

Introduced: 2/24/66  
Referred: Judiciary and  
Finance

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1 IN THE HOUSE

2 HOUSE BILL NO. 450

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act creating the office of the public  
7 examiner; and providing for an effective  
8 date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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

11 CHAPTER 55. OFFICE OF THE PUBLIC EXAMINER.

12 ARTICLE 1. ORGANIZATION.

13 Sec. 24.55.010. OFFICE OF THE PUBLIC EXAMINER. There is  
14 created in the legislative branch of the state the office of  
15 the public examiner.

16 Sec. 24.55.020. APPOINTMENT OF THE PUBLIC EXAMINER. (a)

17 A candidate for appointment as the public examiner shall be  
18 selected by the public examiner selection committee composed  
19 of the president of the senate and a member of the senate  
20 appointed by him, the speaker of the house and a member of  
21 the house of representatives appointed by him, the chairman  
22 of the senate judiciary committee and the chairman of the  
23 house judiciary committee.

24 (b) The public examiner selection committee shall  
25 examine persons to serve as the public examiner regarding  
26 their qualifications and ability and shall place the name of  
27 the person selected in nomination before the legislature for  
28 appointment as the public examiner. The appointment of a  
29 person nominated as the public examiner by the committee is

1 effective if his candidacy is approved by a majority of the  
2 members of the legislature in joint session.

3 Sec. 24.55.030. QUALIFICATIONS. No person may serve  
4 as public examiner

5 (1) within two years of the last day on which he  
6 served as a member of the legislature;

7 (2) while he is a candidate for or holds any  
8 other state office; or

9 (3) while he is engaged in any other occupation  
10 for reward or profit.

11 Sec. 24.55.040. TERM OF OFFICE. The term of office  
12 of the public examiner is four years. A public examiner may  
13 be reappointed but may not serve more than three terms.

14 Sec. 24.55.050. REMOVAL. The legislature, by a two-  
15 thirds vote in each house, may remove or suspend the public  
16 examiner from office, but only for neglect of duty, miscon-  
17 duct, or disability.

18 Sec. 24.55.060. COMPENSATION. The public examiner is  
19 entitled to an annual salary of \$20,000.

20 Sec. 24.55.070. STAFF AND DELEGATION. (a) The public  
21 examiner may appoint assistants and clerical personnel neces-  
22 sary to carry out the provisions of this chapter.

23 (b) The public examiner may delegate to his assistants  
24 any of his duties except those specified in secs. 190 and  
25 200 of this chapter.

26 (c) The public examiner and the staff appointed by him  
27 are in the exempt service under AS 39.25.110.

28 Sec. 24.55.080. OFFICE FACILITIES AND ADMINISTRATION.

29 (a) The Department of Administration shall provide suitable

1 office space and equipment for the public examiner and his  
2 staff.

3 (b) The salary of the public examiner and his staff  
4 shall be paid through the same procedures used for the payment  
5 of the salaries of other state employees.

6 (c) The public examiner shall submit a budget for each  
7 fiscal year to the finance committees of the legislature and  
8 shall annually submit an estimated budget to the governor for  
9 informational purposes in the preparation of the executive  
10 budget.

11 Sec. 24.55.090. PROCEDURE. The public examiner may  
12 establish procedures for receiving and processing complaints,  
13 conducting investigations, and reporting his findings. How-  
14 ever, he may not levy fees for the submission or investigation  
15 of complaints.

16 ARTICLE 2. JURISDICTION AND INITIATION OF INVESTIGATIONS.

17 Sec. 24.55.100. JURISDICTION. (a) The public examiner  
18 has jurisdiction to investigate the administrative acts of  
19 agencies.

20 (b) The public examiner may exercise his powers without  
21 regard to the finality of any administrative act.

22 Sec. 24.55.110. INVESTIGATION OF COMPLAINTS. The public  
23 examiner shall investigate any complaint indicating an  
24 appropriate subject for investigation under sec. 150 of this  
25 chapter, unless he believes that

26 (1) there is presently available an adequate  
27 remedy for the grievance stated in the complaint;

28 (2) the complaint relates to a matter that is  
29 outside the jurisdiction of the public examiner;

1           (3) the complaint relates to an administrative  
2 act of which the complainant has had knowledge for too long  
3 a time before the complaint was submitted;

4           (4) the complainant does not have a sufficient  
5 personal interest in the subject matter of the complaint;

6           (5) the complaint is trivial or made in bad faith;

7           (6) the facilities of the public examiner's office  
8 are insufficient for adequate investigation; or

9           (7) there are other complaints more worthy of the  
10 public examiner's attention.

11           Sec. 24.55.120. INVESTIGATION ON THE PUBLIC EXAMINER'S  
12 MOTION. The public examiner may investigate on his own  
13 motion if he reasonably believes that an appropriate subject  
14 for investigation under sec. 150 of this chapter exists.

15           Sec. 24.55.130. NOTICE TO COMPLAINANT. (a) If the  
16 public examiner decides not to investigate, he shall inform  
17 the complainant of that decision and shall state his reasons  
18 unless he reasonably believes it is inappropriate to do so.

19           (b) If the public examiner decides to investigate, he  
20 shall notify the complainant of his decision.

21           Sec. 24.55.140. NOTICE TO THE AGENCY. If the public  
22 examiner decides to investigate, he shall notify the agency  
23 of his intention to investigate.

24                           ARTICLE 3. INVESTIGATIONS.

25           Sec. 24.55.150. APPROPRIATE SUBJECTS FOR INVESTIGATION.

26           (a) An appropriate subject for investigation by the public  
27 examiner is an administrative act of an agency which might be

28                   (1) contrary to law;

29                   (2) unreasonable, unfair, oppressive, or unneces-

1 sarily discriminatory, even though in accordance with law;

2 (3) based on a mistake of fact;

3 (4) based on improper or irrelevant grounds;

4 (5) unaccompanied by an adequate statement of  
5 reasons;

6 (6) performed in an inefficient manner; or

7 (7) otherwise erroneous.

8 (b) The public examiner may investigate to find an  
9 appropriate remedy.

10 Sec. 24.55.160. INVESTIGATION PROCEDURES. In an in-  
11 vestigation, the public examiner may

12 (1) make inquiries and obtain information as he  
13 thinks fit;

14 (2) enter without notice to inspect the premises  
15 of an agency;

16 (3) hold private hearings.

17 Sec. 24.55.170. POWERS. (a) Subject to the privileges  
18 which witnesses have in the courts of this state, the public  
19 examiner may

20 (1) compel at a specified time and place, by  
21 subpoena, the appearance and sworn testimony of any person  
22 who the public examiner reasonably believes may be able to  
23 give information relating to a matter under investigation;

24 (2) compel any person, by subpoena, to produce  
25 documents, papers, or objects which the public examiner  
26 reasonably believes may relate to a matter under investigation.

27 (b) If a person refuses to comply with a subpoena  
28 issued under (a) of this section, the superior court may  
29 on application of the public examiner compel obedience by

1 proceedings for contempt in the same manner as in the case of  
2 disobedience to the requirements of a subpoena issued by  
3 the court or refusal to testify in the court.

4 ARTICLE 4. PROCEDURE AND REPORTS AFTER INVESTIGATION.

5 Sec. 24.55.180. CONSULTATION WITH AGENCY. Before  
6 giving an opinion or recommendation that is critical of an  
7 agency or person, the public examiner shall consult with that  
8 agency or person.

9 Sec. 24.55.190. PROCEDURE AFTER INVESTIGATION. (a)  
10 The public examiner shall report his opinion and recommenda-  
11 tions to an agency if he finds, after investigation, that

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

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

16 (3) a statute or regulation on which an administra-  
17 tive act is based should be altered;

18 (4) reasons should be given for an administrative  
19 act; or

20 (5) any other action should be taken by the agency.

21 (b) The public examiner may request the agency to notify  
22 him, within a specified time, of any action taken on his  
23 recommendations.

24 Sec. 24.55.200. PUBLICATION OF RECOMMENDATIONS. After  
25 a reasonable time has elapsed, the public examiner may present  
26 his opinion and recommendations to the governor, the legis-  
27 lature, the public, or any of these. The public examiner  
28 shall include with his opinion any reply made by the agency.

29 Sec. 24.55.210. NOTICE TO THE COMPLAINANT. After a

1 reasonable time has elapsed, the public examiner shall notify  
2 the complainant of the actions taken by him and by the agency.

3 ARTICLE 5. MISCELLANEOUS.

4 Sec. 24.55.220. MISCONDUCT BY AGENCY PERSONNEL. If  
5 the public examiner thinks there is a breach of duty or mis-  
6 conduct by an officer or employee of an agency, he shall refer  
7 the matter to the chief executive officer of the agency.

8 Sec. 24.55.230. ANNUAL REPORT. The public examiner  
9 shall submit to the legislature and the public an annual  
10 report discussing his activities under this chapter.

11 Sec. 24.55.240. JUDICIAL REVIEW. No proceeding or  
12 decision of the public examiner may be reviewed in a court,  
13 unless it contravenes the provisions of this chapter.

14 Sec. 24.55.250. IMMUNITY OF THE PUBLIC EXAMINER. The  
15 public examiner has the same immunities from civil and  
16 criminal liability as a judge of this state.

17 Sec. 24.55.260. PRIVILEGE NOT TO TESTIFY. The public  
18 examiner and his staff shall not testify in a court with  
19 respect to matters coming to their attention in the exercise  
20 or purported exercise of their official duties except as  
21 may be necessary to enforce the provisions of this chapter.

22 Sec. 24.55.270. PENALTY. A person who wilfully  
23 hinders the lawful actions of the public examiner or his  
24 staff, or who wilfully refuses to comply with their lawful  
25 demands, is guilty of a misdemeanor and upon conviction is  
26 punishable by a fine of not more than \$1,000.

27 ARTICLE 6. GENERAL PROVISIONS.

28 Sec. 24.55.280. DEFINITIONS. In this chapter

29 (1) "agency" means a department, office, agency

1 or board in the executive branch of the state government and  
2 an officer, employee or member of an "agency" acting or  
3 purporting to act in the exercise of his official duties,  
4 but "agency" does not include the governor or his personal  
5 staff;

6 (2) "administrative act" means an action, omission,  
7 decision, recommendation, practice, or procedure, but does  
8 not include the preparation or presentation of legislation.

9 Sec. 24.55.280. SHORT TITLE. This chapter may be cited  
10 as The Public Examiner Act of 1966.

11 \* Sec. 2. Sec. 24.55.260 in sec. 1 of this Act amends Rule  
12 43(h) of the Rules of Civil Procedure by establishing an additional  
13 privilege not to testify in a court and must receive an affirma-  
14 tive vote of two-thirds of the full membership of each house in  
15 order to be effective.

16 \* Sec. 3. This Act takes effect on the day after its passage  
17 and approval or on the day it becomes law without such approval.  
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