

28-LS0088\D
Gardner
3/19/14

CS FOR HOUSE BILL NO. 127(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY 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 disclosure by an agency to the
3 ombudsman of communications subject to attorney-client and attorney work-product
4 privileges; relating to the privilege of the ombudsman not to testify and creating a
5 privilege under which the ombudsman is not required to disclose certain documents;
6 relating to procedures for procurement by the ombudsman; and amending Rules 501
7 and 503, Alaska Rules of Evidence."

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

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

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

13 * 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 24.55.160(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. 4.** 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* **Sec. 5.** AS 24.55.260 is repealed and reenacted to read: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.

1 Disclosure by the ombudsman is subject to the restrictions on disclosure in
2 AS 24.55.160 - 24.55.190.

3 * Sec. 6. AS 24.55.275 is amended to read:

4 Sec. 24.55.275. **Contract procedures.** The ombudsman shall adopt by
5 regulation procurement procedures that are appropriate for the office of the
6 ombudsman and that are similar to those adopted by the legislative council under
7 AS 36.30.020, as they may be amended from time to time. The procedures shall
8 [CONSISTENT WITH AS 36.30 TO] be followed by the office of the ombudsman in
9 contracting for professional and other services, supplies, construction, and office
10 space. However, competitive principles in the procurement procedures adopted
11 by the legislative council under AS 36.30.020 do [THE PROCEDURE FOR
12 REQUESTS FOR PROPOSALS DOES] not apply to contracts for investigations
13 under AS 24.55.100 [, AND THE OFFICE OF THE OMBUDSMAN SHALL
14 COMPLY WITH THE FIVE PERCENT PREFERENCE UNDER AS 36.30.321(a)].

15 * Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

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

26 (b) The change made by sec. 5 of this Act has the effect of changing Rule 501, Alaska
27 Rules of Evidence, by clarifying that the ombudsman and the staff of the ombudsman have a
28 privilege not to testify or disclose or produce records in a judicial or administrative
29 proceeding, except as provided under AS 24.55.160 - 24.55.200.

30 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 CONDITIONAL EFFECT. (a) AS 24.55.160(c), added by sec. 4 of this Act, takes
2 effect only if sec. 7(a) of this Act receives the two-thirds majority vote of each house required
3 by art. IV, sec. 15, Constitution of the State of Alaska.

4 (b) Section 5 of this Act takes effect only if sec. 7(b) of this Act receives the two-
5 thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
6 Alaska.