



Chapter 55. Office of the Ombudsman

Article

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Legislative history reports. -- For conference committee letter of intent and analysis of ch. 53, SLA 1975 (FCCS HCS CSSB 1), see 1975 Senate Journal, pp. 601-603.

Article 1. Organization.

Section

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Sec. 24.55.010. Office of the ombudsman. There is created in the legislative branch of the state the office of the ombudsman. (§ 1 ch 32 SLA 1975)

Sec. 24.55.020. Appointment of the ombudsman. (a) A candidate for appointment as the ombudsman shall be nominated by the ombudsman selection committee composed of three members of the senate appointed by the president of the senate and three members of the house of representatives appointed by the speaker of the house. One member of the minority party caucus in each house shall be appointed to the selection committee.

(b) The ombudsman selection committee shall examine persons to serve as ombudsman regarding their qualifications and ability and shall place the name of the person selected in nomination. The appointment is effective if the nomination is approved by a roll call vote of two-thirds of the members of the legislature in joint session and approved by the governor. However, the governor may veto the appointment and return it, with a statement of objections, to the legislature. Upon receipt of a veto message the legislature shall meet immediately in joint session and reconsider approval of the vetoed appointment. The vetoed appointment becomes effective by an affirmative vote of two-thirds of the membership of the legislature in joint session. The vote on the appointment and on reconsideration of a vetoed appointment shall be entered in the journals of both houses.

(c) The appointment of the ombudsman becomes effective if, while the legislature is in session, the governor neither approves nor vetoes it within 15 days, Sundays excepted, after its delivery to the governor. If the legislature is not in session and the governor neither approves nor

veto the appointment within 20 days, Sundays excepted, after its delivery to the governor, the appointment becomes effective. (§ 1 ch 32 SLA 1975)

Sec. 24.55.030. Qualifications; prohibitions against political activity. (a) A person may not serve as ombudsman

(1) within one year of the last day on which the person serviced as a member of the legislature;

(2) while the person is a candidate for or holds any other national, state, or municipal office; nor may the ombudsman become a candidate for national, state or municipal office until one year has elapsed from the date the ombudsman vacates the office of ombudsman;

(3) while the person is engaged in any other occupation for which the person receives compensation;

(4) unless the person is at least 21 years of age and is a qualified voter who has been a resident of the state for at least three years.

(b) It is essential that the nonpartisan nature, integrity and impartiality of the ombudsman's functions and services be maintained. The ombudsman and members of the staff of the ombudsman may not join, support or otherwise participate in a partisan political organization, faction or activity, including but not limited to the making of political contributions. However, this subsection does not restrict the ombudsman or members of the staff of the ombudsman from expressing private opinion, registering as to party, or voting. (§ 1 ch 32 SLA 1975)

Sec. 24.55.040. Term of office. (a) The term of office of the ombudsman is five years. An ombudsman may be reappointed but may not serve for more than three terms.

(b) If the term of an ombudsman expires without the appointment of a successor under this chapter, the incumbent ombudsman may continue in office until a successor is appointed. If the ombudsman dies, resigns, becomes ineligible to serve, or is removed or suspended from office, the person appointed as acting ombudsman under AS 24.55.070(a) serves until a new ombudsman is appointed for a full term. (§ 1 ch 32 SLA 1975; am § 1 ch 71 SLA 1990)

Effect of amendments. -- The 1990 amendment substituted "person appointed as" for "deputy ombudsman becomes" and inserted "under AS 24.55.070(a) serves" in the second sentence of subsection (b).

Sec. 24.55.050. Removal. The legislature, by a concurrent resolution adopted by a roll call vote of two-thirds of the members in each house entered in the journal, may remove or suspend the ombudsman from office, but only for neglect of duty, misconduct, or disability (§ 1 ch 32 SLA 1975)

Sec. 24.55.060. Compensation. The ombudsman is entitled to receive an annual salary equal to Step A, Range 26 on the salary schedule set out in AS 39.27.011(a) for Juneau. (§ 1 ch 32 SLA 1975; am § 5 ch 21 SLA 1987)

Effect of amendments. -- The 1987 amendment substituted "Step A, Range 26 on the salary schedule set out in AS 39.27.011(a) for Juneau" for "that of a superior court judge."

Sec. 24.55.070. Staff and delegation. (a) The ombudsman shall appoint a person to serve as acting ombudsman in the absence of the ombudsman. The ombudsman shall also appoint assistants and clerical personnel necessary to carry out the provisions of this chapter.

(b) The ombudsman may delegate to the assistants any of the ombudsman's duties except those specified in AS 24.55.190 and 24.55.200, however, during the ombudsman's absence from the principal business offices, the ombudsman may delegate the duties specified in AS 24.55.190 and 24.55.200 to the acting ombudsman for the duration of the absence. The duties specified in AS 24.55.190 and 24.55.200 shall be performed by the acting ombudsman when serving under AS 24.55.040(b).

(c) The ombudsman and the staff appointed by the ombudsman are in the exempt service under AS 39.25.110 and are not subject to the employment policies under AS 24.10 or AS 24.20. (§ 1 ch 32 SLA 1975; am § 6 ch 21 SLA 1987; am §§ 2, 3 ch 71 SLA 1990)

Effect of amendments. -- The 1987 amendment added "and are not subject to the employment policies under AS 24.10 or AS 24.20" at the end of subsection (c).

The 1990 amendment, in subsection (a), rewrote the first sentence, which formerly read "The ombudsman may appoint a deputy ombudsman"; and in subsection (b), deleted "deputy or" preceding "assistants" and substituted "acting ombudsman" for "deputy ombudsman" and deleted "as acting ombudsman" following "serving" in the second sentence.

Sec. 24.55.080. Office facilities and administration. (a) Subject to restrictions and limitations imposed by the executive director of the Legislative Affairs Agency, the administrative facilities and services of the Legislative Affairs Agency, including computer, data processing, and teleconference facilities, may be made available to the ombudsman to be used in the management of the office of the ombudsman and to carry out the purposes of this chapter.

(b) The salary and benefits of the ombudsman and the permanent staff of the ombudsman shall be paid through the same procedures used for payment of salaries and benefits of other permanent legislative employees.

(c) The ombudsman shall submit a budget for each fiscal year to the Alaska Legislative Council and the council shall annually submit an estimated budget to the governor for information purposes in the preparation of the executive budget. After reviewing and approving, with or without modifications, the budget submitted by the ombudsman, the council shall submit the approved budget to the finance committees of the legislature. (§ 1 ch 32 SLA 1975; am §§ 4, 5 ch 71 SLA 1990)

Effect of amendments. -- The 1990 amendment rewrote subsection (a); and in subsection (c) substituted "Alaska Legislative Council and the council" for "finance committees for the legislature and" in the first sentence and added the second sentence.

Sec. 24.55.090. Procedure. (a) The ombudsman shall, by regulations adopted under the Administrative Procedure Act (AS 44.62), establish procedures for receiving and processing complaints, conducting investigations, reporting findings, and ensuring that confidential information obtained by the ombudsman in the course of an investigation will not be improperly disclosed.

(b) The ombudsman may not charge fees for the submission or investigation of complaints. (§ 1 ch 32 SLA 1975; am § 6 ch 71 SLA 1990)

Effect of amendments. -- The 1990 amendment divided the section into subsections; substituted the language beginning "reported findings, and ensuring that confidential information" for "and related findings" at the end of subsection (a); and deleted "However" from the beginning of subsection (b).

Article 2. Jurisdiction and Initiation of Investigations.

Section

100. Jurisdiction

110. Investigation of complaints

120. Investigation on the ombudsman's motion

Section

130. Notice to complainant

140. Notice to the agency

Sec. 24.55.100 Jurisdiction. (a) The ombudsman has jurisdiction to investigate the administrative acts of agencies.

(b) The ombudsman may exercise the ombudsman's powers without regard to the finality of an administrative act. (§ 1 ch 32 SLA 1975)

Sec. 24.55.110. Investigation of complaints. The ombudsman shall investigate any complaint that is an appropriate subject for investigation under AS 24.55.150, unless the ombudsman reasonably believes that

- (1) there is presently available an adequate remedy for the grievance stated in the complaint;
 - (2) the complaint relates to a matter that is outside the jurisdiction of the ombudsman;
 - (3) the complaint relates to an administrative act of which the complainant has had knowledge for an unreasonable length of time before the complaint was submitted;
 - (4) the complainant does not have a sufficient personal interest in the subject matter of the complaint;
 - (5) the complaint is trivial or made in bad faith;
 - (6) the resources of the ombudsman's office are insufficient for adequate investigation.
- (§ 1 ch 32 SLA 1975)

Sec. 24.55.120. Investigation on the ombudsman's motion. The ombudsman may investigate the administrative act of an agency on the ombudsman's own motion if the ombudsman reasonably believes that it is an appropriate subject for investigation under AS 24.55.150. (§ 1 ch 32 SLA 1975)

Sec. 24.55.130. Notice to complainant. (a) If the ombudsman decides not to investigate a complaint, the ombudsman shall inform the complainant of that decision and shall state the reasons.

(b) If the ombudsman decides to investigate a complaint, the ombudsman shall notify the complainant of the decision.

(c) Notice given under this section may be oral but the ombudsman shall state in writing the reasons for not investigating a complaint if requested by the complainant. (§ 1 ch 32 SLA 1975; am § 7 ch 71 SLA 1990)

Effect of amendments. -- The 1990 amendment added subsection (c).

Sec. 24.55.140. Notice to the agency. If the ombudsman decides to investigate a complaint, the ombudsman shall notify the agency of the intention to investigate unless the ombudsman believes that advance notice will unduly hinder the investigation or make it ineffectual. Notice given under this section may be oral or written, at the discretion of the ombudsman. (§ 1 ch 32 SLA 1975; am § 8 ch 71 SLA 1990)

Effect of amendments. -- The 1990 amendment added the second sentence.

Article 3. Investigations.**Section**

150. Appropriate subjects for investigation

Section

160. Investigative procedures

170. Powers

Sec. 24.55.150. Appropriate subjects for investigation. (a) An appropriate subject for investigation by the ombudsman is an administrative act of an agency which the ombudsman has reason to believe might be

- (1) contrary to law;
- (2) unreasonable, unfair, oppressive, arbitrary, capricious, an abuse of discretion, or unnecessarily discriminatory, even though in accordance with law;
- (3) based on a mistake of fact;
- (4) based in improper or irrelevant grounds;
- (5) unsupported by an adequate statement of reasons;
- (6) performed in an inefficient or discourteous manner; or
- (7) otherwise erroneous.

(b) The ombudsman may investigate to find a appropriate remedy. (§ 1 ch 32 SLA 1975)

Sec. 24.55.160. Investigation procedures. (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.

(b) The ombudsman shall maintain confidentiality with respect to all matters and identities of the complainants or witnesses coming before the ombudsman except insofar as disclosures may be necessary to enable the ombudsman to carry out duties and to support recommendations. However, the ombudsman may not disclose a confidential record obtained from an agency. (§ 1 ch 32 SLA 1975; am § 9 ch 71 SLA 1990)

Effect of amendments. -- The 1990 amendment added paragraph (a)(4), making related grammatical changes; and added the second sentence in subsection (b).

Opinions of attorney general. -- Insofar as the ombudsman has a legitimate governmental interest in access and he is not the "public," the ombudsman may be allowed access to personnel files, but only upon his assurance that the contents of the files will not, under any circumstances except an order of a court of competent jurisdiction, become public in whole or in part. February 28, 1984, Op. Atty' Gen.

Sec. 24.55.170. Powers. (a) Subject to the privileges that witnesses have in the courts of this state, the ombudsman may compel by subpoena, at a specified time and place, the

- (1) appearance and sworn testimony of a person who the ombudsman reasonably believes may be able to give information relating to a matter under investigation; and
- (2) production by a person of a record or object that the ombudsman reasonably believes may relate to the matter under investigation.

(b) If a person refuses to comply with a subpoena issued under (a) of this section, the superior court may, on application of the ombudsman, compel obedience by proceedings for contempt in the same manner as in the case of disobedience to the requirements of a subpoena issued by the court or refusal to testify in the court. (§ 1 ch 32 SLA 1975; am § 10 ch 71 SLA 1990)

Effect of amendments. -- The 1990 amendment made stylistic changes in subsection (a).

Opinions of attorney general. -- Insofar as the ombudsman has a legitimate governmental interest in access and he is not the "public," the ombudsman may be allowed access to personnel files, but only upon his assurance that the contents of the files will not, under any circumstances except an order of a court of competent jurisdiction, become public in whole or in part. February 28, 1984, Op. Atty' Gen.

Article 4. Procedure and Reports After Investigation.

Section

180. Consultation

190. Procedure after investigation

Section

200. Publication of recommendations

210. Notice to the complainant

Sec. 24.55.180. Consultation. Before giving an opinion or recommendation that is critical of an agency or person, the ombudsman shall consult with that agency or person. The ombudsman may make a preliminary opinion or recommendation available to the agency or person for review, but the preliminary opinion or recommendation is confidential and may not be disclosed to the public by the agency or person. (§ 1 ch 32 SLA 1975; am § 11 ch 71 SLA 1990)

Effect of amendments. -- The 1990 amendment made a stylistic change in the first sentence and added the second sentence.

Sec. 24.55.190. Procedure after investigation. (a) The ombudsman shall report the opinion and recommendations of the ombudsman to an agency if the ombudsman finds, after investigation, that

- (1) a matter should be further considered by the agency;
- (2) an administrative act should be modified or cancelled;
- (3) a statute or regulation on which an administrative act is based should be altered;
- (4) reasons should be given for an administrative act;
- (5) any other action should be taken by the agency;
- (6) there are no grounds for action by the agency; or
- (7) the agency's act was arbitrary or capricious, constituted an abuse of discretion, or was otherwise erroneous or not in accordance with the law.

(b) The ombudsman may request the agency to notify the ombudsman, within a specified time, of any action taken on the recommendations.

(c) The report provided under (a) of this section is confidential and may not be disclosed to the public by the agency. The ombudsman may disclose the report under AS 24.55.200 only after providing notice that the investigation has been concluded

- (1) to the agency; and
- (2) if the investigation was conducted in response to a complaint, to the complainant under AS 24.55.210. (§ 1 ch 32 SLA 1975; am § 12 ch 71 SLA 1990)

Effect of amendments. -- The 1990 amendment added subsection (c).

Sec. 24.55.200. Publication of recommendations. Within a reasonable amount of time after the ombudsman reports the opinion and recommendations to an agency the ombudsman may present the opinion and recommendations to the governor, the legislature, a grand jury, the public or any of these. The ombudsman shall include with the opinion any reply made by the agency. (§ 1 ch 32 SLA 1975)

Sec. 24.55.210. Notice to the complainant. After a reasonable time has elapsed, the ombudsman shall notify the complainant of the actions taken by the ombudsman and by the agency. (§ 1 ch 32 SLA 1975)

Article 5. Miscellaneous.**Section**

- 220. Misconduct by agency personnel
- 230. Annual report
- 240. Judicial review
- 250. Immunity of the ombudsman
- 260. Ombudsman's privilege not to testify

Section

- 270. Letters to or from ombudsman
- 275. Contract procedures
- 280. Time for judicial review of agency action
- 290. Penalty

Sec. 24.55.220. Misconduct by agency personnel. If the ombudsman believes there is a breach of duty or misconduct by an officer or employee of an agency in the conduct of the officer's or employee's official duties, the ombudsman shall refer the matter to the chief executive officer of the agency or, when appropriate, to a grand jury or to another appropriate official or agency. (§ 1 ch 32 SLA 1975)

Sec. 24.55.230. Annual report. The ombudsman shall submit to the legislature and the public an annual report of the ombudsman's activities under this chapter. (§ 1 ch 32 SLA 1975)

Sec. 24.55.240. Judicial review. A proceeding or decision of the ombudsman may be reviewed in superior court only to determine if it is contrary to the provisions of this chapter. (§ 1 ch 32 SLA 1975)

Sec. 24.55.250. Immunity of the ombudsman. A civil action may not be brought against the ombudsman or a member of the ombudsman's staff for anything done, said or omitted in performing the ombudsman's duties or responsibilities under this chapter. (§ 1 ch 32 SLA 1975)

Sec. 24.55.260. Ombudsman's privilege not to testify. The ombudsman and the staff of the ombudsman may not testify in a court 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. (§ 1 ch 32 SLA 1975)

Sec. 24.55.270. Letters to or from ombudsman. A letter to the ombudsman from a person held in custody by an agency shall be forwarded immediately, unopened, to the ombudsman. A letter from the ombudsman to a person held in custody by an agency shall be delivered immediately, unopened, to the person. (§ 1 ch 32 SLA 1975)

Sec. 24.55.275. Contract procedures. The ombudsman shall adopt by regulation procedures consistent with AS 36.30 to be followed by the office of the ombudsman in contracting for services. However, the procedure for requests for proposals does not apply to contracts for investigations under AS 24.55.100. (§ 4 ch 144 SLA 1982; am § 23 ch 106 SLA 1986)

Effect of amendments. -- The 1986 amendment, effective January 1, 1988, substituted "AS 36.30" for "AS 24.34" in the first sentence.

Sec. 24.55.280. Time for judicial review of agency action. This chapter in no way extends the time limit in which judicial review of agency action must be sought. (§ 1 ch 32 SLA 1975)

Sec. 24.55.290. Penalty. A person who willfully hinders the lawful actions of the ombudsman or the staff of the ombudsman, or who willfully refuses to comply with their lawful demands, or who willfully violates AS 24.55.270, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000. (§ 1 ch 32 SLA 1975)

Article 6. General Provisions.

Section

300. Administrative Procedure Act

310. Conflict of interest

320. Municipalities

Section

330. Definitions

340. Short title

Sec. 24.55.300. Administrative Procedure Act. The administrative acts of the ombudsman are not subject to the provisions of the Administrative Procedure Act (AS 44.62), except as provided in AS 24.55.090. (§ 1 ch 32 SLA 1975)

Sec. 24.55.310. Conflict of interest. The ombudsman, the acting ombudsman and their professional staff are subject to AS 39.50 (conflict of interest). (§ 1 ch 32 SLA 1975; am § 13 ch 71 SLA 1990)

Effects of amendments. -- The 1990 amendment substituted "acting ombudsman" for "deputy ombudsman."

Sec. 24.55.320. Municipalities and school districts. A municipality or school district may elect to become subject to the jurisdiction of the ombudsman appointed under this chapter. If a municipality or school district so elects, it shall notify the ombudsman of that election and shall thereafter be considered an agency for the purposes of this chapter. If a municipality or school district subjects itself to the jurisdiction of the ombudsman, the municipality or school district shall pay its pro rata share of the cost of the operation of the office of the ombudsman based on the number of complaints or the case load emanating from that municipality or school district, as prescribed by the ombudsman. If a municipality or school district elects to remove itself from the jurisdiction of the ombudsman, it shall notify the ombudsman of that election and shall not thereafter be considered an agency for the purposes of this chapter. A municipality that elects to become subject to the jurisdiction of the ombudsman or to remove itself from that jurisdiction must do so by ordinance. A school district that elects to become subject to the jurisdiction of the ombudsman or to remove itself from that jurisdiction must do so by resolution. (§ 1 ch 32 SLA 1975; am § 14 ch 71 SLA 1990)

Effect of amendments. -- The 1990 amendment inserted "or school district" after "municipality" throughout the section; deleted "by ordinance" before "elect to become" in the first sentence; deleted "shall do so by ordinance" before "shall notify" in the fourth sentence; and added the final two sentences.

Sec. 24.55.330. Definitions. In this chapter

(1) "administrative act" means an action, omission, decision, recommendation, practice, policy, or procedure of an agency, but does not include the preparation or presentation of legislation or the substantive content of a judicial order, decision or opinion;

(2) "agency" includes a department, office, institution, corporation, authority, organization, commission, committee, 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, council or board of a municipality or of the state government independent of the executive, legislative and judicial branches; it also includes an officer, employee or member or an "agency" acting or purporting to act in the exercise of official duties, but does not include the governor, lieutenant governor, a member of the legislature, justice of the supreme court, judge of the court of appeals, a superior court judge, district court judge, magistrate, member of a city council or borough assembly, elected city or borough mayor, or a member of an elected school board.

(3) "record" means a document, paper, memorandum, book, letter, file, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card, or other item developed or received under law or in connection with

the transaction of official business, but does not include an attorney's work product, material that is confidential as a privileged communication between an attorney and client under rules adopted by the supreme court, or confidential oil and gas geological and geophysical data. (§ 1 ch 32 SLA 1975; am § 25 ch 12 ch SLA 1980; am § 88 ch 74 SLA 1985; am § 15 ch 71 SLA 1990)

Effect of amendments. -- The 1985 amendment, effective January 1, 1986, repealed paragraph (3), which defined "municipality."

Sec. 24.55.340. Short title. This chapter may be cited as The Ombudsman Act. (§ 1 ch 32 SLA 1975)