

"An Act creating the office of the ombudsman."

COMMITTEE REPORT

HOUSE

2/20/75

Mr. Speaker:

Date March 5, 1975

The Committee on FINANCE has had CSBP 1 (C.D. & Ct. Rule)
(Failed)

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)

recommends it BE REPLACED WITH CS FOR 1 (Amend) AND THAT

CS FOR _____ DO PASS

"and" recommends it BE REFERRED TO THE _____

COMMITTEE

reports it back WITHOUT RECOMMENDATION

"other" *reports it back with individual amendments*

Members signing the Majority report:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Members NOT concurring in the Majority report:

_____	recommends: <u>No Rec.</u>
_____	recommends: <u>No Rec.</u>
_____	recommends: <u>No Rec.</u>
_____	recommends: <u>No Rec.</u>
_____	recommends: <u>Do Not Pass</u>

H. Malone Chairman

Original Sponsor: Kerttula, Miller,
Croft, Willis, Honman, Rader, Huber
and Rodey

Offered: 2/12/75
Referred: Finance

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 1 (eff. date & Ct. Rule failed)

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."

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

8 * Section 1. AS 24 is amended by adding a new chapter to read:

9 CHAPTER 55. OFFICE OF THE OMBUDSMAN.

10 ARTICLE 1. ORGANIZATION.

11 Sec. 24.55.010. OFFICE OF THE OMBUDSMAN. There is created in
12 the legislative branch of the state the office of the ombudsman.

13 Sec. 24.55.020. APPOINTMENT OF THE OMBUDSMAN. (a) The rules
14 committee of the senate shall examine persons to serve as the ombuds-
15 man regarding their qualifications and abilities and shall place the
16 name of one or more persons recommended before the senate for appoint-
17 ment as the ombudsman.

18 (b) A candidate for appointment as the ombudsman shall be nomi-
19 nated by the senate by a concurrent resolution adopted by a roll call
20 vote of a majority of its members entered in the journal. The
21 appointment of a person nominated as the ombudsman by the senate is
22 effective if his candidacy is

23 (1) confirmed by a roll call vote of a majority of the
24 members of the house of representatives entered in the journal; and

25 (2) approved by the governor.

26 (c) However, the governor may veto the appointment and return
27 it, with a statement of his objections, to the senate. Upon receipt
28 of a veto message the legislature shall meet immediately in joint
29 session and reconsider approval of the vetoed appointment. The vetoed

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

5 (d) The appointment of the ombudsman becomes effective if, while
6 the legislature is in session, the governor neither approves nor
7 vetoes it within 15 days, Sundays excepted, after its delivery to him.
8 If the legislature is not in session and the governor neither approves
9 nor 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 two years of the last day on which he served as
14 a member of the legislature;

15 (2) while he is a candidate for or holds any other national,
16 state, or municipal office;

17 (3) while he is engaged in any other occupation for which
18 he receives compensation; and

19 (4) unless he is at least 21 years of age and is a quali-
20 fied voter who has been a resident of the state for at least three
21 years.

22 (b) The ombudsman and members of his staff shall maintain the
23 integrity and impartiality of the ombudsman's functions and services
24 by refraining from joining or supporting a partisan or nonpartisan
25 political organization, faction or activity which would tend to under-
26 mine the essential nonpartisan nature of their functions and services,
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
6 of a successor under this chapter, the incumbent ombudsman may continue
7 in office until a successor is appointed. If the ombudsman dies,
8 resigns, becomes ineligible to serve, or is removed or suspended from
9 office, the deputy ombudsman becomes acting ombudsman until a new
10 ombudsman is appointed for a full term.

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

14 Sec. 24.55.060. COMPENSATION. The ombudsman is entitled to
15 receive an annual salary equal to that of the chief justice of the
16 supreme court.

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 ombuds-
28 man under sec. 40(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 and benefits 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 an administrative act.

22 Sec. 24.55.110. INVESTIGATION OF COMPLAINTS. The ombudsman
23 shall investigate a 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 ARTICLE 4. PROCEDURE AND REPORTS AFTER INVESTIGATION.

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

6 Sec. 24.55.190. PROCEDURE AFTER INVESTIGATION. (a) The ombuds-
7 man shall report his opinion and recommendations to an agency if he
8 finds, 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
12 is 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
22 reasonable amount of time after the ombudsman reports his opinion and
23 recommendations to an agency he may present his opinion and recommen-
24 dations to the governor, the legislature, the public or any of these.
25 The ombudsman shall include with his opinion any reply made by the
26 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.

ARTICLE 5. MISCELLANEOUS

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

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

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

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

18 Sec. 24.55.260. LETTERS TO OR FROM OMBUDSMAN. A letter to the
19 ombudsman from a person held in custody by an agency shall be forwarded
20 immediately, unopened, to the ombudsman. A letter from the ombudsman
21 to a person held in custody by an agency shall be delivered immediately
22 unopened, to the person.

23 Sec. 24.55.270. TIME FOR JUDICIAL REVIEW OF AGENCY ACTION. This
24 chapter in no way extends the time limit in which judicial review of
25 agency action must be sought.

26 Sec. 24.55.280. PENALTY. A person who wilfully hinders the
27 lawful actions of the ombudsman or his staff, or who wilfully refuses
28 to comply with their lawful demands, or who wilfully violates sec. 270
29 of this chapter, is guilty of a misdemeanor and upon conviction is

1 punishable by a fine of not more than \$1,000.

2 Sec. 24.55.290. ADMINISTRATIVE PROCEDURE ACT. The administrative
3 acts of the ombudsman are not subject to the provisions of the Adminis-
4 trative Procedure Act (AS 44.62), except as provided in sec. 90 of
5 this chapter.

6 Sec. 24.55.300. CONFLICT OF INTEREST. The ombudsman, the
7 deputy ombudsman and their professional staff are subject to AS 39.50
8 (conflict of interest).

9 Sec. 24.55.310. DEFINITIONS. In this chapter

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

14 (2) "agency" includes a department, office, institution,
15 corporation, authority, organization, commission, committee, council
16 or board of a municipality or in the executive, legislative or judi-
17 cial branches of the state government, and a department, office,
18 institution, corporation, authority, organization, commission, com-
19 mittee, council or board of a municipality or of the state government
20 independent of the executive, legislative and judicial branches; it
21 also includes an officer, employee or member of an "agency" acting
22 or purporting to act in the exercise of his official duties, but does
23 not include the governor, lieutenant governor, a member of the legis-
24 lature, justice of the supreme court, judge of the superior or district
25 court, magistrate, member of a city council or borough assembly,
26 elected city or borough mayor, or a member of an elected school board;

27 (3) "municipality" means a home rule or general law borough
28 or city including but not limited to a unified municipality organized
29 under AS 29.58.

1 Sec. 24.55.320. SHORT TITLE. This chapter may be cited as The
2 Ombudsman Act.

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

4 (16) the ombudsman and his staff.
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IN THE SENATE

BY KERTTULA

SENATE BILL NO. 1

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

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

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

* Section 1. AS 24 is amended by adding a new chapter to read:

CHAPTER 55. OFFICE OF THE OMBUDSMAN.

ARTICLE 1. ORGANIZATION.

Sec. 24.55.010. OFFICE OF THE OMBUDSMAN. There is created in the legislative branch of the state the office of the ombudsman.

Sec. 24.55.020. APPOINTMENT OF THE OMBUDSMAN. (a) A candidate for appointment as the ombudsman shall be selected by the ombudsman selection committee composed of the president of the senate and a member of the senate appointed by him, the speaker of the house and a member of the house of representatives appointed by him, the chairman of the senate judiciary committee and the chairman of the house judiciary committee.

(b) The ombudsman selection committee shall examine persons to serve as the ombudsman regarding their qualifications and ability and shall place the name of the person selected in nomination before the legislature for appointment as the ombudsman. The appointment of a person nominated as the ombudsman by the committee is effective if his candidacy is approved by two-thirds of the membership of the legislature sitting in joint session.

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

(1) within two years of the last day on which he served as

1 a member of the legislature;

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

4 (3) while he is engaged in any other regular occupation for
5 which he receives compensation.

6 Sec. 24.55.040. TERM OF OFFICE. The term of office of the
7 ombudsman is five years. An ombudsman may be reappointed but may not
8 serve more than three terms.

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

12 Sec. 24.55.060. COMPENSATION. The ombudsman is entitled to an
13 annual salary of \$40,000.

14 Sec. 24.55.070. STAFF AND DELEGATION. (a) The ombudsman may
15 appoint assistants and clerical personnel necessary to carry out the
16 provisions of this chapter.

17 (b) The ombudsman may delegate to his assistants any of his
18 duties except those specified in secs. 190 and 200 of this chapter.

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

21 Sec. 24.55.080. OFFICE FACILITIES AND ADMINISTRATION. (a) The
22 Department of Administration shall provide suitable office space and
23 equipment for the ombudsman and his staff.

24 (b) The salary of the ombudsman and his staff shall be paid
25 according to the same procedures used for the payment of the salaries of
26 other state employees.

27 (c) The ombudsman shall submit a budget for each fiscal year
28 to the finance committees of the legislature and shall annually submit
29 an estimated budget to the governor for informational purposes in the

1 preparation of the executive budget.

2 Sec. 24.55.090. PROCEDURE. The ombudsman may establish procedures
3 for receiving and processing complaints, conducting investigations,
4 and reporting his findings. However, he may not levy fees for the
5 submission or investigation of complaints.

6 ARTICLE 2. JURISDICTION AND INITIATION OF INVESTIGATIONS.

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

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

11 Sec. 24.55.110. INVESTIGATION OF COMPLAINTS. The ombudsman shall
12 investigate any complaint indicating an appropriate subject for inves-
13 tigation under sec. 150 of this chapter, unless he believes that

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

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

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

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

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

24 (6) the facilities of the ombudsman's office are insufficient
25 for adequate investigation; or

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

28 Sec. 24.55.120. INVESTIGATION ON THE OMBUDSMAN'S MOTION. The
29 ombudsman may investigate on his own motion if he reasonably believes

1 that an appropriate subject for investigation under sec. 150 of this
2 chapter exists.

3 Sec. 24.55.130. NOTICE TO COMPLAINANT. (a) If the ombudsman
4 decides not to investigate, he shall inform the complainant of that
5 decision and shall state his reasons unless he reasonably believes it
6 is inappropriate to do so.

7 (b) If the ombudsman decides to investigate, he shall notify the
8 complainant of his decision.

9 Sec. 24.55.140. NOTICE TO THE AGENCY. If the ombudsman decides
10 to investigate, he shall notify the agency of his intention to
11 investigate.

12 ARTICLE 3. INVESTIGATIONS.

13 Sec. 24.55.150. APPROPRIATE SUBJECTS FOR INVESTIGATION. (a) An
14 appropriate subject for investigation by the ombudsman is an administra-
15 tive act of an agency which might be

16 (1) contrary to law;

17 (2) unreasonable, unfair, oppressive, or unnecessarily
18 discriminatory, even though in accordance with law;

19 (3) based on a mistake of fact;

20 (4) based on improper or irrelevant grounds;

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

22 (6) performed in an inefficient manner; or

23 (7) otherwise erroneous.

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

25 Sec. 24.55.160. INVESTIGATION PROCEDURES. In an investigation,
26 the ombudsman may

27 (1) make inquiries and obtain information as he thinks fit;

28 (2) enter without notice to inspect the premises of an
29 agency; and

1 (3) hold private hearings.

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

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

8 (2) compel any person, by subpoena, to produce documents,
9 papers, or objects which the ombudsman reasonably believes may relate
10 to a matter under investigation.

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

16 ARTICLE 4. PROCEDURE AND REPORTS AFTER INVESTIGATION.

17 Sec. 24.55.180. CONSULTATION WITH AGENCY. Before giving an
18 opinion or recommendation that 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 ombudsman
21 shall report his opinion and recommendations to an agency if he finds,
22 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; or

28 (5) any other action should be taken by the agency.

29 (b) The ombudsman may request the agency to notify him, within

1 a specified time, of any action taken on his recommendations.

2 Sec. 24.55.200. PUBLICATION OF RECOMMENDATIONS. After a reason-
3 able time has elapsed, the ombudsman may present his opinion and
4 recommendations to the governor, the legislature, the public, or any
5 of these. The ombudsman shall include with his opinion any reply
6 made by the agency.

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

10 ARTICLE 5. MISCELLANEOUS.

11 Sec. 24.55.220. MISCONDUCT BY AGENCY PERSONNEL. If the ombudsman
12 thinks there is a breach of duty or misconduct by any officer or
13 employee of an agency, he shall refer the matter to the chief executive
14 officer of the agency.

15 Sec. 24.55.230. ANNUAL REPORT. The ombudsman shall submit to
16 the legislature and the public an annual report discussing his
17 activities under this chapter.

18 Sec. 24.55.240. JUDICIAL REVIEW. No proceeding or decision of
19 the ombudsman may be reviewed in any court, unless it contravenes the
20 provisions of this chapter.

21 Sec. 24.55.250. IMMUNITY OF THE OMBUDSMAN. The ombudsman has the
22 same immunities from civil and criminal liability as a judge of this
23 state.

24 Sec. 24.55.260. OMBUDSMAN'S PRIVILEGE NOT TO TESTIFY. The
25 ombudsman and his staff shall not testify in any court with respect
26 to matters coming to their attention in the exercise or purported
27 exercise of their official duties except as may be necessary to enforce
28 the provisions of this chapter.

29 Sec. 24.55.270. PENALTY. A person who wilfully hinders the

1 lawful actions of the ombudsman or his staff, or who wilfully refuses
2 to comply with their lawful demands, is guilty of a misdemeanor and
3 upon conviction is punishable by a fine of not more than \$1,000.

4 ARTICLE 6. GENERAL PROVISIONS.

5 Sec. 24.55.280. DEFINITIONS. In this chapter

6 (1) "agency" means a department, office, agency or board in
7 the executive branch of the state government and an officer, employee
8 or member of an "agency" acting or purporting to act in the exercise
9 of his official duties, but "agency" does not include the governor or
10 his personal staff;

11 (2) "administrative act" means an action, omission, decision,
12 recommendation, practice, or procedure, but does not include the
13 preparation or presentation of legislation.

14 Sec. 24.55.280. SHORT TITLE. This chapter may be cited as the
15 Ombudsman Act of 1975.

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

17 (16) The ombudsman and staff appointed by him.

18 * Sec. 3. Sec. 24.55.260 of this Act amends Rule 43(h) of the Rules of
19 Civil Procedure by establishing an additional privilege not to testify in a
20 court and must receive an affirmative vote of two-thirds of the full member-
21 ship of each house in order to be effective.

22 * Sec. 4. This Act takes effect immediately in accordance with AS 01.10-
23 070(c).

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 (7) the agency's act was arbitrary or capricious, constituted
2 an abuse of discretion, or was otherwise erroneous or not in accordance
3 with the law.

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

6 Sec. 24.55.200. PUBLICATION OF RECOMMENDATIONS. Within a
7 reasonable amount of time after the ombudsman reports his opinion and
8 recommendations to an agency he may present his opinion and recommen-
9 dations to the governor, the legislature, the public or any of these.
10 The ombudsman shall include with his opinion any reply made by the
11 agency.

12 Sec. 24.55.210. NOTICE TO THE COMPLAINANT. Within a reasonable
13 amount of time after the ombudsman reports his opinion and recom-
14 mendations to an agency, he shall notify the complainant of the actions
15 taken by him and by the agency.

16 ARTICLE 5. MISCELLANEOUS.

17 Sec. 24.55.220. MISCONDUCT BY AGENCY PERSONNEL. If the ombudsman
18 believes there is a breach of duty or misconduct by an officer or
19 employee of an agency in the conduct of his official duties, the
20 ombudsman shall refer the matter to the chief executive officer of the
21 agency or, when appropriate, to any other appropriate official or
22 agency.

23 Sec. 24.55.230. ANNUAL REPORT. The ombudsman shall submit to
24 the legislature and the public an annual report of his activities
25 under this chapter.

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

29 Sec. 24.55.250. IMMUNITY OF THE OMBUDSMAN. The ombudsman has

1 the same immunities from civil and criminal liability as a judge of
2 this state.

3 Sec. 24.55.260. OMBUDSMAN'S PRIVILEGE NOT TO TESTIFY. The
4 ombudsman and his staff may not testify in a court regarding matters
5 coming to their attention in the exercise or purported exercise of
6 their official duties except as may be necessary to enforce the
7 provisions of this chapter.

8 Sec. 24.55.270. LETTERS TO OR FROM OMBUDSMAN. A letter to the
9 ombudsman from a person held in custody by an agency shall be forwarded
10 immediately, unopened, to the ombudsman. A letter from the ombudsman
11 to a person held in custody by an agency shall be delivered immediately,
12 unopened, to the person.

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

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

21 ARTICLE 6. GENERAL PROVISIONS

22 Sec. 24.55.300. DEFINITIONS. In this chapter

23 (1) "agency" includes a department, office, institution,
24 organization, commission, or board in the executive branch of the
25 state government, and a department, office, institution, organization,
26 commission, or board of the state government independent of the executive,
27 legislative and judicial branches; it also includes an officer, employee,
28 or member of an "agency" acting or purporting to act in the exercise
29 of his official duties, but does not include the governor, lieutenant

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).

I. REQUEST

Bill No. SB 1

Title: An Act Creating the Office of the Ombudsman

Requested by: Danny Bowman

Date: January 27, 1975

Return Date Requested: February 1, 1975

Agency: Administration

Program: Budget and Management

II. FISCAL DETAIL

Budget Request Unit(s) Affected:

A. EXPENDITURES: (Thousands of dollars)

		FY76					
	OBJECT	Change	FY 76	FY 77	FY 78	FY 79	FY 80
100	PERSONAL SERVICES	61.0	97.9	107.7	118.5	130.4	143.4
200	TRAVEL	5.8	5.8	6.4	7.0	7.7	8.5
300	CONTRACTUAL	48.9	12.0	12.0	11.0	12.1	13.3
400	COMMODITIES	.8	.8	.5	.6	.7	.8
500	EQUIPMENT	0	0	0	0	0	0
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
TOTAL							

B. FUNDING: (Thousands of dollars)

GENERAL FUND	116.5	116.5	126.6	137.1	150.9	166.0
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	2 /	3 / 0	3 /	3 /	3 /	3 /
MAN MONTHS (P./T.)	24 /	36.0 / 0	36 /	36 /	36 /	36 /

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

Ombudsman
Assistant-Ombudsman
Secretary III

The House Finance Committee in passing out it's Committee Substitute for CSSB 1 decided to change the structure of the Fiscal Note. The Assistant Ombudsman position has been deleted with the resulting savings added to the contractual account. Assuming passage of the bill the Ombudsman should present detailed justification in the FY 77 budget for necessary contractual services and for any positions requested.

V. DATE: February 4, 1975

PREPARED BY: Wayne E. Weeks

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

Original sponsor: Kerttula, Miller,
Croft, et al

Offered: 3/5/75
Referred: Rules

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 1 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act creating the office of the ombudsman; amending
7 Rule 43(h) of the Rules of Civil Procedure; and pro-
8 viding for an effective date."

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

10 * Section 1. AS 24 is amended by adding a new chapter to read:

11 CHAPTER 55. OFFICE OF THE OMBUDSMAN.

12 ARTICLE 1. ORGANIZATION.

13 Sec. 24.55.010. OFFICE OF THE OMBUDSMAN. There is created in the
14 legislative branch of the state the office of the ombudsman.

15 Sec. 24.55.020. APPOINTMENT OF THE OMBUDSMAN. (a) A candidate for
16 appointment as the ombudsman shall be nominated by the Alaska Legislative
17 Council.

18 (b) The legislative council shall examine persons to serve as the
19 ombudsman regarding their qualifications and abilities and shall place
20 the name of the person selected in nomination before the legislature for
21 appointment as the ombudsman. The appointment of a person nominated as
22 the ombudsman by the legislative council

23 (1) shall be considered in hearings before the appropriate
24 standing committees of each house; and

25 (2) is effective if his candidacy is approved by a roll call
26 vote of three-fourths of the members in each house of the legislature
27 entered in the journal.

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

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

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

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

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

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

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

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

29 Sec. 24.55.060. COMPENSATION. The ombudsman is entitled to receive

1 an annual salary equal to that of a superior court judge.

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

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

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

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

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

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

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

1 ARTICLE 2. JURISDICTION AND INITIATION OF INVESTIGATIONS.

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

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

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

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

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

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

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

18 (5) the complaint is made in bad faith;

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

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

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

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

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

5 ARTICLE 3. INVESTIGATIONS.

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

9 (1) contrary to law;

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

13 (3) based on a mistake of fact;

14 (4) based on improper or irrelevant grounds;

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

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

17 (7) otherwise erroneous.

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

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

21 (1) make inquiries and obtain information as he considers
22 necessary;

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

25 (3) hold private hearings.

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

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

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

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

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

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

1 information to the ombudsman.

2 ARTICLE 4. PROCEDURE AND REPORTS AFTER INVESTIGATION.

3 Sec. 24.55.180. CONSULTATION WITH AGENCY. Before giving an opinion
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5 shall consult with that agency or person.

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7 shall report his opinion and recommendations to an agency if he finds,
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12 based should be altered;
13 (4) reasons should be given for an administrative act;
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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-
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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
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29 actions taken by him and by the agency.

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6 when appropriate, to a grand jury or to another appropriate official or
7 agency.

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9 legislature and the public an annual report of his activities under this
10 chapter.

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12 ombudsman may be reviewed in superior court only to determine if it is
13 contrary to the provisions of this chapter.

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

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

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

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

1 agency action must be sought.

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

7 ARTICLE 6. GENERAL PROVISIONS.

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

12 Sec. 24.55.320. DEFINITIONS. In this chapter

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

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

27 Sec. 24.55.330. SHORT TITLE. This chapter may be cited as The
28 Ombudsman Act.

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

1 (16) the ombudsman and his staff.

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

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

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

23 * Sec. 5. This Act takes effect immediately in accordance with AS 01.-
24 10.070(c).
25
26
27
28
29

A M E N D M E N T S

TO: HCS CSRB 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.

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30A-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. [R. 1967, c. 306, §1]

30A-2. Ombudsman: office established; appointment; tenure; removal; qualifications; reappointment; 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.

§96-2. Appointment. The ombudsman shall be appointed by the Governor for a term of five years, beginning on the first day of January following the date of his appointment. He shall hold office until he is removed from office or until he is elected to the office of Governor.

He shall be eligible for reappointment for one or more terms in the same office, unless removed from office by the Governor. He shall be eligible for reappointment for a full term. [L. 1967, c. 300, §2]

§96-3. Assistant ombudsman. The ombudsman shall appoint a first assistant and such other officers and employees, not by necessity to carry out his duties, civil employees, to be appointed, shall be fixed 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 maximum 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. 300, §3]

§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. 300, §4]

§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. 300, §5]

§96-6. Investigation of complaints. (a) The ombudsman shall investigate any complaint which he determines to be an appropriate subject for investigation under section 96-3.

(b) The ombudsman may investigate on his own motion if he reasonably believes that an appropriate subject for investigation under section 96-3 exists. [L. 1967, c. 300, §6]

§96-7. Notice to complainant and agency. If the ombudsman decides not to investigate, he shall inform the complainant of this 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. 300, §7]

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

§96-13. *Investigation of agency action.*

§96-13. Investigation of agency action. (1) The ombudsman shall investigate any complaint received by him from a person who claims to be aggrieved by any action of an agency which that person may have taken under the agency. (H. 1967, c. 306, §13)

§96-14. *Notice to the complainant.* After a reasonable time has elapsed, the ombudsman shall notify the complainant of the action taken by him and by the agency. (H. 1967, c. 306, §14)

§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. (H. 1967, c. 306, §15)

§96-16. *Annual report.* The ombudsman shall submit to the legislature and the public an annual report describing his activities under this chapter. (H. 1967, c. 306, §16)

§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. (H. 1967, c. 306, §17)

§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. (H. 1967, c. 306, §18)

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

STATUTES

CHAPTER 93

PUBLIC ARCHIVES, DEPARTMENT OF

SECTION 116. PUBLIC ARCHIVES

116-1. (a) The public archives shall be established in the Department of Archives and Records Administration.

CHAPTER 94

PUBLIC ARCHIVES, DEPARTMENT OF

116-2. (a) The public archives shall be established in the Department of Archives and Records Administration. (b) The public archives shall be established in the Department of Archives and Records Administration.

The state 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, p. 4 § 2(b); Supp. § 13.721 L.R.S. 195-31; am L. 1970, c. 121, § 1]

CHAPTER 94

PUBLIC ARCHIVES, DEPARTMENT OF RECORDS

Section 116-6. Section 116-6.

116-6. (a) 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 initiator, 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 95

THE COMMISSIONER

Section 116-1

- 116-1 DEPOSITIONS
- 116-2 OMBUDSMAN OFFICE ESTABLISHED, APPOINTMENT, DUTIES, REMOVAL, QUALIFICATIONS, COMPENSATION, VACANCY
- 116-3 ASSISTANT COMMISSIONER, DEPUTY COMMISSIONER, CLERK
- 116-4 INVESTIGATIONS OF COMPLAINTS

STATUTORY TEXT:

Section 301. *Investigation of complaints.*

The Ombudsman shall have 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 complaint which discloses the existence of an appropriate subject for investigation under section 301. The Ombudsman shall have 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 complaint which discloses the existence of an appropriate subject for investigation under section 301.

(a) the complaint is frivolous or made in bad faith;

(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 complaint which discloses the existence of an appropriate subject for investigation under section 301. The Ombudsman shall have 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 complaint which discloses the existence of an appropriate subject for investigation under section 301.

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

601C.12. Complaints have been filed. The citizens' aide may refuse to accept a complaint if the complaint is frivolous, or if the complaint is not made in good faith, or if the complaint is not made in good faith, or if the complaint is not made in good faith.

1. The complaint is not made in good faith, or if the complaint is not made in good faith, or if the complaint is not made in good faith.

2. The complaint is not made in good faith, or if the complaint is not made in good faith, or if the complaint is not made in good faith.

3. The complaint has no substantive or procedural interest which is directly involved by the matter complained of.

4. The complaint is not made in good faith, or if the complaint is not made in good faith, or if the complaint is 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 no direct bearing on the public interest.

The citizens' aide may refuse to investigate a complaint, but shall not be precluded from inquiring into the matter complained of or into related problems of wide public concern. [IOWA, ch 1173, §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 preliminary investigation and may, at his discretion, refer the matter to the Public Counsel.

(1) The complaint is not made in good faith, or if the complaint is not made in good faith, or if the complaint is not made in good faith.

(2) The complaint is not made in good faith, or if the complaint is not made in good faith, or if the complaint is not made in good faith.

(3) The complaint is not made in good faith, or if the complaint is not made in good faith, or if the complaint is not made in good faith.

(4) The complaint is not made in good faith, or if the complaint is not made in good faith, or if the complaint is not made in good faith.

(5) The complaint is not made in good faith, or if the complaint is not made in good faith, or if the complaint is not made in good faith.

(6) The complaint is not made in good faith, or if the complaint is not made in good faith, or if the complaint is not made in good faith.

(7) The complaint is not made in good faith, or if the complaint is not made in good faith, or if the complaint is not made in good faith.

The Public Counsel shall determine in his discretion whether a complaint shall not be investigated if the complaint is not made in good faith, or if the complaint is not made in good faith, or if the complaint is not made in good faith.