

HB

92

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 92
(H) Publish Date: 3/26/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Legislature
Title "An Act removing the victims' advocate and the RDU Office of Victims' Rights"
staff of the office of victims' rights from the jurisdiction of the.." Component Office of Victims' Rights
Sponsor "Representatives Samuels and Stoltze, Hawker.."
Requester House State Affairs Component No. 2769

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	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
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This legislation has zero fiscal impact on the Legislative Affairs Agency.

Prepared by: Karla Schofield, Deputy Director
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Approved by: Pamela Varni, Executive Director
Agency: Legislative Affairs Agency

Phone 465-6626
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BILL STOLTZE

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House Bill 92

Jurisdiction of Ombudsman

"An Act removing the victims' advocate and the staff of the office of victims' rights from the jurisdiction of the office of the ombudsman in the legislative branch."

House Bill 92 would amend Alaska statutes to explicitly exempt the Office of Victims' Rights (OVR) from the jurisdiction of the ombudsman. The statute should be amended to clarify the legislature's intent to have the OVR act as a special ombudsman for the legislature in criminal matters on behalf of crime victims. If this is not cleaned up, several problems arise.

If the Ombudsman continues to have jurisdiction over the OVR, it will add an unnecessary layer of investigation in which the "ombudsman investigates the ombudsman".

The OVR is staffed by attorneys with specialized knowledge; the ombudsman is not. This raises the question of "institutional competency" when the Ombudsman lacks that special legal knowledge necessary to investigate. Additionally, since the victims' advocate and staff are attorneys, they are already subject to ethical obligations to their clients in the Alaska Rules of Professional conduct, including the ARPC 1.3 requirement to exercise due diligence.

The OVR has access to confidential information and records beyond the scope of the access allowed to the Ombudsman. Currently, the OVR is prohibited by statute from providing confidential information and documents to the Ombudsman under confidentiality requirements.

For these reasons it is imperative that the legislature clarify their intent and remove the OVR from the jurisdiction of the Ombudsman.

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MEMORANDUM

March 23, 2007

SUBJECT: Authority of Ombudsman over records of the Office of Victims' Rights

TO: Representative Andrea Doll
Attn: Trevor Harvey

FROM: Tamara Brandt Cook
Director

of the state - 1000

TBC

(1) As an agency of the legislature, is the Office of Victims' Rights subject to the jurisdiction of the Ombudsman?

Under AS 24.55.150, the Ombudsman has jurisdiction to investigate an act of an agency if the ombudsman "has reason to believe" the act may be defective in one or more of the ways listed in the statute. In carrying out an investigation the Ombudsman is granted access to state records, including those of agencies not the subject of the investigation. AS 24.55.160(a) states:

In an investigation, the ombudsman may . . . (4) notwithstanding other provisions of law, have access at all times to records of every state agency, including confidential records, except sealed court records, production of which may only be compelled by subpoena, and except for records of active criminal investigations and records that could lead to the identity of confidential police informants.

Under AS 24.55.160(b) the ombudsman is forbidden from disclosing a confidential record obtained from an agency.

AS 24.55.330(2) provides a definition of "agency" for purposes of AS 24.55, the chapter that deals with the Office of the Ombudsman (emphasis added):

(2) "agency" includes 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. . . .

Representative Andrea Doll

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Only certain elected officials and judicial officials are specifically exempted from coverage under the definition of "agency." The Alaska Office of Victims' Rights is an "agency" for purposes of AS 24.55 and is subject to the jurisdiction of the Ombudsman.

(2) Does the Office of Victims' Rights privilege not to produce documents under AS 24.65.110(d) and AS 24.65.200 yield to the Ombudsman's power to obtain information?

While the matter is not entirely free from doubt, it appears the better reading of the statutes would result in the conclusion that the Ombudsman does have access to records of the Office of Victims' Rights. AS 24.55.160(a) unambiguously grants access to confidential records of "every" state agency (with specific exceptions that probably do not apply to most records of the Office of Victims' Rights) and grants that access "**notwithstanding other provisions of law.**" I read that phrase as superseding contrary provisions in AS 24.65. Under (b) of that section the Ombudsman is, in turn, required to maintain the confidentiality of those records.

TBC:med
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