

OMBUDSMAN

REPORT OF THE

VIRGINIA ADVISORY LEGISLATIVE COUNCIL

To

THE GOVERNOR

And

THE GENERAL ASSEMBLY OF VIRGINIA



House Document No. 7

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1973

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OMBUDSMAN

Report of The Virginia Advisory Legislative Council

Richmond, Virginia
January 2, 1973

TO: HONORABLE LINWOOD HOLTON, *Governor of Virginia*
and
THE GENERAL ASSEMBLY OF VIRGINIA

I. INTRODUCTION

This report is a result of the directive contained in House Joint Resolution No. 8 passed by the 1972 Session of the General Assembly as follows:

HOUSE JOINT RESOLUTION NO. 8

Directing the Virginia Advisory Legislative Council to make a study and report on the advisability of the establishment of an Office of Ombudsman within the Commonwealth of Virginia.

Whereas, the exercise of the functions of government may, in some instances, give rise to complaints by citizens; and

Whereas, in certain foreign nations and in certain states within the United States there have been established Ombudsman offices for the purpose of dealing with complaints of citizens against acts and omissions of government and governmental agencies and employees; and

Whereas, such offices are reported as being effective for this purpose; and

Whereas, the American Bar Association has adopted a resolution recommending State and local governments of the United States give consideration to the establishment of an Ombudsman authorized to inquire into administrative action and to make public criticism, subject to meeting several specified essential criteria; and

Whereas, The Virginia Bar Association has adopted a resolution expressing the belief that the Ombudsman concept is sound and workable in principle, but because of insufficient information as to whether there is a need for such an office in Virginia at the present time, such resolution recommends that the General Assembly refer this question to the Virginia Advisory Legislative Council for study; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Coun-

cil is directed to make a study and report on the advisability of establishing within the Commonwealth of Virginia an Office of Ombudsman. The Council shall complete its study and report to the Governor and the General Assembly no later than November one, nineteen hundred seventy-two.

Pursuant to the study directive, the Virginia Advisory Legislative Council appointed Senator George S. Aldhizer, Broadway; Harold Baumes, Richmond; Evans B. Brasfield, Esquire, Richmond; Honorable Russell M. Carneal, Williamsburg; Roy L. Farmer, Richmond; Thomas E. Glascock, Esquire, Hampton; James I. Hardy, Esquire, Washington, D. C.; Carl L. Howard, Richmond; Honorable Edward E. Lane, Richmond and Thomas V. Monahan, Esquire, Winchester. Honorable Edward E. Lane of Richmond was named Chairman of the Committee.

The Virginia Advisory Legislative Council and the Division of Statutory Research and Drafting made staff and facilities available to carry out the study, L. Willis Robertson, Jr. and E. M. Miller, Jr. being assigned to assist the members of the Committee.

Prior to the first meeting of the Committee, the members and the staff sought to familiarize themselves with the concept of Ombudsman. The Committee found that the concept has its origin in Sweden. "Ombudsman" is a Swedish word which literally translated means agent, representative or deputy. The Office of Ombudsman was first established in Sweden in 1809 where the Ombudsman was elected by the Swedish Parliament to control the activities of public officials. The Ombudsman serves as an independent governmental official who receives complaints against governmental agencies or individuals acting for the government. An Ombudsman is charged with the duty of investigating such complaints and recommending corrective action to the agency if it is at fault or, if the agency is reacting properly, explaining the reasons for the agency's action to the complainant. The office has also been found to be of great assistance in the dissemination of information to citizens concerning the services available from State agencies.

The theory behind the creation of such an office is that as government continues to grow, the bureaucracy becomes less accessible to normal channels of control and probably affects the life of the average citizen more than the actions of elected officials or courts of law. The creation of the Office of Ombudsman helps the bureaucracy become more responsive to the needs of the citizens it represents.

Since its inception in 1809, the concept of Ombudsman has spread throughout the world. Currently there are five state Offices of Ombudsman operating within the United States in Hawaii, Iowa, Nebraska, Oregon and South Carolina. There are also numerous local government Ombudsmen presently operating in the United States.

The American Bar Association adopted the following resolution at the Midyear Meeting of the House of Delegates in 1969, which was noted by the General Assembly in the resolution directing this study:

Be it Resolved, That the American Bar Association recommends:

1. That state and local governments of the United States should give consideration to the establishment of an ombudsman authorized to inquire into administrative action and to make public criticism.

2. That each statute or ordinance establishing an ombudsman should contain the following twelve essentials: (1) authority of the ombudsman to criticize all agencies, officials, and public employees except courts and their personnel, legislative bodies and their personnel, and the chief executive and his personal staff; (2) independence of the ombudsman from control by any other officer, except for his responsibility to the legislative body; (3) appointment by the legislative body or appointment by the executive with confirmation by a designated proportion of the legislative body, preferably more than a majority, such as two-thirds; (4) independence of the ombudsman through a long term, not less than five years, with freedom from removal except for cause, determined by more than a majority of the legislative body, such as two-thirds; (5) a high salary equivalent to that of a designated top officer; (6) freedom of the ombudsman to employ his own assistants and to delegate to them, without restraints of civil service and classification acts; (7) freedom of the ombudsman to investigate any act or failure to act by any agency, official, or public employee; (8) access of the ombudsman to all public records he finds relevant to an investigation; (9) authority to inquire into fairness, correctness of findings, motivation, adequacy of reasons, efficiency, and procedural propriety of any action or inaction by any agency, official, or public employee; (10) discretionary power to determine what complaints to investigate and to determine what criticisms to make or to publicize; (11) opportunity for any agency, official, or public employee criticized by the ombudsman to have advance notice of the criticism and to publish with the criticism an answering statement; (12) immunity of the ombudsman and his staff from civil liability on account of official action.

3. That for the purpose of determining the workability of the ombudsman idea within the Federal government, the Federal government should experiment with the establishment of an ombudsman or ombudsmen for limited geographical area or areas, for a specific agency or agencies or for a limited phase or limited phases of Federal activity.

4. That establishment of a Federal government-wide ombudsman program should await findings based upon the experimentation recommended.

Be it Further Resolved, That the Section of Administrative Law is authorized to present the views of the Association and to encourage the establishment of ombudsmen in accordance with the provisions of this Resolution, by all necessary and appropriate means.

Following its creation, the Committee held meetings and a public hearing at the State Capitol. During the course of these hearings, the members of the Committee heard the testimony of Benny L. Kass, Vice Chairman of the Ombudsman Committee of the American Bar Association. Mr. Kass testified in favor of the establishment of an Office of Ombudsman noting that the establishment of such an office serves to improve

existing good government by making it more responsive to the needs of citizens. The Committee also heard tape recordings from Herman S. Doi, Ombudsman for Hawaii, and Murrell B. McNeil, Ombudsman for Nebraska. These two men answered questions directed to them through the mail by the Committee. Mr. Thomas E. Glascock, Esquire, met with Mr. Herman S. Doi in Hawaii and discussed the operation of the Hawaiian Ombudsman's Office. The Committee staff compiled questionnaires on State agency complaint resolving procedures and the number of citizen complaints against government received by members of the General Assembly. This material may be found in Appendices 1 and 2 of this report.

The Committee made the following report and recommendations to the Council. However, the Council was not able to agree on the report and recommendations of the Committee.

COMMITTEE RECOMMENDATIONS

1. That legislation be enacted to establish an Office of Ombudsman within the Commonwealth. See proposed legislation in Appendix 3 of this report.
2. That the jurisdiction of the Virginia Ombudsman be limited to complaints against State government. See proposed legislation in Appendix 3 of this report.
3. That the Virginia Ombudsman be elected by the members of the General Assembly. See proposed legislation in Appendix 3 of this report.

REASONS FOR COMMITTEE RECOMMENDATIONS

1. That legislation be enacted to establish an Office of Ombudsman within the Commonwealth.

The Committee felt that the citizens of Virginia need a governmental agency where their complaints against the operation of State government can be investigated and appropriate action taken by an independent officer of State government rather than by an officer of the agency to which the complaint was directed.

The Committee noted that of fifty-seven State agencies replying to a staff questionnaire, only thirty-five percent had a formal complaint resolving procedure. It was also noted that the formal procedure was in many cases limited to hearings before officers of the same agency as that to which the complaint was directed. The Committee believes that a more objective complaint resolving procedure, independent from the agency involved, would better serve the citizens of the Commonwealth. Copies of the results of the staff questionnaire are contained in Appendices 1 and 2 of this report. The results of the questionnaire also showed that nine percent of the responding State agencies had no complaint resolving procedure and fifty-six percent of the responding State agencies had only an informal complaint resolving procedure limited to a hearing before members of the agency itself.

The Committee heard testimony that the establishment of an Office of Ombudsman was most feasible in an atmosphere of good government and that when the office was established in such circumstances it tended to make good government better. It was noted that seventy to ninety percent of all complaints received by Ombudsmen are unfounded and that the publication of such facts tended to increase the faith of citizens in their government. Testimony showed that many problems encountered by Ombudsmen result from a lack of ability on the part of many citizens to

understand the bureaucratic jargon used by government officials. An Ombudsman might also serve as a central point for the dissemination of information and help bridge the communication gap between State agencies and citizens of the Commonwealth.

A staff questionnaire directed to members of the General Assembly showed that the twenty-two responding members of the House of Delegates received a total of five hundred ninety complaints annually for an average of 26.81 complaints against government per Delegate. The questionnaire also showed that the sixteen responding Senators received a total of two thousand one hundred twenty-two complaints annually for an average of 132.62 complaints against government per Senator. The Committee felt that the average number of complaints per responding member of the General Assembly showed that there was a need for the establishment of such an office and that if established citizens would in increasing numbers seek to have the office resolve their problems with State government. The Committee heard testimony that while legislators in states having an Office of Ombudsman were initially apprehensive of the usefulness of the office, after its establishment they welcomed the help such an office could provide in solving their constituents' problems and complaints.

2. That the jurisdiction of the Virginia Ombudsman be limited to complaints against State government.

The Committee studied a number of different Ombudsman systems. They learned that some jurisdictions limit the authority of the Ombudsman to investigation of complaints against state government, while other jurisdictions provide that the Ombudsman's authority may be extended to cases of complaints against local government also. The Committee also noted that some Ombudsmen's investigatory powers do not include complaints against certain agencies of state government. The legislation contained in Appendix 3 exempts certain agencies from the jurisdiction of the Ombudsman.

The Committee believed that while the jurisdiction of the Hawaiian Ombudsman includes power to investigate complaints against both state and local governments, such a plan was not feasible in Virginia. The Committee felt that an Ombudsman's jurisdiction over local governmental matters was not economically feasible in Virginia because of the large number of local governmental units which exist here. Such a plan was feasible in Hawaii because Hawaii has only four county governmental units, while Virginia has almost a hundred counties. Therefore, the Committee recommends that the jurisdiction of the Virginia Ombudsman be limited at the present time to investigating complaints against certain State agencies only.

The Committee feels that it should be emphasized that the Office of Ombudsman as proposed by this report is not a consumer protection agency in the usual sense of that term. The jurisdiction of the Office of Ombudsman as proposed herein would not encompass the handling of complaints against private individuals or businesses.

3. That the Virginia Ombudsman be elected by the members of the General Assembly.

The Committee felt that election of the Virginia Ombudsman should be by the members of the General Assembly rather than by the Executive branch. The Committee believed that election by the General Assembly would give all citizens of the Commonwealth a voice in picking the Om-

budsman and politics would not play as large a part in the selection of the Ombudsman if he is selected by the General Assembly rather than by the Executive branch.

CONCLUSIONS OF COMMITTEE

The members of the Committee feel that the evidence they received during the course of the study indicates that the citizens of Virginia need an agency responsible to the General Assembly where complaints against State government may be investigated by an office independent of the office against which the complaint is directed.

After study of several different types of legislation creating offices of Ombudsman, the Committee feels that the legislation contained in Appendix 3 of this report would be the most appropriate for enactment into law in Virginia at the present time.

Therefore, the Committee requests that the Council give the proposals contained herein its serious consideration.

II. COUNCIL RECOMMENDATION

1. That the Governor's Secretaries be asked to establish a formal complaint resolving procedure to be used by citizens of the Commonwealth in having their complaints against State governmental agencies and the actions of such agencies resolved.

III. REASONS FOR COUNCIL RECOMMENDATION

Although the members of the Council were not in complete agreement with the report of the Committee, they believe that the report of the Committee should be presented to the Governor and General Assembly. Therefore, the report of the Committee has been incorporated herein without recommendation by the Council.

As an alternative to the actions recommended by its Committee, the Council recommends that the Governor's Secretaries be asked to establish a formal complaint resolving procedure to be used by citizens of the Commonwealth in resolving their complaints against State governmental agencies and the actions of such agencies. The Council feels that since the Governor's Secretaries are charged with certain managerial duties with respect to the State agencies for which they are responsible, that they should be charged with the duty of establishing a procedure for resolving citizens' complaints against the agencies for which they are responsible. The Council agrees that any complaint resolving procedure should be administered by an agency independent of the agency against which the complaint is directed, but believes that the Office of Governor's Secretary meets that description and should be given the duty of establishing such a procedure.

IV. CONCLUSION

The members of the Council were not satisfied that the evidence presented warranted the establishment of a new office of State government with the sole responsibility of resolving complaints of citizens. Therefore, they believe adding an additional duty to those delegated the newly created Office of Governor's Secretary would provide a better solution to the problem of providing the citizens of the Commonwealth with a formal complaint resolving procedure independent of the agency against which the complaint is directed.

The members of the Council wish to express their appreciation to the members of the Committee for the time and effort they generously dedicated to the preparation of the Committee report.

Respectfully submitted,

LEWIS A. McMURRAN, JR., *Chairman*

WILLARD J. MOODY, *Vice-Chairman*

RUSSELL M. CARNEAL

JOSEPH V. GARTLAN, JR.

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APPENDIX 1

SUMMARY

State Agencies' Complaint Resolving Procedures

<i>No. of Agency replying</i>	<i>No Procedure</i>	<i>Formal Procedure</i>	<i>Informal Procedure</i>
57	5	20	32
Percentages	8.8	35.1	56.1

No. sent questionnaire - 75

Agency	Type of Complaint Resolving Procedure			Additional Remarks
	None	Formal	Informal	
1. Dept. of Agri. & Commerce			X	Complaints pertaining to the Dept. are investigated and appropriate responses are sent to the initiators.
2. State Air Pollu. Ctl. Bd.		X		Handled in accordance with Clear Air Act of 1970. Complaints are investigated and replies sent to complainant. An appeal can be made if complainant not satisfied.
3. Dept. of Alco- holic Beverage Ctl.		X		Printed rules and regulations are available.
4. Virginia Ath- letic Assoc.		X		Handled in accordance with §§ 9-16, 9-16.1 and 9-16.2 of the Code of Virginia.
5. Auditor of Public Accounts				
6. Div. of Auto- mated Data Process.	X			
7. Division of Budget	X			
8. Office of Civil Defense			X	Appeals System—State divided into 3 regions with 2 reg. field rep. assigned to each. Complaints not resolved at this level, then appeals system may be used.
9. Office of Governor (Sec. of Commerce & Resources)	X			
10. Virginia Common- wealth Univ.			X	Complaints are routed to appropriate offices.
11. Virginia Community Colleges			X	Complaints referred to appropriate offices. If not resolved at lower level, the complaint is sent to appropriate committee of the board for their study & recommendations to State Board.
12. Comptroller			X	Maintains an open door policy to any citizen and will try to resolve his difficulties.

Agency	Type of Complaint Resolving Procedure			Additional Remarks
	None	Formal	Informal	
13. Dept. of Conservation and Economic Development			X	The Bd. of Conserv. & Econ. Dev. has adopted rules and regulations and are administered pursuant to the General Administrative Agencies Act.
14. State Regis. Bd. for Contractors	X			No complaints received. If complaint from a contractor against decision of Bd., § 54-133 of Code would apply.
15. State Corporation Commission		X		On the admin. level, the staff investigates complaints; on the legislative & judicial level, the comm. hears complaints of citizens.
16. Virginia Board of Dentistry			X	Appeals System. No complaints have been received.
17. Div. of Drug Abuse Control			X	All complaints referred to Director. He tries to resolve in his office. If pertains to another agency, he refers it to that agency and follows through on action taken.
18. State Dept. of Education			X	Complaints referred to proper staff members in Depts. and explanations are requested.
19. State Board of Elections			X	Complaints are resolved by personal contact, handled by the Attorney General of Virginia or by court action.
20. Div. of Engr. & Buildings			X	All complaints, requests, grievances and any other matters of a similar nature are pursued to a satisfactory conclusion.
21. Council on Environment			X	The Council functions somewhat as an environmental ombudsman.
22. State Council of Higher Education for Virginia			X	Available to answer the questions which come up and refer them to appropriate colleges.
23. Virginia Commission on Higher Education Facilities		X		Their principal program is the admn. of Title I of the Higher Educ. Facilities Act of 1963. Para. 12.0 of this title provides for hearing & an appeals system.
24. Department of Health			X	Complaints received by Div. or bureau are investigated directly by Div. or bur. concerned & a reply made to complainant; complaints rec. by Commissioner referred to appropriate div. A follow-up is made on complaints.
25. Department of Highways			X	In operations concerning Federal aid and State projects, the complaint resolving procedure may be provided by statute. Basic procedure is to handle complaints at the admin. level; if not resolved, reviewed at other levels.

Agency	Type of Complaint Resolving Procedure			Additional Remarks
	None	Formal	Informal	
26. Highway Safety Division			X	All complaints against Div. reviewed by Dir. who investigates and acknowledges to complainant. Complaints concerning employees of another agency are forwarded to appropriate agency head.
27. Virginia Historic Landmarks Commission			X	Complaints are handled on a personal basis by staff; if not resolved, referred to Commission for final decision.
28. Virginia State Bar		X		Rules for Integration of the Virginia State Bar, Part Six (Rule 13 on p. 30) available.
29. Virginia Employment Commission		X		Has an appeals procedure with statutory basis—§§ 60.1-61 to 60.1-69.
30. Industrial Commission of Va. Dept. of Workmen's Compensation			X	Has an Appeals System.
31. Div. of Industrial Development			X	All complaints are brought to the attention of Director for appropriate action.
32. Dept. of Law—Div. of War Veterans' Claims		X		Has an Appeals System. Tries to resolve at lowest level; if unresolved, referred to Dir.; if still unresolved, referred in writing to Grievance Committee; in case of a dissent, completed file forwarded to Atty. Gen. for his final action.
33. Marine Resources Commission		X		Complaints concerning action or inaction of the Commission are adjudicated in accord. with §§ 28.1-30 thru 28.1-33, except when Wetlands are involved and then Ch. 2.1 of Title 62.1 of the Code prescribes manner of resolution. Complaints concerning admin. of law or comm. regulations are referred to supervisors of Div. to check out complaint & try to resolve it.
34. Dept. of Mental Hygiene & Hospitals			X	Complaints referred to appropriate staff member within the central office. Investig. made and reply to complainant.
35. State Milk Commission			X	Aggrieved person and other persons affected are called before the administrator for a discussion; if not resolved, a discussion may be held before full commission.
36. Div. of Motor Vehicles		X		A Special Citizens Service is set up with 5 regional managers who investigate complaints and resolve problems on a local basis.

Agency	Type of Complaint Resolving Procedure			Additional Remarks
	None	Formal	Informal	
37. Division of Personnel		X		Handle only employee grievances. There already exists with existing policy mechanism for handling employee grievances.
38. Division of State Planning and Community Affairs			X	If complaints cannot be resolved by lower levels, the Director's office becomes personally involved.
39. State Board of Nursing		X		In accordance with Chapter 13.1 of Title 54 of the Code of Virginia; §§ 54-367.3 thru 54-367.9 and § 54-361.11.
40. Commission on Outdoor Rec.			X	All complaints are handled within the Comm.
41. Dept. of Professional and Occupational Registration		X		Procedure of Law Enforcement Division for resolving complaints available.
42. Dept. of Property Records and Insurance			X	Have not received any complaints from public against Dept. If information is requested by public, the same is furnished.
43. Virginia Public Telecommunication Council			X	The council depends upon the bd. of directors and its staff to set up mechanisms that may best serve the public and take care of complaints when they occur.
44. Dept. of Purchases & Supply			X	Appeals System. If matters involve bidding procedures, there is set up by statute a Board of Purchases & Supply to whom an appeal can be made.
45. Secretary of Commonwealth			X	Takes care of complaints on an indiv. basis.
46. Dept. of State Police		X		All complaints against its members are investigated; the member is required to answer the charges in writing; complainant is interviewed if possible. Complete written reports are filed in each case investigated by the Dept. Disciplinary action in keeping with State personnel rules.
47. Virginia Suppl. Retirement System		X		Complaints are broken into 2 categories: operational and substantive. Most complaints under the substantive category are virtually all governed by the prov. of the Retirement Act.
48. Supreme Court of Virginia		X		In accordance with Judicial Inquiry and Review Commission created in 1971.
49. Department of Taxation		X		In accordance with §§ 58-1118, et seq., Code of Virginia, and 58-118.1, 58-1130, et seq.
50. Department of Treasury			X	Complaints resolved by telephone or by referral letter.

Agency	Type of Complaint Resolving Procedure			Additional Remarks
	None	Formal	Informal	
51. Virginia Commission for Visually Handicapped			X	Appeals System—Complaints are heard at the lowest level possible and in a variety of procedures with the right to appeal to higher levels and up to and including the Commission.
52. Department of Vocational Rehabilitation		X		Rules and Procedures available: Sec. 24 of State Plan for Vocational Rehabilitation; Sec. 25 of Plan Employee Grievance Policy.
53. State Water Control Bd.		X		Complaint Resolving Procedures available.
54. The Art Commission			X	Try to handle between the complainant and the Commission; if complainant not satisfied, refer problem to the Governor's Office.
55. Commission of Game and Inland Fisheries			X	Has a "three-story" complaint resolving procedure 1st—Handle complaints on a local level, if possible. 2d—Open doors for anyone to lodge a complaint. 3d—Public meetings held—approx. 8 per yr.
56. Director, Special Programs			X	Many of the activities carried out by this office are done so through other state agencies, i.e., a suppl. role. In trying to resolve a complaint, they normally follow the procedures suggested by the affected agency.
57. Virginia National Guard			X	Has a grievance procedure for employees and handles through channels. Any minor complaints are handled on a local basis.

APPENDIX 2 SUMMARY

House of Delegates				
<i>No. responses</i>	<i>No. complaints</i>	<i>State</i>	<i>Local</i>	<i>Other</i>
22	590	375	157	58
Percentages		63.55	26.61	9.84
Average number		26.81		
Senate				
<i>No. responses</i>	<i>No. complaints</i>	<i>State</i>	<i>Local</i>	<i>Other</i>
16	2122	1612	504	6
Percentages		75.97	23.75	0.28
Average number		132.62		

SENATE

	No. of Complaints	Breakdown of Com- plaints against Lo- cal and State Gov- ernments—% or No.	Remarks—Suggestions
1. HOWELL, Henry E., Jr.	1,691	80%—State 20%—Local	He thinks it is imperative that the General Assembly make some move that will cut through the red tape that we presently find in government at all levels. Today's citizens increasingly vocal with their discontent of delivery of governmental services.
2. ALDHIZER, George S., II	12	50%—State 50%—Local	Most of the complaints are without merit. Do not believe an Ombudsman is needed.
3. ANDERSON, Howard P.			
4. ANDREWS, Hunter B.			
5. BABALAS, Peter K.	None	None	None
6. BARNES, George F.			
7. BATEMAN, Herbert H.	50-100	25%—State	Largest number relates to Division of Motor Vehicles. Most of complaints are scattered—cancellation of insurance, assistance on infor. from Div. of Ins. of SCC, sum assessed for care of parents in state mental institutions, nonadmission of relatives to state institutions.
8. BENDHEIM, Leroy S.	10	50%—Div. of Mtr. Veh. 25%—Inst. of Higher Learning 10%—ABC Board 15%—Local	Does not feel that an ombudsman is necessary. Handling such complaints is a vital part of the function of the legislature, and makes for greater personal contact with constituents.
9. BRAULT, Adelard L.			
10. BUCHANAN, John C.	52	60%—State 40%—Local	About 50% of the complaints relating to State govt. involve dissatisfaction with the Department of Highways.
11. BURRUSS, Robert S., Jr.	25 per yr. (Est.)	65%—State 20%—Local	He does not believe an Ombudsman would be needed on a state-wide basis; however, he can envision a small staffed office in Richmond whereby legislators and individuals could refer their complaints, especially the more difficult ones that would require considerable efforts on the part of legislators to investigate and study.
12. CAMPBELL, Leslie D., Jr.	10-20	50%—State 50%—Local	Many complaints result from misunderstandings.
13. CANADA, A. Joe, Jr.	13	10—Local 3—State	Does not think the number of complaints is excessive but has not been in the Senate long enough to give a meaningful opinion.
14. DAWBARN, H. Dunlop			

	No. of Complaints	Breakdown of Complaints against Local and State Governments—% or No.	Remarks—Suggestions
15. DuVAL, Clive L., 2d	50 to 60 per yr.	60-65%—Dept. of Highways 20-25%—DMV 10%—Local govt.	A State "Ombudsman" might be helpful in convincing a State agency such as the Dept. of Highways to take care of citizen complaints faster.
16. EDMUNDS, James T.	51	48—state 1—local govt. 2—federal	An ombudsman would take some of the traffic from the General Assembly members who presently act as ombudsmen in their local districts.
17. FEARS, William E.	50	25 or 50%—State 25 or 50%—Local	Most complaints against ABC Board decision—should have appeal rights to a court.
18. GARTLAN, Joseph V., Jr.			
19. GRAY, Elmon T.			
20. GRAY, Frederick T.			
21. HIRST, Omer L.			
22. HOLLAND, Edward M.			
23. HOPKINS, William B.			
24. MANN, Paul W.			
25. McNAMARA, Thomas R.			
26. MICHAEL, J. Harry, Jr.			
27. MOODY, Willard J.			
28. PARKERSON, William F., Jr.			
29. RAWLINGS, William V.			
30. SMITH, H. Selwyn	3	2—ABC Board 1—Highway Dept.	Not in favor of an Office of Ombudsman. Problems in Prince William County are not normal and cannot be considered as realistic in the study. If we have it at a State level, would soon have to consider it at a local level.
31. STONE, William F.	2 or 3	None against local govt.	Most are concerning social security and federal govt. Think it would be a mistake to create such an office.
32. THORNTON, David F.	16	75%—State 25%—Local	An interesting concept. However, he ventures to predict that citizens will still attempt to go to the source of "power"—i.e., the elected official.
33. TOWNSEND, Russell I.	4	50%—State 50%—Local	He receives a number of requests for assistance with respect to State agencies but these requests are not generally in the form of complaints.
34. TRUBAN, William A.			
35. TURK, James C.	12	Most concern State govt.	Most complaints are more of a misunderstanding. Many in past have involved the Div. of Motor Vehicles. There are occasionally some involving the Highway Dept.

	No. of Complaints	Breakdown of Complaints against Local and State Governments—% or No.	Remarks—Suggestions
36. WADDELL, Charles L.			
37. WALKER, Stanley C.			
38. WARREN, George M., Jr.			
39. WILDER, Lawrence Douglas		90% of complaints received are about local govt.	Complaints pertain to parole board and penitentiary officials; a few about the ABC Board and the Dept. of Welfare and Institutions.
40. WILLEY, Edward E.			
41. YEATTS, Coleman B.			

HOUSE OF DELEGATES

	No. of Complaints	Breakdown of complaints against local and State govts.—% or No.	Remarks—Suggestions
1. COOKE, John Warren	12 to 15	80%—State 15%—Local 5%—Federal	
2. ALLEN, Geo. E., Jr.			
3. ANDERSON, Claude W.			
4. ASHWORTH, L. Ray			
5. BAGLEY, Richard M.			
6. BAIN, Carl E.			Bureaucratic bottlenecks are cause of most complaints. All elected officials serve as Ombudsmen and citizens should be encouraged to see their representatives to solve problems.
7. BALL, Robert B., Sr.			
8. BARRY, Warren E.	20-30	75%—Highway Dept. 5%—Div. of Motor Veh. 10%—Local 10%—Misc.	
9. BRYAN, Stanley G.			
10. CALLAHAN, Vincent F., Jr.	100	50%—State 50%—Local	Does not think Office of Ombudsman is necessary. Believes any member of the General Assembly or local governing official can handle complaints with ease.
11. CAMPBELL, Archibald A.	12	½ State (DMV, Hwy. Dept., Personnel) ½ Town Council	Doubts necessity.
12. CANTRELL, Orby L.			
13. CARNEAL, Russell M.			
14. CRANWELL, C. Richard			
15. DALTON, John N.	10	Most State Govt.	
16. DAVIS, Warren J.			
17. DeBRUHL, Garry G.			

	No. of Complaints	Breakdown of com- plaints against lo- cal and State govts.—% or No.	Remarks—Suggestions
18. DIAMONSTEIN, Alan A.	15	15—State Govt.	He prepared legislation for intro- duction in 1968 for setting up Office of Ombudsman, based on Nevada's situation, but he did not introduce it.
19. DICKINSON, V. Earl			
20. DILLARD, James Hardy, II			
21. DUDLEY, William M.	None		
22. DUNFORD, C. D.			
23. DURRETTE, Wyatt B., Jr.			
24. ELLIOTT, Richard W.	2 or 3	60%—Local 40%—State	
25. EMICK, Dudley J., Jr.	15	10—State 5—Local	
26. FIDLER, Walther B.			
27. FOWLER, Calvin W.			
28. GARLAND, Ray L.			
29. GEISLER, Jerry H.			
30. GIBB, Duncan C.	No record	Great percentage against State	Most complaints are over the poor conditions of local roads and failure to complete I-66.
31. GIBSON, Robert E.			
32. GIESEN, Arthur R.			
33. GLASSCOCK, J. Samuel	20	75%—State 25%—Local	He feels that Virginia should es- tablish the Office of Ombudsman.
34. GRAY, John D.			
35. GREEN, George Mason, Jr.			
36. GUEST, Raymond R.			
37. GUNN, Charles W., Jr.			
38. GWATHMEY, Robert R., III			
39. HEILIG, George H., Jr.			
40. JONES, George W.			
41. LANE, Edward E.			
42. LEAFE, Joseph A.			
43. LEMMON, W. L.	Has not kept a record		A minimum of 50% of his home office time is spent with ques- tions involving State govern- ment.
44. McCLANAN, Glenn B.	15 to 20	18(L) 2(S) Mostly against local govt.	
45. McDIARMID, Dorothy S.			
46. McGLOTHLIN, Donald A., Sr.			
47. McMATH, George N.			There are occasions when he re- ceives complaints and he person- ally investigates the situation. Most deal with State govt. He believes Governor's office should handle complaints. He questions the advisability of establishing an Office of Ombudsman.

	No. of Complaints	Breakdown of com- plaints against lo- cal and State govts.—% or No.	Remarks—Suggestions
48. McMURRAN, Lewis A., Jr.			
49. McMURTRIE, Alexander B.			
50. MANN, Frank E.			Have no figures. Valid complaints minimal.
51. MANNING, L. Cleaves			
52. MARKS, C. Hardaway			
53. MARSHALL, Mary A.	100	¾—State	Many of them are bureaucratic errors—or lack of accurate information. She would sometimes like help in getting information.
54. MELNICK, John L.	None		No complaints to date.
55. MICHIE, Thomas J., Jr.	2	1 each	Hard to separate legal matters from legislative problems.
56. MIDDLETON, B. R.			
57. MILLER, Clinton			
58. MILLER, Nathan H.			
59. MORGAN, Herbert N.	1	1 (state)	
60. MORRIS, Philip B.			
61. MORRISON, Theodore V., Jr.			
62. MOSS, Thomas W., Jr.	10	80%—State 20%—Local	
63. MOSS, William H., Sr.	10	60%—State 40%—Local	He thinks an Office of Ombudsman would be good.
64. MURPHY, William R.			
65. OWENS, Stanley A.	None		Would not like to comment until he has received some complaints.
66. PARKER, Lewis W., Jr.	5	5—State	These complaints have been received since August 1. Not versed to comment—He has not served a year.
67. PARRIS, Stanford E.			
68. PENDLETON, Donald G.			
69. PHILLIPS, Lucas D.			
70. PHILPOTT, A. L.			
71. PICKETT, Owen B.	50	80%—State 20%—Local	Would suggest study of two alternatives to Ombudsman: (a) allow atty's fees to aggrieved persons who litigate against State or local govt.; (b) provide more adequate staff for elected representatives, both State and local, so they can provide more service in this area.
72. POPE, Sam E.			
73. PUTNEY, Lacey E.			
74. QUILLEN, Ford C.			
75. QUINN, Robert E.			

	No. of Complaints	Breakdown of complaints against local and State govts.—% or No.	Remarks—Suggestions
76. RAGSDALE, Edwin H.			
77. REID, Wm. Ferguson			
78. REYNOLDS, Randall O.			
79. ROBINSON, Wm. P., Sr.			
80. ROBRECHT, Raymond R.			
81. ROTHROCK, Thomas Jefferson			
82. SCHLITZ, Lester E.			
83. SCOTT, Mrs. L. O.			
84. SHEPPARD, Eleanor P.			
85. SLAUGHTER, D. French, Jr.			
86. SLAYTON, Frank M.	None		
87. SMITH, W. Roy			
88. STAFFORD, C. Jefferson	10	10—State	
89. STUART, G.R.C.			He said he did not have any basis on which to answer questions intelligently.
90. SUTHERLAND, David A.			
91. SUTTON, T. Dix	No record kept		Complaints against welfare recipients; State Highway Dept., and Board of Bar Examiners.
92. TEICH, Albert, Jr.	Averages 1 a wk. 52	50%—State 50%—Local	Most of the complaints are sent to him by his Congressman. Said Office of Ombudsman sounds good; however, many of the complaints can be handled by the members of the General Assembly.
93. THOMSON, James M.			
94. TOWLER, John C.	78 (est.)	20%—Ins. related State 15%—Welfare—State/local 5%—Higher Education—State 20%—Environ. Enforcement and Consumer Enf. Prot.—State/local 20%—Misc.—local govt. problems 10%—Misc. State matters 10%—Legis. Enactments—State	(Suggestions: cross-indexed directory; toll free numbers for certain agencies — would hasten processing of complaints.)
95. VAN CLIEF, Daniel G.	20		Opposed to Office of Ombudsman. Believes cabinet type of govt. should be given an additional trial period.
96. WASHINGTON, Robert E.	12	$\frac{1}{2}$ State $\frac{1}{2}$ Local	State agencies and independent contractors—largest single category of complaints.
97. WHITE, J. Warren, Jr.			
98. WILLIAMS, Carrington			
99. WOODBRIDGE, Benjamin H., Jr.			

APPENDIX 3

A B I L L

To amend the Code of Virginia by adding in Title 30 a chapter numbered 3.1 consisting of sections numbered 30-34.1 through 30-34.20 relating to the creation of and operation of the Office of Ombudsman in the Commonwealth.

Be it enacted by the General Assembly of Virginia :

1. That the Code of Virginia be amended by adding in Title 30 a chapter numbered 3.1 consisting of sections 30-34.1 through 30-34.20 as follows:

CHAPTER 3.1

THE VIRGINIA OMBUDSMAN ACT

§ 30-34.1. This chapter may be cited as The Virginia Ombudsman Act.

§ 30-34.2. (a) "Agency" includes any permanent State governmental entity, department, organization, or institution, and any officer, employee, or member thereof acting or purporting to act in the exercise of his official duties, except:

- (1) A court;
- (2) The General Assembly, its committees, and its staff;
- (3) An entity of the federal government;
- (4) A multistate governmental entity; and
- (5) The governor, his cabinet and personal staff.

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

§ 30-34.3. The Office of Ombudsman is hereby established. The General Assembly shall elect an ombudsman who shall serve for a period of six years. An ombudsman may be reappointed but may not serve for more than three terms. The General Assembly, by two-thirds vote of the members, may remove or suspend the ombudsman from office, but only for neglect of duty, misconduct, or disability.

No person may serve as ombudsman while he is a candidate for or holds any other elective State or local office.

The compensation of the ombudsman shall be the same as that of the Chief Justice of the Supreme Court of Virginia. The compensation of the ombudsman shall not be diminished during his term of office, unless by general law applying to all salaried officers of the State.

If the ombudsman dies, resigns, becomes ineligible to serve, or is removed or suspended from office, the first assistant to the ombudsman becomes the acting ombudsman until a new ombudsman is appointed for a full term.

§ 30-34.4. The ombudsman shall appoint a first assistant and such other officers and employees as may be necessary to carry out the duties of the office in accordance with the provisions of this chapter. All employees, including the first assistant, shall be hired by the ombudsman and shall serve at his pleasure. In determining the salary of each employee, the ombudsman shall consult with the Division of Personnel and shall follow as closely as possible the recommendations of the Division but

shall not be bound thereby. The ombudsman and his full-time staff shall be entitled to participate in all State employee benefit plans.

The ombudsman may delegate to his appointees any of his duties except those specified in §§ 30-34.13 and 30-34.14.

§ 30-34.5. The ombudsman may establish procedures for receiving and processing complaints, conducting investigations, and reporting his findings. However, he may not levy fees for submission or investigation of complaints.

§ 30-34.6. The ombudsman has jurisdiction to investigate the administrative acts of agencies and he may exercise his powers without regard to the finality of any administrative act.

§ 30-34.7. (a) The ombudsman shall investigate any complaint which he determines to be an appropriate subject for investigation under § 30-34.9 unless he finds that

(1) there is presently available an adequate remedy for the grievance stated in the complaint;

(2) the complaint relates to a matter that is outside the jurisdiction of the Ombudsman;

(3) the complaint relates to an administrative act of which the complainant has had knowledge for too long a time before the complaint was submitted;

(4) the complainant does not have a sufficient personal interest in the subject matter of the complaint;

(5) the complaint is trivial or made in bad faith;

(6) the facilities of the Ombudsman's office are insufficient for adequate investigation; or

(7) there are other complaints more worthy of the Ombudsman's attention.

(b) The ombudsman may investigate on his own motion if he reasonably believes that an appropriate subject for investigation under § 30-34.9 exists.

§ 30-34.8. If the ombudsman decides not to investigate, he shall inform the complainant of that decision and shall state his reasons.

If the ombudsman decides to investigate, he shall notify the complainant of his decision and he shall also notify the agency of his intention to investigate.

§ 30-34.9. An appropriate subject for investigation is an administrative act of an agency which might be:

(1) Contrary to law;

(2) Unreasonable, unfair, oppressive, or unnecessarily discriminatory, even though in accordance with law;

(3) Based on a mistake of fact;

(4) Based on improper or irrelevant grounds;

(5) Unaccompanied by an adequate statement of reasons;

(6) Performed in an inefficient manner; or

(7) Otherwise erroneous.

The ombudsman may investigate to find an appropriate remedy.

§ 30-34.10. (a) In an investigation, the ombudsman may make inquiries and obtain information as he thinks fit, enter without notice to inspect the premises of an agency, and hold private hearings.

(b) The ombudsman is required to maintain secrecy in respect to all matters and the identities of the complainants or witnesses coming before him except so far as disclosures may be necessary to enable him to carry out his duties and to support his recommendations.

§ 30-34.11. Subject to the privileges which witnesses have in the courts of this State, the ombudsman may :

- (1) Compel at a specified time and place, by a subpoena, the appearance and sworn testimony of any person whom the ombudsman reasonably believes may be able to give information relating to a matter under investigation ; and
- (2) Compel any person to produce documents, papers, or objects which the ombudsman reasonably believes may relate to a matter under investigation.

The ombudsman may bring suit in an appropriate State court to enforce these powers.

§ 30-34.12. Before giving any opinion or recommendation that is critical of an agency or person, the ombudsman shall consult with that agency or person.

§ 30-34.13. If, after investigation, the ombudsman finds that :

- (1) A matter should be further considered by the agency ;
- (2) An administrative act should be modified or cancelled ;
- (3) A statute or regulation on which an administrative act is based should be altered ;
- (4) Reasons should be given for an administrative act ; or
- (5) Any other action should be taken by the agency ;

he shall report his opinion and recommendations to the agency. He may request the agency to notify him, within a specified time, of any action taken on his recommendations.

§ 30-34.14. After a reasonable time has elapsed, the ombudsman may present his opinion and recommendations to the governor, the General Assembly, the public, or any of these. The ombudsman shall include with this opinion any reply made by the agency.

§ 30-34.15. After a reasonable time has elapsed, the ombudsman shall notify the complainant of the actions taken by him and by the agency.

§ 30-34.16. If the ombudsman thinks there is a breach of duty or misconduct by any officer or employee of an agency, he shall refer the matter to the appropriate authorities.

§ 30-34.17. The ombudsman shall submit to the legislature and the public an annual report discussing his activities under this chapter.

§ 30-34.18. No proceeding or decision of the ombudsman may be reviewed in any court, unless it contravenes the provisions of this chapter. The ombudsman shall have the same immunities from civil and criminal liability as a judge of this State.

§ 30-34.19. A letter to the ombudsman from a person held in custody by an agency shall be forwarded immediately, unopened, to the ombudsman. A letter from the ombudsman to a person held in custody by an agency shall be forwarded immediately, unopened, to such person.

§ 30-34.20. Any person who willfully hinders the lawful actions of the ombudsman or his staff, or willfully refuses to comply with their lawful demands, shall be fined not more than one thousand dollars.

