

(b) "Administrative act" includes every action (including decisions, omissions, recommendations, practices, or procedures) of an administrative agency.

SEC. 3. ESTABLISHMENT OF OFFICE.—The office of Ombudsman is hereby established as an independent agency of ----- [insert name of state, city, or other entity].

Comment: Whether the Ombudsman can be a wholly independent entity or must instead be included within the Executive or the Legislative Branch depends upon the local constitution or character. Organizational detachment is the desired estate if it can be achieved constitutionally.

SEC. 4. APPOINTMENT.—The ----- [insert title of chief executive] shall appoint the Ombudsman, subject to confirmation by two-thirds of the members of each chamber of the ----- [insert name of legislative body], present and voting.

Comment: In foreign countries the ombudsman has been elected by the legislature. The governmental structure in those countries differs, however, from the American pattern. Appointive officials, whatever their nature, are customarily chosen in American jurisdictions by the Chief Executive, subject sometimes to legislative confirmation. The present proposal contemplates confirmation by an unusually substantial vote in both chambers (if two exist) rather than in the Senate alone. This is intended to stress the "non-political" nature of the appointment and to reflect the need for the general acceptability of the person chosen. Whether the required majority be two-thirds of those voting or some other figure can, of course, be fixed in accord with local preference or precedent.

Some persons favor direct legislative selection, without participation by the Executive. Thus, a Florida bill proposes simply that the ombudsman is to be "appointed by agreement of the president of senate and the speaker of the house subject to confirmation by a majority of the members of each chamber of the legislature." A Connecticut bill provides that one or more candidates "shall be selected by the judiciary committee and reported to the general assembly," after which the ombudsman is to be "elected by a vote of either a majority of each major political party or a two-thirds majority of the general assembly." A more elaborate plan has been advanced in California. It envisages a "Joint Legislative Committee on Administrative Justice" composed of three senators and three representatives affiliated with each political party. If a party has fewer than three members in the Senate or Assembly, as the case may be, only one member of that party from that house will serve on the joint committee. The committee is to nominate the ombudsman by an absolute majority vote, and the nominee is to be "appointed to the office of Ombudsman by concurrent resolution of the Legislature."

All the plans emphasize the desirability of "de-politicalizing" the selection process.

The California plan contemplates that the joint committee will have a continuing existence and will be available for consultation by the ombudsman "as he deems necessary to the execution of his powers and duties." No matter how the office of ombudsman may be filled, some such provision in the legislature's own internal organization would be desirable so that the ombudsman can have a regular point of contact when needed.

SEC. 5. QUALIFICATIONS.—The Ombudsman shall be a person well equipped to analyze problems of law, administration, and public policy, and shall not be actively involved in partisan affairs.

Comment: Efforts to define the qualities sought in an ombudsman tend to result in a catalogue of human virtues, leading one person to remark that if ever such a man were found, he would instantly be cast in bronze rather than appointed to a mundane office. Experience abroad points clearly to the desirability of the ombudsman's having a legal background because he must deal with many grievances that hinge on analysis of statutes and rulings. Requiring any specific experience or absolutely excluding any category of persons (for example, those who have recently been legislators or have held other office) seems undesirable. The consensus of opinion that will presumably support legislative confirmation should be an adequate barrier against unsuitable nominees.

SEC. 6. TERM OF OFFICE.—(a) The Ombudsman shall serve for a term of five years, unless removed by vote of two-thirds of the members of each of the two chambers of the ----- [insert name of legislative body] upon