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Referred: Judiciary and
Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

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HOUSE BILL NO. 45 (FIN)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act creating the office of the ombudsman; amending
7 Rule 43(h) of the Rules of Civil Procedure; and
8 providing for an effective 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 created in
14 the legislative branch of the state the office of the ombudsman.

15 Sec. 24.55.020. APPOINTMENT OF THE OMBUDSMAN. (a) A candidate
16 for appointment as the ombudsman shall be nominated by the Alaska
17 Legislative Council.

18 (b) The legislative council shall examine persons to serve as
19 the ombudsman regarding their qualifications and abilities and shall
20 place the name of the person selected in nomination before the legis-
21 lature for appointment as the ombudsman. The appointment of a person
22 nominated as the ombudsman by the legislative council is effective if
23 his candidacy is approved by a majority of the members of the legis-
24 lature in joint session.

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

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

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

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

3 Sec. 24.55.040. TERM OF OFFICE. (a) The term of office of the
4 ombudsman is six years. An ombudsman may be reappointed but may not
5 serve for more than three terms.

6 (b) If the term of an ombudsman expires without the appointment
7 of a successor under this chapter, the incumbent ombudsman may continue
8 in office until a successor is appointed. If the ombudsman dies,
9 resigns, becomes ineligible to serve, or is removed or suspended from
10 office, the deputy ombudsman becomes acting ombudsman until a new
11 ombudsman is appointed for a full term.

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

15 Sec. 24.55.060. COMPENSATION. The ombudsman is entitled to
16 receive an annual salary equal to that of a superior court judge.

17 Sec. 24.55.070. STAFF AND DELEGATION. (a) The ombudsman shall
18 appoint a deputy ombudsman; he shall also appoint assistants and
19 clerical personnel necessary to carry out the provisions of this
20 chapter.

21 (b) The ombudsman may delegate to his deputy or assistants any
22 of his duties except those specified in secs. 190 - 200 of this chapter
23 however, during the ombudsman's absence from his principal business
24 offices, the ombudsman may delegate the duties specified in secs.
25 190 - 200 of this chapter to his deputy for the duration of his absence.
26 Those duties specified in secs. 190 - 200 of this chapter shall be
27 performed by the deputy ombudsman when he is serving as acting ombudsman
28 under sec. 040(b) of this chapter.

29 (c) The ombudsman and the staff appointed by him are in the

1 exempt service under AS 39.25.110.

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

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

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

12 Sec. 24.55.090. PROCEDURE. The ombudsman shall, by regulations
13 adopted under the Administrative Procedure Act (AS 44.62), establish
14 procedures for receiving and processing complaints, conducting investi-
15 gations, and reporting his findings. However, he may not levy fees
16 for the submission or investigation of complaints.

17 ARTICLE 2. JURISDICTION AND INITIATION OF INVESTIGATIONS.

18 Sec. 24.55.100. JURISDICTION. (a) The ombudsman has jurisdic-
19 tion to investigate the administrative acts of agencies.

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

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

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

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

29 (3) the complaint relates to an administrative act of which

1 the complainant has had knowledge for an unreasonable length of time
2 before the complaint was submitted;

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

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

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

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

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

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

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

20 Sec. 24.55.140. NOTICE TO THE AGENCY. If the ombudsman decides
21 to investigate a complaint, he shall notify the agency of his intention
22 to investigate unless he believes that advance notice will unduly
23 hinder the investigation or make it ineffectual.

24 ARTICLE 3. INVESTIGATIONS.

25 Sec. 24.55.150. APPROPRIATE SUBJECTS FOR INVESTIGATION. (a) An
26 appropriate subject for investigation by the ombudsman is an admini-
27 strative act of an agency which the ombudsman has reason to believe
28 might be

29 (1) contrary to law;

1 (2) unreasonable, unfair, oppressive, arbitrary, capricious,
2 an abuse of discretion, or unnecessarily discriminatory, even though
3 in accordance with law;

4 (3) based on a mistake of fact;

5 (4) based on improper or irrelevant grounds;

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

7 (6) performed in an inefficient manner; or

8 (7) otherwise erroneous.

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

10 Sec. 24.55.160. INVESTIGATION PROCEDURES. In an investigation,
11 the ombudsman may

12 (1) make inquiries and obtain information as he considers
13 necessary;

14 (2) enter without notice to inspect the premises of an
15 agency, but only when agency personnel are present; and

16 (3) hold private hearings.

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

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

23 (2) compel any person, by subpoena, to produce documents,
24 papers, or objects which the ombudsman reasonably believes may relate
25 to the matter under investigation.

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

1 issued by the court or refusal to testify in the court.

2 (c) Any papers, records, documents, memoranda, bills, receipts,
3 photographs, tape recordings, letters, correspondence, invoices, work
4 orders, working papers, agreements, notes, reports and any other manner
5 of writing, recording or document possessed by or in the custody of an
6 agency may be inspected and copied by the ombudsman, notwithstanding
7 any law of the state making any of these items or the information
8 contained in them confidential. However, access to information does
9 not extend to information made confidential under federal law or
10 regulation. The ombudsman may not make public disclosure of con-
11 fidential information acquired under this chapter. If any of these
12 items contain information which is in part available to the ombudsman
13 and in part not available to him under this subsection, the agency
14 shall take the steps that are necessary to segregate and release the
15 available information to the ombudsman.

16 ARTICLE 4. PROCEDURE AND REPORTS AFTER INVESTIGATION.

17 Sec. 24.55.180. CONSULTATION WITH AGENCY. Before giving any
18 opinion or recommendation which 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;
28 (5) any other action should be taken by the agency;
29 (6) there are no grounds for any action by the agency; or

1 (7) the agency's act was arbitrary or capricious, constituted
2 an abuse of discretion, or was otherwise erroneous or not in accordance
3 with the law.

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

6 Sec. 24.55.200. PUBLICATION OF RECOMMENDATIONS. Within a
7 reasonable amount of time after the ombudsman reports his opinion and
8 recommendations to an agency he may present his opinion and recommen-
9 dations to the governor, the legislature, the public or any of these.
10 The ombudsman shall include with his opinion any reply made by the
11 agency.

12 Sec. 24.55.210. NOTICE TO THE COMPLAINANT. Within a reasonable
13 amount of time after the ombudsman reports his opinion and recom-
14 mendations to an agency, he shall notify the complainant of the actions
15 taken by him and by the agency.

16 ARTICLE 5. MISCELLANEOUS.

17 Sec. 24.55.220. MISCONDUCT BY AGENCY PERSONNEL. If the ombudsman
18 believes there is a breach of duty or misconduct by an officer or
19 employee of an agency in the conduct of his official duties, the
20 ombudsman shall refer the matter to the chief executive officer of the
21 agency or, when appropriate, to any other appropriate official or
22 agency.

23 Sec. 24.55.230. ANNUAL REPORT. The ombudsman shall submit to
24 the legislature and the public an annual report of his activities
25 under this chapter.

26 Sec. 24.55.240. JUDICIAL REVIEW. A proceeding or decision of
27 the ombudsman may be reviewed in superior court only to determine if
28 it is contrary to the provisions of this chapter.

29 Sec. 24.55.250. IMMUNITY OF THE OMBUDSMAN. The ombudsman has

1 the same immunities from civil and criminal liability as a judge of
2 this state.

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

8 Sec. 24.55.270. LETTERS TO OR FROM OMBUDSMAN. A letter to the
9 ombudsman from a person held in custody by an agency shall be forwarded
10 immediately, unopened, to the ombudsman. A letter from the ombudsman
11 to a person held in custody by an agency shall be delivered immediately,
12 unopened, to the person.

13 Sec. 24.55.280. TIME FOR JUDICIAL REVIEW OF AGENCY ACTION. This
14 chapter in no way extends the time limit in which judicial review of
15 agency action must be sought.

16 Sec. 24.55.290. PENALTY. A person who wilfully hinders the
17 lawful actions of the ombudsman or his staff, or who wilfully refuses
18 to comply with their lawful demands, or who wilfully violates sec. 270
19 of this chapter, is guilty of a misdemeanor and upon conviction is
20 punishable by a fine of not more than \$1,000.

21 ARTICLE 6. GENERAL PROVISIONS

22 Sec. 24.55.300. DEFINITIONS. In this chapter

23 (1) "agency" includes a department, office, institution,
24 organization, commission, or board in the executive branch of the
25 state government, and a department, office, institution, organization,
26 commission, or board of the state government independent of the executive,
27 legislative and judicial branches; it also includes an officer, employee
28 or member of an "agency" acting or purporting to act in the exercise
29 of his official duties, but does not include the governor, lieutenant

1 governor, or their personal staffs or the members or employees of the
2 legislative and judicial branches;

3 (2) "administrative act" means an action, omission, de-
4 cision, recommendation, practice, policy, or procedure of an agency,
5 but does not include the preparation or presentation of legislation.

6 Sec. 24.55.310. ADMINISTRATIVE PROCEDURE ACT. The administrative
7 acts of the ombudsman are not subject to the provisions of the Admini-
8 strative Procedure Act (AS 44.62), except as provided in sec. 090 of
9 this chapter.

10 Sec. 24.55.320. SHORT TITLE. This chapter may be cited as The
11 Ombudsman Act.

12 * Sec. 2. AS 39.25.110 is amended by adding a new paragraph to read:

13 (16) the ombudsman and his staff.

14 * Sec. 3. Sec. 24.55.260 in sec. 1 of this Act amends Rule 43(h) of the
15 Rules of Civil Procedure by establishing an additional privilege not to
16 testify in a court and must receive an affirmative vote of two-thirds of
17 the full membership of each house in order to be effective.

18 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-
19 10.070(c).