

Original sponsor: Rules Committee by  
request of the Governor

Offered: 3/5/75  
Referred: Rules

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 45 (Finance)

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 pro-  
8 viding 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 the  
14 legislative branch of the state the office of the ombudsman.

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

18 (b) The legislative council shall examine persons to serve as the  
19 ombudsman regarding their qualifications and abilities and shall place  
20 the name of the person selected in nomination before the legislature for  
21 appointment as the ombudsman. The appointment of a person nominated as  
22 the ombudsman by the legislative council

23 (1) shall be considered in hearings before the appropriate  
24 standing committees of each house; and

25 (2) is effective if his candidacy is approved by a roll call  
26 vote of three-fourths of the members in each house of the legislature  
27 entered in the journal.

28 Sec. 24.55.030. QUALIFICATIONS; PROHIBITION AGAINST POLITICAL  
29 ACTIVITY. (a) No person may serve as ombudsman

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

3 (2) while he is a candidate for or holds any other national,  
4 state, or municipal office; nor may the ombudsman become a candidate for  
5 national, state or municipal office until one year has elapsed from the  
6 date he vacates the office of ombudsman;

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

9 (b) It is essential that the nonpartisan nature, integrity and  
10 impartiality of the ombudsman's functions and services be maintained. The  
11 ombudsman and members of his staff may not join, support or otherwise  
12 participate in a partisan political organization, faction or activity,  
13 including but not limited to the making of political contributions.  
14 However, this subsection does not restrict the ombudsman or members of  
15 his staff from expressing private opinion, registering as to party, or  
16 voting.

17 Sec. 24.55.040. TERM OF OFFICE. (a) The term of office of the  
18 ombudsman is five years. An ombudsman may be reappointed.

19 (b) If the term of an ombudsman expires without the appointment of  
20 a successor under this chapter, the incumbent ombudsman may continue in  
21 office until a successor is appointed. If the ombudsman dies, resigns,  
22 becomes ineligible to serve, or is removed or suspended from office, the  
23 deputy ombudsman becomes acting ombudsman until a new ombudsman is ap-  
24 pointed for a full term.

25 Sec. 24.55.050. REMOVAL. The legislature, by a concurrent resolu-  
26 tion adopted by a roll call vote of two-thirds of the members in each  
27 house entered in the journal, may remove or suspend the ombudsman from  
28 office, but only for neglect of duty, misconduct, or disability.

29 Sec. 24.55.060. COMPENSATION. The ombudsman is entitled to receive

1 an annual salary equal to that of a superior court judge.

2 Sec. 24.55.070. STAFF AND DELEGATION. (a) The ombudsman may  
3 appoint a deputy ombudsman; he shall also appoint assistants and clerical  
4 personnel necessary to carry out the provisions of this chapter.

5 (b) The ombudsman may delegate to his deputy or assistants any of  
6 his duties except those specified in secs. 190 - 200 of this chapter;  
7 however, during the ombudsman's absence from his principal business  
8 offices, the ombudsman may delegate the duties specified in secs. 190 -  
9 200 of this chapter to his deputy for the duration of his absence.  
10 Those duties specified in secs. 190 - 200 of this chapter shall be  
11 performed by the deputy ombudsman when he is serving as acting ombudsman  
12 under sec. 40(b) of this chapter.

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

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

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

21 (c) The ombudsman shall submit a budget for each fiscal year to  
22 the finance committees of the legislature and shall annually submit an  
23 estimated budget to the governor for information purposes in the prepara-  
24 tion of the executive budget.

25 Sec. 24.55.090. PROCEDURE. The ombudsman shall, by regulations  
26 adopted under the Administrative Procedure Act (AS 44.62), establish  
27 procedures for receiving and processing complaints, conducting investi-  
28 gations, and reporting his findings. However, he may not charge fees  
29 for the submission or investigation of complaints.

1           ARTICLE 2. JURISDICTION AND INITIATION OF INVESTIGATIONS.

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

4           (b) The ombudsman may exercise his powers without regard to the  
5 finality of an administrative act.

6           Sec. 24.55.110. INVESTIGATION OF COMPLAINTS. The ombudsman shall  
7 investigate any complaint which is an appropriate subject for investiga-  
8 tion under sec. 150 of this chapter, unless he reasonably believes that

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

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

13           (3) the complaint relates to an administrative act of which  
14 the complainant has had knowledge for an unreasonable length of time  
15 before the complaint was submitted;

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

18           (5) the complaint is made in bad faith;

19           (6) the resources of the ombudsman's office are insufficient  
20 for adequate investigation.

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

25           Sec. 24.55.130. NOTICE TO COMPLAINANT. (a) If the ombudsman  
26 decides not to investigate a complaint, he shall inform the complainant  
27 of that decision and shall state his reasons.

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

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

5                           ARTICLE 3. INVESTIGATIONS.

6           Sec. 24.55.150. APPROPRIATE SUBJECTS FOR INVESTIGATION. (a) An  
7 appropriate subject for investigation by the ombudsman is an administra-  
8 tive act of an agency which the ombudsman has reason to believe might be

9                       (1) contrary to law;

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

13                      (3) based on a mistake of fact;

14                      (4) based on improper or irrelevant grounds;

15                      (5) unsupported by an adequate statement of reasons;

16                      (6) performed in an inefficient or discourteous manner; or

17                      (7) otherwise erroneous.

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

19           Sec. 24.55.160. INVESTIGATION PROCEDURES. (a) In an investiga-  
20 tion, the ombudsman may

21                      (1) make inquiries and obtain information as he considers  
22 necessary;

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

25                      (3) hold private hearings.

26           (b) The ombudsman shall maintain confidentiality with respect to  
27 all matters and the identities of the complainants or witnesses coming  
28 before him except insofar as disclosures may be necessary to enable him  
29 to carry out his duties and to support his recommendations.

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

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

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

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

15          (c) Papers, records, documents, memoranda, bills, receipts, photo-  
16 graphs, tape recordings, letters, correspondence, invoices, work orders,  
17 working papers, agreements, notes, reports and any other manner of  
18 writing, recording or document possessed by or in the custody of an  
19 agency may be inspected and copied by the ombudsman, notwithstanding a  
20 law of the state making any of these items or the information contained  
21 in them confidential. However, access to confidential items or infor-  
22 mation is subject to prior approval of the superior court or a federal  
23 court of appropriate jurisdiction. The ombudsman may not make public  
24 disclosure of information required by law to be confidential. The om-  
25 budsman or a member of his staff who makes public information required  
26 to be confidential is punishable under AS 11.30.240. If any of these  
27 items contain information which is in part available to the ombudsman  
28 and in part not available to him under this subsection, the agency shall  
29 take the steps that are necessary to segregate and release the available

1 information to the ombudsman.

2 ARTICLE 4. PROCEDURE AND REPORTS AFTER INVESTIGATION.

3 Sec. 24.55.180. CONSULTATION WITH AGENCY. Before giving an opinion  
4 or recommendation which is critical of an agency or person, the ombudsman  
5 shall consult with that agency or person.

6 Sec. 24.55.190. PROCEDURE AFTER INVESTIGATION. (a) The ombudsman  
7 shall report his opinion and recommendations to an agency if he finds,  
8 after investigation, that

- 9 (1) a matter should be further considered by the agency;  
10 (2) an administrative act should be modified or cancelled;  
11 (3) a statute or regulation on which an administrative act is  
12 based should be altered;  
13 (4) reasons should be given for an administrative act;  
14 (5) any other action should be taken by the agency;  
15 (6) there are no grounds for action by the agency; or  
16 (7) the agency's act was arbitrary or capricious, constituted  
17 an abuse of discretion, or was otherwise erroneous or not in accordance  
18 with the law.

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

21 Sec. 24.55.200. PUBLICATION OF RECOMMENDATIONS. Within a reason-  
22 able amount of time after the ombudsman reports his opinion and recom-  
23 mendations to an agency he may present his opinion and recommendations  
24 to the governor, the legislature, a grand jury, the public or any of  
25 these. The ombudsman shall include with his opinion any reply made by  
26 the agency.

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

1 ARTICLE 5. MISCELLANEOUS.

2 Sec. 24.55.220. MISCONDUCT BY AGENCY PERSONNEL. If the ombudsman  
3 believes there is a breach of duty or misconduct by an officer or em-  
4 ployee of an agency in the conduct of his official duties, the ombudsman  
5 shall refer the matter to the chief executive officer of the agency or,  
6 when appropriate, to a grand jury or to another appropriate official or  
7 agency.

8 Sec. 24.55.230. ANNUAL REPORT. The ombudsman shall submit to the  
9 legislature and the public an annual report of his activities under this  
10 chapter.

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

14 Sec. 24.55.250. IMMUNITY OF THE OMBUDSMAN. No civil action may be  
15 brought against the ombudsman or a member of his staff for anything done  
16 said or omitted in performing his duties or responsibilities under this  
17 chapter.

18 Sec. 24.55.260. OMBUDSMAN'S PRIVILEGE NOT TO TESTIFY. The ombuds-  
19 man and his staff may not testify in a court regarding matters coming to  
20 their attention in the exercise or purported exercise of their official  
21 duties except as may be necessary to enforce the provisions of this  
22 chapter.

23 Sec. 24.55.270. LETTERS TO OR FROM OMBUDSMAN. A letter to the  
24 ombudsman from a person held in custody by an agency shall be forwarded  
25 immediately, unopened, to the ombudsman. A letter from the ombudsman to  
26 a person held in custody by an agency shall be delivered immediately,  
27 unopened, to the person.

28 Sec. 24.55.280. TIME FOR JUDICIAL REVIEW OF AGENCY ACTION. This  
29 chapter in no way extends the time limit in which judicial review of

1 agency action must be sought.

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

7 ARTICLE 6. GENERAL PROVISIONS.

8 Sec. 24.55.300. ADMINISTRATIVE PROCEDURE ACT. The administrative  
9 acts of the ombudsman are not subject to the provisions of the Adminis-  
10 trative Procedure Act (AS 44.62), except as provided in sec. 90 of this  
11 chapter.

12 Sec. 24.55.320. DEFINITIONS. In this chapter

13 (1) "administrative act" means an action, omission, decision,  
14 recommendation, practice, policy, or procedure of an agency, but does not  
15 include the preparation or presentation of legislation or the substantive  
16 content of a judicial order, decision or opinion;

17 (2) "agency" includes a department, office, institution,  
18 corporation, authority, organization, commission, committee, council or  
19 board of the executive, legislative or judicial branches of the state  
20 government, and a department, office, institution, corporation, author-  
21 ity, organization, commission, committee, council or board of the state  
22 government independent of the executive, legislative and judicial  
23 branches; it also includes an officer, employee or member of an "agency"  
24 acting or purporting to act in the exercise of his official duties, but  
25 does not include the governor, lieutenant governor or a member of the  
26 legislature.

27 Sec. 24.55.330. SHORT TITLE. This chapter may be cited as The  
28 Ombudsman Act.

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

1 (16) the ombudsman and his staff.

2 \* Sec. 3. AS 11.30.240 is amended to read:

3 Sec. 11.30.240. MISHANDLING OF PUBLIC RECORDS. A person who has  
4 the legal custody of and who wilfully destroys, secretes, or mutilates a  
5 public record, book, paper, or writing, or a person [AN ATTORNEY] who  
6 wilfully destroys, secretes, or mutilates a public record, book, paper,  
7 or writing, or wrongfully takes a public record, book, paper, or writing  
8 from the person having legal custody of it, or who has obtained posses-  
9 sion wrongfully and refuses or neglects to return or produce it when  
10 lawfully required or demanded so to do, or a person who makes public a  
11 record made confidential under, or that is not subject to inspection or  
12 copying under the exceptions to, AS 09.25.120, is guilty of a misdemeanor  
13 and, upon conviction, is punishable by a fine of not less than \$100 nor  
14 more than \$500, or by imprisonment for not less than 90 days nor more  
15 than one year, or by both [IMPRISONMENT IN THE PENITENTIARY FOR NOT LESS  
16 THAN SIX MONTHS NOR MORE THAN ONE YEAR, OR BY IMPRISONMENT IN A JAIL FOR  
17 NOT LESS THAN THREE MONTHS NOR MORE THAN ONE YEAR, OR BY A FINE OF NOT  
18 LESS THAN \$100 NOR MORE THAN \$500].

19 \* Sec. 4. Section 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 the  
22 full membership of each house in order to be effective.

23 \* Sec. 5. This Act takes effect immediately in accordance with AS 01.-  
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