

28-LS0088\G
Gardner
2/13/14

CS FOR HOUSE BILL NO. 127()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY

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; relating to the definition of**
7 **'agency' for purposes of the Ombudsman Act and providing jurisdiction of the**
8 **ombudsman over persons providing certain services to the state by contract or grant**
9 **and over instrumentalities of the state; and amending Rules 501 and 503, Alaska Rules**
10 **of Evidence."**

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

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

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

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

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

7 * **Sec. 3.** AS 24.55.160 is amended by adding a new subsection to read:

8 (c) Disclosure by an agency to the ombudsman under this chapter of a
9 communication that is subject to the attorney-client privilege, or attorney work-
10 product privilege, does not waive the privilege as to any other person.

11 * **Sec. 4.** AS 24.55.260 is repealed and reenacted to read:

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

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

25 * **Sec. 5.** AS 24.55.275 is amended to read:

26 **Sec. 24.55.275. Contract procedures.** The ombudsman shall adopt by
27 regulation procurement procedures that are appropriate for the office of the
28 ombudsman and that are similar to those adopted by the legislative council under
29 AS 36.30.020, as they may be amended from time to time. The procedures shall
30 [CONSISTENT WITH AS 36.30 TO] be followed by the office of the ombudsman in
31 contracting for professional and other services, supplies, construction, and office

1 space. However, competitive principles in the procurement procedures adopted
2 by the legislative council under AS 36.30.020 do [THE PROCEDURE FOR
3 REQUESTS FOR PROPOSALS DOES] not apply to contracts for investigations
4 under AS 24.55.100 [, AND THE OFFICE OF THE OMBUDSMAN SHALL
5 COMPLY WITH THE FIVE PERCENT PREFERENCE UNDER AS 36.30.321(a)].

6 * Sec. 6. AS 24.55.330(2) is amended to read:

7 (2) "agency" includes a department, office, institution, corporation,
8 authority, organization, commission, committee, instrumentality, council, or board of
9 a municipality or in the executive, legislative, or judicial branches of the state
10 government, and a department, office, institution, corporation, authority, organization,
11 commission, committee, instrumentality, council, or board of a municipality or of the
12 state government independent of the executive, legislative, and judicial branches, or a
13 person under a contract with a state agency or a person who has been awarded a
14 grant from a state agency to provide a prison, halfway house, or similar
15 residential service on behalf of the Department of Corrections, to provide a
16 juvenile correctional or detention facility, home, or work camp as authorized by
17 AS 47.14.010 - 47.14.050, to provide a residential child care facility or a
18 residential psychiatric treatment center as defined in AS 47.32.900 to the extent
19 that the facility or treatment center accepts placement of juveniles committed to
20 the custody of the Department of Health and Social Services, or to determine
21 eligibility for a state program or benefit; it also includes an officer, employee, or
22 member of an "agency" acting or purporting to act in the exercise of official duties,
23 but does not include the governor, the lieutenant governor, a member of the
24 legislature, the victims' advocate, the staff of the office of victims' rights, a justice of
25 the supreme court, a judge of the court of appeals, a superior court judge, a district
26 court judge, a magistrate, a member of a city council or borough assembly, an elected
27 city or borough mayor, or a member of an elected school board;

28 * Sec. 7. AS 36.90 is amended by adding a new section to read:

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

1 AS 24.55.

2 * Sec. 8. The uncoded law of the State of Alaska is amended by adding a new section to
3 read:

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

13 (b) The change made by sec. 4 of this Act has the effect of changing Rule 501, Alaska
14 Rules of Evidence, by clarifying that the ombudsman and the staff of the ombudsman have a
15 privilege not to testify or disclose or produce records in a judicial or administrative
16 proceeding, except as provided under AS 24.55.160 - 24.55.200.

17 * Sec. 9. The uncoded law of the State of Alaska is amended by adding a new section to
18 read:

19 APPLICABILITY. Sections 6 and 7 of this Act apply to contracts or grants entered
20 into after January 1, 2015.

21 * Sec. 10. The uncoded law of the State of Alaska is amended by adding a new section to
22 read:

23 CONDITIONAL EFFECT. (a) AS 24.55.160(c), added by sec. 3 of this Act, takes
24 effect only if sec. 8(a) of this Act receives the two-thirds majority vote of each house required
25 by art. IV, sec. 15, Constitution of the State of Alaska.

26 (b) Section 4 of this Act takes effect only if sec. 8(b) of this Act receives the two-
27 thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
28 Alaska.