



SB358 AMENDMENT REQUESTED (See page 2)

SB358 seeks creation of an Office of Seafood Industry Employment Ombudsman for the promotion and protection of employees and employers within the seafood industry. The proposal includes one issue of concern to VCOG: **The grant of near-total confidentiality to the Seafood Industry Employment Ombudsman and office personnel. (Lines 47-53)**

Ombudsman confidentiality

While lines 37-38 do anticipate the collection of data on use of the ombudsman office, the the proposed § 28.2-105.1, subsection D declares that the following material is "confidential" and not subject to disclosure under the Freedom of Information Act:

1. any employment or business records,
2. all memoranda, work product, and other material contained in case files, and
3. any communication between the ombudsman/office and a person receiving assistance in connection with the office's services.

Together, these three categories of records cloak the work of the office, making it harder to determine if the office is living up to the stated directive on Lines 22-23 that it "shall carry out their duties with impartiality and shall not serve as an advocate for any person or provide legal advice."

An ombudsman is in a unique position to directly assist individuals while also promoting principles of good and open government. Confidentiality is important to foster an atmosphere of candor necessary to resolve disputes, and individuals who take advantage of the services offered should not automatically surrender their privacy. But an ombudsman also has a responsibility to the public to demonstrate that those to come to it for help have been treated fairly.

As written, the bill tilts the balance too far in favor of the individual and the employer, sacrificing accountability of the ombudsman, the ombudsman's office and the seafood industry the ombudsman is attempting to aid.

Confidentiality should not be extended to "any" business record the office might have custody over. Both FOIA and the Uniform Commercial Code contemplate protection of financial information and trade secrets, but not of any and all business information.



Confidentiality should not be extended to “any” communication between the office and others using its service. Beyond the immediacy of a case file, there is a need for oversight into how and whether the office’s communication in the ordinary course of business is appropriate, correct, fair and impartial.

It should also be noted that attorney memoranda and work product are already covered by FOIA exemption 2.2-3705.1(3).

VCOG recommends the following reworking of the proposed subsection D:

D. Memoranda, work product, and materials, including communications between the Ombudsman or Office personnel and a person receiving assistance as provided by this section, contained in the case files for those persons receiving assistance as provided by this section shall not be subject to disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

Thank you for your time and attention. Please contact me at the number/email address below for questions or further discussion.

All the best,

A handwritten signature in black ink that reads "Megan Rhyne".