

1 IN THE HOUSE

BY STEVENS

2 HOUSE BILL NO. 8

3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

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

10 CHAPTER 55. OFFICE OF THE PUBLIC EXAMINER.

11 ARTICLE 1. ORGANIZATION.

12 Sec. 24.55.010. OFFICE OF THE PUBLIC EXAMINER. There is cre-
13 ated in the legislative branch of the state the office of the public
14 examiner.

15 Sec. 24.55.020. APPOINTMENT OF THE PUBLIC EXAMINER. (a) A
16 candidate for appointment as the public examiner shall be selected by
17 the public examiner selection committee composed of the president of
18 the senate and a minority member of the senate appointed by him, the
19 speaker of the house and a minority member of the house of represent-
20 atives appointed by him, the chairman of the senate judiciary committee
21 and the chairman of the house judiciary committee.

22 (b) The public examiner selection committee shall examine per-
23 sons to serve as the public examiner regarding their qualifications and
24 ability and shall place the name of the person selected in nomination
25 before the legislature for appointment as the public examiner. The
26 appointment of a person nominated as the public examiner by the com-
27 mittee is effective if his candidacy is approved by a majority of the
28 members of the legislature in joint session.

29 Sec. 24.55.030. QUALIFICATIONS. No person may serve as public

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1 ~~examiner~~

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

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

6 Sec. 24.55.040. **TERM OF OFFICE.** The term of office of the public
7 examiner is four years. A public examiner may be reappointed but may
8 not serve more than three terms.

9 Sec. 24.55.050. **REMOVAL.** The legislature, by a two-thirds vote
10 in each house, may remove or suspend the public examiner from office,
11 but only for neglect of duty, misconduct, or disability.

12 Sec. 24.55.060. **COMPENSATION.** The public examiner is entitled to
13 an annual salary of \$20,000.

14 Sec. 24.55.070. **STAFF AND DELEGATION.** (a) The public examiner
15 may appoint assistants and clerical personnel necessary to carry out
16 the provisions of this chapter.

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

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

21 Sec. 24.55.080. **OFFICE FACILITIES AND ADMINISTRATION.** (a) The
22 Department of Administration shall provide suitable office space and
23 equipment for the public examiner and his staff.

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

27 (c) The public examiner shall submit a budget for each fiscal
28 year to the finance committees of the legislature and shall annually
29 submit an estimated budget to the governor for informational purposes

1 in the preparation of the executive budget.

2 Sec. 24.55.090. PROCEDURE. The public examiner may establish
3 procedures for receiving and processing complaints, conducting investi-
4 gations, and reporting his findings. However, he may not levy fees for
5 the submission or investigation of complaints.

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

7 Sec. 24.55.100. JURISDICTION. (a) The public examiner has
8 jurisdiction to investigate the administrative acts of agencies.

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

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

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

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

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

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

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

24 (6) the facilities of the public examiner's office are in-
25 sufficient for adequate investigation; or

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

28 Sec. 24.55.120. INVESTIGATION ON THE PUBLIC EXAMINER'S MOTION.
29 The public examiner may investigate on his own motion if he reasonably

1 believes that an appropriate subject for investigation under sec. 150
2 of this chapter exists.

3 Sec. 24.55.130. NOTICE TO COMPLAINANT. (a) If the public
4 examiner decides not to investigate, he shall inform the complainant
5 of that decision and shall state his reasons unless he reasonably be-
6 lieves it is inappropriate to do so.

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

9 Sec. 24.55.140. NOTICE TO THE AGENCY. If the public examiner
10 decides to investigate, he shall notify the agency of his intention to
11 investigate.

12 ARTICLE 3. INVESTIGATIONS.

13 Sec. 24.55.150. APPROPRIATE SUBJECTS FOR INVESTIGATION. (a) An
14 appropriate subject for investigation by the public examiner is an
15 administrative act of an agency which might be

- 16 (1) contrary to law;
17 (2) unreasonable, unfair, oppressive, or unnecessarily
18 discriminatory, even though in accordance with law;
19 (3) based on a mistake of fact;
20 (4) based on improper or irrelevant grounds;
21 (5) unaccompanied by an adequate statement of reasons;
22 (6) performed in an inefficient manner; or
23 (7) otherwise erroneous.

24 (b) The public examiner may investigate to find an appropriate
25 remedy.

26 Sec. 24.55.160. INVESTIGATION PROCEDURES. In an investigation,
27 the public examiner may

- 28 (1) make inquiries and obtain information as he thinks fit;
29 (2) enter without notice to inspect the premises of an

1 agency;

2 (3) hold private hearings.

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

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

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

12 (b) If a person refuses to comply with a subpoena issued under
13 (a) of this section, the superior court may, on application of the
14 public examiner, compel obedience by proceedings for contempt in the
15 same manner as in the case of disobedience to the requirements of a
16 subpoena issued by the court or refusal to testify in the court.

17 ARTICLE 4. PROCEDURE AND REPORTS AFTER INVESTIGATION.

18 Sec. 24.55.180. CONSULTATION WITH AGENCY. Before giving an
19 opinion or recommendation that is critical of an agency or person, the
20 public examiner shall consult with that agency or person.

21 Sec. 24.55.190. PROCEDURE AFTER INVESTIGATION. (a) The public
22 examiner shall report his opinion and recommendations to an agency if
23 he finds, after investigation, that

24 (1) a matter should be further considered by the agency;
25 (2) an administrative act should be modified or cancelled;
26 (3) a statute or regulation on which an administrative act
27 is based should be altered;

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

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

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

3 Sec. 24.55.200. PRESENTATION OF RECOMMENDATIONS. After a reason-
4 able time has elapsed, the public examiner shall present his opinion
5 and recommendations in writing to the governor. If the situation is
6 not remedied within a reasonable time, the public examiner shall submit
7 his opinion and recommendations in writing to the members of the legis-
8 lature. The public examiner shall include with his opinion any reply
9 made by the agency.

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

13 ARTICLE 5. MISCELLANEOUS.

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

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

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

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

27 Sec. 24.55.260. PRIVILEGE NOT TO TESTIFY. The public examiner
28 and his staff shall not testify in a court with respect to matters
29 coming to their attention in the exercise or purported exercise of

1 their official duties except as may be necessary to enforce the pro-
2 visions of this chapter.

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

7 ARTICLE 6. GENERAL PROVISIONS.

8 Sec. 24.55.280. DEFINITIONS. In this chapter

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

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

17 Sec. 24.55.290. SHORT TITLE. This chapter may be cited as the
18 Public Examiner Act of 1967.

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

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