

HOUSE CS FOR SENATE BILL NO. 204(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 4/15/00
Referred: Finance

Sponsor(s): SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act extending the termination date of the Alaska Commission on Aging;
2 transferring the office of the long-term care ombudsman from the Alaska
3 Commission on Aging to the legislative branch; and providing for an effective
4 date."

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

6 * **Section 1.** AS 24 is amended by adding a new chapter to read:

7 **Chapter 57. Office of the Long-Term Care Ombudsman.**

8 **Sec. 24.57.010. Office of the long-term care ombudsman.** There is created
9 in the legislative branch of the state the office of the long-term care ombudsman.

10 **Sec. 24.57.020. Appointment of the long-term care ombudsman.** (a) A
11 candidate for appointment as the long-term care ombudsman shall be nominated by the
12 long-term care ombudsman selection committee composed of three members of the
13 senate appointed by the president of the senate and three members of the house of
14 representatives appointed by the speaker of the house. One member of a minority

1 party caucus in each house shall be appointed to the selection committee.

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

13 (c) The appointment of the long-term care ombudsman becomes effective if,
 14 while the legislature is in session, the governor neither approves nor vetoes it within
 15 15 days, Sundays excepted, after its delivery to the governor. If the legislature is not
 16 in session and the governor neither approves nor vetoes the appointment within 20
 17 days, Sundays excepted, after its delivery to the governor, the appointment becomes
 18 effective.

19 **Sec. 24.57.030. Term; removal.** (a) The term of office of the long-term care
 20 ombudsman is five years. An incumbent may be reappointed but may not serve for
 21 more than three terms. If the term of a long-term care ombudsman expires without the
 22 appointment of a successor under this chapter, the incumbent continues in office until
 23 a successor is appointed. If the long-term care ombudsman dies, resigns, becomes
 24 ineligible to serve, or is removed or suspended from office, the person appointed as
 25 acting long-term care ombudsman under AS 24.57.040 serves until a new long-term
 26 care ombudsman is appointed for a full term.

27 (b) The legislature, by a concurrent resolution adopted by a roll call vote of
 28 two-thirds of the members in each house entered in the journal, may remove or
 29 suspend the long-term care ombudsman from office, but only for neglect of duty,
 30 misconduct, or disability.

31 **Sec. 24.57.040. Staff; employment policies.** (a) The long-term care

1 ombudsman shall appoint a person to serve as acting long-term care ombudsman in the
 2 absence of the long-term care ombudsman. The long-term care ombudsman shall also
 3 appoint assistants and clerical personnel necessary to carry out this chapter.

4 (b) The long-term care ombudsman is a full-time position in the exempt
 5 service under AS 39.25.110, and neither the long-term care ombudsman nor the staff
 6 of the office of the long-term care ombudsman is subject to the employment policies
 7 under AS 24.10 or AS 24.20.

8 **Sec. 24.57.050. Financial interests.** Neither the long-term care ombudsman
 9 nor the staff of the office of the long-term care ombudsman may have a financial
 10 interest in a long-term care facility in the state.

11 **Sec. 24.57.060. Duties and powers of the long-term care ombudsman.** (a)
 12 The long-term care ombudsman shall investigate and resolve a complaint made by or
 13 on behalf of an older Alaskan who resides in a long-term care facility in the state if
 14 the complaint relates to a decision, action, or failure to act by a provider or a
 15 representative of a provider of long-term care services, or by a public agency or social
 16 services agency, that may adversely affect the health, safety, welfare, or rights of the
 17 older Alaskan.

18 (b) The long-term care ombudsman may investigate and resolve a complaint
 19 made by or on behalf of an older Alaskan relating to the long-term care or residential
 20 circumstances of the older Alaskan. Complaints under this subsection may relate to
 21 any issue not covered under (a) of this section, including the older Alaskan's landlord,
 22 senior citizen housing, a public assistance program, a public grant program for services
 23 to older Alaskans, public utilities, health care facilities, and health care providers.

24 (c) The long-term care ombudsman may

25 (1) subpoena witnesses, compel their attendance, require the production
 26 of evidence, administer oaths, and examine any person under oath in connection with
 27 a complaint described under (a) of this section; the powers described in this paragraph
 28 shall be enforced by the superior court;

29 (2) pursue administrative, legal, or other appropriate remedies on behalf
 30 of an older Alaskan who resides in a long-term care facility in the state.

31 (d) The long-term care ombudsman shall adopt regulations under AS 44.62

1 (Administrative Procedure Act) to implement this chapter.

2 **Sec. 24.57.070. Training and certification of staff.** (a) The long-term care
3 ombudsman shall hire and provide for the training and certification of office staff,
4 including volunteers and other representatives of the office of the long-term care
5 ombudsman. Training must include instruction in federal, state, and local laws and
6 policies relating to long-term care facilities in the state and in investigative techniques.
7 The long-term care ombudsman may require other appropriate training. The long-term
8 care ombudsman may decertify a person under this section for good cause in
9 accordance with regulations adopted by the ombudsman.

10 (b) An employee, volunteer, or other representative of the office of the long-
11 term care ombudsman may not investigate a complaint under AS 24.57.060 unless the
12 person has been certified as having completed training under (a) of this section and
13 approved by the long-term care ombudsman as qualified to investigate the complaint.

14 (c) The employees of the office of the long-term care ombudsman are in the
15 exempt service under AS 39.25.110.

16 **Sec. 24.57.080. Access to long-term care facilities, older Alaskans, and**
17 **records.** (a) A person may not deny access to a long-term care facility or to an older
18 Alaskan by the long-term care ombudsman or an employee, volunteer, or other
19 representative of the office of the long-term care ombudsman.

20 (b) Notwithstanding the provisions of AS 24.57.060(c)(1), the long-term care
21 ombudsman may obtain medical or other records of an older Alaskan who resides in
22 a long-term care facility in the state only with the consent of the older Alaskan or the
23 older Alaskan's legal guardian or, if the older Alaskan is unable or incompetent to
24 consent and does not have a legal guardian, only with a court order.

25 **Sec. 24.57.090. Confidentiality.** (a) Records obtained or maintained by the
26 long-term care ombudsman are confidential, are not subject to inspection or copying
27 under AS 09.25.110 - 09.25.120, and, except as provided in (b) of this section, may
28 be disclosed only at the discretion of the long-term care ombudsman.

29 (b) The identity of a complainant or an older Alaskan on whose behalf a
30 complaint is made may not be disclosed without the consent of the identified person
31 or the person's legal guardian, unless required by court order.

1 **Sec. 24.57.100. Immunity from liability.** (a) A person who, in good faith,
2 makes a complaint described in AS 24.57.060 is immune from civil or criminal
3 liability that might otherwise exist for making the complaint.

4 (b) The long-term care ombudsman, or an employee, volunteer, or other
5 representative of the office of the long-term care ombudsman, is immune from civil
6 or criminal liability for the good faith performance of official duties.

7 **Sec. 24.57.110. Interference with the long-term care ombudsman and**
8 **retaliation prohibited.** (a) A person may not intentionally interfere with the long-
9 term care ombudsman, or an employee, volunteer, or representative of the office of the
10 long-term care ombudsman, in the performance of official duties under AS 24.57.060.

11 (b) If a person makes a good faith complaint described in AS 24.57.060, an
12 employer or supervisor of the person, or a public or private agency or entity that
13 provides benefits, services, or housing to the person, may not discharge, demote,
14 transfer, reduce the pay or benefits or work privileges of, prepare a negative work
15 performance evaluation of, deny or withhold benefits or services, evict, or take other
16 detrimental action against the person because of the complaint. The person making
17 the complaint may bring a civil action for compensatory and punitive damages against
18 an employer, supervisor, agency, or entity that violates this subsection. In the civil
19 action, there is a rebuttable presumption that the detrimental action was retaliatory if
20 it was taken within 90 days after the complaint was made.

21 (c) A person who intentionally violates this section is guilty of a class B
22 misdemeanor.

23 **Sec. 24.57.120. Legal counsel for the long-term care ombudsman.** (a)
24 Except as provided in (b) of this section, the Legislative Affairs Agency shall provide
25 legal services, including advice and representation, in connection with any matter
26 relating to the powers, duties, and operation of the office of the long-term care
27 ombudsman, and in any legal action brought against the long-term care ombudsman
28 or an employee, volunteer, or other representative of the office of the long-term care
29 ombudsman. If the Legislative Affairs Agency cannot provide legal advice or
30 representation because of a conflict of interest or because of the limitation in (b) of
31 this section, the long-term care ombudsman may employ private legal counsel.

1 (b) The Legislative Affairs Agency may not provide legal services to the office
 2 of the long-term care ombudsman in connection with the office's power under
 3 AS 24.57.060(c)(2).

4 **Sec. 24.57.200. Definitions.** In this chapter,

5 (1) "long-term care facility" means an assisted living home that is
 6 required to be licensed under AS 47.33 and a nursing home as defined in
 7 AS 08.70.180;

8 (2) "older Alaskan" means a resident who is 60 years of age or older;

9 (3) "senior citizen housing" has the meaning given "senior housing" in
 10 AS 18.56.799.

11 * **Sec. 2.** AS 24.60.176(b) is amended to read:

12 (b) In this section, "appointing authority" means

13 (1) the legislative council for employees of the Legislative Affairs
 14 Agency and of the legislative council and for legislative employees not otherwise
 15 covered under this subsection;

16 (2) the Legislative Budget and Audit Committee for the legislative
 17 fiscal analyst and employees of the division of legislative finance, the legislative
 18 auditor and employees of the division of legislative audit, and employees of the
 19 Legislative Budget and Audit Committee;

20 (3) the appropriate finance committee for employees of the senate or
 21 house finance committees;

22 (4) the appropriate rules committee for employees of

23 (A) standing committees of the legislature, other than the
 24 finance committees;

25 (B) the senate secretary's office and the office of the chief clerk
 26 of the house of representatives; and

27 (C) house records and senate records;

28 (5) the legislator who made the hiring decision for employees of
 29 individual legislators; however, the legislator may request the appropriate rules
 30 committee to act in the legislator's stead;

31 (6) the ombudsman for employees of the office of the ombudsman,

1 other than the ombudsman, **and the long-term care ombudsman for employees of**
 2 **the office of the long-term care ombudsman, other than the long-term care**
 3 **ombudsman;**

4 (7) the legislature for the ombudsman **and the long-term care**
 5 **ombudsman.**

6 * **Sec. 3.** AS 24.60.250(c) is amended to read:

7 (c) In addition to the sanctions described in AS 24.60.260, if the Alaska Public
 8 Offices Commission finds that a legislative director has failed or refused to file a
 9 report under AS 24.60.200 by a deadline established in AS 24.60.210, it shall notify
 10 the Alaska Legislative Council or the Legislative Budget and Audit Committee, as
 11 appropriate. For the ombudsman **and the long-term ombudsman,** the Alaska
 12 Legislative Council shall be notified.

13 * **Sec. 4.** AS 24.60.990(a)(9) is amended to read:

14 (9) "legislative director" means the director of the legislative finance
 15 division, the legislative auditor, the director of the legislative research agency, the
 16 ombudsman, **the long-term care ombudsman,** the executive director of the Legislative
 17 Affairs Agency, and the directors of the divisions within the Legislative Affairs
 18 Agency;

19 * **Sec. 5.** AS 39.27.022(d) is amended to read:

20 (d) This section applies to employees of the legislature only if the committee
 21 responsible for adopting employment policies concerning the employee adopts a
 22 written policy that the section applies. This section applies to the employees of the
 23 office of the ombudsman only if the ombudsman adopts a policy that the section
 24 applies. **This section applies to the employees of the office of the long-term care**
 25 **ombudsman only if the long-term care ombudsman adopts a policy that the**
 26 **section applies.**

27 * **Sec. 6.** AS 39.90.140(3) is amended to read:

28 (3) "matter of public concern" means

29 (A) a violation of a state, federal, or municipal law, regulation,
 30 or ordinance;

31 (B) a danger to public health or safety;

1 (C) gross mismanagement, a substantial waste of funds, or a
2 clear abuse of authority; [OR]

3 (D) a matter accepted for investigation by the office of the
4 ombudsman under AS 24.55.100 or 24.55.320; or

5 **(E) a matter accepted for investigation by the office of the**
6 **long-term care ombudsman under AS 24.57.060(a);**

7 * **Sec. 7.** AS 44.21.230(c) is amended to read:

8 (c) The commission may not investigate, review, or undertake any
9 responsibility for the longevity bonus program under AS 47.45 or [, EXCEPT FOR
10 ACTIVITIES OF THE OFFICE OF THE LONG TERM CARE OMBUDSMAN,] the
11 Alaska Pioneers' Homes under AS 47.55.

12 * **Sec. 8.** AS 44.62.040(c) is amended to read:

13 (c) Before submitting the regulations and orders of repeal to the lieutenant
14 governor under (a) of this section, every state agency that by statute possesses
15 regulation making authority, except boards and commissions, [AND] the office of the
16 ombudsman, **and the office of the long-term care ombudsman,** shall submit to the
17 governor for review a copy of every regulation or order of repeal adopted by the
18 agency, except regulations and orders of repeal identified in (a)(1) - (2) of this section.
19 The governor may review the regulations and orders of repeal received under this
20 subsection. The governor may return the regulations and orders of repeal to the
21 adopting agency before they are submitted to the lieutenant governor for filing under
22 (a) of this section [,] (1) if they are inconsistent with the faithful execution of the laws,
23 or (2) to enable the adopting agency to respond to specific issues raised by the
24 Administrative Regulation Review Committee. The governor may not delegate the
25 governor's review authority under this subsection to a person other than the lieutenant
26 governor.

27 * **Sec. 9.** AS 44.66.010(a)(10)is amended to read:

28 (10) Alaska Commission on Aging (AS 44.21.200) -- June 30, **2004**
29 [2000];

30 * **Sec. 10.** AS 44.66.050(a) is amended to read:

31 (a) Before the termination, dissolution, continuation, or reestablishment of a

1 board or commission under AS 08.03.010 or AS 44.66.010, or of an agency program
 2 under AS 44.66.020 and 44.66.030, a committee of reference of each house, which
 3 shall be the standing committee of legislative jurisdiction as provided in the Uniform
 4 Rules of the Alaska State Legislature, shall hold one or more hearings to receive
 5 testimony from the public, the commissioner of the department having administrative
 6 responsibility for each named board, commission, or agency program, and the members
 7 of the board or commission involved. The hearings may be joint hearings. The
 8 committee shall also consider the proposed budget of the board, commission, or agency
 9 program, prepared in accordance with AS 37.07.050(f), and the performance audit of
 10 the activities of the board, commission, or agency program, prepared by the legislative
 11 audit division as prescribed in AS 24.20.271(1). The committee may consider any
 12 other report of the activities of the board, commission, or program, including but not
 13 limited to annual reports, summaries prepared by the Legislative Affairs Agency, and
 14 any evaluation or general report of the manner of conduct of activities of the board,
 15 commission, or agency program prepared by the office of the ombudsman **or by the**
 16 **office of the long-term care ombudsman.**

17 * **Sec. 11.** AS 44.66.050(c) is amended to read:

18 (c) A determination as to whether a board, [OR] commission, or agency
 19 program has demonstrated a public need for its continued existence must take into
 20 consideration the following factors:

21 (1) the extent to which the board, commission, or program has operated
 22 in the public interest;

23 (2) the extent to which the operation of the board, commission, or
 24 agency program has been impeded or enhanced by existing statutes, procedures, and
 25 practices that it has adopted, and any other matter, including budgetary, resource, and
 26 personnel matters;

27 (3) the extent to which the board, commission, or agency has
 28 recommended statutory changes that are generally of benefit to the public interest;

29 (4) the extent to which the board, commission, or agency has
 30 encouraged interested persons to report to it concerning the effect of its regulations and
 31 decisions on the effectiveness of service, economy of service, and availability of

1 service that it has provided;

2 (5) the extent to which the board, commission, or agency has
3 encouraged public participation in the making of its regulations and decisions;

4 (6) the efficiency with which public inquiries or complaints regarding
5 the activities of the board, commission, or agency filed with it, with the department
6 to which a board or commission is administratively assigned, [OR] with the office of
7 the ombudsman, **or with the long-term care ombudsman** have been processed and
8 resolved;

9 (7) the extent to which a board or commission that regulates entry into
10 an occupation or profession has presented qualified applicants to serve the public;

11 (8) the extent to which state personnel practices, including affirmative
12 action requirements, have been complied with by the board, commission, or agency to
13 its own activities and the area of activity or interest; and

14 (9) the extent to which statutory, regulatory, budgeting, or other
15 changes are necessary to enable the agency, board, or commission to better serve the
16 interests of the public and to comply with the factors enumerated in this subsection.

17 * **Sec. 12.** AS 44.99.240(2) is amended to read:

18 (2) "state agency" means

19 (A) a department, institution, board, commission, division,
20 authority, public corporation, or other administrative unit of the executive
21 branch, including the University of Alaska and the Alaska Railroad
22 Corporation;

23 (B) a committee, division, or administrative unit of the
24 legislative branch, including the Alaska Legislative Council, the leadership of
25 each house, [AND] the office of the ombudsman, **and the office of the long-**
26 **term care ombudsman;**

27 (C) an administrative unit of the judicial branch, including the
28 Alaska Judicial Council and the Commission on Judicial Conduct.

29 * **Sec. 13.** AS 47.24.010(f) is amended to read:

30 (f) A person listed in (a) of this section who reports to the **long-term** [LONG
31 TERM] care ombudsman under **AS 24.57.060** [AS 44.21.232], or to the Department

1 of Health and Social Services, that a vulnerable adult has been exploited, abused, or
 2 neglected in an out-of-home care facility is considered to have met the duty to report
 3 under (a) of this section.

4 * **Sec. 14.** AS 47.24.013(a) is amended to read:

5 (a) If a report received under AS 47.24.010 regards the abandonment,
 6 exploitation, abuse, neglect, or self-neglect of a vulnerable adult who is 60 years of
 7 age or older that is alleged to have been committed by or to have resulted from the
 8 negligence of the staff or a volunteer of an out-of-home care facility, including a
 9 facility licensed under AS 18.20, in which the vulnerable adult resides, and, if the
 10 Department of Health and Social Services licenses that type of facility, the Department
 11 of Administration shall transfer the report for investigation to the **long-term** [LONG
 12 TERM] care ombudsman under **AS 24.57.060** [AS 44.21.232] and the Department of
 13 Health and Social Services.

14 * **Sec. 15.** AS 47.24.013(c) is amended to read:

15 (c) Upon receipt of a report from the department under (a) or (b) of this
 16 section, the **long-term** [LONG TERM] care ombudsman and the Department of Health
 17 and Social Services shall

18 (1) conduct an investigation as appropriate under **AS 24.57.060**
 19 [AS 44.21.232] or this title, respectively;

20 (2) coordinate and cooperate in their responses to and investigations of
 21 the report if their jurisdictions overlap;

22 (3) provide the results of their actions or investigations to the central
 23 information and referral service of the department within 60 days after the receipt of
 24 the report.

25 * **Sec. 16.** AS 47.33.310(b) is amended to read:

26 (b) An assisted living home shall post in a prominent place in the home

27 (1) a copy of the rights set out in AS 47.33.300;

28 (2) the name, address, and phone number of the **long-term** [LONG
 29 TERM] care ombudsman **appointed** [HIRED] under **AS 24.57.020** [AS 44.21.231]
 30 and, if relevant to residents, of the advocacy agency for persons with a developmental
 31 disability or mental illness;

1 (3) the telephone number of an information or referral service for
2 vulnerable adults; and

3 (4) a copy of the grievance procedure established under AS 47.33.340.

4 * **Sec. 17.** REPEALER. AS 44.21.231, 44.21.232, 44.21.233, 44.21.234, 44.21.235,
5 44.21.236, 44.21.237, 44.21.238, 44.21.239, 44.21.240(2), 44.21.240(3), 44.21.240(4), and
6 44.21.240(5) are repealed.

7 * **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 TRANSITIONAL PROVISION FOR PAY LEVELS. (a) Notwithstanding other
10 provisions of this Act, if the person serving in the position of long-term care ombudsman
11 under AS 44.21.231 on June 30, 2000, is appointed as the first long-term care ombudsman
12 under sec. 19 of this Act, that person shall be compensated under AS 24.57 at the same salary
13 level at which the person was compensated on June 30, 2000.

14 (b) Notwithstanding other provisions of this Act, if a person serving as an employee
15 in the office of the long-term care ombudsman under AS 44.21.231 - 44.21.240 on June 30,
16 2000, is retained to serve as an employee with the same duties under the first long-term care
17 ombudsman appointed under sec. 19 of this Act, that person shall be compensated under
18 AS 24.57 at the same salary level at which the person was compensated on June 30, 2000.

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

21 INITIAL APPOINTMENT PROCESS. Notwithstanding sec. 21 of this Act, the
22 nomination and selection process may begin immediately under AS 24.57.020, enacted by sec.
23 1 of this Act, for appointment of the first long-term care ombudsman in the legislative branch.
24 Notwithstanding AS 24.57.020, enacted by sec. 1 of this Act, the first long-term care
25 ombudsman nominated by the selection committee may begin to serve immediately upon
26 nomination on July 1, 2000, whichever is later. The legislature shall meet in joint session
27 during the First Regular Session of the Twenty-Second Alaska State Legislature in order to
28 consider the nomination under the provisions of AS 24.57.020, enacted by sec. 1 of this Act,
29 and the nominee's authority to continue in office is governed thereafter by the terms of
30 AS 24.57.020, enacted by sec. 1 of this Act.

31 * **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section

1 to read:

2 TRANSFER OF RECORDS AND OTHER MATTERS. (a) Hearings, investigations,
3 and other proceedings pending under the long-term care ombudsman appointed under
4 AS 44.21.231 continue in effect and may be completed by the long-term care ombudsman
5 appointed under sec. 19 of this Act.

6 (b) Contracts, rights, labilities, and obligations created by the long-term care
7 ombudsman appointed under AS 44.21.231 and in effect on June 30, 2000, remain in effect
8 notwithstanding the enactment of this Act.

9 (c) Records, equipment, appropriations, and other property of the long-term care
10 ombudsman appointed under AS 44.21.231 shall be transferred to the long-term care
11 ombudsman appointed under sec. 19 of this Act.

12 * **Sec. 21.** Except as provided in sec. 22 of this Act, this Act takes effect July 1, 2000.

13 * **Sec. 22.** Sections 9 and 19 of this Act take effect immediately under AS 01.10.070(c).