

HOUSE BILL No. 5492

January 30, 2018, Introduced by Reps. Phelps and Neeley and referred to the Committee on Oversight.

A bill to create the office of government accountability; to prescribe the powers and duties of the office, the legislative council, and state departments and agencies; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) This act shall be known and may be cited as the
2 "government accountability act".

3 (2) As used in this act:

4 (a) "Administrative act" means an action, rule, regulation,
5 order, omission, decision, recommendation, practice, or procedure
6 of a public body.

7 (b) "Complaint" means an allegation of wrongdoing or a report
8 as described in section 2 of the whistleblowers' protection act,
9 1980 PA 469, MCL 15.362.

1 (c) "Council" means the legislative council.

2 (d) "Office" means the office of government accountability
3 created in section 2.

4 (e) "Person" means an individual, sole proprietorship,
5 partnership, corporation, association, or any other legal entity.

6 (f) "Public body" includes all of the following:

7 (i) An officer, employee, agency, department, division,
8 bureau, board, commission, council, authority, or other body, or a
9 member thereof, of the executive branch of state government.

10 (ii) An officer, employee, agency, board, commission, council,
11 or other body, or member thereof, of the legislative branch of
12 state government.

13 (iii) A county, city, township, village, intercounty,
14 intercity, or regional governing body; a council, school district,
15 special district, or municipal corporation; a board, department,
16 commission, council, agency; or a member or employee thereof.

17 (iv) The judiciary or a member or employee of the judiciary.

18 (v) A person that has contracted with a public body to provide
19 a service that the public body is required to or would otherwise
20 provide or to fulfill an obligation or duty of the public body.

21 (g) "Wrongdoing" means an action by a public body that does
22 any of the following:

23 (i) Violates a law of this state, a political subdivision of
24 this state, or the United States.

25 (ii) Results in the gross mismanagement or gross waste of
26 public funds.

27 (iii) Creates a substantial and specific danger to public

1 health or safety.

2 (iv) Results in the alteration, concealment, or destruction of
3 or tampering with data used in the preparation of an official
4 report for the purpose of falsifying or misrepresenting the data or
5 misleading a person relying on the report.

6 Sec. 2. (1) The office of government accountability is created
7 within the legislative council.

8 (2) The principal executive officer of the office of
9 government accountability is the government accountability officer
10 who is appointed by and serves at the pleasure of the council.

11 (3) The council shall establish procedures for approving the
12 budget and expenditures for the office and for employing personnel.

13 Sec. 3. (1) Within 30 business days after receiving a
14 complaint, the government accountability officer shall conduct an
15 investigation. The government accountability officer may decline to
16 conduct an investigation if he or she determines that the complaint
17 pertains to a matter that is outside the scope of the government
18 accountability officer's powers.

19 (2) Subject to approval of the council, the government
20 accountability officer shall establish procedures for receiving and
21 processing complaints, conducting investigations, holding hearings,
22 and reporting the findings resulting from the investigations.

23 Sec. 4. If the government accountability officer decides to
24 investigate a complaint, the government accountability officer
25 shall notify the complainant in writing. If the government
26 accountability officer declines to investigate a complaint, the
27 government accountability officer shall, in writing, notify the

1 complainant and inform the complainant of the reasons for the
2 government accountability officer's decision.

3 Sec. 5. (1) Upon request and without the requirement of any
4 release, a public body shall give the government accountability
5 officer access to all information, records, and documents in the
6 possession of the public body that the government accountability
7 officer considers relevant to an investigation.

8 (2) Upon request and without notice, a public body shall grant
9 the government accountability officer entrance to inspect at any
10 time any premises under the control of the public body that the
11 government accountability officer considers relevant to an
12 investigation.

13 (3) The government accountability officer may hold informal
14 hearings and may request that any person appear before the
15 government accountability officer or at a hearing and give
16 testimony or produce documentary or other evidence that the
17 government accountability officer considers relevant to an
18 investigation.

19 Sec. 6. Upon request of the government accountability officer,
20 the council may hold a hearing. The council may administer oaths,
21 subpoena witnesses, and examine the books and records of the
22 relevant public body or of a person, partnership, or corporation
23 involved, in accordance with section 104 of the legislative council
24 act, 1986 PA 268, MCL 4.1104, in a matter that is or was a proper
25 subject of investigation by the government accountability officer
26 under this act.

27 Sec. 7. (1) Correspondence between the government

1 accountability officer and a complainant is confidential, is not
2 discoverable in a legal proceeding, is exempt from disclosure under
3 the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246,
4 and must be processed as privileged correspondence.

5 (2) The government accountability officer shall maintain
6 confidentiality with respect to all complaints and the identities
7 of the complainants, except so far as disclosures may be necessary
8 to enable the government accountability officer to perform the
9 duties of the office and to support any recommendations resulting
10 from an investigation.

11 (3) A report prepared and recommendations made by the
12 government accountability officer and submitted to the council
13 under section 8 are exempt from disclosure under the freedom of
14 information act, 1976 PA 442, MCL 15.231 to 15.246.

15 Sec. 8. (1) The government accountability officer shall,
16 within 30 days after completing an investigation, prepare and
17 submit a report of the findings of the investigation to the
18 complainant and the council and, if the government accountability
19 officer finds any of the following, make recommendations to the
20 council:

21 (a) A wrongdoing.

22 (b) An administrative act for which justification is
23 necessary.

24 (c) A matter that raises an issue that it is in the best
25 interest of the state for the public body to address.

26 (d) Any other significant concerns as determined by the
27 government accountability officer.

1 (2) The council may forward the report prepared and submitted
2 under this section to the relevant public body or other persons
3 affected. In an appropriate case, the council may forward a report
4 to the Michigan state police or Ingham County prosecutor for
5 further investigation or prosecution.

6 Sec. 9. The government accountability officer shall submit to
7 the legislature an annual report on the conduct of the office.

8 Sec. 10. (1) A complainant or any other individual must not be
9 subject to adverse employment action or be penalized in any way by
10 a public body because of filing a complaint or cooperating with the
11 government accountability officer in investigating a complaint,
12 unless the complainant knowingly filed a complaint based on false
13 information or the individual provided information the individual
14 knew to be false or misleading in the course of the investigation
15 of a complaint. As used in this subsection, "adverse employment
16 action" means discharge, threats, or other discrimination against
17 an employee regarding the employee's compensation, terms,
18 conditions, location, or privileges of employment.

19 (2) A person shall not hinder the lawful actions of the
20 government accountability officer or employees of the office, or
21 willfully refuse to comply with lawful demands of the office.

22 (3) A person that violates this act is guilty of a felony
23 punishable by imprisonment for not more than 2 years or a fine of
24 not more than \$5,000.00, or both.

25 Sec. 11. The authority granted to the government
26 accountability officer is in addition to the authority granted
27 under any other act or rule that provides a remedy or right to

1 appeal or object, or any procedure provided for inquiring into or
2 investigating any matter. The authority granted the government
3 accountability officer does not limit or affect the remedy or right
4 of appeal or objection and is not part of an exclusionary process.

5 Sec. 12. (1) The government accountability officer shall
6 prepare a written notice of the rights of individuals under this
7 act and the whistleblowers' protection act, 1980 PA 469, MCL 15.361
8 to 15.369, and shall prepare a training guide of those rights.

9 (2) A public body shall train its employees utilizing the
10 training guide prepared by the government accountability officer
11 under subsection (1).

12 Enacting section 1. This act takes effect 90 days after the
13 date it is enacted into law.