

"An Act creating the office of the ombudsman; amending Rule 43(h) of the Rules of Civil Procedure; and providing for an effective date."

# COMMITTEE REPORT

2/19/75

HOUSE

Mr. Speaker:

Date 3/5/75

The Committee on FINANCE has had HR 45

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(x) recommends it BE REPLACED WITH CS FOR HR 45 (Finance) AND THAT

CS FOR \_\_\_\_\_ DO PASS

( ) "and" recommends it BE REFERRED TO THE \_\_\_\_\_

COMMITTEE

(x) reports it back WITHOUT RECOMMENDATION

(x) "other" reports it back with individual recommendations

Members signing the Majority report:

[Signature] \_\_\_\_\_

Charles [Signature] "Do Pass" \_\_\_\_\_

[Signature] "Do Pass" \_\_\_\_\_

[Signature] "Do Pass" \_\_\_\_\_

Members NOT concurring in the Majority report:

[Signature] recommends: No Rec.

[Signature] recommends: No Rec.

[Signature] recommends: No Rec.

[Signature] recommends: do not pass

[Signature] recommends: Do NOT Pass

[Signature] Chairman

Original sponsor: Rules Committee by  
request of the Governor

Offered: 3/5/75  
Referred: Rules

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 45 (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  
1 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, memcranda, 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 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  
25  
26  
27  
28  
29

Introduced: 1/22/75  
Referred: Judiciary and  
Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 45

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  
8 providing 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) A candidate  
16 for appointment as the ombudsman shall be nominated by the Alaska  
17 Legislative Council.

18 (b) The legislative council shall examine persons to serve as  
19 the ombudsman regarding their qualifications and abilities and shall  
20 place the name of the person selected in nomination before the legis-  
21 lature for appointment as the ombudsman. The appointment of a person  
22 nominated as the ombudsman by the legislative council is effective if  
23 his candidacy is approved by a majority of the members of the legis-  
24 lature in joint session.

25 Sec. 24.55.030. QUALIFICATIONS. No person may serve as ombudsman

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

28 (2) while he is a candidate for or holds any other national  
29 or state office; or

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

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

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

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

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

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

21 (b) The ombudsman may delegate to his deputy or assistants any  
22 of his duties except those specified in secs. 190 - 200 of this chapter  
23 however, during the ombudsman's absence from his principal business  
24 offices, the ombudsman may delegate the duties specified in secs.  
25 190 - 200 of this chapter to his deputy for the duration of his absence  
26 Those duties specified in secs. 190 - 200 of this chapter shall be  
27 performed by the deputy ombudsman when he is serving as acting ombudsman  
28 under sec. 040(b) of this chapter.

29 (c) The ombudsman and the staff appointed by him are in the

1 exempt service under AS 39.25.110.

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

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

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

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

17 ARTICLE 2. JURISDICTION AND INITIATION OF INVESTIGATIONS.

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

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

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

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

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

29 (3) the complaint relates to an administrative act of which

1 the complainant has had knowledge for an unreasonable length of time  
2 before the complaint was submitted;

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

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

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

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

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

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

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

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

24 ARTICLE 3. INVESTIGATIONS.

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

29 (1) contrary to law;

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

4 (3) based on a mistake of fact;

5 (4) based on improper or irrelevant grounds;

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

7 (6) performed in an inefficient manner; or

8 (7) otherwise erroneous.

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

10 Sec. 24.55.160. INVESTIGATION PROCEDURES. In an investigation,  
11 the ombudsman may

12 (1) make inquiries and obtain information as he considers  
13 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.

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

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

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

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

1 issued by the court or refusal to testify in the court.

2 (c) Any papers, records, documents, memoranda, bills, receipts,  
3 photographs, tape recordings, letters, correspondence, invoices, work  
4 orders, working papers, agreements, notes, reports and any other manner  
5 of writing, recording or document possessed by or in the custody of an  
6 agency may be inspected and copied by the ombudsman, notwithstanding  
7 any law of the state making any of these items or the information  
8 contained in them confidential. However, access to information does  
9 not extend to information made confidential under federal law or  
10 regulation. The ombudsman may not make public disclosure of con-  
11 fidential information acquired under this chapter. If any of these  
12 items contain information which is in part available to the ombudsman  
13 and in part not available to him under this subsection, the agency  
14 shall take the steps that are necessary to segregate and release the  
15 available information to the ombudsman.

16 ARTICLE 4. PROCEDURE AND REPORTS AFTER INVESTIGATION.

17 Sec. 24.55.180. CONSULTATION WITH AGENCY. Before giving any  
18 opinion or recommendation which is critical of an agency or person,  
19 the ombudsman shall consult with that agency or person.

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

- 23 (1) a matter should be further considered by the agency;
- 24 (2) an administrative act should be modified or cancelled;
- 25 (3) a statute or regulation on which an administrative act  
26 is based should be altered;
- 27 (4) reasons should be given for an administrative act;
- 28 (5) any other action should be taken by the agency;
- 29 (6) there are no grounds for any action by the agency; or

1 governor, or their personal staffs or the members or employees of the  
2 legislative and judicial branches;

3 (2) "administrative act" means an action, omission, de-  
4 cision, recommendation, practice, policy, or procedure of an agency,  
5 but does not include the preparation or presentation of legislation.

6 Sec. 24.55.310. ADMINISTRATIVE PROCEDURE ACT. The administrative  
7 acts of the ombudsman are not subject to the provisions of the Admini-  
8 strative Procedure Act (AS 44.62), except as provided in sec. 090 of  
9 this chapter.

10 Sec. 24.55.320. SHORT TITLE. This chapter may be cited as The  
11 Ombudsman Act.

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

13 (16) the ombudsman and his staff.

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

18 \* Sec. 4. This Act takes effect immediately in accordance with AS 01.-  
19 10.070(c).

# 15 Contractual Services

CODE	CONTRACTUAL SERVICES CLASSIFICATION	PRIOR YEAR (PY) ACTUAL	CURRENT YEAR (CY) AUTHORIZED	BUDGET YEAR (BY)			GOVERNOR'S BUDGET
				AGENCY			
				Maintenance	Change	Request	
300	TOTAL CONTRACTUAL				12.0	12.0	12.0
310	COMMUNICATION SERVICES				3.2	3.2	3.2
320	PRINTING AND ADVERTISING				.5	.5	.5
330	RENTS AND UTILITIES				3.6	3.6	3.6
340	REPAIRS, SERVICES AND ALTERATIONS				1.0	1.0	1.0
350	TRANSPORTATION OF THINGS				1.5	1.5	1.5
360	EQUIPMENT RENTAL						
370	INSURANCE AND BONDING						
380	PROFESSIONAL FEES AND SERVICES				2.2	2.2	2.2
390	OTHER						
930	INTER-AGENCY TRANSFERS (Non-Add)						

## EXPLANATION:

- 310 Telephone instrument charge .9 Long Distance 2.3 (four three minute calls per working day)
- 320 Printing of procedures, forms, and annual report to the Legislature and the public
- 330 Rental costs including custodial and maintenance for 300 square feet
- 340 Renovate Office
- 350 Moving expense for one employee
- 380 Contractual investigator 80 hours at \$25.00 per hour

Hawaii Ombudsman actual expenditures for each year since inception

First year	\$90,342
Second year	\$157,395
Third year	159,760
Fourth year	\$157,595
Last year	\$163,000

BRU \_\_\_\_\_ BRU CODE \_\_\_\_\_ REVISED \_\_\_\_\_

**15** CONTRACTUAL SERVICES

The Legislature of the State of Alaska  
FISCAL NOTE

First Session - Ninth Legislature

I. REQUEST

Bill No. HR 45  
 Title: Creating Office of Ombudsman  
 Requested by: Fanny Bowman Date: January 27, 1975  
 Return Date Requested: Unk  
 Agency: Administration Program: Budget & Management

II. FISCAL DETAIL

Budget Request Unit(s) Affected: \_\_\_\_\_

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 75	FY 76	FY 77	FY 78	FY 79	FY 80
100 PERSONAL SERVICES	0	97.9	107.7	118.5		
200 TRAVEL	0	5.8	6.4	7.0		
300 CONTRACTUAL	0	12.0	10.0	11.0		
400 COMMODITIES	0	.8	.5	1.0		
500 EQUIPMENT	0	2.0	1.0	1.0		
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	118.5	125.6	138.5		

B. FUNDING: (Thousands of dollars)

GENERAL FUND	0	118.5	125.6	138.5		
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	0 /	3 /	3 /	3 /	/	/
MAN MONTHS (P./T.)	0 /	36 /	36 /	36 /	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The basic unit funded at \$118,500 in Juneau would include:  
 Salaries of the Ombudsman (\$40,000), deputy Ombudsman (\$31,236),  
 range 26A, and a Secretary III (\$11,724), range 12, plus benefits;  
 travel and per diem for 15 intrastate trips, (\$5,800); (\$12,000)  
 in contractual services to cover possible use of temporary  
 investigators; (\$800) in commodities; (\$2,000) to cover purchase  
 of equipment for office. 10% used as wage increase factor in  
 personal services.

IV. ATTACHMENTS

V. DATE: 1/31/75

PREPARED BY: [Signature]

Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

The Legislature of the State of Alaska  
FISCAL NOTE

First Session - Ninth Legislature

I. REQUEST

Bill No. HB 45  
 Title: Creating Office of Ombudsman  
 Requested by: Danny Lowman Date: January 27, 1975  
 Return Date Requested: NAK  
 Agency: Administration Program: Budget & Management

II. FISCAL DETAIL

Budget Request Unit(s) Affected: \_\_\_\_\_

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 75	FY 76	FY 77	FY 78	FY 79	FY 80
100 PERSONAL SERVICES	0	97.9	107.7	118.5		
200 TRAVEL	0	5.8	6.4	7.0		
300 CONTRACTUAL	0	12.0	10.0	11.0		
400 COMMODITIES	0	.8	.5	1.0		
500 EQUIPMENT	0	2.0	1.0	1.0		
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	118.5	125.6	133.5		

B. FUNDING: (Thousands of dollars)

GENERAL FUND	0	118.5	125.6	138.5		
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	0 /	3 /	3 /	3 /	/	/
MAN MONTHS (P./T.)	0 /	36 /	36 /	36 /	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)  
 The basic unit funded at \$118,500 in Juneau would include:  
 Salaries of the Ombudsman (\$40,000), deputy Ombudsman (\$31,236),  
 range 26A, and a Secretary III (\$11,724), range 12, plus benefits;  
 travel and per diem for 15 intrastate trips, (\$5,800); (\$12,000)  
 in contractual services to cover possible use of temporary  
 investigators; (\$800) in commodities; (\$2,000) to cover purchase  
 of equipment for office. 10% used as wage increase factor in  
 personal services.

IV. ATTACHMENTS

V. DATE: 1/31/75

PREPARED BY: W. Raymond E. W. [Signature]

Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

The Legislature of the State of Alaska  
FISCAL NOTE

First Session - Ninth Legislature

I. REQUEST

Bill No. HB 45  
 Title: Creating Office of Ombudsman  
 Requested by: Danny Bowman Date: January 27, 1975  
 Return Date Requested: Unk  
 Agency: Administration Program: Budget & Management

II. FISCAL DETAIL

Budget Request Unit(s) Affected:

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 75	FY 76	FY 77	FY 78	FY 79	FY 80
100 PERSONAL SERVICES	0	97.9	107.7	112.5		
200 TRAVEL	0	5.8	6.4	7.0		
300 CONTRACTUAL	0	12.0	10.0	11.0		
400 COMMODITIES	0	.8	.5	1.0		
500 EQUIPMENT	0	2.0	1.0	1.0		
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	118.5	125.6	138.5		

B. FUNDING: (Thousands of dollars)

GENERAL FUND	0	118.5	125.6	138.5		
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	0 /	3 /	3 /	3 /	/	/
MAN MONTHS (P./T.)	0 /	36 /	36 /	36 /	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The basic unit funded at \$118,500 in Juneau would include:  
 Salaries of the Ombudsman (\$40,000), deputy Ombudsman (\$31,235),  
 range 26A, and a Secretary 111 (\$11,724), range 12, plus benefits;  
 travel and per diem for 15 intrastate trips, (\$5,800); (\$12,000)  
 in contractual services to cover possible use of temporary  
 investigators; (\$800) in commodities; (\$2,000) to cover purchase  
 of equipment for office. 10% used as wage increase factor in  
 personal services.

IV. ATTACHMENTS

V. DATE: 1/31/75

PREPARED BY: William E. [Signature]

Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

January 22, 1975

The Honorable Mike Bradner  
Speaker of the House  
Alaska State Legislature  
Juneau, Alaska 99811

Dear Mr. Speaker:

Pursuant to the Uniform Rules of the Legislature, I am transmitting a bill which creates the office of the ombudsman, and which amends Rule 43(h) of the Rules of Civil Procedure.

This bill provides for the creation of the office of the ombudsman in the legislative branch of the government. The ombudsman is a legislative officer who is nominated by the legislative council and appointed by a majority of the members of the legislature in joint session for a term of six years. The ombudsman may be removed by the legislature by a two-thirds vote in each house, but only for neglect of duty, misconduct or disability. The ombudsman shall appoint a deputy ombudsman and assistants and clerical personnel necessary to assist him in his operations.

He is required to establish, by regulations, procedures for receiving and processing complaints, conducting investigations, and reporting his findings. The jurisdiction of the ombudsman extends to the administrative acts of state agencies, which include any agency in the executive branch of the government and those agencies which are independent of the executive, legislative and judicial branches. It also includes an officer, employee or member of an agency acting in his official capacity, but does not include the governor, lieutenant governor, their personal staff, or members or employees of the legislative and judicial branches.

The ombudsman will be required to investigate any complaint which is made to his office and which is an appropriate

NB 45

subject for investigation under the provisions of this bill. He also may investigate the administrative acts of agencies on his own motion if they are appropriate subjects for investigation under the provisions of this bill. An appropriate subject for investigation is an administrative act of an agency which the ombudsman has reason to believe might be (1) contrary to law; (2) unreasonable, unfair, oppressive, arbitrary, capricious, an abuse of discretion, or unnecessarily discriminatory even though in accordance with law; (3) based on a mistake of fact; (4) based on improper or irrelevant grounds; (5) unaccompanied by an adequate statement of reasons; (6) performed in an inefficient manner; or (7) otherwise erroneous.

The ombudsman may investigate to find an appropriate remedy for whatever abuse he might find. The ombudsman has subpoena power for testimony, for documents, papers or objects which relate to matters under investigation.

The ombudsman is required to report his opinion and recommendations resulting from an investigation to the appropriate agency, if he finds (1) that a matter should be further considered by the agency; (2) the administrative act should be modified or cancelled; (3) a statute or regulation on which an administrative act is based should be altered; (4) reasons should be given for an administrative act; (5) any other action should be taken by the agency; (6) there are no grounds for any action by the agency; or (7) the agency's act was arbitrary, capricious, constituted an abuse of discretion or was otherwise erroneous, or not in accordance with law.

Within a reasonable amount of time after the ombudsman reports his opinion and recommendations to an agency, he may present his opinion and recommendations to the governor, the legislature, the public or any of these. This provision contains the real crux of the ombudsman's power, in that abuses by the government of individuals are brought under public scrutiny so that proper action may be taken either by the executive, by the legislature, or through the election process.

The provision of the bill which amends the court rule of civil procedure and consequently requires a two-thirds vote of the members of each house, is that which gives

THE OMBUDSMAN AND HIS STAFF A PRIVILEGE NOT TO TESTIFY IN COURT REGARDING MATTERS COMING TO THEIR ATTENTION IN THE EXERCISE OR PURPORTED EXERCISE OF THEIR OFFICIAL DUTIES.

CONFIDENTIAL - THIS DOCUMENT IS UNCLASSIFIED DATE 05/14/03 BY 60322/UCB/STP

the ombudsman and his staff a privilege not to testify in court regarding matters coming to their attention in the exercise or purported exercise of their official duties.

Sincerely,

Jay S. Hammond  
Governor

A M E N D M E N T S

TO: HCS CSSB 1/CSHB 45

BY THE FINANCE COMMITTEE

Amendments requested by the Committee:

Amendment No. 1

On page 1, line 23, after "approved by", insert:

"a concurrent resolution adopted by"

Amendment No. 2

On page 2, line 27, strike out "two-thirds vote", and insert:

"concurrent resolution adopted by a roll call vote of  
two-thirds of the members"

On page 2, line 28, after "house", insert:

"entered in the journal"

Amendment No. 3

On page 5, line 21, after "PROCEDURES.", insert: "(a)"

On page 5, between lines 27 and 28, insert:

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

Amendments suggested by Legislative Counsel:

Amendment No. 4

On page 2, line 3, after "office", insert:

" , if the municipality is subject to the ombudsman's jurisdiction under sec. 310 of this chapter"

Amendment No. 5

On page 7, line 21, after "agency", insert: "or a person"

Amendment No. 6

On page 4, between lines 16 and 17, insert:

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

Renumber paragraphs (4), (5) and (6) as (5), (6), and (7), respectively.

CHAPTER 96  
THE OMBUDSMAN

SECTION	
96-1	DEFINITIONS
96-2	OMBUDSMAN; OFFICE ESTABLISHED, APPOINTMENT, TENURE, REMOVAL, QUALIFICATIONS, COMPENSATION, VACANCY
96-3	ASSISTANCE, STAFF, DELEGATION
96-4	PROCEDURE
96-5	JURISDICTION
96-6	INVESTIGATION OF COMPLAINTS
96-7	NOTICE TO COMPLAINANT AND AGENCY
96-8	APPROPRIATE SUBJECTS FOR INVESTIGATION
96-9	INVESTIGATION PROCEDURES
96-10	POWERS
96-11	CONSULTATION WITH AGENCY
96-12	PROCEDURE AFTER INVESTIGATION
96-13	PUBLICATION OF RECOMMENDATIONS
96-14	NOTICE TO THE COMPLAINANT
96-15	MISCONDUCT BY AGENCY PERSONNEL
96-16	ANNUAL REPORT
96-17	JUDICIAL REVIEW, IMMUNITY
96-18	AGENCIES MAY NOT OPEN LETTERS TO OMBUDSMAN
96-19	PENALTY FOR OBSTRUCTION

§96-1 Definitions. (a) "Agency" includes any permanent governmental entity, department, organization, or institution, and any officer, employee, or member thereof acting or purporting to act in the exercise of his official duties, except:

- (1) A court;
- (2) The legislature, its committees, and its staff;
- (3) An entity of the federal government;
- (4) A multistate governmental entity; and
- (5) The governor and his personal staff.

(b) "Administrative act" includes any action, omission, decision, recommendation, practice, or procedure, but does not include the preparation or presentation of legislation. [L. 1967, c 306, §2]

§96-2 Ombudsman; office established, appointment, tenure, removal, qualifications, compensation, vacancy. The office of ombudsman is established. The legislature, by a majority vote of each house in joint session, shall appoint an ombudsman who shall serve for a period of six years. An ombudsman may be reappointed but may not serve for more than three terms. The legislature, by two-thirds vote of the members in joint session, may remove or suspend the ombudsman from office, but only for neglect of duty, misconduct, or disability.

No person may serve as ombudsman within two years of the last day on which he served as a member of the legislature, or while he is a candidate for or holds any other state office, or while he is engaged in any other occupation for reward or profit.

The compensation of the ombudsman shall be \$12,000 a year. The compensation of the ombudsman shall not be diminished during his term of office, unless by general law applying to all salaried officers of the State.

If the ombudsman dies, resigns, becomes ineligible to serve, or is removed or suspended from office, the first assistant to the ombudsman becomes the acting ombudsman until a new ombudsman is appointed for a full term. [L. 1967, c. 306, §3]

§96-3 Assistance, staff, delegation. The ombudsman shall appoint a first assistant and such other officers and employees as may be necessary to carry out this chapter. All employees, including the first assistant, shall be hired by the ombudsman and shall serve at his pleasure. In determining the salary of each such employee, the ombudsman shall consult with the department of personnel services and shall follow as closely as possible the recommendations of the department. The first assistant's salary shall not exceed the percentage limitation established by law for a deputy director of a department. The ombudsman and his full-time staff shall be entitled to participate in any employee benefit plan.

The ombudsman may delegate to his appointees any of his duties except those specified in sections 96-12 and 96-13. [L. 1967, c. 306, §4]

§96-4 Procedure. The ombudsman may establish procedures for receiving and processing complaints, conducting investigations, and reporting his findings. However, may not levy fees for the submission or investigation of complaints. [L. 1967, c. 306, §5]

§96-5 Jurisdiction. The ombudsman has jurisdiction to investigate the administrative acts of agencies and he may exercise his powers without regard to the finality of any administrative act. [L. 1967, c. 306, §6]

§96-6 Investigation of complaints. (a) The ombudsman shall investigate any complaint which he determines to be an appropriate subject for investigation under section 96-8.

(b) The ombudsman may investigate on his own motion if he reasonably believes that an appropriate subject for investigation under section 96-8 exists. [L. 1967, c. 306, §7]

§96-7 Notice to complainant and agency. If the ombudsman decides not to investigate, he shall inform the complainant of that decision and shall state his reasons.

If the ombudsman decides to investigate, he shall notify the complainant of his decision and he shall also notify the agency of his intention to investigate. [L. 1967, c. 306, §8]

§96-8 Appropriate subjects for investigation. An appropriate subject for investigation is an administrative act of an agency which might be:

- (1) Contrary to law;
- (2) Unreasonable, unfair, oppressive, or unnecessarily discriminatory, even though in accordance with law;
- (3) Based on a mistake of fact;
- (4) Based on improper or irrelevant grounds;
- (5) Unaccompanied by an adequate statement of reasons;
- (6) Performed in an inefficient manner; or
- (7) Otherwise erroneous.

The ombudsman may investigate to find an appropriate remedy. [L. 1967, c 306, §9]

96-9 Investigation procedures. (a) In an investigation, the ombudsman may make inquiries and obtain information as he thinks fit, enter without notice to inspect the premises of an agency, and hold private hearings.

(b) The ombudsman is required to maintain secrecy in respect to all matters and the identities of the complainants or witnesses coming before him except so far as disclosures may be necessary to enable him to carry out his duties and to support his recommendations. [L. 1967, c 306, §10]

§96-10 Powers. Subject to the privileges which witnesses have in the courts of this State, the ombudsman may:

- (1) Compel at a specified time and place, by a subpoena, the appearance and sworn testimony of any person who the ombudsman reasonably believes may be able to give information relating to a matter under investigation; and
- (2) Compel any person to produce documents, papers, or objects which the ombudsman reasonably believes may relate to a matter under investigation.

The ombudsman may bring suit in an appropriate state court to enforce these powers. [L. 1967, c 306, §11]

§96-11 Consultation with agency. Before giving any opinion or recommendation that is critical of an agency or person, the ombudsman shall consult with that agency or person. [L. 1967, c 306, §12]

§96-12 Procedure after investigation. If, after investigation, the ombudsman finds that:

- (1) A matter should be further considered by the agency;
- (2) An administrative act should be modified or cancelled;
- (3) A statute or regulation on which an administrative act is based should be altered;
- (4) Reasons should be given for an administrative act; or
- (5) Any other action should be taken by the agency;

he shall report his opinion and recommendations to the agency. He may request the agency to notify him, within a specified time, of any action taken on his recommendations. [L. 1967, c 306, §13]

Sec. 96-13 PUBLIC PROCEEDINGS AND RECORDS

§96-13 Publication of recommendations. After a reasonable time has elapsed, the ombudsman may present his opinion and recommendations to the governor, the legislature, the public, or any of them. The ombudsman shall include with this opinion any reply made by the agency. [L. 1967, c. 306, §14]

§96-14 Notice to the complainant. After a reasonable time has elapsed, the ombudsman shall notify the complainant of the actions taken by him and by the agency. [L. 1967, c. 306, §15]

§96-15 Misconduct by agency personnel. If the ombudsman thinks there is a breach of duty or misconduct by any officer or employee of an agency, he shall refer the matter to the appropriate authorities. [L. 1967, c. 306, §16]

§96-16 Annual report. The ombudsman shall submit to the legislature and the public an annual report discussing his activities under this chapter. [L. 1967, c. 306, §17]

§96-17 Judicial review, immunity. No proceeding or decision of the ombudsman may be reviewed in any court, unless it contravenes the provisions of this chapter. The ombudsman has the same immunities from civil and criminal liability as a judge of this State. The ombudsman and his staff shall not testify in any court with respect to matters coming to their attention in the exercise or purported exercise of their official duties except as may be necessary to enforce the provisions of this chapter. [L. 1967, c. 306, §18]

§96-18 Agencies may not open letters to ombudsman. A letter to the ombudsman from a person held in custody by an agency shall be forwarded immediately, unopened, to the ombudsman. [L. 1967, c. 306, §19]

§96-19 Penalty for obstruction. A person who willfully hinders the lawful actions of the ombudsman or his staff, or willfully refuses to comply with their lawful demands, shall be fined not more than \$1,000. [L. 1967, c. 306, §20]

COSTS AND FEES

... Except as otherwise provided or record, including any map, is open to the inspection of the public for the same by the public officer having the custody of the following:

... thereof contained in any written paper when the copy is made in ink by the public officer having the custody of the same.

... producing any written document, a copy is made by the public officer by the use of any photostat, or by any other method of reproduction.

... of any map, plan, diagram, or by any method of reproduction; a fraction thereof for comparing and entry, or other paper with the same, if required or requested; and a certification is required or requested.

.....\$1.50  
...ted or photostatic copies, first charge only.

.....\$1.50  
...aries.....\$1.00

.....\$1.00;  
...the public officer receiving or the public officer of finance or county director employed as government reader. [L. 1929, c 166, pt of §166; am L. 1929, c 166, pt of §458; am L. 1945, c 248, §1; RL 1955, §7-1; am L. 1949, c 23, §1; RL 1955, §7-1; am L. 1963, c 114, §1; HRS §92-21; am L. 1972, c 188, §2]

HEARINGS

Notwithstanding any law to the contrary, every public hearing shall be held at least twice weekly in the presence of the public of the time, place and date specified in the notice. This requirement shall prevail over any other law, and shall not be waived by any agency of a notice of public hearing specifically required by law, and shall not be waived by law. [L. 1972, c 188, §2]

...  
...ice of hearing must in addition comply with the provisions of section 3-12.  
...ntly where a notice of public hearing is required.

CHAPTER 93  
GOVERNMENT PUBLICATIONS

PART I. STATE PUBLICATIONS DISTRIBUTION CENTER

SECTION 93-3 DEPOSIT OF PUBLICATIONS

PART I. STATE PUBLICATIONS DISTRIBUTION CENTER

§93-3 Deposit of publications. Every state and county agency shall immediately upon release of a publication, deposit fifteen copies with the state publications distribution center and one copy each with the state archives and the University of Hawaii. Additional copies of the publications shall be deposited with the publications distribution center upon request of the state librarian so long as copies are available.

The state librarian may enter into depository agreements with private and public educational, historical, or scientific institutions or other libraries, within or without the State in order to achieve the objectives sought under this part. [L. 1965, c 175, pt of §2(b); Supp. §13-22; HRS §93-3; am L. 1970, c 121, §1]

CHAPTER 94  
PUBLIC ARCHIVES; DISPOSAL OF RECORDS

SECTION 94-6 STUDIES

§94-6 Studies. Within ten days following the initiation of any study to be done on a contractual basis by the State or one of its political subdivisions, or any agency thereof, the initiating department or agency shall notify the State archivist of the initiation of the study in the form of notice prescribed by the archivist.

The archivist shall maintain a complete and current index of all studies so initiated and shall, at least semi-annually send current copies of this index to the governor, the mayors of the respective counties, the legislative reference bureau and the legislative auditor.

The archivist may at any time request that a copy of any study or portion of a study be deposited with the archives and this request shall be complied with by the department or agency initiating the study.

This section shall apply to all studies of whatever nature: provided, however that to the extent that the governor or mayor of any county initiating a study determines that compliance with any portion of this section would be contrary to the public interest they may waive compliance with respect to any study initiated under their jurisdiction. [L. 1972, c 193, §1; am L. 1973, c 198, §1]

CHAPTER 96  
THE OMBUDSMAN

- SECTION 96-1 DEFINITIONS
- 96-2 OMBUDSMAN; OFFICE ESTABLISHED, APPOINTMENT, TENURE, REMOVAL, QUALIFICATIONS, COMPENSATION, VACANCY
- 96-3 ASSISTANCE, STAFF, DELEGATION, FUNDING
- 96-6 INVESTIGATION OF COMPLAINTS

§96-1 Definitions. (a) "Agency" includes any permanent governmental entity, department, organization, or institution, and any officer, employee, or member thereof acting or purporting to act in the exercise of his official duties, except:

- (1) The judiciary and its staff;
- (2) The legislature, its committees, and its staff;
- (3) An entity of the federal government;
- (4) A multistate governmental entity;
- (5) The governor and his personal staff;
- (6) The lieutenant governor and his personal staff;
- (7) The mayors of the various counties; and
- (8) The councils of the various counties.

(b) "Administrative act" includes any action, omission, decision, recommendation, practice, or procedure, but does not include the preparation or presentation of legislation. [L. 1967, c 306, §2; HRS §96-1; am L. 1974, c 46, §1]

§96-2 Ombudsman; office established, appointment, tenure, removal, qualifications, compensation, vacancy. The office of ombudsman is established. The legislature, by a majority vote of each house in joint session, shall appoint an ombudsman who shall serve for a period of six years and thereafter until a successor shall have been appointed. An ombudsman may be reappointed but may not serve for more than three terms. The legislature, by two-thirds vote of the members in joint session, may remove or suspend the ombudsman from office, but only for neglect of duty, misconduct, or disability.

No person may serve as ombudsman within two years of the last day on which he served as a member of the legislature, or while he is a candidate for or holds any other state office, or while he is engaged in any other occupation for reward or profit.

For the period beginning on July 1, 1969 and ending June 30, 1970, the salary of the ombudsman shall be the same as the salary of the circuit court judges. Effective July 1, 1970, the salary of the ombudsman shall be the same as the salary of the circuit court judges. The compensation of the ombudsman shall not be diminished during his term of office, unless by general law applying to all salaried officers of the State.

If the ombudsman dies, resigns, becomes ineligible to serve, or is removed or suspended from office, the first assistant to the ombudsman becomes the acting ombudsman until a new ombudsman is appointed for a full term. [L. 1967, c 306, §3; HRS §96-2; am L. 1969, c 127, §6; am L. 1974, c 46, §2]

#### Attorney General Opinions

Funds for operation of office constitute funds for "expenses of the legislature" within meaning of Const., Art. VI, §5. Att. Gen. Op. 69-4.

#### Hawaii Bar Journal

The Ombudsman in Hawaii: The Basic Premises, Walter H. Ikeda, 7 HBJ 17.

§96-3 Assistance, staff, delegation, funding. The ombudsman shall appoint a first assistant and such other officers and employees as may be necessary to carry out this chapter. All employees, including the first assistant, shall be hired by the ombudsman and shall serve at his pleasure. In determining the salary of each such employee, the ombudsman shall consult with the department of personnel services and shall follow as closely as possible the recommendations of the department. The first assistant's salary shall not exceed the percentage limit

ation established by man and his ultimate duty plan.

The ombudsman those specified in the ombudsman and discharge the contained in section ing such absence of

The funds for for in the act provide HRS §96-3; am L. 1974

#### §96-5 Jurisdiction

Ombudsman has no agreements executed by

§96-6 In order any complaint which tion under section 9

(b) The ombudsman believes that an act [L. 1967, c 306, §7; am

#### §96-8 Appropriation

Ombudsman has no agreements executed by

permanent government and any officer, employee, or agent of his official duties.

ff:

mission, decision, recommendation, the preparation or presentation. [L. 1974, c. 46, §1]

ent, tenure, removal, qualifications. The ombudsman is established. The ombudsman shall appoint an assistant and thereafter until a successor is appointed may be reappointed but may not be reappointed by two-thirds vote of the legislature from office,

years of the last day on which he is a candidate for or engaged in any other occupation for

ing June 30, 1970, the salaries of the circuit court judges, shall be the same as the salaries of the ombudsman shall not be subject to any law applying to all sal-

to serve, or is removed from office, the ombudsman becomes the acting ombudsman for a full term. [L. 1967, c. 46, §2]

legislature" within meaning of

71HB17.

ombudsman shall appoint an assistant as may be necessary to assist him. The assistant, shall be hired by the ombudsman after determining the salary of the assistant. The department of personnel shall determine the recommendations of the ombudsman and shall exceed the percentage limi-

ation established by law for a deputy director of a department. The ombudsman and his full-time staff shall be entitled to participate in any employee benefit plan.

The ombudsman may delegate to his appointees any of his duties except those specified in sections 96-12 and 96-13; provided that during the absence of the ombudsman from the island of Oahu, or his temporary inability to exercise and discharge the powers and duties of his office, such powers and duties as contained in sections 96-12 and 96-13 shall devolve upon the first assistant during such absence or inability.

The funds for the support of the office of the ombudsman shall be provided for in the act providing for the expenses of the legislature. [L. 1967, c. 306, §4; HRS §96-3; am L. 1974, c. 46, §3]

§96-5 Jurisdiction.

Attorney General Opinions

Ombudsman has no jurisdiction over employee complaints covered by collective bargaining agreements executed under chapter 89, Att. Gen. Op. 73-6.

§96-6 Investigation of complaints. (a) The ombudsman may investigate any complaint which he determines to be an appropriate subject for investigation under section 96-8.

(b) The ombudsman may investigate on his own motion if he reasonably believes that an appropriate subject for investigation under section 96-8 exists. [L. 1967, c. 306, §7; HRS §96-6; am L. 1974, c. 46, §4]

§96-8 Appropriate subjects for investigation.

Attorney General Opinions

Ombudsman has no jurisdiction over employee complaints covered by collective bargaining agreements executed under chapter 89, Att. Gen. Op. 73-6.

Excerpt from Walter Gellhorn, "Annotated Model Ombudsman Statute"  
in Stanley V. Anderson (ed.), OMBUDSMEN FOR AMERICAN  
GOVERNMENT? (1968), pp. 167-68

STATUTORY  
TEXT:

Section 11. *Action on complaints.* (a) The Ombudsman may receive a complaint from any source concerning an administrative act. He shall conduct a suitable investigation into the things complained of unless he believes that

1. the complainant has available to him another remedy or channel of complaint which he could reasonably be expected to use;
2. the grievance pertains to a matter outside the Ombudsman's power;
3. the complainant's interest is insufficiently related to the subject matter;
4. the complaint is trivial, frivolous, vexatious, or not made in good faith;
5. other complaints are more worthy of attention;
6. the Ombudsman's resources are insufficient for adequate investigation; or
7. the complaint has been too long delayed to justify present examination of its merit.

The Ombudsman's declining to investigate a complaint shall not, however, bar him from proceeding on his own motion to inquire into the matter complained about or into related problems;

COMMENT:

COMMENT. The duty to act on every complaint should not be imposed, partly because the dimensions of the work burden cannot be exactly predicted and partly because some complaints will show on their face that they are unlikely to lead to productive findings. The above listing leaves the Ombudsman free to reject complaints, but does not bar his making inquiries. Specifically, he need not reject a complaint because another judicial or administrative remedy exists. Normally, one may suppose the Ombudsman will insist that matters proceed through regular channels. Explaining to a complainant the steps he can take to obtain review will usually suffice. But assuredly some cases will arise in which the burden of expense and time are realistic barriers to a complainant's pursuing the theoretically available remedies. In those instances access to the Ombudsman should not be precluded. Subsection (1) leaves the avenue open, but the traffic is still subject to control.

Another policy choice is reflected in Subsection (5) which does not require that every complaint be based on a claimed invasion of a strictly personal interest. This permits a complainant to bring to the Ombudsman's notice a matter of public rather than purely private concern. But if the complainant's concern with the subject matter is too attenuated, the Ombudsman may choose not to investigate.

Subsection (7) does not contain an explicit "statute of limitations" on complaints, though the Ombudsman is left free to reject those based on stale claims or ancient grudges. In Sweden complaints must be acted on if filed within ten years of the events in question; Denmark, New Zealand, and Norway, by contrast, require rejection of any complaint pertaining to occurrences beyond the preceding twelve months. Neither extreme seems desirable. The present draft lays down no rule in this respect, but allows the Ombudsman to pick his way at the outset. Later, in the light of experience, he may wish to promulgate some rules of his own, as is allowed by Section 9 (b), above.

STATUTORY TEXT:

SECTION 302. *Investigation of complaints.*

The Ombudsman shall investigate any complaint indicating an appropriate subject for investigation under section 301, unless he believes that

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

(b) the complaint relates to a matter that is outside the jurisdiction of the Ombudsman;

(c) the complaint relates to an administrative act of which the complainant has had knowledge for too long a time before the complaint was submitted;

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

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

(f) the facilities of the Ombudsman's office are insufficient for adequate investigation; or

(g) there are other complaints more worthy of the Ombudsman's attention.

COMMENT:

SECTION 302. *Investigation of complaints.*

In general, the Ombudsman has the duty to investigate any complaint which discloses the existence of an appropriate subject for investigation under section 301. He may decline to investigate only for certain reasons, stipulated in section 302. However, these reasons are broadly stated and leave much to the Ombudsman's discretion. He may consider the degree of the complainant's interest in the problem disclosed, the seriousness of the grievance, whether the resources of his office permit an adequate investigation, and whether there are other complaints more worthy of his attention. He may also decline to investigate if another remedy is available to the complainant. Since the number of complaints an Ombudsman in an American state would receive is an unknown quantity, such provisions are necessary to enable him to make the most effective use of his powers. They in no way preclude the Ombudsman from investigating any agency under his jurisdiction. Often the Ombudsman will prefer to investigate in a case where the statute permits him to refuse. For instance, if he believes that recourse to a legal remedy would be futile or overly burdensome to his client, he might wish to render assistance. He might also want to proceed on a complaint from a public-spirited citizen who discloses administrative inefficiency even though the complainant is not personally injured. These examples are not exhaustive. However, in the vast majority of cases, the Ombudsman can be expected to rely on the standards implicit in section 302.

CODE OF IOWA, §601G.12 re authority of the Citizens' Aide (Ombudsman)  
to refuse to investigate a complaint

601G.12 Complaints investigated. The citizens' aide may receive a complaint from any source concerning an administrative action. He shall conduct a suitable investigation into the administrative actions complained of unless he finds substantiating facts that:

1. The complainant has available to him another remedy or channel of complaint which he could reasonably be expected to use.
2. The grievance pertains to a matter outside the citizens' aide power.
3. The complainant has no substantive or procedural interest which is directly affected by the matter complained about.
4. The complaint is trivial, frivolous, vexatious, or not made in good faith.
5. Other complaints are more worthy of attention.
6. The citizens' aide resources are insufficient for adequate investigation.
7. The complaint has been delayed too long to justify present examination of its merit.

The citizens' aide may decline to investigate a complaint, but shall not be prohibited from inquiring into the matter complained about or into related problems at some future time.  
[64CA, ch 1123, §12]

REVISED STATUTES OF NEBRASKA 1943 (Reissue of 1971), §81-8,247 re  
authority of Public Counsel (Ombudsman) to  
refuse to investigate a complaint

81-8,247. Public Counsel; complaint; investigation; decision; notify complainant. The Public Counsel may receive a complaint from any person concerning an administrative act. He shall conduct a suitable investigation into the thing complained of unless he believes that:

- (1) The complainant has available to him another remedy which he could reasonably be expected to use;
- (2) The grievance pertains to a matter outside his power;
- (3) The complainant's interest is insufficiently related to the subject matter;
- (4) The complaint is trivial, frivolous, vexatious, or not made in good faith;
- (5) Other complaints are more worthy of attention;
- (6) His resources are insufficient for adequate investigation; or
- (7) The complaint has been too long delayed to justify present examination of its merit.

The Public Counsel's declining to investigate a complaint shall not bar him from proceeding on his own motion to inquire into related problems. After completing his consideration of a complaint, whether or not it has been investigated, the Public Counsel shall suitably inform the complainant and the administrative agency involved.

Source: Laws 1969, c. 762, § 6, p. 2682.