

Original sponsor: Palmer

Offered: 5/4/70  
Referred: Rules

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

HOUSE CS FOR CS FOR SENATE BILL NO. 93  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA

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4

SIXTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act creating the office of ombudsman; amending  
7 Rule 43(h) of the Rules of Civil Procedure; and  
8 providing for an effective 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:

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CHAPTER 55. OFFICE OF THE OMBUDSMAN.

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ARTICLE 1. ORGANIZATION.

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

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Sec. 24.55.020. APPOINTMENT OF THE OMBUDSMAN. (a) A candidate  
17 for appointment as the ombudsman shall be selected by the ombudsman  
18 selection committee composed of six members of the legislature, three  
19 from each house. Two members from each house shall be selected by the  
20 majority members of the respective houses and one member from each house  
shall be selected by the minority members of the respective houses.

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(b) The ombudsman selection committee shall examine persons to  
serve as ombudsman regarding their qualifications and ability and shall  
place the name of the person selected in nomination before the legisla-  
ture for appointment as the ombudsman. The appointment of a person  
nominated as the ombudsman by the committee is effective if his candi-  
dacy is approved by a two-thirds majority of the members of the legis-  
lature in joint session.

Sec. 24.55.030. QUALIFICATIONS. No person may serve as ombudsman  
(1) while he is a candidate for or holds any other national

1 or state office;

2 (2) within one year of the last day on which he served as  
3 a member of the legislature; 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 ombuds-  
7 man is four years, except that the first person appointed to the office  
8 is subject to approval or rejection under sec. 50 of this chapter at  
9 the general election held on the Tuesday after the first Monday in  
10 November, 1972, and each succeeding appointee is first subject to  
11 approval or rejection under sec. 50 of this chapter at the first non-  
12 gubernatorial, general election held at least two years after his  
13 appointment.

14 Sec. 24.55.050. APPROVAL OR REJECTION; REMOVAL. (a) The ombuds-  
15 man is subject to approval or rejection every four years in the manner  
16 provided for superior court judges in the Alaska Election Code (AS 15.-  
17 05. - 15.60).

18 (b) The ombudsman may be removed from office by a two-thirds vote  
19 of each house of the legislature meeting in joint session, but may be  
20 removed only for neglect of duty, misconduct, or disability.

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

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

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

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

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

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

7           (c) The ombudsman shall submit a budget for each fiscal year to  
8 the legislature and shall annually submit an estimated budget to the  
9 governor for information purposes in the preparation of the executive  
10 budget.

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

15           ARTICLE 2. JURISDICTION AND INITIATION OF INVESTIGATIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

19 ARTICLE 3. INVESTIGATIONS.

20 Sec. 24.55.150. APPROPRIATE SUBJECTS FOR INVESTIGATION. (a) An  
21 appropriate subject for investigation by the ombudsman is an adminis-  
22 trative act of an agency which might be

23 (1) contrary to law;

24 (2) unreasonable, unfair, oppressive, or unnecessarily  
25 discriminatory, even though in accordance with law;

26 (3) based on a mistake of fact;

27 (4) based on improper or irrelevant grounds;

28 (5) unaccompanied by an adequate statement of reasons;

29 (6) performed in an inefficient manner; or

1 (7) otherwise erroneous.

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

3 Sec. 24.55.160. INVESTIGATION PROCEDURES. In an investigation,  
4 the ombudsman may

5 (1) make inquiries and obtain information as he thinks fit;

6 (2) enter without notice to inspect the premises of an  
7 agency;

8 (3) hold private hearings.

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

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

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

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

23 ARTICLE 4. PROCEDURE AND REPORTS AFTER INVESTIGATION.

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

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

- 1 (1) a matter should be further considered by the agency;  
2 (2) an administrative act should be modified or cancelled;  
3 (3) a statute or regulation on which an administrative act  
4 is based should be altered;  
5 (4) reasons should be given for an administrative act; or  
6 (5) any other action should be taken by the agency.

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

9 Sec. 24.55.200. PRESENTATION OF RECOMMENDATIONS. After a rea-  
10 sonable time has elapsed, the ombudsman shall present his opinion and  
11 recommendations in writing to the governor. If the situation is not  
12 remedied within a reasonable time, the ombudsman shall submit his  
13 opinion and recommendations in writing to the members of the legisla-  
14 ture. The ombudsman shall include with his opinion any reply made by  
15 the agency.

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

19 ARTICLE 5. MISCELLANEOUS.

20 Sec. 24.55.220. MISCONDUCT BY AGENCY PERSONNEL. If the ombudsman  
21 thinks there is a breach of duty or misconduct by an officer or employe  
22 of an agency, he shall refer the matter to the chief executive officer  
23 of the agency.

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

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

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

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

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

13                           ARTICLE 6. GENERAL PROVISIONS.

14           Sec. 24.55.280. DEFINITIONS. In this chapter

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

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

23           Sec. 24.55.290. SHORT TITLE. This chapter may be cited as the  
24 Ombudsman Act.

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

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