

109TH CONGRESS  
1ST SESSION

# H. R. 1043

To provide additional authority to the Office of Ombudsman of the  
Environmental Protection Agency.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 2005

Mr. BILIRAKIS (for himself and Ms. DEGETTE) introduced the following bill;  
which was referred to the Committee on Energy and Commerce

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## A BILL

To provide additional authority to the Office of Ombudsman  
of the Environmental Protection Agency.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Ombudsman Reauthor-  
5       ization Act of 2005”.

6       **SEC. 2. OFFICE OF OMBUDSMAN.**

7       The Solid Waste Disposal Act (42 U.S.C. 6901 et  
8       seq.) is amended by striking section 2008 (42 U.S.C.  
9       6917) and inserting the following:

1 **“SEC. 2008. OFFICE OF OMBUDSMAN.**

2 “(a) DEFINITIONS.—In this section:

3 “(1) ADMINISTRATOR.—The term ‘Adminis-  
4 trator’ means the Administrator of the Environ-  
5 mental Protection Agency.

6 “(2) AGENCY.—The term ‘Agency’ means the  
7 Environmental Protection Agency.

8 “(3) DEPUTY OMBUDSMAN.—The term ‘Deputy  
9 Ombudsman’ means any individual appointed by the  
10 Ombudsman under subsection (e)(1)(A)(i).

11 “(4) OFFICE.—The term ‘Office’ means the Of-  
12 fice of the Ombudsman established by subsection  
13 (b)(1).

14 “(5) OMBUDSMAN.—The term ‘Ombudsman’  
15 means the director of the Office.

16 “(b) ESTABLISHMENT.—

17 “(1) IN GENERAL.—There is established within  
18 the Agency an office to be known as the ‘Office of  
19 the Ombudsman’.

20 “(2) OVERSIGHT.—

21 “(A) IN GENERAL.—The Office shall be an  
22 independent office within the Agency.

23 “(B) STRUCTURE.—To the maximum ex-  
24 tent practicable, the structure of the Office  
25 shall conform to relevant professional guide-  
26 lines, standards, and practices.

1 “(3) HEAD OF OFFICE.—

2 “(A) OMBUDSMAN.—The Office shall be  
3 directed by an Ombudsman, who shall be ap-  
4 pointed by and report directly to the Adminis-  
5 trator.

6 “(B) APPLICABILITY OF CERTAIN CIVIL  
7 SERVICE LAWS.—The Ombudsman shall be ap-  
8 pointed subject to the provisions of title 5,  
9 United States Code, governing appointments in  
10 the competitive service, and shall be paid at the  
11 rate of basic pay for GS–15 of the General  
12 Schedule.

13 “(C) QUALIFICATIONS FOR AND RESTRIC-  
14 TIONS ON EMPLOYMENT.—A person appointed  
15 as Ombudsman—

16 “(i) shall be a person of recognized  
17 judgment, objectivity, and integrity who is  
18 well-equipped to analyze problems of law,  
19 administration, and public policy;

20 “(ii) shall not have been an employee  
21 of the Agency at any time during the 1-  
22 year period before the date of appointment;

23 “(iii) shall not have received any  
24 grant, loan, or contract (other than an em-  
25 ployment contract permissible under clause

(ii)) from the Agency during the 5-year period before the date of appointment; and

“(iv) while serving as Ombudsman, shall not—

“(I) be actively involved in political party activities or publicly endorse, solicit funds for, or make contributions to political parties or candidates for elective office;

“(II) be a candidate for or hold any other elective or appointive public office; or

“(III) engage in any other occupation, business, or profession likely to detract from the full-time performance of his or her duties as Ombudsman or to result in a conflict of interest or an appearance of impropriety or partiality.

“(D) TERM.—The Ombudsman—

“(i) shall serve for a term of 5 years; and

“(ii) may be reappointed for not more than 1 additional term.

“(E) REMOVAL.—

1                   “(i) IN GENERAL.—The Administrator  
2                   may remove or suspend the Ombudsman  
3                   from office only for neglect of duty or mal-  
4                   feasance in office.

5                   “(ii) COMMUNICATION TO CON-  
6                   GRESS.—If the Administrator removes or  
7                   suspends the Ombudsman, the Adminis-  
8                   trator shall communicate the reasons for  
9                   the removal or suspension to Congress.

10                  “(c) DUTIES.—The Ombudsman shall—

11                   “(1) receive, and render assistance concerning,  
12                   any complaint, grievance, or request for information  
13                   submitted by any person relating to any program or  
14                   requirement of the Agency; and

15                   “(2) conduct investigations, make findings of  
16                   fact, and make nonbinding recommendations to the  
17                   Administrator concerning the program or require-  
18                   ment of the Agency.

19                  “(d) POWERS AND RESPONSIBILITIES.—In carrying  
20                  out this section, the Ombudsman—

21                   “(1) may investigate any action of the Agency  
22                   without regard to the finality of the action;

23                   “(2) may select appropriate matters for action  
24                   by the Office;

25                   “(3) may—

1           “(A) prescribe the methods by which com-  
2           plaints shall be made to, and received and ad-  
3           dressed by, the Office;

4           “(B) determine the scope and manner of  
5           investigations made by the Office; and

6           “(C) determine the form, frequency, and  
7           distribution of conclusions and recommenda-  
8           tions of the Office;

9           “(4) may request the Administrator to provide  
10          the Ombudsman notification, within a specified pe-  
11          riod of time, of any action taken on a recommenda-  
12          tion of the Ombudsman;

13          “(5) may request, and shall be granted by any  
14          Federal agency or department, assistance and infor-  
15          mation that the Ombudsman determines to be nec-  
16          essary to carry out this section;

17          “(6) may examine any record of, and enter and  
18          inspect any property under the administrative juris-  
19          diction of—

20                 “(A) the Agency; or

21                 “(B) any other Federal agency or depart-  
22                 ment involved in a matter under the adminis-  
23                 trative jurisdiction of the Agency;

24          “(7) may—

1           “(A) issue a subpoena to compel any per-  
2           son to appear to give sworn testimony con-  
3           cerning, or to produce documentary or other  
4           evidence determined by the Ombudsman to be  
5           reasonable in scope and relevant to, an inves-  
6           tigation by the Office; and

7           “(B) seek enforcement of a subpoena  
8           issued under subparagraph (A) in a court of  
9           competent jurisdiction;

10          “(8) may carry out and participate in, and co-  
11          operate with any person or agency involved in, any  
12          conference, inquiry on the record, public hearing on  
13          the record, meeting, or study that, as determined by  
14          the Ombudsman—

15               “(A) is material to an investigation con-  
16               ducted by the Ombudsman; or

17               “(B) may lead to an improvement in the  
18               performance of the functions of the Agency;

19          “(9) may administer oaths and hold hearings in  
20          connection with any matter under investigation by  
21          the Office;

22          “(10) may engage in alternative dispute resolu-  
23          tion, mediation, or any other informal process that  
24          the Ombudsman determines to be appropriate to  
25          carry out this section;

1           “(11) may communicate with any person, in-  
2           cluding Members of Congress, the press, and any  
3           person that submits a complaint, grievance, or re-  
4           quest for information under subsection (c)(1); and

5           “(12) shall administer a budget for the Office.

6           “(e) ADMINISTRATION.—

7           “(1) IN GENERAL.—The Ombudsman shall—

8                   “(A)(i) appoint a Deputy Ombudsman for  
9                   each region of the Agency; and

10                   “(ii) hire such other assistants and em-  
11                   ployees as the Ombudsman determines to be  
12                   necessary to carry out this section; and

13                   “(B) supervise, evaluate, and carry out  
14                   personnel actions (including hiring and dis-  
15                   missal) with respect to any employee of the Of-  
16                   fice.

17           “(2) DELEGATION OF AUTHORITY.—The Om-  
18           budsman may delegate to other employees of the Of-  
19           fice any responsibility of the Ombudsman under this  
20           section except—

21                   “(A) the power to delegate responsibility;

22                   “(B) the power to issue subpoenas; and

23                   “(C) the responsibility to make rec-  
24                   ommendations to the Administrator.



1           “(3) CONTACT INFORMATION.—The Ombuds-  
2           man shall maintain, in each region of the Agency, a  
3           telephone number, facsimile number, electronic mail  
4           address, and post office address for the Ombudsman  
5           that are different from the numbers and addresses  
6           of the regional office of the Agency located in that  
7           region.

8           “(4) REPORTS.—The Ombudsman—

9                   “(A) shall, at least annually, publish in the  
10                  Federal Register and submit to the Adminis-  
11                  trator, the President, the Committee on Energy  
12                  and Commerce of the House of Representatives,  
13                  and the Committee on Environment and Public  
14                  Works of the Senate a report on the status of  
15                  health and environmental concerns addressed in  
16                  complaints and cases brought before the Om-  
17                  budsman in the period of time covered by the  
18                  report;

19                   “(B) may issue reports, conclusions, or  
20                  recommendations concerning any other matter  
21                  under investigation by the Office;

22                   “(C) shall solicit comments from the Agen-  
23                  cy concerning any matter under investigation by  
24                  the Office; and

1           “(D) shall include any comments received  
2           by the Office in written reports, conclusions,  
3           and recommendations issued by the Office  
4           under this section.

5           “(f) PENALTIES.—An investigation conducted by the  
6 Ombudsman under this section constitutes—

7           “(1) a matter under section 1001 of title 18,  
8 United States Code; and

9           “(2) a proceeding under section 1505 of title  
10 18, United States Code.

11          “(g) EMPLOYEE PROTECTION.—

12          “(1) IN GENERAL.—No employer may discharge  
13 any employee, or otherwise discriminate against any  
14 employee with respect to compensation, terms, con-  
15 ditions, or privileges of employment of the employee,  
16 because the employee (or any person acting at the  
17 request of the employee) complied with any provision  
18 of this section.

19          “(2) COMPLAINT.—Any employee that, in the  
20 opinion of the employee, is discharged or otherwise  
21 discriminated against by any person in violation of  
22 paragraph (1) may, not later than 180 days after  
23 the date on which the violation occurs, file a com-  
24 plaint in accordance with section 211 of the Energy  
25 Reorganization Act of 1974.

1 “(h) APPLICABILITY.—

2 “(1) IN GENERAL.—This section—

3 “(A) does not limit any remedy or right of  
4 appeal; and

5 “(B) may be carried out notwithstanding  
6 any provision of law to the contrary that pro-  
7 vides that an agency action is final, not review-  
8 able, or not subject to appeal.

9 “(2) EFFECT ON PROCEDURES FOR GRIEV-  
10 ANCES, APPEALS, OR ADMINISTRATIVE MATTERS.—

11 The establishment of the Office does not affect any  
12 procedure concerning grievances, appeals, or admin-  
13 istrative matters under this Act or any other law  
14 (including regulations).

15 “(i) SEPARATE LINE ITEM.—In submitting the an-  
16 nual budget for the Federal Government to Congress, the  
17 President shall include a separate line item for the funding  
18 for the Office.”.

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