

Fiscal Impact Review 2020 General Assembly Session

Date: February 24, 2020

Bill number: HB 1301 (Substitute), Office of the Children's Ombudsman established

Review requested by: Chairman Barker; Senate General Laws and Technology

JLARC Staff Fiscal Estimates

JLARC staff estimate that the fiscal impact of HB 1301-substitute would start at \$416,000 (general funds) (GF) in FY21 but could be higher depending on the population of children that would be covered by the bill. HB 1301-substitute would establish an independent, cabinet-level Office of the Children's Ombudsman, but the bill is inconsistent regarding the population of children that would be within the ombudsman's authority. If the ombudsman's authority were concentrated on children involved with child protective services, foster care, or adoption, as appears to be contemplated in most sections of the bill, the fiscal impact is estimated to be \$416,000 (GF) in FY21 and \$479,500 (GF) in FY22.

HB 1301-substitute also grants the ombudsman broad authority to protect the rights and welfare of children under the supervision of a child-serving agency, which includes local school divisions. Under this broader authority, it is likely that the ombudsman would receive complaints related to the rights or welfare of children in local school divisions in addition to complaints related to children in the child welfare system. To respond to these additional complaints, the office would likely require more investigative and intake staff. Each additional position would increase the bill's total costs by \$83,000 (GF) in the first year and \$96,500 (GF) in the second year.

An explanation of the JLARC staff review is included on the pages that follow.

Authorized for release:



Hal E. Greer, Director

Bill summary

HB 1301-substitute would establish a cabinet-level Office of the Children's Ombudsman. The ombudsman would be created to:

- investigate and review actions of the Virginia Department of Social Services (VDSS), local departments of social services, child-placing agencies, and child-caring institutions;
- effectuate changes in policy, procedure, and legislation;
- educate the public; and
- ensure compliance with relevant statutes, rules, and policies pertaining to children's protective services and the placement, supervision, and delivery of care to children in foster care and adoptive homes.

In addition to granting the ombudsman specific authority to investigate; review administrative actions; and ensure compliance of entities involved in child protective services, foster care, and adoption (§ 2.2-439), HB 1301-substitute also grants the ombudsman broad authority to "pursue all necessary action...to protect the rights and welfare" of any child under the "jurisdiction, control, or supervision" of a state or local child-serving agency in the commonwealth (§ 2.2-442). The bill defines a "child-serving agency" to include the Department of Social Services, the Department of Behavioral Health and Developmental Services, the Department of Education, the Department of Health, the Department of Juvenile Justice, and the Office of Children's Services, as well as any non-law-enforcement local entity that provides services to children and receives funding from one of these agencies.

Fiscal implications

HB 1301-substitute would have a fiscal impact resulting from the creation of an independent Office of the Children's Ombudsman. The fiscal impact would depend on the population of children within the ombudsman's jurisdiction and, therefore, its potential investigatory caseload. If the ombudsman's authority were concentrated on children involved with child protective services, foster care, or adoption, as appears to be contemplated in most sections of the bill, the fiscal impact would be less than \$500,000 (general funds). Just over 60,000 children in Virginia were the subject of a child protective services investigation, approximately 4,800 children spent time in foster care, and 801 children were adopted from the child welfare system in 2017, the most recent year for which data is available.

However, according to staff at the Office of the Attorney General, the definition of “child-serving agency” in HB 1301-substitute means that the ombudsman’s authority “to protect the rights and welfare of a child” (§ 2.2-442) would extend to a much broader population of children and include entities such as local school divisions. Virginia’s school-age population was approximately 1.6 million as of July 2018. This expands the fiscal impact of the bill.

To estimate the fiscal impact of HB 1301-substitute, this analysis assumes two possible scenarios for the ombudsman’s authority and jurisdiction:

- Scenario A – the ombudsman’s authority extends to protecting the rights and welfare of any child involved with child protective services, in the foster care system, or in an adoptive home as expressed in § 2.2-439
- Scenario B (current version of HB 1301-substitute) – the ombudsman’s authority extends to all children covered in Scenario A as well as protecting the rights and welfare of any child under the “jurisdiction, control, or supervision” of a child-serving agency, including local school divisions as expressed in § 2.2-442

Clarifying language regarding the ombudsman’s powers (§ 2.2-442) would be appropriate if the intent is to concentrate the ombudsman’s authority on children involved with child protective services, foster care, or adoption.

Fiscal impact, Scenario A

The estimated fiscal impact of HB 1301-substitute would be \$416,000 (general funds) in FY21 and \$479,500 (general funds) in FY22 if the Office of the Children’s Ombudsman’s authority were concentrated only on children involved in or adopted from the child welfare system. This is within the range of a House budget amendment that has been approved for this purpose. The office is expected to require a minimum of 5 positions to fulfill its responsibilities. This is based on information provided by VDSS staff and staff of the Michigan Office of Children’s Ombudsman, after which HB 1301-substitute is largely modeled.¹ These positions would include

- one children’s ombudsman,
- two investigative analysts,

¹ Michigan’s Office of Children’s Ombudsman is required to investigate all deaths of children occurring within Michigan’s child welfare system, which increases the staffing needs for the office. HB 1301, as introduced, would have included this requirement. HB 1301-substitute was modified to indicate that the ombudsman may investigate child deaths occurring within the child welfare system meeting certain criteria, but the ombudsman would not be required to do so.

- one intake analyst, and
- one part-time administrative specialist.

At least two investigative analysts (“investigators”) would be required for the Office of the Children’s Ombudsman to perform its duties, according to VDSS staff and staff in the Michigan Office of Children’s Ombudsman. This minimum staffing level appears reasonable given the existing volume of similar inquiries received by the Family Services Constituent Services Unit at VDSS.²

At least one full-time intake specialist would be necessary for the office to function effectively. The House budget amendment assumes one full-time position would be responsible for both intake and administrative functions. However, staff of the Michigan Office of Children’s Ombudsman emphasized that an effective intake process—which is needed to make informed decisions about which cases to open and prioritize—requires analytical skills and procedures that go beyond simply logging initial complaints. Michigan staff also noted that the biggest “bottleneck” in their process is intake, for which their office is equipped with two full-time intake positions. Therefore, Michigan’s experience suggests that it would be unreasonable to expect one position to be responsible for both intake and office administration.

These staffing levels would require the support of one part-time administrative specialist.

The total number of needed positions could increase as awareness of the office grows, and the volume of complaints increases. HB 1301-substitute would require the children’s ombudsman to report on the activities of the office at least annually to the governor and the General Assembly. This would help provide transparency in workload and associated staffing needs in a timely manner.

² The Family Services Constituent Services Unit at VDSS, comprising 4 full-time staff, received 1,216 inquiries related to children’s protective services, foster care, and adoption services throughout the state in calendar year 2019.

TABLE 1
Estimated fiscal impact for Scenario A

	FY21	FY22	FY23
Personnel costs (salary and benefits)^a	\$306,000 (4.5 FTE)	\$407,000 (4.5 FTE)	\$407,000 (4.5 FTE)
<i>Ombudsman</i>	\$105,000 1 FTE	\$140,000 1 FTE	\$140,000 1 FTE
<i>Investigators</i>	\$126,000 2 FTE	\$168,000 2 FTE	\$168,000 2 FTE
<i>Intake specialist</i>	\$63,000 1 FTE	\$84,000 1 FTE	\$84,000 1 FTE
<i>Administrative (office services)</i>	\$12,000 .5 FTE	\$15,000 .5 FTE	\$15,000 .5 FTE
Non-personnel costs (office infrastructure, operating and IT costs, publishing costs)^b	\$110,000	\$72,500	\$72,500
ESTIMATED TOTAL COSTS	\$416,000	\$479,500	\$479,500

SOURCE: JLARC staff analysis of estimates provided by the Department of Planning and Budget.

^a: Consistent with the fiscal impact statements for previous versions of HB 1301, assumes 18 pay periods of compensation for FY21 due to time expected to conduct hiring process and fully staff the office.

^b: Assumes \$37,500 in costs for furniture and equipment in FY21 only.

Fiscal impact, Scenario B

The estimated fiscal impact would be higher under the current version of HB 1301-substitute, which would extend the authority of the Office of the Children's Ombudsman beyond children involved in or adopted from the child welfare system. It is not possible to accurately estimate how many more complaints would be received under this broader authority. However, it is likely that the ombudsman would receive some complaints related to concerns about the rights or welfare of children based on their experiences in local school divisions. To illustrate the potential fiscal impact:

- If the office required one additional investigator, the estimated total cost (including non-personnel costs per FTE) would be \$499,000 (general funds) in FY21 and \$576,000 (general funds) in FY22 and FY23.
- If the office required two additional investigators, the estimated total costs would be \$582,000 (general funds) in FY21 and \$672,500 (general funds) in FY22 and FY23.
- If the office required two additional investigators and one additional intake specialist, the estimated total costs would be \$665,000 (general funds) in FY21 and \$769,000 (general funds) in FY22 and FY23.

Budget amendment necessary? Yes; amendment already approved by House
Appropriations Committee

Agencies affected: Department of Social Services, local departments of social services, child-placing agencies, child-caring institutions; other agencies (Department of Health; Department of Behavioral Health and Developmental Services; Department of Education; Department of Juvenile Justice; Office of Children's Services); local entities receiving funding from any of the above

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