

## Mechanisms for ombudsman independence

While 19 states [have enacted](#) some sort of records ombudsman legislation, not all are fully independent. An alternate model for independence might be [other types of ombudsman positions](#), particularly children's advocates whose job is to provide oversight over child protective services on behalf of the public. The following are provisions that could protect independence, with relevant precedents listed.

### Declare independent body

- Connecticut child advocate [46a-13k](#): "Notwithstanding any other provision of the general statutes, the Child Advocate shall act independently of any state department in the performance of the advocate's duties."
- Michigan children's ombudsman [§ 722.923\(1\)](#): "[T]he children's ombudsman is established as an autonomous entity in the department of management and budget."
- Rhode Island child advocate [§ 42-73-5](#): "Notwithstanding any other provisions of this or any other chapter to the contrary, the child advocate acts independently of the department of children, youth, and families in the performance of his or her duties."
- Texas independent ombudsman for juvenile justice, [Human Resources Code 261.003\(a\)](#): "The independent ombudsman in the performance of its duties and powers under this chapter acts independently of the department."

### Administrative home, with independence

- Maryland, public access ombudsman, [§ 4-1B-02](#): "The Office of the Attorney General shall provide office space and staff for the Ombudsman, with appropriate steps taken to protect the autonomy and independence of the Ombudsman."
- Georgia statute on child advocate, [§ 15-11-742\(c\)](#): "The Office of the Child Advocate for the Protection of Children shall be assigned to the Office of Planning and Budget for administrative purposes only, as described in Code Section 50-4-3."
- Georgia "administrative purposes only" defined, [§50-4-3](#):

(a) An agency assigned to a department for administrative purposes only shall:

(1) Exercise its quasi-judicial, rule-making, licensing, or policy-making functions independently of the department and without approval or control of the department;

(2) Prepare its budget, if any, and submit its budgetary requests, if any, through the department; and

(3) Hire its own personnel if authorized by the Constitution of this state or by statute or if the General Assembly provides or authorizes the expenditure of funds therefor.

(b) The department to which an agency is assigned for administrative purposes only shall:

(1) Provide record keeping, reporting, and related administrative and clerical functions for the agency;

(2) Disseminate for the agency required notices, rules, or orders adopted, amended, or repealed by the agency;

(3) Provide staff for the agency subject to paragraph (3) of subsection (a) of this Code section; and

(4) Include in the departmental budget the agency's budgetary request, if any, as a separate part of the budget and exactly as prepared and submitted to the department by the agency.

(c) Whenever any authority is assigned for administrative purposes, it means only that the state department through which the authority deals with the state shall be that department to which the authority is assigned. Any authority created by state law shall retain its separate identity as an instrumentality of the state and a public corporation. The department to which an authority is assigned is authorized, only with the approval of the authority, to perform for such authority any or all of the functions set forth in subsection (b) of this Code section.

### **Appointment of advocate**

- Oregon Government Ethics Commission, [ORS 244.310](#): The executive director is appointed by the commission. The Public Records Advisory Council could do the same with public records advocate in statute.

### **Dedicated funding**

In 2007, the Legislature passed a bill ([SB 10](#)) to fund the Oregon Government Ethics Commission through fees, half of which come from local public bodies and half from state agencies. The amount paid is a sliding scale that takes into account a public body's FTE and total expenditures.

The 2019 Legislature opted to fund the Public Records Advocate's Office from a share of statewide fees on other agencies as apportioned to the Chief Operating Officer in DAS. This has the advantage of protection from general fund cuts. However, the share of fees appropriated to the PRA is subject to alteration by the governor.

The Legislature could:

a) set in statute the percentage of COO budget to go to PRA;

b) create a separate fee assessment in statute on all public bodies, to be collected with the assessment for the Ethics Commission.

For simplicity, we could peg the Advocate's assessment to the Ethics Commission's. The PRA's budget in 2019-21 is roughly  $\frac{1}{4}$  the size of OGEC's. The Legislature could set in statute a PRA fee assessment that adds 25 percent to the OGEC assessment. Then the following ANNUAL amounts would apply to public bodies based on their annual budgets:

<b>Budget</b>	<b>Fee</b>
Under \$50,000	\$10
\$50,000-\$150,000	\$19
\$150,000-\$500,000	\$71
\$500,000 to \$1 m	\$95
\$1m to \$5m	\$119
\$5m to \$10m	\$143
\$10m to \$50m	\$166
>\$50 m	\$190

(This analysis is based on the [2017-19 fee schedule](#) from OGEC.)

### **Introducing legislation**

Currently the PRAC submits bill requests via DAS, which by law needs the governor's approval. Not in statute, but in a future PRAC resolution, we could agree to submit legislation in one of two ways: 1) in the case of a consensus bill concept, via one of the legislators on the council who volunteers to sponsor; 2) in the case of a bill with majority council support, as a recommendation to the relevant legislative committee or Legislature at large.