the person is engaged in any other  
5 occupation for reward or profit. Effective July 1, 2005, the  
6 salary of the ombudsman shall be the same as the salary of the  
7 director of health. The salary of the ombudsman shall not be  
8 diminished during the ombudsman's term of office, unless by  
9 general law applying to all salaried officers of the State.

10 If the ombudsman dies, resigns, becomes ineligible to  
11 serve, or is removed or suspended from office, the [~~first~~  
12 ~~assistant~~] deputy to the ombudsman becomes the acting ombudsman  
13 until a new ombudsman is appointed for a full term."

14 3. By amending section 96-3 to read:

15 "**§96-3 Assistance, staff, delegation, funding.** The  
16 ombudsman shall appoint a [~~first assistant~~] deputy ombudsman,  
17 and other officers and employees as may be necessary to carry  
18 out this chapter. All employees, including the [~~first~~  
19 ~~assistant,~~] deputy ombudsman, shall be hired by the ombudsman  
20 and shall serve at the ombudsman's pleasure. In determining the  
21 salary of each such employee, the ombudsman shall consult with  
22 the department of human resources development and shall follow



1 as closely as possible the recommendations of the department.  
2 Effective July 1, 2005, the [~~first assistant's~~] deputy  
3 ombudsman's salary shall be not more than eighty-seven per cent  
4 of the salary of the ombudsman. The ombudsman and the  
5 ombudsman's full-time staff shall be entitled to participate in  
6 any employee benefit plan.

7 The ombudsman may delegate to the ombudsman's appointees  
8 any of the ombudsman's duties except those specified in sections  
9 96-12 and 96-13; provided that during the absence of the  
10 ombudsman from the island of Oahu, or the ombudsman's temporary  
11 inability to exercise and discharge the powers and duties of the  
12 ombudsman's office, the powers and duties as contained in  
13 sections 96-12 and 96-13 shall devolve upon the [~~first~~  
14 ~~assistant~~] deputy ombudsman during the ombudsman's absence or  
15 inability.

16 The funds for the support of the office of the ombudsman  
17 shall be provided for in the act providing for the expenses of  
18 the legislature."

19 4. By amending section 96-5 to read:

20 "**§96-5 Jurisdiction.** The ombudsman has jurisdiction to  
21 investigate the administrative acts of agencies and the  
22 contractual acts of private providers. The ombudsman may



1 exercise the ombudsman's powers without regard to the finality  
2 of any administrative act."

3 5. By amending section 96-7 to read:

4 **"§96-7 Notice to complainant and agency~~[-]~~ or private**  
5 **provider.** If the ombudsman decides not to investigate, [~~he~~] the  
6 ombudsman shall inform the complainant of that decision and  
7 shall state [~~his~~] the reasons.

8 If the ombudsman decides to investigate, [~~he~~] the ombudsman  
9 shall notify the complainant of [~~his~~] the decision and [~~he~~] the  
10 ombudsman shall also notify the agency or private provider of  
11 [~~his~~] the intention to investigate."

12 6. By amending section 96-8 to read:

13 **"§96-8 Appropriate subjects for investigation.** An  
14 appropriate subject for investigation is an administrative act  
15 of an agency [~~which~~] or contractual act of any private provider  
16 that might be:

- 17 (1) Contrary to law;
- 18 (2) Unreasonable, unfair, oppressive, or unnecessarily  
19 discriminatory, even though in accordance with law;
- 20 (3) Based on a mistake of fact;
- 21 (4) Based on improper or irrelevant grounds;
- 22 (5) Unaccompanied by an adequate statement of reasons;



1 (6) Performed in an inefficient manner; [~~or~~]

2 (7) Otherwise erroneous[~~or~~]; or

3 (8) In noncompliance with contractual terms.

4 The ombudsman may investigate to find an appropriate  
5 remedy."

6 7. By amending subsection (a) of section 96-9 to read:

7 "(a) In an investigation, the ombudsman may make inquiries  
8 and obtain information as the ombudsman thinks fit, enter  
9 without notice to inspect the premises of an agency[~~or~~] or  
10 private provider, and hold private hearings."

11 8. By amending section 96-11 to read:

12 "**§96-11 Consultation with agency[~~or~~] or private provider.**

13 Before giving any opinion or recommendation that is critical of  
14 an agency, private provider, or person, the ombudsman shall  
15 consult with that agency, private provider, or person."

16 9. By amending section 96-12 to read:

17 "**§96-12 Procedure after investigation.** If, after  
18 investigation, the ombudsman finds that:

19 (1) A matter should be further considered by the agency[~~or~~]  
20 or private provider;



- 1 (2) An administrative act should be modified or  
2 cancelled[+] or a contractual term or condition should  
3 be modified;
- 4 (3) A statute or [~~regulation on~~] rule upon which an  
5 administrative act is based should be altered;
- 6 (4) Reasons should be given for an administrative act[+] or  
7 a contractual term or condition; or
- 8 (5) Any other action should be taken by the agency[+] or  
9 private provider,

10 the ombudsman shall report the ombudsman's opinion and  
11 recommendations to the agency[-] or private provider. The  
12 ombudsman may request the agency or private provider to notify  
13 the ombudsman, within a specified time, of any action taken on  
14 the ombudsman's recommendations."

15 10. By amending section 96-13 to read:

16 "**§96-13 Publication of recommendations.** After a  
17 reasonable time has elapsed, the ombudsman may present the  
18 ombudsman's opinion and recommendations to the governor, the  
19 legislature, the public, or any of these. The ombudsman shall  
20 include with this opinion any reply made by the agency[-] or  
21 private provider."

22 11. By amending section 96-15 to read:



1           **"§96-15 Misconduct by agency or private provider**  
2 **personnel.** If the ombudsman has a reasonable basis to believe  
3 that there may be a breach of duty or misconduct by any officer  
4 or employee of an agency, or by any employee or agent of a  
5 private provider, the ombudsman may refer the matter to the  
6 appropriate authorities without notice to that person."

7           12. By amending section 96-18 to read:

8           **"§96-18 Agencies and private providers may not open**  
9 **letters or other communications to ombudsman.** A letter or other  
10 communication to the ombudsman from a person held in custody by  
11 an agency or private provider shall be forwarded immediately,  
12 unopened, to the ombudsman."

13           SECTION 2. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15           SECTION 3. This Act shall take effect upon its approval.





HB 440 HD 2

**Report Title:**

Ombudsman; Expand Jurisdiction; Private Contractors

**Description:**

Expands jurisdiction of ombudsman to include private providers providing health services and human services under contract to a governmental agency. Changes first assistant to deputy ombudsman. (HB440 HD2)

HB440 HD2 HMS 2006-1491

