

Introduced: 1/23/85
Referred: State Affairs and
Judiciary

BY THE JUDICIARY
COMMITTEE BY REQUEST

1 IN THE HOUSE

2 HOUSE BILL NO. 95

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the office of the ombudsman and
7 to the powers and duties of the ombudsman."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 24.55.080(a) is repealed and reenacted to read:

10 (a) Subject to restrictions and limitations imposed by the
11 director of the Legislative Affairs Agency, the administrative
12 facilities and services of the Legislative Affairs Agency, including
13 computer, data processing, and teleconference facilities, may be made
14 available to the ombudsman to be used in the management of the office
15 of the ombudsman and to carry out the purposes of this chapter.

16 * Sec. 2. AS 24.55.090 is amended to read:

17 Sec. 24.55.090. PROCEDURE. (a) The ombudsman shall, by regu-
18 lations adopted under the Administrative Procedure Act (AS 44.62),
19 establish procedures for receiving and processing complaints, conduct-
20 ing investigations, [AND] reporting [HIS] findings, and assuring that
21 confidential information obtained by the ombudsman in the course of an
22 investigation will not be improperly disclosed. However, the provi-
23 sions of AS 44.62.060 do not apply to regulations adopted, amended or
24 repealed under this subsection.

25 (b) The ombudsman [HE] may not charge fees for the submission or
26 investigation of complaints.

27 * Sec. 3. AS 24.55.130 is amended by adding a new subsection to read:

28 (c) Notice given under this section may be verbal, but the
29 ombudsman shall state the reasons for not investigating a complaint in

1 writing if so requested by the complainant.

2 * Sec. 4. AS 24.55.140 is amended to read:

3 Sec. 24.55.140. NOTICE TO THE AGENCY. If the ombudsman decides
4 to investigate a complaint, the ombudsman [HE] shall notify the agency
5 of the [HIS] intention to investigate unless the ombudsman [HE] be-
6 lieves that advance notice will unduly hinder the investigation or
7 make it ineffectual. Notice given under this section may be verbal or
8 written, at the discretion of the ombudsman.

9 * Sec. 5. AS 24.55.160 is amended to read:

10 Sec. 24.55.160. INVESTIGATION PROCEDURES. (a) In an inves-
11 tigation, the ombudsman may

12 (1) make inquiries and obtain information as the ombudsman
13 [HE] considers necessary;

14 (2) enter without notice to inspect the premises of an
15 agency, but only when agency personnel are present; [AND]

16 (3) hold private hearings; and

17 (4) notwithstanding other provisions of law, have access at
18 all times to records of every state agency, including confidential
19 records.

20 (b) The ombudsman shall maintain confidentiality with respect to
21 all matters and the identities of the complainants or witnesses coming
22 before the ombudsman [HIM] except insofar as disclosures may be neces-
23 sary to enable the [HIM TO CARRY OUT HIS] duties of the ombudsman to
24 be carried out and to support opinions or [HIS] recommendations of the
25 ombudsman.

26 * Sec. 6. AS 24.55.170(a) is amended to read:

27 (a) Subject to the privileges that [WHICH] witnesses have in the
28 courts of this state, the ombudsman may compel by subpoena, at a
29 specified time and place, the

1 (1) [COMPEL BY SUBPOENA, AT A SPECIFIED TIME AND PLACE,
2 THE] appearance and sworn testimony of a person who the ombudsman
3 reasonably believes may be able to give information relating to a
4 matter under investigation; and

5 (2) production by [COMPEL] a person of a record that [, BY
6 SUBPOENA, TO PRODUCE DOCUMENTS, PAPERS, OR OBJECTS WHICH] the
7 ombudsman reasonably believes may relate to the matter under inves-
8 tigation.

9 * Sec. 7. AS 24.55.190(a) is amended to read:

10 (a) After an investigation, the [THE] ombudsman shall report an
11 [HIS] opinion [AND RECOMMENDATIONS] to the [AN] agency. In addition,
12 the ombudsman may make recommendations to the agency if the ombudsman
13 [HE] finds [, AFTER INVESTIGATION,] that

14 (1) a matter should be further considered by the agency;

15 (2) an administrative act should be modified or cancelled;

16 (3) a statute or regulation on which an administrative act
17 is based should be altered;

18 (4) reasons should be given for an administrative act;

19 (5) any other action should be taken by the agency;

20 (6) there are no grounds for action by the agency; or

21 (7) the agency's act was arbitrary or capricious, consti-
22 tuted an abuse of discretion, or was otherwise erroneous or not in
23 accordance with the law.

24 * Sec. 8. AS 24.55.190 is amended by adding a new subsection to read:

25 (c) Information provided under this section is confidential and
26 may not be disclosed to the public by the ombudsman or the agency
27 until the ombudsman reports that the investigation has been concluded

28 (1) to the agency; and

29 (2) if the investigation was conducted in response to a

1 complaint, to the complainant under AS 24.55.210.

2 * Sec. 9. AS 24.55.330 is amended to read:

3 Sec. 24.55.330. DEFINITIONS. In this chapter

4 (1) "administrative act" means an action, omission, deci-
5 sion, recommendation, practice, policy, or procedure of an agency, but
6 does not include the preparation or presentation of legislation or the
7 substantive content of a judicial order, decision or opinion;

8 (2) "agency" includes a department, office, institution,
9 corporation, authority, organization, commission, committee, council,
10 or board of a municipality or in the executive, legislative, or judi-
11 cial branches of the state government [, AND A DEPARTMENT, OFFICE,
12 INSTITUTION, CORPORATION, AUTHORITY, ORGANIZATION, COMMISSION, COMMIT-
13 TEE, COUNCIL OR BOARD OF A MUNICIPALITY] or of the state government
14 independent of the executive, legislative and judicial branches; it
15 also includes an officer, employee or member of an agency ["AGENCY"]
16 acting or purporting to act in the exercise of [HIS] official duties,
17 but does not include the governor, lieutenant governor, a member of
18 the legislature, a justice of the supreme court, a judge of the court
19 of appeals, a superior court judge, a district court judge, a
20 magistrate, a member of a city council or borough assembly, an elected
21 city or borough mayor, or a member of an elected school board;

22 (3) "municipality" means a home rule or general law borough
23 or city including [BUT NOT LIMITED TO] a unified municipality; and
24 [ORGANIZED UNDER AS 29.68]

25 (4) "record" means a document, paper, memorandum, book,
26 letter, file, drawing, map, plat, photo, photographic file, motion
27 picture, film, microfilm, microphotograph, exhibit, magnetic or paper
28 tape, punched card, or other item developed or received under law or
29 in connection with the transaction of official business, but does not

1 include an attorney's work product.