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1 IN THE SENATE

BY THE FREE CONFERENCE COMMITTEE

2 FREE CONFERENCE CS FOR HCS 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 ombudsman selec-
17 tion committee composed of three members of the senate appointed by the
18 president of the senate and three members of the house of representatives
19 appointed by the speaker of the house. One member of the minority party
20 caucus in each houseshall be appointed to the selection committee.

21 (b) The ombudsman selection committee shall examine persons to
22 serve as ombudsman regarding their qualifications and ability and shall
23 place the name of the person selected in nomination. The appointment is
24 effective if the nomination is approved by a roll call vote of two-thirds
25 of the members of the legislature in joint session and approved by the
26 governor. However, the governor may veto the appointment and return it,
27 with a statement of his objections, to the legislature. Upon receipt of
28 a veto message the legislature shall meet immediately in joint session
29 and reconsider approval of the vetoed appointment. The vetoed appoint-

1 ment becomes effective by an affirmative vote of two-thirds of the
2 membership of the legislature in joint session. The vote on the appoint-
3 ment and on reconsideration of a vetoed appointment shall be entered in
4 the journals of both houses.

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

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

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

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

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

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

23 (b) It is essential that the nonpartisan nature, integrity and
24 impartiality of the ombudsman's functions and services be maintained. The
25 ombudsman and members of his staff may not join, support or otherwise
26 participate in a partisan political organization, faction or activity,
27 including but not limited to the making of political contributions.
28 However, this subsection does not restrict the ombudsman or members of
29 his staff from expressing private opinion, registering as to party, or

1 voting.

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

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

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

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

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

20 (b) The ombudsman may delegate to his deputy or assistants any of
21 his duties except those specified in secs. 190 - 200 of this chapter;
22 however, during the ombudsman's absence from his principal business
23 offices, the ombudsman may delegate the duties specified in secs. 190 -
24 200 of this chapter to his deputy for the duration of his absence.
25 Those duties specified in secs. 190 - 200 of this chapter shall be
26 performed by the deputy ombudsman when he is serving as acting ombudsman
27 under sec. 40(b) of this chapter.

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

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

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

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

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

16 ARTICLE 2. JURISDICTION AND INITIATION OF INVESTIGATIONS.

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

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

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

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

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

28 (3) the complaint relates to an administrative act of which
29 the complainant has had knowledge for an unreasonable length of time

1 before the complaint was submitted;

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

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

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

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

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

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

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

20 ARTICLE 3. INVESTIGATIONS.

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

24 (1) contrary to law;

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

28 (3) based on a mistake of fact;

29 (4) based on improper or irrelevant grounds;

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

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

3 (7) otherwise erroneous.

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

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

7 (1) make inquiries and obtain information as he considers
8 necessary;

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

11 (3) hold private hearings.

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

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

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

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

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

1 ARTICLE 4. PROCEDURE AND REPORTS AFTER INVESTIGATION.

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

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

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

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

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

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

29 ARTICLE 5. MISCELLANEOUS.

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

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

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

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

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

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

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

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

6 ARTICLE 6. GENERAL PROVISIONS.

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

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

14 Sec. 24.55.320. MUNICIPALITIES. A municipality may by ordinance
15 elect to become subject to the jurisdiction of the ombudsman appointed
16 under this chapter. If a municipality so elects, it shall notify the
17 ombudsman of that election and shall thereafter be considered an agency
18 for the purposes of this chapter. If a municipality subjects itself to
19 the jurisdiction of the ombudsman, the municipality shall pay its pro
20 rata share of the cost of the operation of the office of the ombudsman
21 based on the number of complaints or the case load emanating from that
22 municipality, as prescribed by the ombudsman. If a municipality elects
23 to remove itself from the jurisdiction of the ombudsman, it shall do so
24 by ordinance, shall notify the ombudsman of that election and shall not
25 thereafter be considered an agency for the purposes of this chapter.

26 Sec. 24.55.330. DEFINITIONS. In this chapter

27 (1) "administrative act" means an action, omission, decision,
28 recommendation, practice, policy, or procedure of an agency, but does not
29 include the preparation or presentation of legislation or the substantive

1 content of a judicial order, decision or opinion;

2 (2) "agency" includes a department, office, institution,
3 corporation, authority, organization, commission, committee, council or
4 board of a municipality or in the executive, legislative or judicial
5 branches of the state government, and a department, office, institution,
6 corporation, authority, organization, commission, committee, council or
7 board of a municipality or of the state government independent of the
8 executive, legislative and judicial branches; it also includes an
9 officer, employee or member of an "agency" acting or purporting to act
10 in the exercise of his official duties, but does not include the gover-
11 nor, lieutenant governor, a member of the legislature, justice of the
12 supreme court, judge of the superior or district court, magistrate,
13 member of a city council or borough assembly, elected city or borough
14 mayor, or a member of an elected school board;

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

18 Sec. 24.55.340. SHORT TITLE. This chapter may be cited as The
19 Ombudsman Act.

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

21 (16) the ombudsman and his staff.

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

26 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-
27 10.070(c).
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