

House Engrossed Senate Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

CHAPTER 370

SENATE BILL 1407

AN ACT

AMENDING TITLE 41, CHAPTER 8, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1376.01; MAKING AN APPROPRIATION; RELATING TO THE OMBUDSMAN-CITIZENS AIDE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 41, chapter 8, article 5, Arizona Revised Statutes,
3 is amended by adding section 41-1376.01, to read:

4 41-1376.01. Additional powers and duties; definitions

5 A. IN ADDITION TO THE POWERS AND DUTIES PRESCRIBED IN SECTION 41-1376,
6 THE OMBUDSMAN-CITIZENS AIDE SHALL APPOINT TWO ASSISTANTS, ONE OF WHOM SHALL
7 BE AN ATTORNEY, TO HELP THE OMBUDSMAN-CITIZENS AIDE INVESTIGATE COMPLAINTS
8 RELATING TO PUBLIC ACCESS LAWS INVOLVING AN AGENCY. THE ASSISTANTS SHALL
9 TRAIN PUBLIC OFFICIALS AND EDUCATE THE PUBLIC ON THE RIGHTS OF THE PUBLIC AND
10 THE RESPONSIBILITIES OF PUBLIC AGENCIES UNDER THE PUBLIC ACCESS LAWS. THE
11 ASSISTANTS SHALL PREPARE INTERPRETIVE AND EDUCATIONAL MATERIALS AND PROGRAMS
12 IN COOPERATION WITH THE OMBUDSMAN-CITIZENS AIDE AND SHALL DISTRIBUTE TO
13 ELECTED OR APPOINTED PUBLIC OFFICIALS THE PUBLIC ACCESS LAWS AND EDUCATIONAL
14 MATERIALS CONCERNING THE PUBLIC ACCESS LAWS.

15 B. THE ANNUAL REPORT OF THE OMBUDSMAN-CITIZENS AIDE SHALL INCLUDE THE
16 FOLLOWING INFORMATION ABOUT PUBLIC ACCESS:

17 1. THE NUMBER OF INQUIRIES THAT ARE RECEIVED FROM THE PUBLIC, THE
18 MEDIA AND GOVERNMENT AGENCIES.

19 2. THE NUMBER OF INQUIRIES THAT ARE RECEIVED ABOUT STATE AGENCIES,
20 COUNTY AGENCIES, CITY OR TOWN AGENCIES, SCHOOL DISTRICTS AND OTHER LOCAL
21 JURISDICTIONS.

22 3. THE NUMBER OF REQUESTS THAT ARE RECEIVED CONCERNING PUBLIC RECORDS
23 AND PUBLIC MEETINGS.

24 4. THE NUMBER OF INVESTIGATIONS THAT ARE CONDUCTED AND THE RESULTS OF
25 THE INVESTIGATIONS.

26 C. FOR INVESTIGATIONS MADE PURSUANT TO THIS SECTION, THE
27 OMBUDSMAN-CITIZENS AIDE MAY:

28 1. MAKE INQUIRIES AND OBTAIN INFORMATION CONSIDERED NECESSARY SUBJECT
29 TO THE RESTRICTIONS IN SECTION 41-1377.

30 2. ENTER WITHOUT NOTICE TO INSPECT AGENCY PREMISES WITH AGENCY STAFF
31 ON THE PREMISES.

32 3. HOLD HEARINGS.

33 4. NOTWITHSTANDING ANY OTHER LAW, HAVE ACCESS TO ALL AGENCY RECORDS,
34 INCLUDING CONFIDENTIAL RECORDS, EXCEPT:

35 (a) SEALED COURT RECORDS WITHOUT A SUBPOENA.

36 (b) ACTIVE CRIMINAL INVESTIGATION RECORDS.

37 (c) RECORDS THAT COULD LEAD TO THE IDENTITY OF CONFIDENTIAL POLICE
38 INFORMANTS.

39 (d) ATTORNEY WORK PRODUCT AND COMMUNICATIONS THAT ARE PROTECTED UNDER
40 ATTORNEY-CLIENT PRIVILEGE.

41 (e) CONFIDENTIAL INFORMATION AS DEFINED IN SECTION 42-2001, EXCEPT AS
42 PROVIDED IN SECTION 42-2003, SUBSECTION M.

43 (f) INFORMATION PROTECTED BY SECTION 6103(d), 6103(p) OR 7213 OF THE
44 INTERNAL REVENUE CODE.

1 (g) CONFIDENTIAL INFORMATION RELATING TO SECTION 36-2903, SUBSECTION
2 I, SECTION 36-2917, SECTION 36-2932, SUBSECTION F OR SECTION 36-2972.

3 (h) CONFIDENTIAL INFORMATION RELATING TO SECTIONS 36-507, 36-509 AND
4 36-2220.

5 5. ISSUE SUBPOENAS IF NECESSARY TO COMPEL THE ATTENDANCE AND TESTIMONY
6 OF WITNESSES AND THE PRODUCTION OF BOOKS, RECORDS, DOCUMENTS AND OTHER
7 EVIDENCE TO WHICH THE OMBUDSMAN-CITIZENS AIDE MAY HAVE ACCESS PURSUANT TO
8 PARAGRAPH 4 OF THIS SUBSECTION. THE OMBUDSMAN-CITIZENS AIDE MAY ONLY ISSUE A
9 SUBPOENA IF THE OMBUDSMAN-CITIZENS AIDE HAS PREVIOUSLY REQUESTED TESTIMONY OR
10 EVIDENCE AND THE PERSON OR AGENCY TO WHICH THE REQUEST WAS MADE HAS FAILED TO
11 COMPLY WITH THE REQUEST IN A REASONABLE AMOUNT OF TIME.

12 D. IT IS CONTRARY TO THE PUBLIC POLICY OF THIS STATE FOR ANY AGENCY OR
13 ANY INDIVIDUAL ACTING FOR AN AGENCY TO TAKE ANY ADVERSE ACTION AGAINST AN
14 INDIVIDUAL IN RETALIATION BECAUSE THE INDIVIDUAL COOPERATED WITH OR PROVIDED
15 INFORMATION TO THE OMBUDSMAN-CITIZENS AIDE OR THE OMBUDSMAN-CITIZENS AIDE'S
16 STAFF.

17 E. FOR THE PURPOSES OF THIS SECTION:

18 1. "AGENCY" HAS THE SAME MEANING PRESCRIBED IN SECTION 41-1371 BUT
19 INCLUDES A "PUBLIC BODY" AS DEFINED IN SECTION 39-121.01, SUBSECTION A,
20 PARAGRAPH 2.

21 2. "PUBLIC ACCESS LAWS" MEANS:

22 (a) TITLE 39, CHAPTER 1.

23 (b) TITLE 38, CHAPTER 3, ARTICLE 3.1.

24 (c) ANY OTHER STATE STATUTE OR RULE GOVERNING ACCESS TO PUBLIC
25 MEETINGS OR PUBLIC RECORDS.

26 Sec. 2. Appropriation; purpose; exemption

27 A. The sum of \$185,000 and two FTEs is appropriated from the state
28 general fund in fiscal year 2006-2007 to the office of the ombudsman-citizens
29 aide for the purposes prescribed by this act.

30 B. The appropriation made in subsection A of this section is exempt
31 from the provisions of section 35-190, Arizona Revised Statutes, relating to
32 lapsing of appropriations.

33 Sec. 3. Effective date

34 This act is effective from and after December 31, 2006.

APPROVED BY THE GOVERNOR JUNE 21, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 21, 2006.