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Gardner
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CS FOR HOUSE BILL NO. 127(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to compensation of the ombudsman and to employment of staff by the**
2 **ombudsman under personal service contracts; relating to investigation by the**
3 **ombudsman on the legislature's motion or by the ombudsman's motion; relating to**
4 **notice by the ombudsman to a complainant; relating to disclosure by an agency to the**
5 **ombudsman of communications subject to attorney-client and attorney work-product**
6 **privileges; relating to the privilege of the ombudsman not to testify and creating a**
7 **privilege under which the ombudsman is not required to disclose certain documents;**
8 **relating to procedures for procurement by the ombudsman; relating to the definition of**
9 **'agency' for purposes of the Ombudsman Act and providing jurisdiction of the**
10 **ombudsman over persons providing certain services to the state by contract or grant**
11 **and over instrumentalities of the state; and amending Rules 501 and 503, Alaska Rules**
12 **of Evidence."**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* **Section 1.** AS 24.55.060 is amended to read:

Sec. 24.55.060. Compensation. The ombudsman is entitled to receive an annual salary equal to a step in [A,] Range 26 on the salary schedule set out in AS 39.27.011(a) [FOR JUNEAU].

* **Sec. 2.** AS 24.55.070 is amended by adding a new subsection to read:

(d) Notwithstanding (c) of this section, staff appointed by the ombudsman may be employed under a personal services contract as provided by AS 24.10.060(f).

* **Sec. 3.** AS 24.55.120 is amended to read:

Sec. 24.55.120. Investigation on the ombudsman's motion. The ombudsman may investigate the administrative act of an agency if the chair of the Administrative Regulation Review Committee requests an investigation on behalf of the legislature or on the ombudsman's own motion if the ombudsman reasonably believes that it is an appropriate subject for investigation under AS 24.55.150.

* **Sec. 4.** AS 24.55.130(a) is amended to read:

(a) If the ombudsman decides not to investigate a complaint, the ombudsman shall inform the complainant of that decision and shall state the reasons. If the complainant consents to disclosure, the ombudsman shall disclose the name of the complainant and the fact that the ombudsman has declined to review the complaint to the chair of the Administrative Regulation Review Committee.

* **Sec. 5.** AS 24.55.130(c) is amended to read:

(c) Notice given under this section may be oral, but the ombudsman shall state in writing the reasons for not investigating a complaint to the chair, if requested by the chair of the Administrative Regulation Review Committee, or to any other complainant, if requested by the complainant.

* **Sec. 6.** AS 24.55.160(a) is amended to read:

(a) In an investigation, the ombudsman may

- (1) make inquiries and obtain information considered necessary;
- (2) enter without notice to inspect the premises of an agency, but only when agency personnel are present;
- (3) hold private hearings; and

(4) notwithstanding other provisions of law, have access at all times to records of every [STATE] agency, including confidential records, except sealed court records, production of which may only be compelled by subpoena, and except for records of active criminal investigations and records that could lead to the identity of confidential police informants.

* **Sec. 7.** AS 24.55.160 is amended by adding a new subsection to read:

(c) Disclosure by an agency to the ombudsman under this chapter of a communication that is subject to the attorney-client privilege, or attorney work-product privilege, does not waive the privilege as to any other person. The ombudsman may not disclose a privileged communication provided under this subsection.

* **Sec. 8.** AS 24.55.260 is repealed and reenacted to read:

Sec. 24.55.260. Ombudsman's privilege not to testify or disclose documents. (a) The ombudsman and staff of the ombudsman may not testify or be deposed in a judicial or administrative proceeding regarding matters coming to their attention in the exercise of their official duties, except as may be necessary to enforce the provisions of this chapter.

(b) The records of the ombudsman and staff of the ombudsman, including notes, drafts, and records obtained from an individual or agency during intake, review, or investigation of a complaint, and any reports not released to the public in accordance with AS 24.55.200, are not subject to disclosure or production in response to a subpoena or discovery in a judicial or administrative proceeding, except as the ombudsman determines may be necessary to enforce the provisions of this chapter. Disclosure by the ombudsman is subject to the restrictions on disclosure in AS 24.55.160 - 24.55.190.

* **Sec. 9.** AS 24.55.275 is amended to read:

Sec. 24.55.275. Contract procedures. The ombudsman shall adopt by regulation procurement procedures that are appropriate for the office of the ombudsman and that are similar to those adopted by the legislative council under AS 36.30.020, as they may be amended from time to time. The procedures shall [CONSISTENT WITH AS 36.30 TO] be followed by the office of the ombudsman in

contracting for professional and other services, supplies, construction, and office space. However, competitive principles in the procurement procedures adopted by the legislative council under AS 36.30.020 do [THE PROCEDURE FOR REQUESTS FOR PROPOSALS DOES] not apply to contracts for investigations under AS 24.55.100 [, AND THE OFFICE OF THE OMBUDSMAN SHALL COMPLY WITH THE FIVE PERCENT PREFERENCE UNDER AS 36.30.321(a)].

* **Sec. 10.** AS 24.55.330(2) is amended to read:

(2) "agency" includes a department, office, institution, corporation, authority, organization, commission, committee, instrumentality, council, or board of a municipality or in the executive, legislative, or judicial branches of the state government, and a department, office, institution, corporation, authority, organization, commission, committee, instrumentality, council, or board of a municipality or of the state government independent of the executive, legislative, and judicial branches, or a person under a contract with a state agency or a person who has been awarded a grant from a state agency to provide a prison, halfway house, or similar residential service on behalf of the Department of Corrections, to provide a juvenile correctional or detention facility, home, or work camp as authorized by AS 47.14.010 - 47.14.050, or to determine eligibility for a state program or benefit; it also includes an officer, employee, or member of an "agency" acting or purporting to act in the exercise of official duties, but does not include the governor, the lieutenant governor, a member of the legislature, the victims' advocate, the staff of the office of victims' rights, a justice of the supreme court, a judge of the court of appeals, a superior court judge, a district court judge, a magistrate, a member of a city council or borough assembly, an elected city or borough mayor, or a member of an elected school board;

* **Sec. 11.** AS 36.90 is amended by adding a new section to read:

Sec. 36.90.310. Ombudsman's jurisdiction. A contract between the state and a person providing a service in AS 24.55.330(2) shall include a provision that the person is subject to the jurisdiction of the office of the ombudsman as provided in AS 24.55.

* **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 INDIRECT COURT RULE AMENDMENTS. (a) The change made to
3 AS 24.55.160(c), added by sec. 7 of this Act, has the effect of changing Rules 501 and 503,
4 Alaska Rules of Evidence, by clarifying that disclosure by an agency to the ombudsman under
5 AS 24.55 of a communication that is subject to the attorney-client privilege or attorney work-
6 product privilege does not waive the privilege as to any other person and that the ombudsman
7 has a privilege not to testify or disclose documents as provided under AS 24.55.260, added by
8 sec. 8 of this Act, and may not be made to disclose a communication provided by an agency
9 to the ombudsman that is subject to the attorney-client privilege or attorney work-product
10 privilege.

11 (b) The change made by sec. 8 of this Act has the effect of changing Rule 501, Alaska
12 Rules of Evidence, by clarifying that the ombudsman and the staff of the ombudsman have a
13 privilege not to testify or disclose or produce records in a judicial or administrative
14 proceeding, except as provided under AS 24.55.160 - 24.55.200.

15 * **Sec. 13.** The uncoded law of the State of Alaska is amended by adding a new section to
16 read:

17 APPLICABILITY. Sections 10 and 11 of this Act apply to contracts or grants entered
18 into after January 1, 2015.

19 * **Sec. 14.** The uncoded law of the State of Alaska is amended by adding a new section to
20 read:

21 CONDITIONAL EFFECT. (a) AS 24.55.160(c), added by sec. 7 of this Act, takes
22 effect only if sec. 12(a) of this Act receives the two-thirds majority vote of each house
23 required by art. IV, sec. 15, Constitution of the State of Alaska.

24 (b) Section 8 of this Act takes effect only if sec. 12(b) of this Act receives the two-
25 thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
26 Alaska.