

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

1 IN THE HOUSE

BY THE RULES COMMITTEE
BY REQUEST

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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."

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

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* 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.

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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.

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

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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 minority member of the
20 senate appointed by him, the speaker of the house and a
21 minority member of the house of representatives appointed by
22 him, the chairman of the senate judiciary committee and the
23 chairman of the 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) while he is a candidate for or holds any
6 other state office; or

7 (2) while he is engaged in any other occupation
8 for reward or profit.

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

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

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

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

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

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

26 Sec. 24.55.080. OFFICE FACILITIES AND ADMINISTRATION.
27 (a) The Department of Administration shall provide suitable
28 office space and equipment for the public examiner and his
29 staff.

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

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

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

14 ARTICLE 2. JURISDICTION AND INITIATION OF INVESTIGATIONS.

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

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

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

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

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

28 (3) the complaint relates to an administrative
29 act of which the complainant has had knowledge for too long

1 a time before the complaint was submitted;

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

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

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

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

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

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

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

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

22 ARTICLE 3. INVESTIGATIONS.

23 Sec. 24.55.150. APPROPRIATE SUBJECTS FOR INVESTIGATION.

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

26 (1) contrary to law;

27 (2) unreasonable, unfair, oppressive, or unneces-
28 sarily discriminatory, even though in accordance with law;

29 (3) based on a mistake of fact;

- 1 (4) based on improper or irrelevant grounds;
- 2 (5) unaccompanied by an adequate statement of
- 3 reasons;
- 4 (6) performed in an inefficient manner; or
- 5 (7) otherwise erroneous.

6 (b) The public examiner may investigate to find an
7 appropriate remedy.

8 Sec. 24.55.160. INVESTIGATION PROCEDURES. In an in-
9 vestigation, the public examiner may

- 10 (1) make inquiries and obtain information as he
- 11 thinks fit;
- 12 (2) enter without notice to inspect the premises
- 13 of an agency;
- 14 (3) hold private hearings.

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

- 18 (1) compel at a specified time and place, by
- 19 subpoena, the appearance and sworn testimony of any person
- 20 who the public examiner reasonably believes may be able to
- 21 give information relating to a matter under investigation:
- 22 (2) compel any person, by subpoena, to produce
- 23 documents, papers, or objects which the public examiner
- 24 reasonably believes may relate to a matter under investigation.

25 (b) If a person refuses to comply with a subpoena
26 issued under (a) of this section, the superior court may
27 on application of the public examiner compel obedience by
28 proceedings for contempt in the same manner as in the case of
29 disobedience to the requirements of a subpoena issued by

1 the court or refusal to testify in the court.

2 ARTICLE 4. PROCEDURE AND REPORTS AFTER INVESTIGATION.

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

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

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

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

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

16 (4) reasons should be given for an administrative
17 act; or

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

19 (b) The public examiner may request the agency to notif-
20 him, within a specified time, of any action taken on his
21 recommendations.

22 Sec. 24.55.200. PRESENTATION OF RECOMMENDATIONS. After
23 a reasonable time has elapsed, the public examiner shall
24 present his opinion and recommendations in writing to the
25 governor. If the situation is not remedied within a reason-
26 able time, the public examiner shall submit his opinion and
27 recommendations in writing to the members of the legislature.
28 The public examiner shall include with his opinion any reply
29 made by the agency.

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Sec. 24.55.210. NOTICE TO THE COMPLAINANT. After a reasonable time has elapsed, the public examiner shall notify the complainant of the actions taken by him and by the agency.

ARTICLE 5. MISCELLANEOUS.

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

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

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

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

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

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

ARTICLE 6. GENERAL PROVISIONS.

Sec. 24.55.280. DEFINITIONS. In this chapter

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(1) "agency" means a department, office, agency or board in the executive branch of the state government and an officer, employee or member of an "agency" acting or purporting to act in the exercise of his official duties, but "agency" does not include the governor or his personal staff;

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

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

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

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