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1290*

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Referred: State Affairs,
Judiciary and Finance

BY KERTTULA, BRADNER
AND RAY

1 IN THE HOUSE

2 HOUSE BILL NO. 132

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act creating the office of the ombudsman; and
7 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 OMBUDSMAN.

11 ARTICLE 1. ORGANIZATION.

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

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

21 (b) The ombudsman selection committee shall examine persons to
22 serve as the ombudsman regarding their qualifications and ability and
23 shall place the name of the person selected in nomination before the
24 legislature for appointment as the ombudsman. The appointment of a
25 person nominated as the ombudsman by the committee is effective if
26 his candidacy is approved by two-thirds of the membership of the
27 legislature sitting in joint session.

28 Sec. 24.55.030. QUALIFICATIONS. No person may serve as ombudsman

29 (1) within two years of the last day on which he served as

1 a member of the legislature;

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

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

6 Sec. 24.55.040. TERM OF OFFICE. The term of office of the
7 ombudsman is three years. An ombudsman may be reappointed but may not
8 serve more than four⁴⁰ terms.

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

12 Sec. 24.55.060. COMPENSATION. The ombudsman is entitled to an
13 annual salary of \$22,500.

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

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

19 (c) The ombudsman 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 ombudsman and his staff.

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

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

1 preparation of the executive budget.

2 Sec. 24.55.090. PROCEDURE. The ombudsman may establish pro-
3 cedures for receiving and processing complaints, conducting investiga-
4 tions, 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 ombudsman has jurisdic-
8 tion to investigate the administrative acts of agencies.

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

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

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

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

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 ombudsman's office are insufficient
25 for adequate investigation; or

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

28 Sec. 24.55.120. INVESTIGATION ON THE OMBUDSMAN'S MOTION. The
29 ombudsman may investigate on his own motion if he reasonably believes

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

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

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

9 Sec. 24.55.140. NOTICE TO THE AGENCY. If the ombudsman decides
10 to investigate, he shall notify the agency of his intention to investi-
11 gate.

12 ARTICLE 3. INVESTIGATIONS.

13 Sec. 24.55.150. APPROPRIATE SUBJECTS FOR INVESTIGATION. (a) An
14 appropriate subject for investigation by the ombudsman is an adminis-
15 trative 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 ombudsman may investigate to find an appropriate remedy.

25 Sec. 24.55.160. INVESTIGATION PROCEDURES. In an investigation,
26 the ombudsman may

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

1 (3) hold private hearings.

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

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

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

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

16 ARTICLE 4. PROCEDURE AND REPORTS AFTER INVESTIGATION.

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

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

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

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

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

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

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

29 (b) The ombudsman may request the agency to notify him, within

1 a specified time, of any action taken on his recommendations.

2 Sec. 24.55.200. PUBLICATION OF RECOMMENDATIONS. After a reason-
3 able time has elapsed, the ombudsman may present his opinion and recom-
4 mendations to the governor, the legislature, the public, or any of
5 these. The ombudsman shall include with his opinion any reply made
6 by the agency.

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

10 ARTICLE 5. MISCELLANEOUS.

11 Sec. 24.55.220. MISCONDUCT BY AGENCY PERSONNEL. If the ombudsman
12 thinks there is a breach of duty or misconduct by any officer or
13 employee of an agency, he shall refer the matter to the chief executive
14 officer of the agency.

15 Sec. 24.55.230. ANNUAL REPORT. The ombudsman shall submit to
16 the legislature and the public an annual report discussing his activi-
17 ties under this chapter.

18 Sec. 24.55.240. JUDICIAL REVIEW. No proceeding or decision of
19 the ombudsman may be reviewed in any court, unless it contravenes the
20 provisions of this chapter.

21 Sec. 24.55.250. IMMUNITY OF THE OMBUDSMAN. The ombudsman has the
22 same immunities from civil and criminal liability as a judge of this
23 state.

24 Sec. 24.55.260. OMBUDSMAN'S PRIVILEGE NOT TO TESTIFY. The
25 ombudsman and his staff shall not testify in any court with respect
26 to matters coming to their attention in the exercise or purported
27 exercise of their official duties except as may be necessary to enforce
28 the provisions of this chapter.

29 Sec. 24.55.270. PENALTY. A person who willfully hinders the

1 lawful actions of the ombudsman or his staff, or who willfully refuses
2 to comply with their lawful demands, is guilty of a misdemeanor and
3 upon conviction is punishable by a fine of not more than \$1,000.

4 ARTICLE 6. GENERAL PROVISIONS.

5 Sec. 24.55.280. DEFINITIONS. In this chapter

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

11 (2) "administrative act" means an action, omission, decision,
12 recommendation, practice, or procedure, but does not include the prepara-
13 tion or presentation of legislation.

14 Sec. 24.55.280. SHORT TITLE. This chapter may be cited as "The
15 Ombudsman Act of 1969".

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

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