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1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 1

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
14 the legislative branch of the state the office of the ombudsman.

15 Sec. 24.55.020. APPOINTMENT OF THE OMBUDSMAN. (a) The rules
16 committee of the senate shall examine persons to serve as the ombuds-
17 man regarding their qualifications and abilities and shall place the
18 name of one or more persons recommended before the senate for appoint-
19 ment as the ombudsman.

20 (b) A candidate for appointment as the ombudsman shall be nomi-
21 nated by the senate by a concurrent resolution adopted by a roll call
22 vote of a majority of its members entered in the journal. The appoint-
23 ment of a person nominated as the ombudsman by the senate is effective
24 if his candidacy is

25 (1) confirmed by a roll call vote of a majority of the
26 members of the house of representatives entered in the journal; and

27 (2) approved by the governor.

28 (c) However, the governor may veto the appointment and return it,
29 with a statement of his objections, to the senate. Upon receipt of a

1 veto message the legislature shall meet immediately in joint session
2 and reconsider approval of the vetoed appointment. The vetoed appoint-
3 ment becomes effective by an affirmative vote of two-thirds of the
4 membership of the legislature in joint session. The vote on reconsider-
5 ation of a vetoed appointment shall be entered in the journals of both
6 houses.

7 (d) The appointment of the ombudsman becomes effective if, while
8 the legislature is in session, the governor neither approves nor
9 vetoes it within 15 days, Sundays excepted, after its delivery to him.
10 If the legislature is not in session and the governor neither approves
11 nor vetoes the appointment within 20 days, Sundays excepted, after its
12 delivery to him, the appointment becomes effective.

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

15 (1) within two years of the last day on which he served as
16 a member of the legislature;

17 (2) while he is a candidate for or holds any other national,
18 state, or municipal office;

19 (3) while he is engaged in any other occupation for which
20 he receives compensation; and

21 (4) unless he is at least 21 years of age and is a quali-
22 fied voter who has been a resident of the state for at least three
23 years.

24 (b) The ombudsman and members of his staff shall maintain the
25 integrity and impartiality of the ombudsman's functions and services
26 by refraining from joining or supporting a partisan or nonpartisan
27 political organization, faction or activity which would tend to
28 undermine the essential nonpartisan nature of their functions and
29 services, including but not limited to the making of political

1 contributions. However, this subsection does not restrict the ombuds-
2 man or members of his staff from expressing private opinion, registering
3 as to party, or voting.

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

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

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

16 Sec. 24.55.060. COMPENSATION. The ombudsman is entitled to
17 receive an annual salary equal to that of the chief justice of the
18 supreme court.

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

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

1 under sec. 40(b) of this chapter.

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

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

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

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

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

19 ARTICLE 2. JURISDICTION AND INITIATION OF INVESTIGATIONS.

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

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

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

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

29 (2) the complaint relates to a matter that is outside the

1 jurisdiction of the ombudsman;

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

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

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

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

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

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

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

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

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

26 ARTICLE 3. INVESTIGATIONS.

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

1 might be

2 (1) contrary to law;

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

6 (3) based on a mistake of fact;

7 (4) based on improper or irrelevant grounds;

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

9 (6) performed in an inefficient manner; or

10 (7) otherwise erroneous.

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

12 Sec. 24.55.160. INVESTIGATION PROCEDURES. In an investigation,
13 the ombudsman may

14 (1) make inquiries and obtain information as he considers
15 necessary;

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

18 (3) hold private hearings.

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

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

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

28 (b) If a person refuses to comply with a subpoena issued under
29 (a) of this section, the superior court may, on application of the

1 ombudsman, compel obedience by proceedings for contempt in the same
2 manner as in the case of disobedience to the requirements of a subpoena
3 issued by the court or refusal to testify in the court.

4 ARTICLE 4. PROCEDURE AND REPORTS AFTER INVESTIGATION.

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

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

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

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

23 Sec. 24.55.200. PUBLICATION OF RECOMMENDATIONS. Within a
24 reasonable amount of time after the ombudsman reports his opinion and
25 recommendations to an agency he may present his opinion and recommen-
26 dations to the governor, the legislature, the public or any of these.
27 The ombudsman shall include with his opinion any reply made by the
28 agency.

29 Sec. 24.55.210. NOTICE TO THE COMPLAINANT. After a reasonable

1 time has elapsed, the ombudsman shall notify the complainant of the
2 actions taken by him and by the agency.

3 ARTICLE 5. MISCELLANEOUS

4 Sec. 24.55.220. MISCONDUCT BY AGENCY PERSONNEL. If the ombudsman
5 believes there is a breach of duty or misconduct by an officer or
6 employee of an agency in the conduct of his official duties, the
7 ombudsman shall refer the matter to the chief executive officer of the
8 agency or, when appropriate, to a grand jury or to any other appropri-
9 ate official or agency.

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

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

16 Sec. 24.55.250. IMMUNITY OF THE OMBUDSMAN. No civil action
17 may be brought against the ombudsman or a member of his staff for
18 anything done, said or omitted in performing his duties or responsi-
19 bilities under this chapter.

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

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

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

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

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

13 Sec. 24.55.310. CONFLICT OF INTEREST. The ombudsman, the
14 deputy ombudsman and their professional staff are subject to AS 39.50
15 (conflict of interest).

16 Sec. 24.55.320. DEFINITIONS. In this chapter

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

21 (2) "agency" includes a department, office, institution,
22 corporation, authority, organization, commission, committee, council
23 or board of a municipality or in the executive, legislative or judi-
24 cial branches of the state government, and a department, office,
25 institution, corporation, authority, organization, commission, com-
26 mittee, council or board of a municipality or of the state government
27 independent of the executive, legislative and judicial branches; it
28 also includes an officer, employee or member of an "agency" acting
29 or purporting to act in the exercise of his official duties, but does

1 not include the governor, lieutenant governor, a member of the legis-
2 lature, justice of the supreme court, judge of the superior or district
3 court, magistrate, member of a city council or borough assembly,
4 elected city or borough mayor, or a member of an elected school board;

5 (3) "municipality" means a home rule or general law borough
6 or city including but not limited to a unified municipality organized
7 under AS 29.68.

8 Sec. 24.55.330. SHORT TITLE. This chapter may be cited as The
9 Ombudsman Act.

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

11 (16) the ombudsman and his staff.

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

16 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-
17 10.070(c).