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1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR 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 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 is effective if his candidacy is
23 approved by a roll call vote of three-fourths of the members in each
24 house of the legislature entered in the journal.

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

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

29 (2) while he is a candidate for or holds any other national,

1 state, or municipal office, if the municipality is subject to the om-
2 budsman's jurisdiction under sec. 310 of this chapter; nor may the
3 ombudsman become a candidate for national, state or municipal office
4 until one year has elapsed from the date he vacates the office of ombuds-
5 man;

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

8 (b) It is essential that the nonpartisan nature, integrity and
9 impartiality of the ombudsman's functions and services be maintained. The
10 ombudsman and members of his staff may not join, support or otherwise
11 participate in a partisan political organization, faction or activity,
12 including but not limited to the making of political contributions. The
13 ombudsman and members of his staff may not join, support or otherwise
14 participate in a nonpartisan political organization, faction or activity
15 in any municipality that is subject to the ombudsman's jurisdiction under
16 sec. 310 of this chapter. However, this subsection does not restrict the
17 ombudsman or members of his staff from expressing private opinion, regis-
18 tering as to party, or voting.

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

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

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

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

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

6 (b) The ombudsman may delegate to his deputy or assistants any of
7 his duties except those specified in secs. 190 - 200 of this chapter;
8 however, during the ombudsman's absence from his principal business
9 offices, the ombudsman may delegate the duties specified in secs. 190 -
10 200 of this chapter to his deputy for the duration of his absence. Those
11 duties specified in secs. 190 - 200 of this chapter shall be performed by
12 the deputy ombudsman when he is serving as acting ombudsman under sec.
13 40(b) of this chapter.

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

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

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

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

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

1 the submission or investigation of complaints.

2 ARTICLE 2. JURISDICTION AND INITIATION OF INVESTIGATIONS.

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

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

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

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

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

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

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

18 (5) the resources of the ombudsman's office are insufficient
19 for adequate investigation; or

20 (6) there are other complaints more worthy of the ombudsman's
21 attention.

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

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

29 (b) If the ombudsman decides to investigate a complaint, he shall

1 notify the complainant of his decision.

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

6 ARTICLE 3. INVESTIGATIONS.

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

11 (1) contrary to law;

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

15 (3) based on a mistake of fact;

16 (4) based on improper or irrelevant grounds;

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

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

19 (7) otherwise erroneous.

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

21 Sec. 24.55.160. INVESTIGATION PROCEDURES. In an investigation, the
22 ombudsman may

23 (1) make inquiries and obtain information as he considers
24 necessary;

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

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

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

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

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

29 ARTICLE 4. PROCEDURE AND REPORTS AFTER INVESTIGATION.

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

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

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

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

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

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

27 ARTICLE 5. MISCELLANEOUS

28 Sec. 24.55.220. MISCONDUCT BY AGENCY PERSONNEL. If the ombudsman
29 believes there is a breach of duty or misconduct by an officer or em-

1 ployee of an agency in the conduct of his official duties, the ombudsman
2 shall refer the matter to the chief executive officer of the agency or,
3 when appropriate, to a grand jury or to another appropriate official or
4 agency.

5 Sec. 24.55.230. ANNUAL REPORT. The ombudsman shall submit to the
6 legislature and the public an annual report of his activities under this
7 chapter.

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

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

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

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

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

28 Sec. 24.55.290. PENALTY. A person who wilfully hinders the lawful
29 actions of the ombudsman or his staff, or who wilfully refuses to comply

1 with their lawful demands, or who wilfully violates sec. 270 of this
2 chapter, is guilty of a misdemeanor and upon conviction is punishable by
3 a fine of not more than \$1,000.

4 ARTICLE 6. GENERAL PROVISIONS.

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

9 Sec. 24.55.310. MUNICIPALITIES. A municipality may by ordinance
10 elect to become subject to the jurisdiction of the ombudsman appointed
11 under this chapter. If a municipality so elects, it shall notify the
12 ombudsman of that election and shall thereafter be considered an agency
13 for purposes of this chapter.

14 Sec. 24.55.320. DEFINITIONS. In this chapter

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

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

1 of an elected school board;

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

5 Sec. 24.55.330. SHORT TITLE. This chapter may be cited as The
6 Ombudsman Act.

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

8 (16) the ombudsman and his staff.

9 * Sec. 3. AS 11.30.240 is amended to read:

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

26 * Sec. 4. Section 24.55.260 in sec. 1 of this Act amends Rule 43(h) of the
27 Rules of Civil Procedure by establishing an additional privilege not to
28 testify in a court and must receive an affirmative vote of two-thirds of the
29 full membership of each house in order to be effective.

1 * Sec. 5. This Act takes effect immediately in accordance with AS 01.-
2 10.070(c).
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