

Chapter 906

S.B. No. 213

1 AN ACT

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

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

5 SECTION 1. The heading to Subchapter Y, Chapter 531,
6 Government Code, is amended to read as follows:

7 SUBCHAPTER Y. OMBUDSMAN FOR THE DEPARTMENT OF FAMILY AND
8 PROTECTIVE SERVICES [~~CHILDREN AND YOUTH IN FOSTER CARE~~]

9 SECTION 2. Section 531.991(2), Government Code, is amended
10 to read as follows:

11 (2) "Ombudsman" means the individual appointed as the
12 ombudsman for the Department of Family and Protective Services
13 [~~children and youth in foster care~~].

14 SECTION 3. The heading to Section 531.992, Government Code,
15 is amended to read as follows:

16 Sec. 531.992. OMBUDSMAN FOR THE DEPARTMENT OF FAMILY AND
17 PROTECTIVE SERVICES [~~CHILDREN AND YOUTH IN FOSTER CARE~~].

18 SECTION 4. Section 531.992, Government Code, is amended by
19 amending Subsection (a) and adding Subsection (d) to read as
20 follows:

21 (a) The governor [~~executive commissioner~~] shall appoint an
22 ombudsman for the Department of Family and Protective Services
23 [~~children and youth in foster care~~] to serve at the will of the
24 governor [~~executive commissioner~~].

1 (d) The ombudsman may not use the name or any logo of the
2 department on any forms or other materials produced and distributed
3 by the ombudsman.

4 SECTION 5. Subchapter Y, Chapter 531, Government Code, is
5 amended by adding Section 531.9921 to read as follows:

6 Sec. 531.9921. CONFLICT OF INTEREST. A person may not serve
7 as ombudsman if the person or the person's spouse:

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

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

14 (3) is required to register as a lobbyist under
15 Chapter 305 because of the person's activities for compensation on
16 behalf of a profession related to the operation of the department.

17 SECTION 6. Section 531.993, Government Code, is amended to
18 read as follows:

19 Sec. 531.993. DUTIES OF OMBUDSMAN. (a) The ombudsman
20 serves as a neutral party in assisting:

21 (1) children and youth in the conservatorship of the
22 department with complaints regarding issues within the authority of
23 the department or another health and human services agency; and

24 (2) persons with a complaint against the department
25 regarding case-specific activities of the programs of the
26 department, including adult protective services, child protective
27 services, child-care licensing, and statewide intake.

- 1 (b) The ombudsman shall:
- 2 (1) develop and implement statewide procedures to:
- 3 (A) receive complaints from children and youth in
- 4 the conservatorship of the department and other persons with a
- 5 complaint against the department;
- 6 (B) review complaints filed with the ombudsman
- 7 and take appropriate action, including:
- 8 (i) conducting an investigation into
- 9 individual complaints that allege violations of department or
- 10 agency procedure or policy or other violations; and
- 11 (ii) referring to department or agency
- 12 management for resolution any trends or systemic issues identified
- 13 in complaints;
- 14 (C) provide any necessary assistance to children
- 15 and youth in the conservatorship of the department in making
- 16 complaints and reporting allegations of abuse or neglect to the
- 17 department;
- 18 (D) maintain the confidentiality of:
- 19 (i) the ombudsman's communications and
- 20 records;
- 21 (ii) records of another person that have
- 22 been provided to the ombudsman; and
- 23 (iii) communications of another person with
- 24 the ombudsman; and
- 25 (E) ensure that the department and any person or
- 26 a child or youth in the conservatorship of the department who files
- 27 a complaint with the ombudsman are informed of the results of the

1 ombudsman's investigation of the complaint, including whether the
2 ombudsman was able to substantiate the person's, child's, or youth's
3 complaint;

4 (2) collaborate with the department to develop and
5 implement an annual outreach plan to promote awareness of the
6 ombudsman among the public, children and youth in the
7 conservatorship of the department, family members and caretakers of
8 those children, and facilities licensed by the department and that
9 includes:

10 (A) how the office may be contacted;

11 (B) the purpose of the office; and

12 (C) the services the office provides;

13 (3) issue and file with the department and any
14 applicable health and human services agency a report that contains
15 the ombudsman's final determination regarding a complaint and any
16 recommended corrective actions to be taken as a result of the
17 complaint;

18 (4) establish a secure form of communication with any
19 individual who files a complaint with the ombudsman; ~~and~~

20 (5) collaborate with the department to identify
21 consequences for any retaliatory action related to a complaint
22 filed with the ombudsman, in accordance with Section 40.0041(g),
23 Human Resources Code; and

24 (6) monitor and evaluate the department's corrective
25 actions taken in response to a recommendation by the ombudsman.

26 (c) The ombudsman's final determination in a report
27 described by Subsection (b)(3) must include a determination of

1 whether there was wrongdoing or negligence by the department or an
2 agent of the department or whether the complaint was frivolous and
3 without merit. If the ombudsman determines there was wrongdoing or
4 negligence, the ombudsman shall recommend corrective actions to be
5 taken by the department.

6 (d) The ombudsman may attend any judicial proceeding
7 related to a complaint filed with the office.

8 SECTION 7. Subchapter Y, Chapter 531, Government Code, is
9 amended by adding Section 531.9931 to read as follows:

10 Sec. 531.9931. DIVISION OF OMBUDSMAN FOR CHILDREN AND YOUTH
11 IN FOSTER CARE. (a) The division of the ombudsman for children and
12 youth in foster care is created within the office of the ombudsman
13 for the purpose of:

14 (1) receiving complaints from children and youth in
15 the conservatorship of the department as provided under Section
16 531.993(a)(1);

17 (2) informing children and youth in the
18 conservatorship of the department who file a complaint under this
19 subchapter about the result of the ombudsman's investigation of the
20 complaint, including whether the ombudsman was able to substantiate
21 the child's or youth's complaint; and

22 (3) collaborating with the department to develop an
23 outreach plan for children and youth in the conservatorship of the
24 department to promote awareness of the ombudsman.

25 (b) If a child or youth in the conservatorship of the
26 department contacts the ombudsman by telephone call to report a
27 complaint under this subchapter, the call shall be transferred

1 directly to a person employed by the division of the ombudsman
2 created under this section.

3 SECTION 8. Subchapter Y, Chapter 531, Government Code, is
4 amended by adding Section 531.9941 to read as follows:

5 Sec. 531.9941. DISPUTES REGARDING FOSTER CHILDREN. (a) A
6 child-placing agency responsible for a foster child may refer a
7 dispute regarding the child's placement or the permanency plan for
8 the child to the ombudsman by filing a complaint with the ombudsman.

9 (b) The complaint filed with the ombudsman must include a
10 clear explanation of the dispute and the requested remedy.

11 (c) The ombudsman shall notify the court with jurisdiction
12 over the child's case of any investigation of a complaint filed
13 under this subchapter.

14 SECTION 9. Section 531.997, Government Code, is amended to
15 read as follows:

16 Sec. 531.997. RETALIATION PROHIBITED. The department or
17 another health and human services agency may not retaliate against
18 a department employee, a child or youth in the conservatorship of
19 the department, or any other person who in good faith makes a
20 complaint to the ombudsman or against any person who cooperates
21 with the ombudsman in an investigation.

22 SECTION 10. Section 531.998(b), Government Code, is amended
23 to read as follows:

24 (b) The report must be submitted to the governor, the
25 lieutenant governor, each standing committee of the legislature
26 with jurisdiction over matters involving the department, each
27 member of the legislature, the executive commissioner, and the

1 commissioner of the department not later than December 1 of each
2 year. On receipt of the report, the department and the commission
3 shall make the report publicly available on the department's and
4 the commission's Internet websites.

5 SECTION 11. As soon as practicable after the effective date
6 of this Act, the commissioner of the Department of Family and
7 Protective Services shall:

8 (1) abolish the office of consumer affairs in the
9 department; and

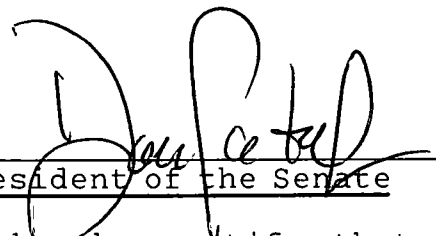
10 (2) transfer any department funds and resources
11 allocated to the office of consumer affairs to the ombudsman for the
12 Department of Family and Protective Services created under
13 Subchapter Y, Chapter 531, Government Code, as amended by this Act.

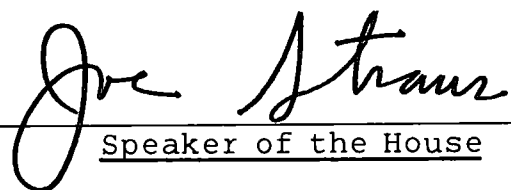
14 SECTION 12. This Act takes effect only if a specific
15 appropriation for the implementation of the Act is provided in a
16 general appropriations act of the 85th Legislature.

17 SECTION 13. This Act takes effect September 1, 2017.

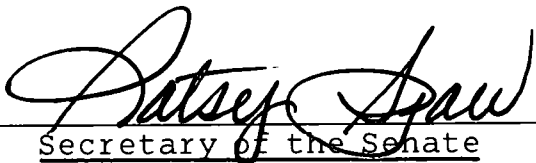
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S.B. No. 213

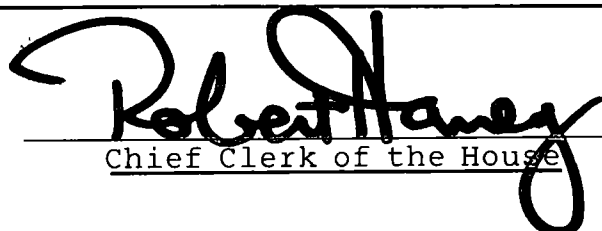

President of the Senate


Speaker of the House

I hereby certify that S.B. No. 213 passed the Senate on May 4, 2017, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 25, 2017, by the following vote: Yeas 30, Nays 1.


Secretary of the Senate

I hereby certify that S.B. No. 213 passed the House, with amendment, on May 19, 2017, by the following vote: Yeas 141, Nays 3, two present not voting.


Chief Clerk of the House

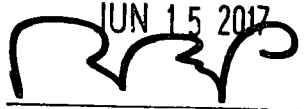
Approved:

6-12-2017
Date


Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE

3 PM O'CLOCK

JUN 15 2017

Secretary of State

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 19, 2017

TO: Honorable Dan Patrick, Lieutenant Governor, Senate

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB213 by Menéndez (Relating to the office of ombudsman for the Department of Family and Protective Services.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

This Act takes effect only is a specific appropriation for the implementation of the Act is provided in a general appropriations act of the 85th Legislature.

The bill would amend the Government Code relating to the office of ombudsman for the Department of Family and Protective Services (DFPS). Based on information provided by DFPS, it is assumed that the duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

The bill would take effect September 1, 2017.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 530 Family and Protective Services, Department of

LBB Staff: UP, KCA, EP, JLi

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 23, 2017

TO: Honorable Charles Schwertner, Chair, Senate Committee on Health & Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB213 by Menéndez (Relating to the office of ombudsman for the Department of Family and Protective Services.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

This Act takes effect only is a specific appropriation for the implementation of the Act is provided in a general appropriations act of the 85th Legislature.

The bill would amend the Government Code relating to the office of ombudsman for the Department of Family and Protective Services (DFPS). Based on information provided by DFPS, it is assumed that the duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

The bill would take effect September 1, 2017.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 530 Family and Protective Services, Department of

LBB Staff: UP, KCA, EP, JLi

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 5, 2017

TO: Honorable Charles Schwertner, Chair, Senate Committee on Health & Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB213 by Menéndez (Relating to the office of independent ombudsman for the Department of Family and Protective Services.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB213, As Introduced: a negative impact of (\$743,807) through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	(\$261,093)
2019	(\$482,714)
2020	(\$482,714)
2021	(\$482,714)
2022	(\$482,714)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2017
2018	(\$261,093)	5.0
2019	(\$482,714)	5.0
2020	(\$482,714)	5.0
2021	(\$482,714)	5.0
2022	(\$482,714)	5.0

Fiscal Analysis

The bill would amend the Human Resources Code to create the Office of Independent Ombudsman for the Department of Family and Protective Services (DFPS) to assist persons with a complaint against DFPS regarding case-specific activities of the programs within DFPS. The Governor would appoint the independent ombudsman to serve at the will of the Governor, and the independent

ombudsman is authorized to appoint assistants to perform the same duties and exercise the same powers. The duties and powers of the independent ombudsman are outlined in the bill. The would take effect September 1, 2017.

On or before January 1 of each year, the independent ombudsman would be required to submit a report to certain parties that describes, for the one-year period preceding the report, the work performed and any recommendations for improving the operations of DFPS.

Unless continued in existence by Chapter 325, Government Code, the office would be abolished and the chapter would expire September 1, 2029.

Methodology

The bill does not specify whether the office will be a state agency operating separately from DFPS or whether the office will be administratively attached to DFPS. This cost estimate assumes that the office will be a separate and independent state agency.

The bill authorizes the office to appoint assistants to perform the same duties and exercise the same powers as the independent ombudsman. The Office of Independent Ombudsman for the Texas Juvenile Justice Department (TJJD) has similar powers and duties and has five FTEs with a annual budget of \$438,831 for the previous biennium. Administrative support is provided by TJJD. This cost estimate assumes similar costs for the Office of Independent Ombudsman for DFPS with a 10% increase per year for travel since the Office of Independent Ombudsman for DFPS staff will have slightly higher travel needs. This estimate also assumes that costs in the first year would be phased in. Since the number of assistants appointed will be at the discretion of the independent ombudsman and dependent upon the number of complaints filed with the ombudsman concerning the actions of DFPS, the cost associated with the provision of the bill could be higher or lower.

The bill also requires the Office of Independent Ombudsman for DFPS to promote awareness of their services. The cost of these promotional activities is undetermined.

According to DFPS, in order to provide access to all records, data, and other information under the control of the agency that the ombudsman determines are necessary to investigate a complaint, a new external link to the Child Care Licensing Automated Support System (CLASS) system must be created to allow access to child care records. DFPS estimates the cost to be \$29,388 in fiscal year 2018.

Total cost associated with the provisions of the bill would be \$261,093 in fiscal year 2018, and \$482,714 in fiscal year 2019 and each year going forward.

The Sunset Advisory Commission, Office of Court Administration, and Office of the Governor do not anticipate any significant fiscal impact as a result of complying with the provisions of the bill.

Technology

DFPS indicates that creating a new external link in CLASS would cost \$29,388 in fiscal year 2018. These costs are included above.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 212 Office of Court Administration, Texas Judicial Council, 300 Trusted Programs Within the Office of the Governor, 530 Family and Protective Services, Department of, 301 Office of the Governor

LBB Staff: UP, KCA, EP, JLi, RC, WP, LBe, MW, CL, MB