

SENATE BILL NO. 72

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY SENATOR COGHILL BY REQUEST

Introduced: 3/11/13

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act clarifying that the Alaska Bar Association is an agency for purposes of
2 investigations by the ombudsman; relating to compensation of the ombudsman and to
3 employment of staff by the ombudsman under personal service contracts; providing that
4 certain records of communications between the ombudsman and an agency are not
5 public records; relating to disclosure by an agency to the ombudsman of
6 communications subject to attorney-client and attorney work-product privileges;
7 relating to informal and formal reports of opinions and recommendations issued by the
8 ombudsman; relating to the privilege of the ombudsman not to testify and creating a
9 privilege under which the ombudsman is not required to disclose certain documents;
10 relating to procedures for procurement by the ombudsman; relating to the definition of
11 'agency' for purposes of the Ombudsman Act and providing jurisdiction of the
12 ombudsman over persons providing certain services to the state by contract; and

1 **amending Rules 501 and 503, Alaska Rules of Evidence."**

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

3 * **Section 1.** AS 08.08.010 is amended by adding a new subsection to read:

4 (b) The Alaska Bar Association is an agency for purposes of AS 24.55.

5 * **Sec. 2.** AS 24.55.060 is amended to read:

6 **Sec. 24.55.060. Compensation.** The ombudsman is entitled to receive an
7 annual salary equal to **a** step **in** [A,] Range 26 on the salary schedule set out in AS
8 39.27.011(a) [FOR JUNEAU].

9 * **Sec. 3.** AS 24.55.070 is amended by adding a new subsection to read:

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

12 * **Sec. 4.** AS 24.55.160(b) is amended to read:

13 (b) The ombudsman shall maintain confidentiality with respect to all matters
14 and the identities of the complainants or witnesses coming before the ombudsman
15 except insofar as disclosures may be necessary to enable the ombudsman to carry out
16 duties and to support recommendations. However, the ombudsman may not disclose a
17 confidential record obtained from an agency. **Records of communication between**
18 **the ombudsman and an agency relating to an investigation by the ombudsman**
19 **under this chapter are not public records for purposes of AS 40.25.110 -**
20 **40.25.220.**

21 * **Sec. 5.** AS 24.55.160 is amended by adding a new subsection to read:

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

25 * **Sec. 6.** AS 24.55.180 is amended to read:

26 **Sec. 24.55.180. Consultation.** Before giving an opinion or recommendation
27 that is critical of an agency or person, the ombudsman shall consult with that agency
28 or person. **Before reporting an opinion or recommendation that is critical of an**
29 **agency under AS 24.55.190, the** [THE] ombudsman **shall** [MAY] make a
30 preliminary opinion or recommendation available to the agency or person for review,

1 but the preliminary opinion or recommendation is confidential and may not be
2 disclosed to the public by the agency or person.

3 * **Sec. 7.** AS 24.55 is amended by adding a new section to read:

4 **Sec. 24.55.185. Informal report after investigation.** (a) The ombudsman may
5 issue an informal report of the opinion and recommendations of the ombudsman to an
6 agency if the ombudsman finds a factor listed in AS 24.55.190(a)(1) - (7) and, under
7 regulations adopted by the ombudsman, finds that an informal report to the agency is
8 an appropriate remedy.

9 (b) The ombudsman may request the agency to notify the ombudsman, within
10 a specified time, of any action taken on recommendations provided under (a) of this
11 section.

12 (c) The report provided under (a) of this section is confidential and may not be
13 disclosed to the public by the agency. The ombudsman may publish a summary as
14 provided under (d) of this section and as provided in AS 24.55.200, only after
15 providing notice that the investigation has been concluded

16 (1) to the agency; and

17 (2) if the investigation was conducted in response to a complaint, to
18 the complainant under AS 24.55.210.

19 (d) Before disclosing a summary under (c) of this section, the ombudsman
20 shall provide the agency with reasonable advance notice of the planned disclosure and
21 a copy of the summary.

22 * **Sec. 8.** AS 24.55.190(a) is amended to read:

23 (a) **If the ombudsman has not issued an informal report under AS**
24 **24.55.185(a), the** [THE] ombudsman shall report the opinion and recommendations of
25 the ombudsman to an agency if the ombudsman finds, after investigation, that

26 (1) a matter should be further considered by the agency;

27 (2) an administrative act should be modified or cancelled;

28 (3) a statute or regulation on which an administrative act is based
29 should be altered;

30 (4) reasons should be given for an administrative act;

31 (5) any other action should be taken by the agency;

1 (6) there are no grounds for action by the agency; or

2 (7) the agency's act was arbitrary or capricious, constituted an abuse of
3 discretion, or was otherwise erroneous or not in accordance with the law.

4 * **Sec. 9.** AS 24.55.190(b) is amended to read:

5 (b) The ombudsman may request the agency to notify the ombudsman, within
6 a specified time, of any action taken on the **report provided under this section**
7 **[RECOMMENDATIONS]**.

8 * **Sec. 10.** AS 24.55.260 is repealed and reenacted to read:

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

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

22 * **Sec. 11.** AS 24.55.275 is amended to read:

23 **Sec. 24.55.275. Contract procedures.** The ombudsman shall adopt by
24 regulation **procurement** procedures **that are appropriate for the office of the**
25 **ombudsman and that are similar to those adopted by the legislative council under**
26 **AS 36.30.020, as they may be amended from time to time. The procedures shall**
27 **[CONSISTENT WITH AS 36.30 TO]** be followed by the office of the ombudsman in
28 contracting for **professional and other** services, **supplies, construction, and office**
29 **space**. However, **competitive principles in the procurement procedures adopted**
30 **by the legislative council under AS 36.30.020 do** **[THE PROCEDURE FOR**
31 **REQUESTS FOR PROPOSALS DOES]** not apply to contracts for investigations

1 under AS 24.55.100, and the office of the ombudsman shall comply with AS
2 36.30.170(b).

3 * **Sec. 12.** AS 24.55.330(2) is amended to read:

4 (2) "agency" includes a department, office, institution, corporation,
5 authority, organization, commission, committee, council, or board of a municipality or
6 in the executive, legislative, or judicial branches of the state government, and a
7 department, office, institution, corporation, authority, organization, commission,
8 committee, council, or board of a municipality or of the state government independent
9 of the executive, legislative, and judicial branches, or a person under a contract
10 with a state agency to provide a prison, halfway house, or similar residential
11 service on behalf of the Department of Corrections, to provide a juvenile
12 detention facility, treatment facility, or residential treatment program accepting
13 placement of juveniles committed to the custody of the Department of Health and
14 Social Services, or to determine eligibility for a state program or benefit; it also
15 includes an officer, employee, or member of an "agency" acting or purporting to act in
16 the exercise of official duties, but does not include the governor, the lieutenant
17 governor, a member of the legislature, the victims' advocate, the staff of the office of
18 victims' rights, a justice of the supreme court, a judge of the court of appeals, a
19 superior court judge, a district court judge, a magistrate, a member of a city council or
20 borough assembly, an elected city or borough mayor, or a member of an elected
21 school board;

22 * **Sec. 13.** AS 36.90 is amended by adding a new section to read:

23 **Sec. 36.90.310. Ombudsman's jurisdiction.** A contract between the state and
24 a person providing a service in AS 24.55.330(2) shall include a provision that the
25 person is subject to the jurisdiction of the office of the ombudsman as provided in AS
26 24.55.

27 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 INDIRECT COURT RULE AMENDMENTS. (a) The change made to AS
30 24.55.160(c), added by sec. 5 of this Act, has the effect of changing Rules 501 and 503,
31 Alaska Rules of Evidence, by clarifying that disclosure by an agency to the ombudsman under

1 AS 24.55 of a communication that is subject to the attorney-client privilege or attorney work-
2 product privilege does not waive the privilege as to any other person and that the ombudsman
3 has a privilege not to testify or disclose documents as provided under AS 24.55.260, added by
4 sec. 10 of this Act, and may not be made to disclose a communication provided by an agency
5 to the ombudsman that is subject to the attorney-client privilege or attorney work-product
6 privilege.

7 (b) The change made by sec. 10 of this Act has the effect of changing Rule 501,
8 Alaska Rules of Evidence, by clarifying that the ombudsman and the staff of the ombudsman
9 have a privilege not to testify or disclose or produce records in a judicial or administrative
10 proceeding, except as provided under AS 24.55.160 - 24.55.200.

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

13 APPLICABILITY. Sections 12 and 13 of this Act apply to contracts entered into after
14 January 1, 2015.

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

17 CONDITIONAL EFFECT. (a) AS 24.55.160(c), added by sec. 5 of this Act, takes
18 effect only if sec. 14(a) of this Act receives the two-thirds majority vote of each house
19 required by art. IV, sec. 15, Constitution of the State of Alaska.

20 (b) Section 10 of this Act takes effect only if sec. 14(b) of this Act receives the two-
21 thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
22 Alaska.