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1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 1 (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.-
24 10.070(c).