

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

1 IN THE SENATE

BY KILCHER

2 SENATE BILL NO. 276

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
7 ombudsman; 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 OMBUDSMAN

12 ARTICLE 1. ORGANIZATION

13 Sec. 24.55.010. OFFICE OF THE OMBUDSMAN. There is
14 created in the legislative branch of the state the office
15 of the ombudsman.

16 Sec. 24.55.020. APPOINTMENT OF THE OMBUDSMAN. (a) A
17 candidate for appointment as the ombudsman shall be selected
18 by the ombudsman selection committee composed of the presi-
19 dent of the senate and a member of the senate appointed by
20 him, the speaker of the house and a member of the house of
21 representatives appointed by him, the chairman of the senate
22 judiciary committee and the chairman of the house judiciary
23 committee.

24 (b) The ombudsman selection committee shall examine
25 persons to serve as the ombudsman regarding their qualifica-
26 tions and ability and shall place the name of the person
27 selected in nomination before the legislature for appointment
28 as the ombudsman. The appointment of a person nominated as
29 the ombudsman by the committee is effective if his candidacy

SB 276

1 is approved by two-thirds of the membership of the legisla-
2 ture sitting in joint session.

3 Sec. 24.55.030. QUALIFICATIONS. No person may serve
4 as ombudsman

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 other
8 national or state office; or

9 (3) while he is engaged in any other regular
10 occupation for which he receives compensation.

11 Sec. 24.55.040. TERM OF OFFICE. The term of office
12 of the ombudsman is three years. An ombudsman may be reap-
13 pointed but may not serve more than four terms.

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

18 Sec. 24.55.060. COMPENSATION. The ombudsman is en-
19 titled to an annual salary of \$22,500.

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

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

26 (c) The ombudsman and the staff appointed by him are
27 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 ombudsman and his staff.

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

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

10 Sec. 24.55.090. PROCEDURE. The ombudsman may establish
11 procedures for receiving and processing complaints, conduct-
12 ing investigations, and reporting his findings. However,
13 he may not levy fees for the submission or investigation of
14 complaints.

15 **ARTICLE 2. JURISDICTION AND INITIATION OF INVESTIGATIONS**

16 Sec. 24.55.100. JURISDICTION. (a) The ombudsman has
17 jurisdiction to investigate the administrative acts of
18 agencies.

19 (b) The ombudsman may exercise his powers without re-
20 gard to the finality of any administrative act.

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

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

27 (2) the complaint relates to a matter that is
28 outside the jurisdiction of the ombudsman;

29 (3) the complaint relates to an administrative

1 act of which the complainant has had knowledge for too long
2 a time before the complaint was submitted;

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

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

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

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

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

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

18 (b) If the ombudsman decides to investigate, he shall
19 notify the complainant of his decision.

20 Sec. 24.55.140. NOTICE TO THE AGENCY. If the ombuds-
21 man decides to investigate, he shall notify the agency of his
22 intention to investigate.

23 ARTICLE 3. INVESTIGATIONS

24 Sec. 24.55.150. APPROPRIATE SUBJECTS FOR INVESTIGATION.

25 (a) An appropriate subject for investigation by the ombuds-
26 man is an administrative act of an agency which might be

27 (1) contrary to law;

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

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

7 (b) The ombudsman may investigate to find an appropri-
8 ate remedy.

9 Sec. 24.55.160. INVESTIGATION PROCEDURES. In an in-
10 vestigation, the ombudsman may

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

16 Sec. 24.55.170. POWERS. (a) Subject to the privileges
17 which witnesses have in the courts of this state, the ombuds-
18 man may

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

26 (b) If a person refuses to comply with a subpoena
27 issued under (a) of this section, the superior court may
28 on application of the ombudsman compel obedience by pro-
29 ceedings for contempt in the same manner as in the case of

1 disobedience to the requirements of a subpoena issued by
2 the court or refusal to testify in the court.

3 **ARTICLE 4. PROCEDURE AND REPORTS AFTER INVESTIGATION**

4 **Sec. 24.55.180. CONSULTATION WITH AGENCY.** Before
5 giving any opinion or recommendation that is critical of an
6 agency or person, the ombudsman shall consult with that
7 agency or person.

8 **Sec. 24.55.190. PROCEDURE AFTER INVESTIGATION. (a)**
9 The ombudsman shall report his opinion and recommendations
10 to an agency if he finds, after investigation, that

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

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

15 (3) a statute or regulation on which an adminis-
16 trative act is based should be altered;

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

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

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

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

28 **Sec. 24.55.210. NOTICE TO THE COMPLAINANT.** After a
29 reasonable time has elapsed, the ombudsman shall notify the

1 complainant of the actions taken by him and by the agency.

2 **ARTICLE 5. MISCELLANEOUS**

3 **Sec. 24.55.220. MISCONDUCT BY AGENCY PERSONNEL.** If
4 the ombudsman thinks there is a breach of duty or misconduct
5 by any officer or employee of an agency, he shall refer the
6 matter to the chief executive officer of the agency.

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

10 **Sec. 24.55.240. JUDICIAL REVIEW.** No proceeding or
11 decision of the ombudsman may be reviewed in any court,
12 unless it contravenes the provisions of this chapter.

13 **Sec. 24.55.250. IMMUNITY OF THE OMBUDSMAN.** The
14 ombudsman has the same immunities from civil and criminal
15 liability as a judge of this state.

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

22 **Sec. 24.55.270. PENALTY.** A person who willfully
23 hinders the lawful actions of the ombudsman or his staff,
24 or who willfully refuses to comply with their lawful demands,
25 is guilty of a misdemeanor and upon conviction is punishable
26 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

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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 Ombudsman Act of 1966".

* Sec. 2. Sec. 24.55.260 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.