

Original sponsor: Palmer

Offered: 4/10/70
Referred: Rules

HCS
CS

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 93

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act creating the office of ombudsman; and providing
7 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 the
13 legislative branch of the state the office of 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
17 minority member of the senate appointed by him, the speaker of the
18 house and a minority member of the house of representatives appointed
19 by him, the chairman of the senate judiciary committee and the chairman
20 of the house judiciary committee.

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

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

28 (1) while he is a candidate for or holds any other national or
29 state office;

1 (2) within one year of the last day on which he served as
2 a member of the legislature; or

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

5 Sec. 24.55.040. TERM OF OFFICE. The term of office of the ombuds-
6 man is four years, except that the first person appointed to the office
7 shall be subject to approval or rejection under sec. 50 of this chapter
8 at the general election held on the Tuesday after the first Monday in
9 November, 1972.

10 Sec. 24.55.050. APPROVAL OR REJECTION. The ombudsman is subject to
11 approval or rejection every four years in the manner provided for
12 superior court judges in the Alaska Election Code (AS 15.05.- 15.60).

13 Sec. 24.55.060. COMPENSATION. The ombudsman is entitled to an
14 annual salary equal to that of a superior court judge.

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

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

20 (c) The ombudsman and the staff appointed by him are in the
21 exempt service under AS 39.25.110.

22 Sec. 24.55.080. OFFICE FACILITIES AND ADMINISTRATION. (a) The
23 Legislative Affairs Agency shall provide suitable office space and
24 equipment for the ombudsman and his staff.

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

28 (c) The ombudsman shall submit a budget for each fiscal year to
29 the legislature and shall annually submit an estimated budget to the

1 governor for information purposes in the preparation of the executive
2 budget.

3 Sec. 24.55.090. PROCEDURE. The ombudsman may establish procedures
4 for receiving and processing complaints, conducting investigations, and
5 reporting his findings. However, he may not levy fees for the submission
6 or investigation of complaints.

7 ARTICLE 2. JURISDICTION AND INITIATION OF INVESTIGATIONS.

8 Sec. 24.55.100. JURISDICTION. (a) The ombudsman has jurisdiction
9 to investigate the administrative acts of agencies.

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

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

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

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

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

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

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

25 (6) the facilities of the ombudsman's office are insufficient
26 for adequate investigation.

27 Sec. 24.55.120. INVESTIGATION ON THE OMBUDSMAN'S MOTION. The ombuds-
28 man may investigate on his own motion if he reasonably believes that an
29 appropriate subject for investigation under sec. 150 of this chapter

1 exists.

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

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

8 Sec. 24.55.140. NOTICE TO THE AGENCY. If the ombudsman decides to
9 investigate, he shall notify the agency of his intention to investigate.

10 ARTICLE 3. INVESTIGATIONS.

11 Sec. 24.55.150. APPROPRIATE SUBJECTS FOR INVESTIGATION. (a) An
12 appropriate subject for investigation by the ombudsman is an administra-
13 tive act of an agency which might be

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

22 (b) The ombudsman may investigate to find an appropriate remedy.

23 Sec. 24.55.160. INVESTIGATION PROCEDURES. In an investigation,
24 the ombudsman may

- 25 (1) make inquiries and obtain information as he thinks fit;
26 (2) enter without notice to inspect the premises of an agency
27 (3) hold private hearings.

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

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

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

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

13 ARTICLE 4. PROCEDURE AND REPORTS AFTER INVESTIGATION.

14 Sec. 24.55.180. CONSULTATION WITH AGENCY. Before giving an
15 opinion or recommendation that is critical of an agency or person, the
16 ombudsman shall consult with that agency or person.

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

20 (1) a matter should be further considered by the agency;
21 (2) an administrative act should be modified or cancelled;
22 (3) a statute or regulation on which an administrative act
23 is based should be altered;

24 (4) reasons should be given for an administrative act; or
25 (5) any other action should be taken by the agency.

26 (b) The ombudsman may require the agency to notify him, within
27 a specified time, of any action taken on his recommendations.

28 Sec. 24.55.200. PRESENTATION OF RECOMMENDATIONS. After a
29 reasonable time has elapsed, the ombudsman shall present his opinion

1 and recommendations in writing to the governor. If the situation is
2 not remedied within a reasonable time, the ombudsman shall submit his
3 opinion and recommendations in writing to the members of the legislature
4 The ombudsman shall include with his opinion any reply made by the
5 agency.

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

9 ARTICLE 5. MISCELLANEOUS.

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

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

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

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

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

28 Sec. 24.55.270. PENALTY. A person who wilfully hinders the
29 lawful actions of the ombudsman or his staff, or who wilfully refuses

1 to comply with their lawful demands, is guilty of a misdemeanor and
2 upon conviction is punishable by a fine of not more than \$1,000.

3 ARTICLE 6. GENERAL PROVISIONS.

4 Sec. 24.55.280. DEFINITIONS. In this chapter

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

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

13 Sec. 24.55.290. SHORT TITLE. This chapter may be cited as the
14 Ombudsman Act of 1970.

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

19 * Sec. 3. This Act takes effect on January 1, 1971.
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