

**HB**

**86**

ATTN: Barbara Craver

Amendments to HB 86 adopted and CS passed out of House State Affairs

**Amendment #1**

Page 2, lines 14-15:

Delete "The ombudsman may not verify the reports or investigate the information reported."

**Amendment #2**

Page 3, line 3:

Delete "executive branch"

Insert "public" (in final, legal changed "public" to "agency" to conform w/ombudsman statute)

**Amendment #3 (conceptual)**

Page 2, line 13

Insert after "every six months" ", and to the legislature annually"

Please incorporate to a final CS

Thanks,

Louise Flora

House State Affairs Committee aide

Rep. Seaton

Room 102

24-LS0037Y

Craver  
4/20/05

CS FOR HOUSE BILL NO. 86( ) <sup>as</sup> amended.

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES MEYER, Kerttula

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing in the office of the ombudsman a public employee fraud, waste,  
2 and abuse report hotline program."

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

4 \* Section 1. AS 24.55.090(a) is amended to read:

5 (a) The ombudsman shall, by regulations adopted under AS 44.62  
6 (Administrative Procedure Act), establish procedures for receiving and processing

7 (1) complaints, conducting investigations, reporting findings, and  
8 ensuring that confidential information obtained by the ombudsman in the course of an  
9 investigation will not be improperly disclosed; and

10 (2) reports made by public employees using the public employee  
11 fraud, waste, and abuse hotline program.

12 \* Sec. 2. AS 24.55 is amended by adding a new section to read:

13 Article 4A. Public Employee Fraud, Waste, and Abuse Hotline Program.

14 Sec. 24.55.222. Public employee fraud, waste, and abuse hotline program.

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7/11/11

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(a) The ombudsman shall establish, maintain, and administer the public employee fraud, waste, and abuse hotline program to encourage agency employees to report situations where fraud, waste, or abuse may be occurring in the state's agencies.

(b) The ombudsman may make available to agency employees a variety of means to report fraud, waste, and abuse in agencies, one of which shall be an anonymous toll-free telephone number, and including any other communications to the ombudsman made through the governor or heads of agencies, or made by mail, electronic mail, facsimile, and the Internet.

(c) An allegation made to the hotline shall be considered to be anonymous. The ombudsman may attempt to identify any person contacting the hotline and shall protect the anonymity of the agency employee reporting to the hotline.

(d) The ombudsman shall report to the <sup>Legislature</sup> Legislative Budget and Audit Committee <sup># Send to the legislative committee</sup> every six months regarding the number of calls, and the types of fraud, waste, and abuse reported through the hotline program. ~~The ombudsman may not verify the reports or investigate the information reported.~~ *Amed #1*

(e) In this section,

(1) "abuse" means the intentional destruction, diversion, manipulation, misapplication, maltreatment, or misuse of government resources, and extravagant or excessive use of one's position or authority; abuse may include financial and non-financial misuse of government resources;

(2) "fraud" means the intentional deception, including a false representation of a matter or fact, whether by words or by conduct, by false or misleading statements, or by concealment of that which should have been disclosed and that deceives and is intended to deceive, by any person within or external to the state government that could result in a benefit to the person perpetrating the fraud, or a detriment to others or the state;

(3) "waste" means the intentional or unintentional, thoughtless or careless expenditure, consumption, mismanagement, use of, or squandering of a resource of an agency to the detriment or potential detriment of the state, or incurring unnecessary costs as a result of inefficient or ineffective practices, systems, or controls.

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# 2

1 \* Sec. 3. AS 39.25 is amended by adding a new section to read:

2 **Sec 39.25.920. Department of administration to inform employees of**  
3 **hotline.** The commissioner of administration shall inform <sup>public.</sup> [executive branch]  
4 employees of the public employee fraud, waste, and abuse hotline program established  
5 under AS 24.55.222.

6 \* Sec. 4. AS 39.90.100(a) is amended to read:

7 (a) A public employer may not discharge, threaten, or otherwise discriminate  
8 against an employee regarding the employee's compensation, terms, conditions,  
9 location, or privileges of employment because

10 (1) the employee, or a person acting on behalf of the employee, reports  
11 to a public body or is about to report to a public body a matter of public concern; [OR]

12 (2) the employee participates in a court action, an investigation, a  
13 hearing, or an inquiry held by a public body on a matter of public concern; or

14 (3) the employee contacted the ombudsman in regard to an  
15 allegation of fraud, waste, or abuse under the public employee fraud, waste, and  
16 abuse hotline program under AS 24.55.

17 \* Sec. 5. AS 39.90.110(c) is amended to read:

18 (c) As part of its written personnel policy, a public employer may require that,  
19 before an employee initiates a report on a matter of public concern under  
20 AS 39.90.100, the employee shall submit a written report concerning the matter to the  
21 employer. However, the employee is not required to submit a report if the employee

22 (1) reasonably believes that reports to the employer will not result in  
23 prompt action to remedy the matter of public concern;

24 (2) believes with reasonable certainty that the activity, policy, or  
25 practice is already known to one or more supervisors;

26 (3) reasonably believes that an emergency is involved; [OR]

27 (4) reasonably fears reprisal or discrimination as a result of disclosure;

28 or

29 (5) contacts the ombudsman under the public employee fraud,  
30 waste, and abuse hotline program under AS 24.55.

*John McKay  
ADN Attorney*

24-LS0237Y  
Craver  
4/20/05

**CS FOR HOUSE BILL NO. 86( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVES MEYER, Kerttula**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act establishing in the office of the ombudsman a public employee fraud, waste,**  
2 **and abuse report hotline program."**

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

4 **\* Section 1.** AS 24.55.090(a) is amended to read:

5 (a) The ombudsman shall, by regulations adopted under AS 44.62  
6 (Administrative Procedure Act), establish procedures for receiving and processing

7 (1) complaints, conducting investigations, reporting findings, and  
8 ensuring that confidential information obtained by the ombudsman in the course of an  
9 investigation will not be improperly disclosed; and

10 (2) reports made by public employees using the public employee  
11 fraud, waste, and abuse hotline program.

12 **\* Sec. 2.** AS 24.55 is amended by adding a new section to read:

13 **Article 4A. Public Employee Fraud, Waste, and Abuse Hotline Program.**

14 **Sec. 24.55.222. Public employee fraud, waste, and abuse hotline program.**

1 (a) The ombudsman shall establish, maintain, and administer the public employee  
2 fraud, waste, and abuse hotline program to encourage agency employees to report  
3 situations where fraud, waste, or abuse may be occurring in the state's agencies.

4 (b) The ombudsman may make available to agency employees a variety of  
5 means to report fraud, waste, and abuse in agencies, one of which shall be an  
6 anonymous toll-free telephone number, and including any other communications to  
7 the ombudsman made through the governor or heads of agencies, or made by mail,  
8 electronic mail, facsimile, and the Internet.

9 (c) An allegation made to the hotline shall be considered to be anonymous.  
10 The ombudsman may attempt to identify any person contacting the hotline and shall  
11 protect the anonymity of the agency employee reporting to the hotline.

12 (d) The ombudsman shall report to the ~~Legislative Budget and Audit~~  
13 ~~Committee~~ Legislature every six months, regarding the number of calls, and the types of fraud,  
14 waste, and abuse reported through the hotline program. ~~The ombudsman may not~~  
15 ~~verify the reports or investigate the information reported.~~

16 (e) In this section,

17 (1) "abuse" means the intentional destruction, diversion, manipulation,  
18 misapplication, maltreatment, or misuse of government resources, and extravagant or  
19 excessive use of one's position or authority; abuse may include financial and non-  
20 financial misuse of government resources;

21 (2) "fraud" means the intentional deception, including a false  
22 representation of a matter or fact, whether by words or by conduct, by false or  
23 misleading statements, or by concealment of that which should have been disclosed  
24 and that deceives and is intended to deceive, by any person within or external to the  
25 state government: that could result in a benefit to the person perpetrating the fraud, or a  
26 detriment to others or the state;

27 (3) "waste" means the intentional or unintentional, thoughtless or  
28 careless expenditure, consumption, mismanagement, use of, or squandering of a  
29 resource of an agency to the detriment or potential detriment of the state, or incurring  
30 unnecessary costs as a result of inefficient or ineffective practices, systems, or  
31 controls.

Amendment #3 w/drawn  
Amendment #1 applied

Am #4 w/drawn

Legislature w/drawn

Adopted  
Gen. 21  
Sub-A  
June 25  
1993

Amended #2  
eliminate "Executive branch" insert "Public"

\* Sec. 3. AS 39.25 is amended by adding a new section to read:

**Sec. 39.25.920. Department of administration to inform employees of hotline.** The commissioner of administration shall inform ~~executive branch~~ <sup>public</sup> employees of the public employee fraud, waste, and abuse hotline program established under AS 24.55.222.

\* Sec. 4. AS 39.90.100(a) is amended to read:

(a) A public employer may not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because

(1) the employee, or a person acting on behalf of the employee, reports to a public body or is about to report to a public body a matter of public concern; [OR]

(2) the employee participates in a court action, an investigation, a hearing, or an inquiry held by a public body on a matter of public concern; or

(3) the employee contacted the ombudsman in regard to an allegation of fraud, waste, or abuse under the public employee fraud, waste, and abuse hotline program under AS 24.55.

\* Sec. 5. AS 39.90.110(c) is amended to read:

(c) As part of its written personnel policy, a public employer may require that, before an employee initiates a report on a matter of public concern under AS 39.90.100, the employee shall submit a written report concerning the matter to the employer. However, the employee is not required to submit a report if the employee

(1) reasonably believes that reports to the employer will not result in prompt action to remedy the matter of public concern;

(2) believes with reasonable certainty that the activity, policy, or practice is already known to one or more supervisors;

(3) reasonably believes that an emergency is involved; [OR]

(4) reasonably fears reprisal or discrimination as a result of disclosure;

or

(5) contacts the ombudsman under the public employee fraud, waste, and abuse hotline program under AS 24.55.

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB88  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title "An Act establishing in the office of RDU All  
the ombudsman a state executive branch employee fraud..." Component All  
 Sponsor Rep. Meyer  
 Requester (H) State Affairs Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill will have a zero fiscal impact on the Department of Administration.

Prepared by: Eric Swanson, Director Phone 465-5655  
 Division Administrative Services Date/Time 4/20/05 3:27 PM  
 Approved by: Mike Tibbles, Deputy Commissioner Date 4/20/2005  
 Agency Department of Administration

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB86  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Legislature  
 Title: "An Act establishing in the office of the  
ombudsman a state executive branch employee fraud...." BRU: Budget and Audit Committee  
 Sponsor: Representative Mayer, Kerttula Component: Office of the Ombudsman  
 Requestor: House State Affairs Component No.: 2232

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	84.0	84.0	84.0	84.0	84.0	84.0
Travel	3.0	3.0	3.0	3.0	3.0	3.0
Contractual	1.2	1.2	1.2	1.2	1.2	1.2
Supplies	2.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>90.2</b>	<b>88.2</b>	<b>88.2</b>	<b>88.2</b>	<b>88.2</b>	<b>88.2</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	90.2	88.2	88.2	88.2	88.2	88.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
<b>TOTAL</b>	<b>90.2</b>	<b>88.2</b>	<b>88.2</b>	<b>88.2</b>	<b>88.2</b>	<b>88.2</b>

Estimate of any current year (FY2005) cost: \_\_\_\_\_

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

HB86 establishes in the Office of the Ombudsman a state executive branch employee fraud, waste, and abuse report hotline program. These new responsibilities will require the hiring of an investigator position, and includes costs for travel, training, telephone and a one time equipment expense. If this bill becomes law, the workload of the Office of the Ombudsman will increase substantially.

Prepared by: Karia Schofield, Deputy Director Phone: 465-3852  
 Division: Division of Administrative Services Date/Time: 4/20/05 4:35 PM  
 Approved by: Pamela Vami, Executive Director Date: 4/20/2005  
 Agency: Legislative Affairs Agency

(April 4)

PAUL - we just received  
these recommendations  
from the ombudsman.

Let us discuss these  
with her in more detail  
& come back with a  
CS. We like some  
of her recommendations  
~~& not~~ but not all.

No need to take up  
your committee's time.

Thanks

Kevin



State of Alaska  
**ombudsman**

Reply to:

X P.O. Box 102636  
Anchorage, AK 99510-2636  
(907) 269-5290  
(800) 478-2624  
(FAX) 269-5291

P.O. Box 113000  
Juneau, AK 99811-3000  
(907) 465-4970  
(800) 478-4970  
(FAX) 465-3330

April 4, 2005

The Honorable Representative Kevin Meyer  
Alaska State Capitol  
State Capitol, Room 515  
Juneau, AK 99801-1182

RE: House Bill 86 (State Employee Fraud, Abuse Hotline)

Dear Rep. Meyer:

You have introduced House Bill 86, the State Employee Fraud, Abuse and Waste Hotline for consideration of the Alaska Legislature. The bill, as proposed, would direct the Office of the Ombudsman to establish, maintain, and administer a program aimed at encouraging state employees to report instances of fraud, waste, and abuse by other state executive branch employees.

HB86 gives the Ombudsman discretion to create methods by which state employees may report fraud, abuse and waste but mandates one of those methods must be a toll-free telephone number which accepts anonymous telephone calls from state employees reporting fraud, abuse and waste.

HB86 Article 4A states an allegation made to the hotline "shall be considered to be anonymous." The statute prohibits the ombudsman from attempting "to identify any person contacting the hotline and may protect the anonymity of the state executive branch employee reporting to the hotline."

HB86 defines abuse, fraud, state executive branch employee and waste. It also amends the Alaska Whistleblower's statute at AS 39.90.100(a) and AS 39.90.110(c) to reflect the creation of the hotline program and extend protection to those who report to the hotline.

You have asked me for comment on the proposed legislation and for insight on how this hotline would affect the Ombudsman office.

My staff and I reviewed the proposed legislation as it would fit with existing Alaska Statute, Regulations and Ombudsman policy and procedures as well as numerous legal opinions on Ombudsman authority.

I also have reviewed hotline Web pages for several other governmental jurisdictions including Virginia, Nebraska, Oregon, Arizona, The Federal Emergency Management Agency (FEMA), the City of Dallas, Los Angeles County, California, Social Security, and Ventura County California. I also sent out a list of questions to the managers of those hotlines seeking specific information that I was not able to obtain on-line. I was able to review the Virginia Hotline's Policies and Procedures manual, which proved helpful in my research.

Preliminary review of HB86 leads me to believe that the intent of the legislation is not incompatible with the Ombudsman's function. AS 24.55, the Ombudsman statute, gives the Office of the Ombudsman the statutory authority to investigate complaints about many of these types of allegations included in HG86 under the ombudsman statute governing misconduct. Typically, however, the issue of waste is not included in Ombudsman review. Most of the Hotlines I revised are located in an auditor's office but I will note that most were in jurisdictions that did not have an ombudsman office.

I have broken down the results of my review into the following categories: Ombudsman jurisdiction; anonymous complaints and misconduct complaints, notice to complainants, the effect of the legislation on the Alaska Whistleblower statute, and the practical effect on the ombudsman office.

## **OMBUDSMAN JURISDICTION**

The existing statute governing Ombudsman jurisdiction is covered by AS 24.55.100 and 110. The Ombudsman can investigate complaints about the administrative actions of State of Alaska agencies and state employees.

**AS 24.55.330 (1)** defines an administrative act as:

... an action, omission, decision, recommendation, practice, policy, or procedure of an agency, but does not include the preparation or presentation of legislation or the substantive content of a judicial order, decision or opinion;

**AS 24.55.330(2)** defines agency as including

... a department, office, institution, corporation, authority, organization, commission, committee, council or board of a municipality or in the executive, legislative or judicial branches of the state government, and a department, office, institution, corporation, authority, organization, commission, committee, council or board of a municipality or of the state government independent of the executive, legislative and judicial branches; it also includes an officer, employee or member or an "agency" acting or purporting to act in the exercise of official duties...

Exempted from Ombudsman jurisdiction are the governor, lieutenant governor, a member of the Legislature, justice of the supreme court, judge of the court of appeals, a superior court judge, district court judge, magistrate, member of a city council or borough assembly, elected city or borough mayor, or a member of an elected school board.

HB86 would create AS 24.55.222 which directs the Ombudsman to establish, maintain and administer the *state executive branch employee* fraud, waste, and abuse hotline program to encourage *state executive branch employees* to report situations where fraud, waste or abuse may be occurring in the *state's executive branch agencies* and institutions. At (b), the legislation specifies that the ombudsman make available to *state executive branch employees* a variety of means to report fraud, waste, and abuse in the *state's executive branch* . . .

In subsequent references, the program refers to state executive branch employees. In section (3) of proposed AS 24.55.226 Definitions, HB 86 states a *state executive branch employee* means a person employed by a department, office, institution, board, commission, bureau, division, or other administrative unit forming a part of the *executive branch* of state government.

### Comments

As written, proposed AS 24.55.222 conflicts with existing Ombudsman jurisdiction as defined in AS 24.55.100 and .330 in that the proposed legislation, by omission, exempts from Ombudsman jurisdiction the court and legislative branches of government, over which the ombudsman currently has jurisdiction. In AS 24.55.330 (2), agency is defined as:

. . . a department, office, institution, corporation, authority, organization, commission, committee, council or board of a municipality or in the executive, legislative or judicial branches of the state government . . .

***Recommendation 1: I recommend HB 86 be amended to include the legislative and judicial branches of government subject to ombudsman jurisdiction under provisions of 24.55.222.***

\* \* \* \* \*

HB 86 at proposed AS 24.55.224(c) further exempts from Ombudsman jurisdiction the provisions of existing AS 24.55.320, which authorizes the Ombudsman to provide ombudsman services to Alaska municipalities and school districts if the municipalities and school districts elect to purchase services. Under .320, when a municipality or school district elects to retain the services of the ombudsman the municipality "shall thereafter be considered an agency for the purposes of this chapter." This office has, since 1985, contracted with the City and Borough of Juneau to provide ombudsman services and has in the past held similar contracts with Sitka, Wrangell and Palmer.

Part II of the Ombudsman contract with CBJ states:

Scope of Services: The ombudsman shall investigate complaints within the jurisdiction of the Ombudsman when those complaints are an appropriate subject for investigation. Investigations shall be initiated and conducted by the Ombudsman according to the procedures, with the powers, and subject to the duties established by Alaska Statute 24.55 and regulations issued under that statute, as that statute and those regulations may be amended from time to time.

The Ombudsman shall provide the City with reasonable notice of any such amendments and shall give due regard to the City's comments thereon.

I believe that the Ombudsman should be authorized to treat any contractual partner in the same manner it treats state agencies, as the original legislation intended.

*Recommendation 2: I recommend HB 86 be amended to remove AS 24.55.320 from the exemptions and allow the Ombudsman to provide similar services to municipalities and school boards contracting for Ombudsman services.*

\* \* \* \* \*

*Would the proposed legislation create jurisdictional disparities between state employees and private citizens who complain to the Ombudsman?*

AS 24.55.110 lists the types of complaint subject matters which the ombudsman has the discretion to decline. This statute grants the ombudsman discretion in decision making but generally directs that complaints be declined in the following instances:

- An adequate grievance or appeal process is available to the complainant but has not been used; AS 24.55.110(1)
- The complaint is outside the ombudsman's jurisdiction; AS 24.55.110(2), 21AAC 20.010
- The complainant has not attempted to resolve the complaint within one year prior to filing the complaint with the ombudsman; AS 24.55.110(3), 21AAC.20.010(3);
- The complainant lacks sufficient personal interest, defined as the person directly affected by an action, their spouse or legal representative; AS 24.55.110(4)
- The complaint is trivial or made in bad faith; AS 24.55.110(5)
- Ombudsman resources are insufficient to investigate the complaint. Ombudsman regulations spell out the priority ranking for the ombudsman to handle complaints when staff is not sufficient to handle all complaints coming to the office. AS 24.55.110(6) 21 AAC 20.100

HBS6 adopts the provisions in AS 24.55.110 (2), (5) and (6) allowing the ombudsman to decline to act in a case when a complaint is outside the ombudsman's jurisdiction, is trivial, or when office resources are insufficient. HB86 does not directly address the other provisions, most significantly AS 25.55.110(3), which establishes a timeframe for complaining to the ombudsman.

**Comments:**

One concern I have is that the effect of this legislation requires that we treat private citizens reporting fraud, abuse and waste differently than we propose to treat state employees reporting to the Hotline.

HB86 in proposed section 24.55.222 establishes a mechanism for state employees to use the hotline but 24.55.224(a) merely refers to investigating allegations of fraud, waste, or abuse, without specifying a state employee reporter. So if a non-employee reporter makes a complaint, the ombudsman will have to determine whether the complainant is a "citizen complainant" or a 24.55.224 complainant. There is a substantial difference in how the complainant and complaint are treated. If the legislation's intent is to allow only state employees to bring a complaint under the new statute, then I believe the drafting should more strongly reflect that. Most of the Hotlines I reviewed accept complaints from private citizens as well as government employees.

Another area of disparity is **timeliness**. The existing statute and accompanying regulations generally direct that the ombudsman decline for lack of timeliness a complaint from a state worker or citizen who, for example, reports that his co-worker pocketed cash receipts more than one year ago. HB 86 places no time limits on complaints filed by state employees on the Hotline. If we received such a complaint from a private citizen who presents the same information, we would decline to act.

I do not believe the ombudsman's overall timeframes as outlined in 21 AAC 20.010 should be changed. The reasons for these requirements are practical. With the passage of time witnesses' memory of events fades, witnesses change jobs, retire and leave the state; pertinent records occasionally are lost, agency policy and practice change. That makes the investigation more difficult and can challenge the credibility of an investigation.

*Recommendation 3: Regarding allegations of fraud, I would recommend considering adopting the same timeframes as imposed by the Alaska statute of limitations for criminal matters which is five years. For issues related to general waste and abuse, I would recommend adopting the existing one-year timeframes. This could be implemented through regulation. I realize this would be cumbersome but I believe it is a realistic alternative to no time frames on Hotline calls.*

\* \* \* \* \*

Do we require state employees to follow the **grievance/appeal reporting requirement** now imposed on private citizens? Currently, unless there are compelling circumstances that would require immediate intervention, we generally direct private citizen complainants into any grievance or appeal process available to a complainant. But, if we require a state employee to report fraud or abuse to a supervisor or the agency, we may well thwart the intent of the hotline and discourage reporting. If we don't, we run the risk of treating state employees differently than we treat private citizens. I believe the Ombudsman's discretion would allow the office to deal with that requirement and I don't believe any statutory change is required to address this disparity.

\* \* \* \* \*

Proposed 24.55.224(c) exempts Hotline complaints from AS 24.55.280, which states that an Ombudsman complaint does not extend any time limits for **judicial review**. This would imply that bringing a complaint of this type extends any relevant judicial appeal deadlines indefinitely until we close the complaint. If so, I believe that extension ought to be explicit in the statute. However, we again have the appearance of disparate treatment for state employees.

**Recommendation 4: I recommend this provision be researched to determine if the framers intend to extend any relevant judicial appeal and, if so, amend HB86 to reflect that intention.**

\* \* \* \* \*

**Private Contractors:** Neither AS 24.55 nor the proposed HB86 grants the ombudsman jurisdiction over private contractors who conduct business on behalf of the state of Alaska: i.e. construction companies working on state roads, grant agencies, private prisons. I point this out because this office occasionally receives complaints against contractors working on behalf of the state and it is an area that might be considered for inclusion in this area of the hotline. However, if the Legislature chooses to add private contractors to the jurisdiction of the ombudsman in connection with the Hotline I would recommend that the Legislature consider adding contractors to the jurisdiction of the ombudsman in all matters. This would obviously have an impact on manpower needs in this office.

#### **ANONYMOUS COMPLAINTS AND MISCONDUCT COMPLAINTS**

The Ombudsman Act does not specifically address anonymous complaints other than in connection with AS 24.55.110(4) and (5) which refer to declining complaints made by complainants with insufficient personal interest or complaints that are trivial or made in bad faith. Obviously, if the Ombudsman does not know the identity of a complainant it will be impossible to determine if a complainant has sufficient personal interest and difficult to determine if a complaint is made in bad faith.

Ombudsman regulations at 21 AAC 20.030 state:

**21 AAC 20.030. ANONYMOUS COMPLAINTS.** (a) The ombudsman will, in his or her discretion, decline to investigate a complaint alleging breach of duty, misconduct, or discourtesy by an officer or employee of an agency if the complaint is presented anonymously and the ombudsman determines that investigation of the complaint is precluded by AS 24.55.110(4) or (5).

(b) Except as provided in (a) of this section, an anonymous complaint may be considered for investigation on the ombudsman's motion under AS 24.55.120

(c) An anonymous complaint that is not investigated on the ombudsman's motion when authorized by (b) of this section must be referred to the attention of the chief executive officer of the affected agency and may be referred to any officer or employee whose action has been challenged or questioned by the complainant.

An anonymous complaint excluded from investigation by (a) of this section may not be referred to an agency as provided in this subsection.

**Ombudsman Policy and Procedures Manual at 4015.1 Anonymous Complaints<sup>1</sup>** states:

Anonymous complaints should be discouraged. The Alaska Whistleblower Act (AS 39.90) provides a degree of protection for citizens who come forward with issues relating to government abuses. Complainants should be advised that our law, (which protects their identity) and the Whistleblower Act help protect them from retaliation by government agencies. If their identity needs to be released to pursue the issue further they will be contacted and given the opportunity to allow us to identify them or to withdraw their complaint.

Be aware that some people may try to file mean-spirited complaints about a public official or employee to harm the official through innuendo. Some mistakenly believe that if a complaint has been accepted by us, there must be some shred of truth to the allegation. Some agency officials may also inappropriately give an anonymous complaint we might refer to them a degree of credibility the complaint does not deserve. The Ombudsman's Office should not act as a conduit for such efforts.

Decline anonymous complaints alleging breach of duty, misconduct, or discourtesy by an officer or employee of an agency (21 AAC 20.030(a)). Such complaints may not be referred to the affected agency (21 AAC 20.030(c)).

An anonymous complaint other than one alleging a breach of duty, misconduct, or discourtesy may be considered for investigation on the ombudsman's initiative (21 AAC 20.030(b)) if facts of the matter can be independently verified. Complaints of this nature that are not investigated on the ombudsman's initiative must be referred to the chief executive officer of the affected agency and may be referred to any officer or employee whose action has been challenged or questioned by the complainant (21 AAC 20.030(c)).

As I read the regulation at 21 AAC 20.030, the Ombudsman can decline if the anonymous complaint alleges misconduct AND is determined to be made in bad faith, is trivial, or the complainant lacks sufficient personal interest. However, the policy directs that the Ombudsman *will decline* anonymous complaints but gives the Ombudsman the option of opening an ombudsman-initiated investigation if sufficient evidence exists to do so. This apparent inconsistency between regulation and policy can perhaps be explained by the fact that the ombudsman has discretion to involve the office in anonymous complaints.

Under HB86, total anonymity of state employees making allegations of fraud, abuse or waste is not only encouraged but required. HB 86 prevents the ombudsman from attempting to identify any person contacting the hotline and may protect the anonymity of the state executive branch employee reporting to the hotline.

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<sup>1</sup> Dated November 1, 1993. Signed by then-Ombudsman Duncan Fowler

Despite the inconsistency between regulation and policy, the concern about anonymous complaints is well articulated in Ombudsman policy.

There has long been held a concern that accepting anonymous complaints will create a wealth of vindictive complaints filed by mean-spirited complainants. Such complaints could also have unintended consequence of creating a great deal of unnecessary and fruitless work for the ombudsman. However, Ventura, California Auditor Christine Cohen, who runs that county's hotline, stated that more than 50 percent of anonymous complaints yielded substantiated findings. I believe the concerns articulated in Ombudsman Policy 4015.1 could be answered by careful handling. Also, a review of several hotline operations indicated that they considered anonymity and confidentiality to be a paramount concern.

However, I also would like to point out that AS 24.55.160(b) requires that the ombudsman keep confidential all information that is statutorily designated as confidential. The identity of complainants falls into that category so I believe there is no *necessity* that a complainant be anonymous. This statute sufficiently protects the identity of complainants from the person whom is being complained about. That said, I also understand that some state employee reporters of fraud might be unwilling to report problems if there is any chance that someone will learn their identity. Complainants occasionally refuse to allow our office to reveal that they have complained about a situation that is specific only to them, forcing us to close a complaint.

Another incompatibility between existing statute and HB86 is found in AS 24.55.220 and 21 AAC 20.020 (b) regarding the handling of misconduct complaints. Fraud would fall under the misconduct provisions of the Ombudsman Act. Ombudsman regulations require that a misconduct complaint be filed in writing.

**21 AAC 20.020. COMPLAINTS.** (a) Except as provided in (b) of this section, a complaint to the ombudsman need not be in writing.

(b) A complaint that alleges a breach of duty, misconduct, or discourtesy by an officer or employee of an agency may not be investigated unless the complaint is specific and in writing. If a complainant requires assistance in writing the complaint, the ombudsman or a member of the ombudsman's office staff will provide the assistance.

This requirement is based in the belief that complainants who write and sign their complaints often are more sincere about them and less inclined to file malicious complaints. This requirement would be voided by HB86's requirement that anonymous complaints be accepted. I have found that to be true. It is my observation that when the Ombudsman required prison inmates to file complaints in writing, the number of DOC complaints dropped dramatically. Those that were filed had far more substance than those filed by phone in years past.

One other consideration in this area is the efficiency of accepting anonymous complaints. Practically speaking, I am concerned about the efficiency of any investigation prompted by an anonymous complaint. Investigators frequently have to cross-check information and allegations with complainants. If we do not know the identity of a reporter we would have a great many problems doing that cross-checking efficiently.

I have seen several options for handling anonymous complaints. One assigns a private code number to the reporter to use when contacting the ombudsman. Another has installed a special call-in line for reporters to call to see if they need to provide more information to investigators. This is all possible but realistically, it does add time and effort to investigative efforts and can delay efficiency.

***Recommendation 4: If the Legislature intends to offer employees an anonymous opportunity to complain to the Ombudsman HB86 should be amended to soften the language allowing the Ombudsman to inquire about the complainant's identity but not to require that it be given if sufficient evidence can be obtained without it.***

\* \* \* \* \*

## NOTICE AND REPORTING TO THE COMPLAINANT

HB 86 specifically exempts AS 24.55.130 and .210 both of which deal with notice to the complainant. AS 24.55.130 directs that the ombudsman notify a complainant if the Ombudsman declines to act on a complaint. AS 24.55.210 directs that the Ombudsman notify a complainant of the results of an Ombudsman review or formal investigation.

It may be assumed that HB86 exempts these statutes in keeping with the intent that hotline reporters be granted anonymity. However, if the legislature chooses to soften the language of HB86 to allow the Ombudsman to inquire about a reporter's identity, I would recommend that this provision be amended to reflect that change.

Under AS 24.55.160(b) the Ombudsman cannot reveal confidential personnel action if taken. But in cases where the Ombudsman is precluded from divulging confidential information, the Ombudsman can, if nothing more, report that the matter was reviewed. I would like to discuss the intent of HB86 on this issue. If the Legislature intends that the results of Fraud, Abuse and Waste investigations be kept confidential, a provision should be included in legislation to specifically state that. Does the legislation envision any reporting on the results of the Hotline?

**Recommendation 5: If the Legislature revises HB86 to allow the Ombudsman to obtain but not require the reporter's identity, the Legislature should allow the Ombudsman to report back to the reporter when investigation is complete.**

\* \* \* \* \*

## ALASKA WHISTLEBLOWER ACT

The proposed legislation grants Whistleblower protections to those who report fraud, abuse or waste to the Hotline. One practical problem presented by an anonymous hotline is proving that someone reported to the Hotline. Our office would be hard-pressed to state that someone was eligible to claim Whistleblower protection as a result of a complaint to our office if we were prevented from establishing the identity of a complainant.

## THE PRACTICAL EFFECT ON THE OMBUDSMAN OFFICE

Several of my practical concerns about HB86 have been raised in prior sections.

One small consideration would be the need for the office to revise regulations governing our office operations. We are in the midst of a regulation revision project and this could be incorporated in that task. Other concerns are as follows:

### Referrals

All of the Hotline Programs I have reviewed allow for the Hotline operator to refer reports to other agencies as appropriate. For example, most complaints about waste could best be handled by the agency internal auditors if they exist, or OMB or Legislative Audit if they don't. Complaints about abuse such as sexual harassment would best be handled by an entity established to investigate such abuse such as the Human Rights Commission. The Ombudsman would be best suited to handle some complaints of fraud or misconduct and Legislative Audit (via the Legislative Budget and Audit Committee) would be best suited to handle other complaints.

*Recommendation 6: HB86 should include a provision allowing the Ombudsman to refer reports to appropriate agencies and a statutory requirement that the referral agency report its findings back to the Ombudsman.*

### Ombudsman needs and Fiscal Note

My primary concern would be staffing. My office saw a dramatic increase in the number of complaints filed in calendar year 2004. In the first quarter of Calendar 2005, our complaint load has increased another 19 percent. My FY06 budget proposal has requested funding for an additional two staff: one investigator and one intake officer. These positions, if approved, would not include work anticipated to implement and maintain the Fraud Hotline. The House Finance Committee has approved that request but, as of this writing, Senate Finance has not met on the Legislative Budget.

In order to staff the Fraud, Abuse and Waste Hotline Program I would need at least one additional investigator to handle calls and conduct the review of information presented. This is consistent with other Hotlines serving similar population bases. The fiscal note for one fully funded Range 19 investigator is: \$84,000.

This investigator would require equipment including a computer and printer at a cost of about \$2,000, telephone at a cost of \$600 per year, and a special outside telephone line for non-traceable toll-free hotline calls at a cost of about \$600 per year not including long distance calls. Additional training and travel for the position would be cost about \$3,000. At this time I don't believe the Ombudsman Case Management System would require modification to handle Hotline calls.

Although I would prefer to place the Hotline investigator in the Anchorage office where I can more closely manage the position, my Anchorage office is at full capacity. The investigator could be placed in Juneau without any additional expense for lease space.

Based on these estimated costs, the fiscal note for startup should be \$90,200.

### **STATUTORY AMENDMENT TO AS 24.55.260**

I also would make one request regarding existing statute. I request that AS 24.55.260 Ombudsman's Privilege Not to Testify be amended.

Existing AS 24.55.260 addresses the ombudsman's privilege not to testify but does not specifically protect Ombudsman records from disclosure or discovery. This leaves a long-recognized weakness in statute. My proposed amendment more clearly protects Ombudsman records from disclosure. The proposed amendment reads similarly to the Office of Victim's Rights legislation, much of which was based on Ombudsman statutes with this one exception.

**Recommendation 7: AS 24.55.260 should be amended to read:**

**Ombudsman's privilege not to testify or produce documents or other evidence.**

**Except as may be necessary to enforce the provisions of this chapter, the determinations, conclusions, thought processes, discussions, records, reports, and recommendations of or information collected by the Ombudsman or staff of the Ombudsman are not admissible in a civil or criminal proceeding, and are not subject to questioning or disclosure by subpoena or discovery.**

\* \* \* \* \*

I hope this is helpful to you. Please feel free to contact me if you require additional information. I look forward to discussing this further.

Sincerely,

Linda Lord-Jenkins  
Alaska Ombudsman

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to 129 6th St., Rm. 329

## MEMORANDUM

January 29, 2005

**SUBJECT:** Sectional Summary of HB 86 (Work Order No. 24-LS0237\G)

**TO:** Representative Kevin Meyer  
Attn: Mike Pawlowski

**FROM:** Barbara R. Craver  
Legislative Counsel *BRC*

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

**Section 1.** The ombudsman is to establish regulations regarding receiving and processing reports by state employees under the fraud, waste, and abuse hotline program.

**Section 2.** The state employee fraud, waste, and abuse hotline program is set up in several new sections. It is established in the ombudsman's office. The ombudsman is to establish the program and investigate reports. The same procedures otherwise used by the ombudsman under AS 24.55.120 - 24.55.330 apply except for the following sections which do not apply to the hotline program:

24.55.130 - in keeping with the anonymous nature of the hotline, the complainant is not notified by the ombudsman in regard to a report made to the hotline.

24.55.150 - the hotline program is limited to its own subjects, so this section, which applies generally to the ombudsman, "appropriate subjects for investigation," does not apply to the hotline program.

24.55.210 - there is no notice to the complainant of the actions taken by the ombudsman and by the agency.

24.55.280 - this section is not applicable to the program.

24.55.320 - the hotline program is not available to municipalities and school districts.

**Section 3.** This protects an employee from any retaliation by the employee's employer for contacting or cooperating with the ombudsman in regard to the hotline program.

**Section 4.** Exempts an employee from having to make a report to the employee's

Sectional Analysis

Representative Kevin Meyer

January 29, 2005

Page 2

employer about a matter of public concern under AS 39.90.100, and under the previous section; contacts with the hotline program are included in this exemption.

If I may be of further assistance, please advise.

BRC:med

05-070.med



## State govt. waste hotline saves millions, study says

### Auditors review calls, which are confidential

[Prev](#) | [Next](#)

*From Bend.com news sources*

Posted: Thursday, April 15, 2004 2:29 PM  
Reference Code: AR-14887

**April 15 - SALEM - Secretary of State Bill Bradbury released a report Thursday finding that the Government Waste Hotline has led to the discovery of \$4.13 million in potential savings.**

Established in 1995, the toll free hotline logs complaints of waste, fraud, inefficiency or abuse in state government.

"The audits hotline is an effective tool for direct public involvement in preventing fraud, waste and abuse," said Bradbury.

All state offices are required to display notice of the hotline. Callers to the hotline, at 1-800-336-8218, will hear a recorded voice informing them that the call is confidential, and listing what type of information is necessary for an investigation.

The recording also notes that, "Audits are expensive and we initiate an audit only when we believe we can save more money than the audit would cost."

Messages are logged into a database, and reviewed by Secretary of State auditors to determine whether to investigate, audit, or refer to another agency.

Call volume has steadily increased since 2000 due to an increase in publicity about the hotline. The majority of calls come from private citizens, followed by state employees and organization representatives or anonymous callers.

"We absolutely encourage people to call the hotline if they have any information about inefficiencies in state government," said Bradbury.

Calls generally relate information about ongoing audits, request audit information, or concern matters of personal opinion, personal legal issues, or issues referable to another agency (for example, alleged ethical violations are referred to the Government Standards and Practices Commission).

Since 1995, 18 hotline calls have resulted in audits, including a 1998 audit of printer overcharges to the Department of Administrative Services which identified savings of \$700,000, and a 2002 audit of the Department of Human Services contracting practices which identified savings of \$2.3 million.

The calls resulting in audits have identified a total of \$4.13 million in potential savings.

"The audits hotline offers you a responsive and accountable state government," said Bradbury. Call 1-800-336-8218 or email [audits.hotline@state.or.us](mailto:audits.hotline@state.or.us).





# Virginia Department of Accounts

The State Employee Fraud Waste and Abuse Hotline

1-800-723-1615

NO - YOUR NUMBER DOES NOT SHOW UP ON A CALLER ID!!

Comptroller's Memorandum to Heads of State Agencies and Institutions of Higher Education - July 13, 2004



The Employee Hotline is a toll free telephone number available Monday through Friday from 8:15 a.m. until 5:00 p.m., which is anonymous and non-traceable. The Procedures and Policy Manual is available in PDF format.

**To Report:**

- Illegal or Fraudulent Conduct
- Waste of Funds

- Abuse of State Property or Resources
- Gross Mismanagement
- Gross Neglect of Duty

**What Is The Purpose Of The State Employee Fraud, Waste And Abuse Hotline?**

There exist in Virginia's government, as in every other state in the nation, the ongoing and continuing possibility of fraud, waste and abuse in the conduct of government business. Governor Gilmore issued a Executive Order which directs the Department of the State Internal Auditor to operate a toll-free telephone number "hotline" to encourage state employees to report situations where fraud, waste and abuse may occur in Virginia Executive Branch Agencies and Institutions.

The State Employee Hotline provides state employees with an opportunity to report significant instances of fraud, waste or abuse anonymously by using a toll-free hotline number. The major objective of the hotline is to identify situations where fraud, waste and abuse may have occurred in state agencies and institutions so that it can be eliminated. If you observe a situation within your own agency that appears to involve fraud, waste or abuse, give us a call - its toll free and anonymous.

**Who Operates The State Employee Fraud, Waste, and Abuse Hotline?**

The Department of the State Internal Auditor administers the Hotline per Executive Order of the Governor. The Department coordinates investigations with the various state agencies. Upon completion of the investigations, reports are issued to the appropriate authorities.

**Why Should You Contact The State Employee Fraud, Waste, And Abuse Hotline?**

Because we all share a common goal: To provide the citizens of the Commonwealth with an honest, effective, and efficient state government. Further, it is every state employee's obligation to report significant instances of Fraud, Waste, and Abuse to management, and if the employee is uncomfortable with reporting to management, then they have the opportunity to report it anonymously to the Hotline. When there is fraud, waste, or abuse in our state government, we all suffer, as taxpayers and as employees of the Commonwealth.

**Who Can Call The State Employee Fraud, Waste, and Abuse Hotline?**

Significant instances of fraud, waste and abuse may be reported to the Hotline by any state employee, classified, at-will, contract, part-time, or full-time.

**When Should Employees Call The Hotline?**

State Employee's should call the Hotline when the employee first learns of the fraud, waste, or abuse. Keep in mind the longer it has been from the incident and the time it is reported, the more difficult it becomes to investigate. The Hotline is available for reporting significant instances of fraud, waste, and abuse from 8:15 a.m. to 5:00 p.m., Monday through Friday, except state holidays.

**What Happens When You Call The Hotline?**

When you call the hotline you will be told not to identify yourself. You will then be transferred to an investigator who will assign a hotline case number to you. The investigator will listen to your allegation and ask pertinent questions about it. After the initial call to the hotline, you will be instructed to call back in three weeks. Since the hotline is based on anonymous tips, we sometimes need to get back in touch with the caller to ask for additional information. The information that you provide goes through a screening process to determine if it is sufficient and significant enough to conduct an effective investigation. The more information you can provide, the more effective the investigation. You should have the following information available when you call:

- Circumstances of the incident.
- The agency and the subject(s) involved.
- Identify any evidence that is available.
- Identify any available documentation and location.
- Dates, times, names, places.
- Credible witnesses.

**How Are Callers Protected?**

You will never be asked to provide your name when you call the Hotline, nor is your call traceable. There should never be an attempt on anyone's part to try to identify the caller, or if someone is suspected of calling the Hotline, or the caller is found out, there can be no retaliation or retribution. If so, it is a violation of policy and the Executive Order and we take it seriously to protect the integrity and credibility of the Hotline. Retaliation against anyone for calling the Hotline is also reportable through the grievance process.

**What Should Be Reported And What Should Not Be Reported?**

The State Employee Fraud, Waste, and Abuse Hotline is designed to report significant instances of fraud, waste, and abuse that may occur in Executive Branch Agencies. Through cooperative agreements, the Hotline will except calls on some Independent Agencies. It is not for general complaints, suggestions, or personnel issues. The Hotline does not accept calls of allegations that involve the Legislative Branch, the Judicial Branch (We do have a cooperative agreement with the Supreme Court of Virginia), localities, or private businesses. The caller will be referred to the appropriate agency to report those calls. The Hotline is reserved for reporting:

- Illegal or Fraudulent Conduct
- Waste of Funds
- Abuse of State Property or Resources
- Gross Mismanagement

- Gross Neglect of Duty

**Examples are:**

- Personal use of State-owned vehicles
- Personal use of state telephones, including long distance personal calls
- Personal use of state owned supplies or equipment
- Violations of state procurement policy
- Excessive or unnecessary purchases
- Falsification of official documents (timesheets, leave reports, travel vouchers, etc.)
- Contract fraud
- Conducting personal business on state time
- Inappropriate expenditures
- Embezzlement

**Who Can Investigate Cases?**

The staff of the Department of the State Internal Auditor, agency internal auditors, or other appropriate investigative personnel may conduct investigations that come to the Hotline. Once an investigation is undertaken and there has been determined that a reasonable possibility that a significant fraud has occurred, the *code of Virginia* requires that the Auditor of Public Accounts and the Virginia State Police be notified. Any significant criminal activity is also turned over to the Virginia State Police for investigation. Several state agencies also have in-house hotlines for various purposes that can also be used.

**What Happens When An Investigation Is Conducted?**

When the information provided by the caller passes the screening process a thorough investigation is conducted. If an investigation is undertaken and if the allegation of fraud, waste or abuse is substantiated, a report is issued and corrective action is recommended to rectify the cause or control weaknesses that allowed it to occur. Management is required to take corrective action on all recommendations to improve controls over situations where fraud, waste, or abuse has occurred.

**What Is Considered To Be Fraud, Waste, Or Abuse?**

**Fraud** – The intentional deception perpetrated by an individual or individuals, or an organization or organizations, either internal or external to state government, which could result in a tangible or intangible benefit to themselves, others, or the Commonwealth or could cause detriment to others or the Commonwealth. Fraud includes a false representation of a matter of fact, whether by words or by conduct, by false or misleading statements, or by concealment of that which should have been disclosed, which deceives and is intended to deceive.

**Waste** – The intentional or unintentional, thoughtless or careless expenditure, consumption, mismanagement, use, or squandering of Commonwealth resources to the detriment or potential detriment of the Commonwealth. Waste also includes incurring unnecessary costs as a result of inefficient or ineffective practices, systems, or controls.

**Abuse** – Excessive or improper use of a thing, or to employ something in a manner contrary to the natural or legal rules for its use. Intentional destruction, diversion, manipulation, misapplication, maltreatment, or misuse of Commonwealth resources. Extravagant or excessive use as to abuse one's position or authority. Abuse can occur in financial or non-financial settings.

If you would like more information about the Employee Fraud, Waste and Abuse Hotline, [click here](#).

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Last Updated: Thursday, July 15, 2004

# **REPRESENTATIVE KEVIN MEYER**

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HOUSE DISTRICT 30

## **Sponsor Statement**

### **House Bill 86**

**“An Act establishing in the office of the ombudsman a state executive branch employee fraud, waste, and abuse hotline program.”**

According to the 2002 *Report to the Nation on Occupational Fraud and Abuse* over \$400 billion annually is lost to fraud and abuse in U.S. organizations. Instances of fraud, waste, or abuse can be especially egregious when it is public money that is being stolen or wasted. Government waste erodes the public trust and strikes deep at the foundation of our democracy.

State governments have established a wide variety of programs and systems to protect public resources. State fraud and abuse hotlines have been established across the country with varying results. In Oregon, the establishment of a fraud, waste, and abuse hotline has led to \$4.13 million in savings.

In Alaska there are two primary entities that investigate complaints or allegations of fraud, waste or abuse: the legislative audit division and the ombudsman.

House Bill 86 establishes, in the ombudsman's office a hotline, for state employees to report fraud, waste, or abuse. Under HB 86, state employees would be able to report anonymously through a hotline while under the protection of the state's whistleblower protection laws. The results of investigations conducted based on complaints made through the hotline would be reported to the legislature through the ombudsman's regular process. HB 86 provides the legislature with another tool to monitor state spending and protect the public's trust.