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but this section does not prevent the appointment of qualified individuals from other professions.

(b) (1-3) These provisions, while insuring that the Ombudsman's work is performed on a full-time basis, inhibit politicization of his office and conflicts of interest in his outside professional contacts (whether or not for profit).

While (b) (2) inhibits an Ombudsman's using the office as an immediate political stepping-stone, some states have proposed to go further and to add a section reading, "shall not have served as a member of the Legislature for two years prior to his appointment and shall not serve as a member of the Legislature for three years following completion of the term for which he was appointed," which would prevent use of the office as a political plum as well. However, this would also unnecessarily prevent appointment of a highly qualified legislator, governor or judge; the appointment process should provide a sufficient screen against outright political favoritism.

(b) (4) This suggested section is parallel to the mandatory retirement requirement for judges in many states.

#### Section 7. Term of Office

The Ombudsman shall serve for a term of \_\_\_\_\_ years and until his successor is appointed and qualified. [(Alternate A) He may be re-appointed for additional terms.] [(Alternate B) He may not be re-appointed for additional terms.]

COMMENT. A long term is desirable: to permit the Ombudsman sufficient time to become proficient at his duties; to provide a measure of independence from politics; and to provide prestige and security to attract qualified people to the position. An excessively long term (e.g., 15 years) prevents the desired periodic accountability to the Legislature. The term should not be less than five (5) years.

Either Alternate A or Alternate B should be used to make it clear the Ombudsman should be limited to one term only or may be re-appointed for additional terms.

#### Section 8. Removal and Vacancy

(a) The Legislature by a vote of two-thirds of the members of each house present and voting may remove the Ombudsman or Acting Ombudsman from office, but only for mental or physical incapacity to perform the duties of his office for at least three months, or other grounds sufficient for removal of a judge from state court.

(b) If the position of Ombudsman becomes vacant for any reason, the Deputy Ombudsman shall serve as Acting Ombudsman until an Ombudsman has been appointed for a full term.

COMMENT. (a) Removal is made difficult and for cause to prevent the sudden attacks or political threats against the office more likely to occur in this country without an Ombudsmanic tradition. Alternatively, this sub-section might provide that the Ombudsman, et al, could be removed from office according to state constitutional provisions for removal of judges or other public officials.

(b) In filling vacancies, full-term appointment is preferable to remainder-of-term appointment as it provides the desirable longer term of office.

#### Section 9. Compensation

The Ombudsman shall receive the same salary and benefits as the chief judge of the \_\_\_\_\_ [highest court of state].

COMMENT. This high salary reflects the responsibility and prestige of the office and should be sufficient remuneration to attract qualified people. Rather than fixing the salary at a specific sum, which would shortly become obsolete (leading inevitably to legislative wrangling), it is pegged to a judge's salary and benefits (see §10 (c)). Of course, normal reimbursement of expenses is not included in compensation. If a specific dollar sum is desired, an additional provision is appropriate: "Compensation shall not be diminished during his tenure in office, unless by general law applying to all salaried officers of the State." Permitting a legislative committee or council to set salary and benefits--which might fluctuate with political moods--is neither fair to applicants for the post, nor promotive of independence of the office, and may effectively abrogate stiff removal provisions (§8 (a)).

#### Section 10. Organization of Office

(a) The Ombudsman shall select, appoint and fix the compensation (within the amount available by appropriation) of a person as Deputy Ombudsman and may select, appoint and fix the compensation (within the amount available by appropriation) of such other officers and employees as he may deem necessary to discharge his responsibilities under this Act. All officers and employees of his office shall serve at the Ombudsman's pleasure.

(b) The Ombudsman may delegate to members of his staff any of his

authority, powers, or duties except this power of delegation and his duty to make any report under this Act. However, the Ombudsman may authorize the Deputy Ombudsman to act in his stead during illness, absence, leave, or disability.

(c) The Ombudsman and his staff shall be entitled to participate in any employee benefit or retirement plan available to state employees.

COMMENT. (a) The experimental nature of the office and the close, personal relationship engendered in such a small staff implies the Ombudsman should be free of civil service and political constraints in staff selection and retention. The Ombudsman, however, should refer to civil service salary schedules in setting comparable salaries for staff, and would naturally use state accounting facilities for payment of such (cf., §11 (j)). The appointment of a Deputy Ombudsman is compulsory, while selection of other officials, including an Assistant Ombudsman or Ombudsmen, is optional.

(b) This same desire for flexibility should permit a broad delegation of powers. The Ombudsman, however, remains responsible for the organization of his office and for whatever reports leave the office (§16)--unless the Deputy Ombudsman has assumed his duties in his absence or when the office is vacant (§8 (b)). Rather than requiring within the text of the bill that such delegation be in writing, or that staff members take an oath of office, such matters should be left to the Ombudsman's discretion to impose, if found desirable, by regulation (§11 (b)).

#### Section 11. Powers

The Ombudsman shall have the following powers:

- (a) to investigate, on complaint or on his own motion, any act of an agency without regard to its finality;
- (b) to adopt, promulgate, amend and rescind rules and regulations required for the discharge of his duties--including procedures for receiving and processing complaints, conducting investigations, and reporting his findings--not inconsistent with this Act. However, he may not levy any fees for the submission or investigation of complaints;
- (c) to examine the records and documents of any agency;

- (d) to enter and inspect without notice the premises of any agency;
- (e) to subpoena any person to appear, to give sworn testimony or to produce documentary or other evidence that is reasonably material to his inquiry;
- (f) to undertake, participate in or cooperate with persons and agencies in such conferences, inquiries, meetings, or studies as might lead to improvements in the functioning of agencies;
- (g) to obtain such information and make such inquiries from any agency or person as he shall require for the discharge of his duties;
- (h) to maintain secrecy in respect to all matters and the identities of the complainants or witnesses coming before him;
- (i) to bring suit in           [name of court]           to enforce the provisions of this Act;
- (j) to establish and administer a budget for his office;
- (k) to concern himself with strengthening procedures and practices which lessen the risk that objectionable administrative acts will occur.

COMMENT. Powers are enumerated for clarity; additional powers of staff selection and compensation and delegation of these powers are contained in §10.

(a) His investigatory power is limited to acts of an agency (§3 (b)). As he can act on complaint regardless of source, he can receive anonymous or oral complaints, though his regulatory powers (subsection (b)) permit him to require complaints in writing if experience dictates. His power to investigate on his own motion is most applicable when others are unwilling to come forward (see (c) below).

(b) This broad, internal regulatory provision is relevant to many provisions in this bill. To insure accessibility (and avoid discrimination against the poor), charging of fees for his service is forbidden.

(c-d) The Ombudsman has the power to inspect any agency without notice, as advance notice might negate the value of such a visit. Such visits might provide subjects for investigation on his own motion.

(e) Protections and privileges for witnesses, regardless of whether or not they have been subpoenaed, are provided in §18. §§11 (i) and 19 provide means of compelling compliance. Implicitly, he and his staff are empowered to administer oaths to such witnesses.

(f) Though most of his time will be preoccupied with individual complaints, he can embark on such studies of a general nature as may improve the efficiency of agency work--alone or with other govern-

mental bodies or non-governmental research enterprises.

(g) There is no requirement of formal hearings of an adversary nature. If a proceeding for the taking of testimony were in fact to occur, it should be perceived as an element of an investigation rather than a proceeding in the nature of a trial. Hence its content need not be the same as would normally be demanded in a formal adjudication hearing.

(h) This suggested sub-section expresses the desirability of maintaining confidentiality in the Ombudsman's investigations.

(i) The office of Ombudsman may bring suits: for a declaratory judgment to obtain jurisdiction (under §§3 (a) and 11 (a)); to enter and inspect agencies (§11 (d)); to show cause for not appearing after subpoenaed (§11 (e)); to enforce confidentiality provisions (§§13 (d,e); and to prosecute for willful obstruction or non-compliance (§19).

(j) A provision for budgetary powers may be necessary in some states, useful in others, to insure that the Ombudsman's budget is independent of outside (agency) administration.

(k) The Ombudsman should seek to prevent problems before they occur.

## Section 12. Investigation of Complaints

(a) The Ombudsman shall investigate any complaint alleging that an act of an agency is:

- (1) contrary to or inconsistent with law, regulation or agency practice; or
- (2) based on mistaken facts or irrelevant considerations; or
- (3) inadequately explained when reasons should have been revealed; or
- (4) inefficiently performed; or
- (5) unreasonable, unfair, or otherwise objectionable, even though in accordance with law;

(b) unless he in his discretion decides not to investigate because:

- (1) the complainant could reasonably be expected to use another remedy or channel, and then the Ombudsman shall furnish the complainant with written instructions on the procedural steps to be taken in connection with such other remedy or channel;
- (2) the complaint is trivial, frivolous, vexatious, or not made in good faith;

(3) the complaint has been too long delayed to justify present examination;

(4) his resources are insufficient for adequate investigation in which case the Ombudsman shall refer the complaint to the proper legislative committee and the Governor.

(c) The Ombudsman in his discretion may investigate any act of an agency not enumerated in (a).

(d) The Ombudsman's declining to investigate a complaint shall not bar him from reviewing on his own motion acts of an agency whether or not included in the complaint.

COMMENT. (a), (b) and (c). The Ombudsman has the duty to investigate any complaint which alleges the acts of an agency enumerated in (a) but has the discretion to decline to investigate for reasons stated in (b). He is not limited to the type of problems enumerated in (a) and has the discretion under (c) to investigate any act of an agency not enumerated in (a).

(b) Paragraph (b) (1) reiterates that the Ombudsman is not a substitute for agency's internal complaint procedures, nor can he be expected to absorb all the complaints that agencies generate. Citizens would normally exhaust such avenues before approaching the Ombudsman; however, the Ombudsman can waive this exclusion whenever he believes that he may provide a faster and more just method of review. Paragraph (b) (3) provides a flexible statute of limitation which the Ombudsman may determine by regulation (§11 (b)). Paragraph (b) (4) rechannels those complaints too ambitious or time-consuming (e.g., complex local complaints) for effective investigation.

(d) A series of complaints, though themselves inappropriate for investigation, may reveal acts which should be investigated on the Ombudsman's own motion.

### Section 13. Rights of Complainant--Communication With Complainant

(a) After the Ombudsman has decided whether or not to investigate a complaint, he shall suitably inform the complainant.

(b) The Ombudsman shall, if requested by the complainant, report the status of his investigation to the complainant.

(c) After investigation of a complaint, he shall suitably inform the complainant of his conclusion or recommendation and, if appropriate, any action taken or to be taken by the agency involved.

(d) A letter to the Ombudsman from a person held in custody--including by detention, incarceration and hospitalization--by an agency shall be forwarded immediately, unopened to the Ombudsman. A letter from the Ombudsman to such person shall be immediately delivered, unopened to the person.

(e) No person who files a complaint pursuant to this Act shall be subject to any penalties, sanctions or restrictions in connection with his employment because of such complaint.

COMMENT.

(a), (b) & (c) These sub-sections give the Ombudsman a general duty to inform the complainant of the status of his complaint. The experience and judgment of the Ombudsman will determine the suitable response to be made.

(e) This sub-section provides assurance that there will be no reprisals for filing complaints.

Section 14. Rights of Agency

(a) If the Ombudsman decides to investigate a complaint, he may, if he deems it appropriate, suitably inform the agency involved.

(b) Before announcing or reporting a conclusion or recommendation that criticizes or is adverse to an agency, the Ombudsman shall consult with that agency and permit the agency reasonable opportunity to reply.

(c) If any report that he issues criticizes or is adverse to an agency, the Ombudsman shall include any brief statement the agency may provide.

COMMENT.

(a), (b) & (c) These subdivisions insure that the Ombudsman has the views of the affected agency in mind to guard against oversight and bias. Under (a) it is discretionary with the Ombudsman to give notice to an agency before investigating a complaint and such notice will depend upon whether it will aid or hinder investigation; (b) further protects the agency by giving it reasonable time to reply to criticism. (c) In his special, general interim, and annual reports (§16), the Ombudsman is required to provide the agency's rebuttal (if any). Rather than permitting the Ombudsman to summarize the agency's reply, the agency has been limited to a "brief" statement which shall be printed unedited (regulations as to what is "brief" might be promulgated under §11 (b))

Section 15. Recommendations

(a) If, after investigation, the Ombudsman is of the opinion that an agency should:

- (1) consider the matter further,
- (2) modify or cancel an act,
- (3) alter a regulation, practice, or ruling,
- (4) explain more fully the act in question,
- (5) rectify an omission, or
- (6) take any other action,

he shall state his recommendations and reasons therefor to the agency. If the Ombudsman so requests, the agency shall, within the time he has specified, inform him about the action taken on his recommendations or the reasons for not complying with them. After a reasonable period of time has elapsed, the Ombudsman may issue a report.

(b) If the Ombudsman believes that an action has been dictated by laws whose results are unfair or otherwise objectionable, and could be revised by legislative action, he shall bring to the (insert name of legislative body)'s and agency's notice his views concerning desirable statutory change.

(c) If the Ombudsman believes that any person has acted in a manner warranting criminal or disciplinary proceedings, he shall refer the matter to the appropriate authorities without notice to that person.

COMMENT.

(a) Though the Ombudsman will rarely have reason to make a recommendation if he does not find an error in what the agency has done or neglected to do, he should remain free to suggest improvements in method or policy even when the existing practice may be legally permissible. Thus he may facilitate one agency's learning about and taking advantage of the experience of another. This sub-section contemplates no entry of judgment, as it were, but simply the expression of opinion by the Ombudsman. He is not a superior official, in a position of command. He cannot compel a change in an administrative act. His recommendation may, however, induce an agency to exercise whatever power it itself may still possess to right what the Ombudsman points out as a past mistake.

(b) The Ombudsman's duty extends beyond simply finding that an administrator acted in accord with existing statutory law; if the law itself produces

unjust results, he should bring this to legislative notice. He is not meant to be a general social reformer, but he does have an obligation to take note of statutory provisions that cause unexpectedly harsh administration.

(c) In Sweden the Ombudsman has power to prosecute miscreant officials. Here the Ombudsman has the duty of forwarding pertinent allegations to the appropriate agency, civil service office, or the attorney general. As such reporting might be construed under §14 (a) to require informing the person of such allegations--which, prematurely, might hinder adequate investigation--he is empowered to do this without notice to the individual involved. If the individual has testified before the Ombudsman, such testimony would bear the same privileges as testimony in court (§18).

#### Section 16. Reports

The Ombudsman may from time to time and shall annually report on his activities to the Governor, to the Legislature, or any of its committees, to the public and, in his discretion, to agencies.

COMMENT. Bringing his moves into the open is the Ombudsman's sole means of gaining the public's support.

Under this section, he may publish his recommendations in separate special reports or he may issue general interim reports in his discretion. The annual report, whose release date would be set by the Ombudsman (Paragraph 11 (b)) is mandatory.

He need not identify individuals in his report (§11 (h)), but must reprint brief replies of agencies which he criticizes (§14 (c)).

#### Section 17. Ombudsman's Immunities

- (a) No proceeding, conclusion, recommendation, or report of the Ombudsman or member of his staff shall be reviewable in any court;
- (b) The Ombudsman and his staff shall have the same immunities from civil and criminal liabilities as a judge of this state.

(c) The Ombudsman and his staff shall not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to any matter involving the exercise of their official duties except as may be necessary to enforce this Act.

COMMENT. (a) Sub-section (a) precludes judicial review of the Ombudsman's work, unless, of course, he has violated the Act.

(b) This sub-section avoids litigation and harassment by an uncooperative agency, but does not preclude prosecution for serious misconduct, or removal from office (§8 (a)).

(c) This sub-section acts with §11 (h) to protect the secrecy and confidentiality of information obtained--in order to instill public confidence in his work; it also prevents unnecessary interruptions of his work to testify, while allowing him to proceed in court whenever necessary (§11 (i)).

#### Section 18. Witnesses' Privileges

Any person required to provide information under this Act shall be paid the same fees and travel allowances and accorded the same privileges and immunities, including right of assistance of counsel, as witnesses whose attendance has been required in the

          [name of court]          .

COMMENT. Although nearly all testimony will be in private and confidential, witnesses required to testify (whether or not by subpoena) are given judicial privileges and immunities. A provision that, "However, a representative of an agency during business hours shall not be entitled to such fees and allowances" might be included to avoid possible double payment of public servants during working hours.

#### Section 19. Obstruction

Any person who willfully obstructs or hinders the proper and lawful exercise of the Ombudsman's powers, or willfully misleads or attempts to mislead the Ombudsman in his inquiries, shall be subject to a fine of not more than one thousand dollars (\$1,000.00).

COMMENT. Counsel must determine in each state whether necessity exists for indicating the court in which proceedings are to be brought and upon whose initiative.

Section 20. Relation to Other Laws

The provisions of this Act are in addition to and do not in any manner limit or affect the provisions of any other enactment under which any remedy or right of appeal is provided for any person, or any procedure is provided for the inquiry into or investigation of any matter. The powers conferred on the Ombudsman may be exercised notwithstanding any provision in any enactment to the effect that any administrative action shall be final or unappealable.

Section 21. Appropriation

The sum of \$ \_\_\_\_\_, or so much thereof as may be necessary, is hereby appropriated out of the general funds of the State for the fiscal year ending \_\_\_\_\_ for the purpose of carrying out this Act.

COMMENT. This section should be included where required by the fiscal regulations or practice of the state. If inclusion of such section is not necessary, its omission is recommended.

Section 22. Effective Date

This Act shall take effect immediately upon enactment.

COMMENT. The Act really becomes effective only after appropriation has been made and an Ombudsman has taken office.

Section 23. Severability

If any part of this Act shall be declared invalid, all other parts shall remain in full force and effect; the provisions of this Act are declared to be severable.

## American Bar Association Resolution

The following Resolution dealing with the establishment of an Ombudsman was adopted by the American Bar Association at the Midyear Meeting of the House of Delegates in 1969 and amended in July, 1971:

*Be it Resolved*, That the American Bar Association recommends:

1. That state and local governments of the United States should give consideration to the establishment of an ombudsman authorized to inquire into administrative action and to make public criticism.

2. That each statute or ordinance establishing an ombudsman should contain the following twelve essentials: (1) authority of the ombudsman to criticize all agencies, officials, and public employees except courts and their personnel, legislative bodies and their personnel, and the chief executive and his personal staff; (2) independence of the ombudsman from control by any other officer, except for his responsibility to the legislative body; (3) appointment by the legislative body or appointment by the executive with confirmation by a designated proportion of the legislative body, preferably more than a majority, such as two-thirds; (4) independence of the ombudsman through a long term, not less than five years, with freedom from removal except for cause, determined by more than a majority of the legislative body, such as two-thirds; (5) a high salary equivalent to that of a designated top officer; (6) freedom of the ombudsman to employ his own assistants and to delegate to them, without restraints of civil service and classification acts; (7) freedom of the ombudsman to investigate any act or failure to act by any agency, official, or public employee; (8) access of the ombudsman to all public records he finds relevant to an investigation; (9) authority to inquire into fairness, correctness of findings, motivation, adequacy of reasons, efficiency, and procedural propriety of any action or inaction by any agency, official, or public employee; (10) discretionary power to determine what complaints to investigate and to determine what criticisms to make or to publicize; (11) opportunity for any agency, official, or public employee criticized by the ombudsman to have advance notice of the criticism and to publish with the criticism an answering statement; (12) immunity of the ombudsman and his staff from civil liability on account of official action.

3. That for the purpose of determining the workability of the ombudsman idea within the Federal government, the Federal government should experiment with the establishment of an ombudsman or ombudsmen for limited geographical area or areas, for a specific agency or agencies or for a limited phase or limited phases of Federal activity.

4. That establishment of a Federal government-wide ombudsman program should await findings based upon the experimentation recommended.

*Be it Further Resolved*, That the Section of Administrative Law is authorized to present the views of the Association and to encourage the establishment of ombudsmen in accordance with the provisions of this Resolution, by all necessary and appropriate means.

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Yale Legislative Services

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THE OMBUDSMAN:  
ITS POTENTIAL APPLICABILITY FOR THE STATE OF ALASKA

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## PREFACE TO THE SECOND PRINTING

As a service to the public in July, 1974 the Southeast Alaska Chapter of the American Society for Public Administration published and distributed throughout the State of Alaska this meritorious study on the applicability of the ombudsman to the governmental system of this state. Commenced in the summer of 1972, this study is a governmental project report which Gary E. Wilson submitted to the University of Alaska in partial fulfillment of the requirements for a Master's Degree in Public Administration. An Alaska resident since 1966, Wilson is the Division Right-of-Way Officer for Alaska with the Federal Highway Administration. Professor Robert E. Newton, Coordinator of the University's Graduate Extension Program in Public Administration, directed the research.

The initial supply of this study was exhausted some months ago. Interest and requests for copies have continued. In Alaska, as in many other states and localities, indications are that the ombudsman idea has arrived at its time. We have gone to this second printing in response to this widespread interest.

Donald P. Fisher  
President  
Southeast Alaska Chapter  
American Society for Public Administration  
January, 1975

## INTRODUCTION

"Governmental activities nowadays touch so many people in so many ways that bruises and scratches are inevitable."<sup>1</sup> How can these bruises and scratches be alleviated? The enormous growth and diversity of government functions, the size and elaborateness of the administrative mechanisms, the maze of interrelationships among national, state, and local levels are often highly bewildering. Many citizens regard government as remote and inaccessible. The aggrieved person is often thwarted and gives up when he comes up against a defensive government professional.<sup>2</sup> A proposed solution to these problems is to establish a centralized grievance bureau of "Ombudsman." The purpose of this paper is to explain who and what an ombudsman is, discuss the attempts to adopt the concept in this country, and explore the feasibility of establishing a statewide office of Ombudsman in the State of Alaska.

The strange-sounding name, ombudsman, is a Swedish word which means agent, representative, or deputy. The present, generally accepted concept of an ombudsman is a spokesman representing a citizen who has a grievance against a government agency. A grievance may result from ". . . for example, unreasonableness, miscalculation, mistaken application of rules, improper

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<sup>1</sup>Walter Gellhorn, When Americans Complain: Government Grievance Procedures, 1966, p. 1.

<sup>2</sup>Dalmas H. Nelson and Eugene C. Price, "Realignment, Readjustment, Reform: The Impact of the Ombudsman on American Constitutional and Political Institutions," The Annals of the American Academy of Political and Social Sciences, (May, 1968), p. 129.

discrimination, prejudice, bias, neglect of duty, inattention, delay, incompetence, perversity, turpitude, and arbitrariness."<sup>1</sup> These are probably overly harsh adjectives; however, even the best of bureaucracies will have flaws due to its size and human idiosyncrasies.

With the increasing complexity and growth of all levels of government, individual citizens need a place to air their grievances concerning administrative action or inaction. Today's citizen can protect himself against just about everyone except the bureaucrat. It is sometimes argued that several avenues already exist through which complaints may be expressed. For example, there are administrative appeals boards, courts, and state and federal legislators. Each of these, however, has definite limitations for serving as grievance reviewing bodies.

Administrative appeals boards many times include the person making the original decision. While a re-review by a superior or an individual's own review of his decision may be helpful, it certainly lacks impartiality. The agency is likely to try to justify its decisions and is, therefore, not inclined to admit a mistake has been made.

The courts are congested. They usually require legal counsel and are generally frightening to underprivileged or uneducated citizens who many times feel their chances of a success are nonexistent. This is graphically shown in William Stringfellow's book, My People is the Enemy.<sup>2</sup> Stringfellow, as a recent law school graduate, moved into Harlem's ghetto and opened a law office.

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<sup>1</sup>Geoffrey Marshall, "The British Parliamentary Commissioner for Administration," The Annals of the American Academy of Political and Social Sciences, (May, 1968), p. 88.

<sup>2</sup>(New York: Holt, Rinehart and Winston, 1964).

The lack of knowledge as to personal rights and to whom to complain that Stringfellow encountered was astounding. The fear of authority and the feeling that no one would listen or care was the prevalent attitude. This study shows the need for a compassionate ombudsman by whatever name in whom the poor and uneducated would have enough faith to ask where help can be found and what they are entitled to. "Phrases like 'he is the champion of the people,' 'he is like God,' and 'he is the protector of the little guy,' appear repeatedly in interviews with persons who have witnessed the system in operation."<sup>1</sup>

While many legislators feel the "casework" keeps them in closer touch with their constituents, the variety of legislative temperaments cannot give complaints consistent treatment due to differences of motivation, expertise, or ability to communicate with administrators. With so many different people receiving the complaints, it is difficult to detect patterns of grievances that may be obvious if all complaints were received by one office. Handling grievances also detracts from the legislator's primary purpose, which is the formulation of legislation. Many state legislatures meet for only a few months annually, or even biennially. Thirty-five state legislatures meet annually; however, they are often limited to sixty to ninety-day sessions. The other fifteen have similar time restrictions and meet only biennially. Thus, the aggrieved citizen has nowhere to send his complaint during the major part of the year unless his particular legislator considers his office a year-round one.

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<sup>1</sup>John M. Capozzola, "An American Ombudsman: Problems and Prospects." Western Political Quarterly, (June, 1968), p. 300.

## CHAPTER I

### Historical Development of the Office of Ombudsman

The concept of an ombudsman originated in Sweden in 1809. The ombudsman was appointed by the Riksdag (Parliament) to act as a representative of the Parliament to protect individuals against unfair assertions of power by the king's administrative appointees. The ombudsman was "available to hear the complaint of any citizen against the erroneous, unfair or even impolite action by government officials, having the power to investigate a complaint, to publicize any abuse, to recommend corrective action, and to report to the legislature."<sup>1</sup> The intention was to provide a vehicle whereby a citizen regardless of his economic, social, or political status could challenge the actions or decisions of a public agency.

The Swedish ombudsman's jurisdiction now covers national, regional, and local levels of government. It also covers the courts as well as the bureaucracy and is somewhat unique in this regard. He may not take action affecting the king, legislature, or a private citizen.

The office of the Swedish ombudsman formerly included two individuals, a civil ombudsman and a military ombudsman. These were merged in 1965. Legal as well as administrative training are considered requirements for the office in Sweden.

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<sup>1</sup>U.S. Congress Joint Committee on the Organization of Congress, Hearings on the Organization of Congress, 89th Congress, First Session, Part 1, 1966, p. 83.

For over 100 years the ombudsman idea remained exclusively a Swedish innovation. In 1919 the idea was exported to Finland following that country's gaining its independence from Russia. Finland actually has had a type of ombudsman, the Chancellor, dating from the days of Swedish-Russian rule. He is appointed by the President and is actually a part of the executive branch. He no longer handles complaint work, concentrating instead on cabinet work and his duties as Supreme Public Prosecutor.<sup>1</sup> Due to the Chancellor's ties to the executive, Parliament created the ombudsman to oversee the executive branch. As in Sweden, he has investigatory jurisdiction over the courts as well as the executive.

Despite the Swedish and Finnish institutions, the ombudsman idea did not receive much worldwide attention until 1955 when Denmark created the Parliamentary Commissioner, their version of ombudsman. The first appointee was Stephan Hurwitz, a doctor of law and a professor at the University of Copenhagen. Professor Hurwitz has done much to publicize the office through extensive writing and worldwide speaking engagements. He feels the success of the office is greatly dependent upon its prestige and the impartiality of the man in the office.<sup>2</sup>

Denmark gave the office a different emphasis by denying the ombudsman jurisdiction over the courts. Thus he concentrates his efforts on the executive and administration sectors. As in Sweden and Finland, he has jurisdiction

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<sup>1</sup>Walter Gellhorn, Ombudsman and Others: Citizen's Protectors in Nine Countries, p. 48.

<sup>2</sup>Harvard Journal on Legislation, "A State Ombudsman," (June, 1965), p. 218.

over local governments. In the Danish system, jurisdiction extends not only to illegal actions, but also to all phases of administration, which may involve substance, procedures, delay, convenience, and even impoliteness.<sup>1</sup>

The idea next spread to New Zealand in 1962 where a Commissioner of Investigation was established as the result of an election promise of the National Party's platform in the 1960 general election.<sup>2</sup>

Although generally patterned after the Danish model, the New Zealand office is at a relatively lower level. The salary level is lower and his jurisdiction is more restricted. He has no authority over local affairs, the courts, or the military.

In 1963, Norway's ombudsman took office. Thus all four of the Scandinavian countries now have a form of ombudsman. This office was also patterned after Denmark. Norway was followed by the United Republic of Tanzania in 1965, Guyana in 1966, and the United Kingdom in 1967.

The first jurisdiction to create a version of the office in North America was Nassau County, New York, on May 31, 1966. Although the official is referred to as an ombudsman, he is not an independent agency of the legislature but is appointed by the executive.<sup>3</sup> Five Canadian provinces have adopted the idea--Alberta and New Brunswick in 1967, Quebec in 1969, Nova Scotia and Manitoba in 1970.

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<sup>1</sup>Western Political Quarterly, "An American Ombudsman: Problems and Prospects," (June, 1968), p. 291.

<sup>2</sup>Henry S. Reuss and Stanley V. Anderson, "The Ombudsman: Tribune of the People," The Annals of the American Academy of Political and Social Sciences, (January, 1966), p. 45.

<sup>3</sup>Donald C. Rowat, ed., The Ombudsman: Citizen's Defender, (1965), p. xii.

While not specifically ombudsmen, there are similar institutions in India, Japan, Nepal, the Philippines, Mauritius, Australia, Ghana, Greece, Israel, Poland, West Germany, and several other countries. Bills have been introduced in at least thirty-five state legislatures (including Alaska) to create some form of ombudsman. Bills have also been regularly introduced in the United States Congress since 1965 to create a national office of ombudsman.

The basic idea of an ombudsman has become so popular that it has been adopted in one form or another by schools, newspapers, radio stations, citizen's organizations, the military, etc. There is such a diversity of applications that the original concept is becoming somewhat blurred. There are three basic features essential to retaining the original system: (1) he must be an independent, non-partisan officer of the legislature to supervise the administration; (2) he deals with specific complaints against the administration; and (3) he has the power to investigate and to criticize, but not to reverse administrative action.

The flexibility of the ombudsman is probably what has made the office adaptable in so many countries at a national as well as lower level of government. There are common threads running through each of these adaptations. For example, high standing as a jurist is usually a prime qualification. In the Scandinavian countries legal training is required by statute.

Typically, the ombudsman is selected by the legislative bodies. In New Zealand, the Lieutenant Governor (the Queen's delegate) appoints the ombudsman but he acts on the recommendation of the legislature.<sup>1</sup>

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<sup>1</sup>State of Washington, Legislative Council, Committee on State Government, The Ombudsman in Scandinavia: Advantages and Disadvantages for State Government, Olympia: Legislative Council, n.d., p. 7.

The ombudsman is generally appointed for four to six years. In New Zealand he continues in office until a successor is named. Removal from office generally takes at least a two-thirds vote of the legislature. In Finland removal is impossible.

Salary is universally set high, usually fixed at the equivalent of the highest ranking judges. The staff is generally small and selected by the ombudsman. In most cases they are not covered by civil service and thus serve at the pleasure of the ombudsman.

The jurisdiction of the various ombudsmen is the area of largest variance. None may inquire into the work of the legislature, and of the principal countries having ombudsmen, only in Sweden and Finland may inquiry be made of the courts. In all the Scandinavian countries the acts of local officials come under the jurisdiction of the ombudsman, but this is not always true elsewhere. There is a universal tendency to limit the ombudsman to areas where either there is no reviewable avenue or where all available legal remedies have been exhausted.

Most ombudsmen have the authority to act on their own initiative. A variation found in Great Britain is that direct complaints may not be made by citizens, they must be made to the commissioner (ombudsman) via a member of Parliament. In Sweden, Finland, and Denmark the ombudsman makes periodic inspections of government establishments mainly for the purpose of gaining familiarization with the operation of the different agencies.

The Swedish and Finnish ombudsmen are prosecutors who can bring charges against officials. These powers have seldom been used. They rely instead on the power of persuasion and publicity which is generally the only powers other

ombudsmen have. The press, particularly in Sweden and Denmark, gives considerable publicity to findings that reflect adversely an official or an administrative unit.<sup>1</sup>

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<sup>1</sup>State of Washington, Advantages and Disadvantages, p. 10.

## CHAPTER II

### A National Ombudsman for the United States?

It is generally accepted that the idea of an ombudsman will work at a national level when the country is relatively small with a homogenous population. Ake Sandler suggests that twenty million may be the ultimate population an ombudsman can handle effectively.<sup>1</sup> Great Britain is the possible exception to this; however, the British concept is not actually an ombudsman in the full sense of the term since he cannot receive complaints directly. It seems fairly obvious that no one man can supervise a bureaucracy the size of the United States or be responsive to 200,000,000 people. However, even in the Scandinavian countries the work is not done by one man but by a staff. In the United States the size of the staff could be overwhelming.

John M. Capozzola of New York University questions whether a successful institution in a small country can be implemented in a vast and complex society. He states, "there is validity to the doubts of some that the plan is inapplicable except on the local level in the United States. The Danish Ombudsman, Professor Stephan Hurwitz, had questions about its successful implementation in a country the size of Britain. This is compounded by the

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<sup>1</sup>Ake Sandler, "An Ombudsman for the United States." The Annals of the American Academy of Political and Social Sciences, (May, 1968), p. 105.

emphatic belief of Professor Hurwitz that an organization cannot achieve the same degree of public confidence that an individual can attain."<sup>1</sup>

The doctrine of the separation of powers in the United States could prove to be an additional problem to the one of size when a national ombudsman is considered. Although the legislative branch has the right to investigate administrative performance when it is in the pursuit of legislative purposes, the doctrine of executive privilege can be invoked whenever national security is involved. Although this would apply at the federal level, national security would not apply at the state or local level. Clearly the separation of powers with an independent judiciary would place the courts outside the ombudsman's jurisdiction.

One of the largest problems to overcome with instituting the ombudsman concept on the national level in the United States is the legislative branch itself. Congress is the branch most accountable to the people. Legislators naturally do not want to do anything to build a wall between themselves and the voters. It is traditional for the voters to seek help from their representatives in Congress. Senator Mike Monroney stated, "I am afraid there will be boys thinking, 'Well, I elected this guy to serve me up there in Washington. The first thing I catch him doing is passing the buck over to some Ombudsman.'"<sup>2</sup> "Probably the most important mail received by a congressman is the 'case' mail . . . . Denied a favorable ruling by the bureaucracy on a matter of direct concern to him, puzzled or irked by delays in obtaining a decision,

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<sup>1</sup>Capozzola, American Ombudsman, p. 292.

<sup>2</sup>U.S. Congress, Joint Committee, p. 91.

confused by the administrative maze through which he is directed to proceed, or ignorant of whom to write, a constituent may turn to his congressman for help . . . . A person who has a reasonable complaint or query is regarded as providing an opportunity rather than as an extra burden to an already busy office. The party affiliation of the individual even when known to be different from that of the congressman does not normally act as a deterrent to action."<sup>1</sup>

Thus in a sense the United States already has 535 ombudsmen with its 100 Senators and 435 Congressmen. These lawmakers each have a staff of from ten to thirty who spend a great deal of their time handling "casework," inquiries, or complaints from constituents.

Congress also has available to it an organization to investigate the administration, the General Accounting Office. Although not actually an ombudsman since they do not receive complaints from private citizens, this organization does keep executive agencies somewhat in check since they are always susceptible to a surprise audit. The actual responsibility of the G.A.O. is to audit federal agencies to determine whether or not they are carrying out legislation the way Congress intended.<sup>2</sup>

Even so, Congressman Henry S. Reuss from Wisconsin has long been a proponent of a national ombudsman. In his view, a congressman's time could be better spent researching and enacting meaningful legislation instead of spending so much time on casework. "As Vice-President Hubert Humphrey said recently, 'Many members of the Senate and the House spend up to ninety percent of their

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<sup>1</sup>Charles L. Clapp, The Ombudsman: His Work as He Sees It, p. 84.

<sup>2</sup>Scot MacDonald, "Reorganizing Along Functional Lines Makes Congress' GAO More Responsive," Government Executive, (June, 1972), pp. 54-57.

time--and the time of their staff--answering mail, meeting with constituents and handling individual constituent complaints or requests.' 'I thought I was going to be Daniel Webster,' remarked another member, 'and I found that most of my work consisted of personal work for constituents.'<sup>1</sup> Reuss also thinks the complaining citizens would receive more uniform treatment if they were all handled by one agency or individual. The Reuss-Pell bill (H.R. 4273 and S. 984) introduced in 1965 read in part:

Section 2. The Congress hereby finds and declares that the increasing complexity of the Federal Government has created difficulties on the part of private citizens in dealing with the Government, that there is a clear need for the Congress to be informed of the nature of such difficulties, particularly those of a recurrent nature, in order that remedial legislative action may be taken, and that, under existing procedures, such information is only sporadically available and frequently is inadequately developed or fails entirely to reach the appropriate legislative committees. The Congress further finds that the necessary and proper efforts of its individual Members to deal with these problems have increasingly become so burdensome as to constitute a serious impediment to the discharge of their other legislative duties.<sup>2</sup>

Another reason for the ombudsman thus emerges from this bill, that of informing the legislature where corrective legislation is needed to raise the level of service to the public. The Reuss bill varies somewhat from the usual concept of an ombudsman. In the first place the name was to Administrative Counsel of the Congress. He was only to be given a term of two years, receive complaints through an individual Congressman or committee and report back to the same source. He would also make an annual report to Congress. He would have a staff of approximately 100 experts to replace the many staffs of

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<sup>1</sup>Henry S. Reuss, "We Need an American Ombudsman," The Christian Century, (March, 1965), p. 270.

<sup>2</sup>Reuss and Anderson, Tribune of the People, p. 49.

generalists now attached to the individual Congressmen's offices.<sup>1</sup> Reuss gives several reasons for having complaints go through Congressmen. There is already a tradition of citizens complaining to their representatives. Congressmen are not apt to give up a source of votes and would, therefore, be more inclined to pass the bill if the complaints and replies were funneled through them.

One flaw in Mr. Reuss' plan is the size. One of the outstanding characteristics of the ombudsman is the small staff and personal rather than bureaucratized attention. Although personal attention can also be given with a large staff, it is apt to become just another government agency. Many of the various ombudsmen so far established have substantially increased the size of their staff from its original conception. Granted, their increases have not represented very many people, but percentagewise the increase has been substantial. If Mr. Reuss' plan is to start with a staff of 100, it is highly conceivable that the agency would lose all semblance of personal attention through size in a relatively short time.

Perhaps if one central office became unmanageable due to size, regional offices could be set up, or even state offices similar to that of federal district attorneys. This, however, would be getting further and further away from the idea of a one-man public watchdog. Regional offices would also require some degree of duplication. This would further increase the size of the staff and the proliferation would just keep snowballing. Another alternative might be to establish several ombudsmen, for different functional areas, such as welfare, resources, etc.

From the above it can be seen that at the national level in the United States the problems of creating an ombudsman may be insurmountable.

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<sup>1</sup>Reuss and Anderson, Tribune of the People, pp. 49-50.

## CHAPTER III

### Ombudsman at the State Level

As stated earlier, as of 1972, bills had been introduced in thirty-five states to create some type of ombudsman. The first state to introduce such a bill was Connecticut in 1963.<sup>1</sup> The first state to enact a bill was Hawaii in 1967.

The Hawaiian ombudsman, Herman Doi, took office July 1, 1969. Prior to becoming Hawaii's ombudsman, Mr. Doi had extensive experience as both a private and government attorney. He had served as the director of the University of Hawaii's Legislative Reference Bureau just before assuming the ombudsman post.<sup>2</sup> During his first year in office 983 inquiries were received. This total includes inquiries received during the three months prior to Mr. Doi taking office. Of these, 68.7% were received by telephone, 18.1% by visits and 13.2% by letter. Of the inquiries received, 243 or 24.7% were considered outside the jurisdiction of the office. Another 129 or 13.1% were not considered as complaints but as informational inquiries. This left 611 actual complaints against governmental agencies.<sup>3</sup>

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<sup>1</sup>Jesse M. Unruh, "The Ombudsman in the States," The Annals of the American Academy of Political and Social Sciences, (May, 1968), p. 112.

<sup>2</sup>Jack H. Stephens, "Hawaii's Ombudsman," National Civic Review, (February, 1970), p. 83.

<sup>3</sup>Office of the Ombudsman, State of Hawaii, Fiscal Year 1969-1970/ Report Number 1, p. 13.

The city and county of Honolulu with three-quarters population of the state provided the source for 93% of the inquiries.

By the end of the third year of operation, the total number of complaints had risen to 1,678 (this is down from the second year when 1,758 were received). Of these, 358 or 21.3% were outside the ombudsman's jurisdiction and 513 or 30.6% were informational. This left a total of 807 actual complaints against an agency.<sup>1</sup>

The initial staff of Hawaii's Office of Ombudsman consisted of the ombudsman himself and an executive secretary. By January, 1970, the staff also included an associate analyst and a stenographer. The staff had increased by the end of the third year to include a first assistant, three other professional analysts and four secretaries. The educational backgrounds of the professionals included law, political science, education and guidance, and management.<sup>2</sup>

Oregon's governor, by executive action, created the post of ombudsman in 1969. During the fiscal year July, 1969 to June, 1970, 922 complaints were received. Two individuals have held the post in Oregon.<sup>3</sup>

The 1969 Nebraska Legislature enacted a bill calling for the appointment of an ombudsman who took office June 1, 1971. During his first year, 383 inquiries were received.<sup>4</sup>

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<sup>1</sup>Office of the Ombudsman, State of Hawaii, Fiscal Year 1971-1972/ Report Number 3, p. 7.

<sup>2</sup>State of Hawaii, Report Number 3, p. 61.

<sup>3</sup>American Bar Association, Section of Administrative Law, Ombudsman Committee, Development Report, April 15, 1971-June 30, 1972, p. 12.

<sup>4</sup>Ibid.

Iowa's governor appointed a Citizen Aide in 1970 and the 1972 Legislature passed the Citizens Aide Act. The act does not exclude local government from the jurisdiction of the Citizens Aide. During the year October 1, 1970 to September 30, 1971, 1,185 inquiries were received.<sup>1</sup>

The Governor of South Carolina, on May 4, 1971, created the Office of Citizens Service. During the period ending September 13, 1971, 1,338 inquiries were registered with this office.<sup>2</sup>

In 1971, the Lieutenant Governor of New Mexico was given the added duties of ombudsman by statute.<sup>3</sup>

In Minnesota, an Ombudsman for Correction was appointed by the governor on April 21, 1972. This office is funded in a large part by federal aid. In May, 1973, the legislature passed a bill creating the Office of Ombudsman for Correction.<sup>4</sup>

Various other proposals have been made for ombudsmen in specific areas such as mental health, welfare, and dependent children. While the need for these specific ombudsmen exists, it points out the need for a general ombudsman since it would be impossible to state that grievance problems exist in only one selected area.

Despite the widespread use of the term ombudsman, ignorance of the capabilities of an ombudsman still appears to be the greatest hindrance to its

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<sup>1</sup>American Bar Association, Section of Administrative Law, Ombudsman Committee, Development Report, April 15, 1971-June 30, 1972, p. 13.

<sup>2</sup>Ibid.

<sup>3</sup>Ibid.

<sup>4</sup>Ombudsman for Corrections, 1972-1973 Annual Report, State of Minnesota, July, 1973.

adoption. With bills having been introduced in thirty-five state legislatures over the past ten years, the instances where an ombudsman was established as cited above represent a small proportion of these attempts. Former Speaker of the California State Assembly, Jesse Unruh, points out that most state legislators have sincere doubts about the need for and the feasibility of the institution.<sup>1</sup> The question that is usually not answered for legislators is whether or not existing procedures are adequate.

What then are these existing procedures and how adequate are they? A study by Professor Gerald McDaniel of the complaint mail received by the California Governor's Office showed that more people bring their complaints to him than to their legislators.<sup>2</sup> Although to the aggrieved citizen this may seem to be a logical area of recourse, the governor is more apt to be defensive of his appointees rather than admit they have erred. To some extent this would also hold true for a legislator when he is of the same political party as the executive. On the other hand a legislator of the opposite party may be overzealous in pursuing complaints against the administration. These suppositions lead to the conclusion that perhaps all complaints are not being treated equally.

If the governor is not the most ideal recipient of complaints against the administration, is the legislature the answer? As stated earlier, legislators are reluctant to give up any opportunities to improve their public relations by assisting a constituent. This applies to the state level as well as the national. However, the arguments in favor of giving up casework at the state level are greater than at the national level. In the first place, state

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<sup>1</sup>Unruh, "The Ombudsman," p. 113.

<sup>2</sup>Cited from Unruh, "The Ombudsman," p. 116.

legislatures are in session for a short time. Committee work, research and homework on bills not before his committee should require nearly all the legislator's time while in session.

Election to public office seldom constitutes full-time employment for a state legislator. During the non-session months the legislator returns to his primary occupation. Here he must make up for the two to six months he has been away and typically lacks sufficient time for constituents' problems. Being away from the capitol, he also lacks access to heads of the administrative agencies.

Another handicap is lack of facilities provided a legislator. A state legislator is usually fortunate to have office space. A private secretary and/or research assistants are not at his disposal. At the national level such assistants handle most of the legwork on constituents' grievances.

The British concept of an ombudsman has resolved these problems to some extent by requiring complaints to be directed through a member of parliament. This has definite drawbacks, however, since the individual may feel he has too little influence to attract the attention of a senator or representative he may or may not have even voted for. He may also feel his problem is not significant enough to take the legislator's time away from his primary duties. However, if he knew there was an agency set up specifically to listen to his complaints, he would be more inclined to voice his grievance.

". . . [T]he legislator who wants to find solutions to problems and to enact the laws implementing those solutions will have less time for casework."<sup>1</sup> Instituting an ombudsman may have a detrimental effect on a legislator. By

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<sup>1</sup>Unruh, "Ombudsman in the State," p. 119.

spending most of his time on casework he can demonstrate how he is assisting his constituents. A legislator with little influence within the legislature or with no real expertise to offer the legislature may depend very heavily upon casework to get re-elected.

In addition to registering complaints with the governor and individual legislators, a third avenue for citizen complaints lies through the appeals procedures contained within the agency making the original decision. In practice, however, these procedures may be so cumbersome and difficult to initiate that they are rarely used. They are generally not understood by the affected citizen either.

Even though impartiality is attempted by these appeal procedures, the affected citizen is going to question why he could be expected to believe he would get any better treatment or the outcome would be any different when he is still being handled by the same agency.

Despite the drawbacks of an agency being its own source of appeal, how many agencies even go this far? Although most agency decisions are appealable, have provisions been set up for appeals? Mr. Unruh estimates that eighty to ninety percent of administrative action has no appeal provisions.<sup>1</sup>

Less than one-third of the states have adopted explicit administrative procedures governing their agencies. Attorneys for claimants regularly find themselves unable to locate the rules of state agencies, prevented from seeing the factual basis for agency determination, and thwarted by influences channeled through ex parte communications by agency administrators and hearing examiners.

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<sup>1</sup>Unruh, "Ombudsman in the State," p. 113.

In cases possessing little monetary value, these difficulties easily discourage citizens from retaining counsel and counsel from accepting such cases.<sup>1</sup>

During the last few decades, the vastly increased demand for government services has placed a real burden on government agencies. In order to be handled fairly, each individual contact with an agency should be handled individually. However, standardizing procedures is a prerequisite to handling the volume of cases. Thus, dissatisfaction with services performed is bound to occur.

" . . . [T]he citizens . . . should have rapid, inexpensive and reliable access to an impartial 'public watchdog' who is not involved in the governmental decision-making process, and who is clothed with powers of public criticism and the initiation of requests for remedial action . . . ."<sup>2</sup>

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<sup>1</sup>Ralph Nader, "Ombudsmen for State Governments," The Ombudsman, p. 243.

<sup>2</sup>Henry F. Abraham, "The Need for Ombudsmen in the United States," The Ombudsman, p. 240.

## CHAPTER IV

### Legislative History of Ombudsman Bills in Alaska

The original Alaska ombudsman bill was Senate Bill No. 276. It was introduced by Sen. Yule Kilcher (D-Homer) February 24, 1966 during the second session of the Fourth Alaska Legislature. It was referred to the Judiciary and Finance Committees. The bill was reported out of the Judiciary Committee March 31, 1966 with a do not pass recommendation. The recommendation further stated that should the bill pass, the sponsorship should be changed to the Rules Committee. The report was signed by Sen. Robert H. Ziegler (D-Ketchikan), the Chairman, Sen. John B. Hall (D-Fairbanks) and Sen. James Nolan (D-Wrangel). Two of the committee members not concurring in the report were Sen. Nick Begich (D-Anchorage) and Sen. Howard Pollock (R-Anchorage). The bill was then referred to the Finance Committee. No further action was taken.

The next ombudsman bill was House Bill No. 52, introduced by Rep. Jalmar M. Kerttula (D-Palmer) with co-sponsors Rep. Bill Ray (D-Juneau) and Rep. Gene Guess (D-Anchorage) January 25, 1967 during the first session of the Fifth Legislature. The bill was referred to the State Affairs, then the Finance and Judiciary Committees. It was never reported out of the original committee.

During the first session of the Sixth Legislature, an ombudsman bill was again introduced by Rep. Kerttula with co-sponsors Rep. Mike Bradner (D-Fairbanks) and Rep. Ray. This was House Bill No. 132, introduced February 11,

1969. It was referred to the State Affairs, Judiciary and Finance Committees, and again never reported out of the original committee.

In the Seventh Legislature during the first session, separate ombudsman bills were introduced in each house. House Bill No. 7 was introduced by Rep. Bradner January 12, 1971. Rep. Kerttula continued his support of the ombudsman measure by signing on as a co-sponsor. Rep. John Huber (D-Fairbanks), Rep. Richard Randolph (R-Fairbanks) and Rep. Helen M. Fischer (D-Anchorage) also signed on as co-sponsors. The bill was referred to the State Affairs and Finance Committees. It was never reported out of the original committee. Sen. Bob Palmer (R-Ninilchik) introduced Senate Bill No. 13 January 18, 1971. It was referred to the State Affairs and Judiciary Committees and never reported out of the original committee.

House Bill No. 15 in the Eighth Legislature was introduced January 10, 1973 by Rep. Randolph. The bill was referred to the State Affairs Committee. It was reported out January 23, 1973 with a do pass recommendation. The committee proposed a minor amendment which will be discussed later. The bill was brought up in the Judiciary Committee during the week of March 19 and tabled until the second session of the Eighth Legislature. There was no further action taken on the bill during the second session in the spring of 1974. The do pass recommendation of January 23, 1973 by the State Affairs Committee represents the furthest an ombudsman bill has ever progressed in an Alaskan legislature.

Senate Bill 276 of the Fourth Legislature, House Bill 52 of the Fifth Legislature, House Bill 132 of the Sixth Legislature, and House Bill 7 of the Seventh Legislature were all identical. The first changes to the original wording came in Senate Bill 13 of the Seventh Legislature. In the original bill

the selection committee for filling the ombudsman office was to include a member of the Senate appointed by the Senate President and a member of the House appointed by the Speaker of the House. Senate Bill 13 revised this to read a minority member of the Senate appointed by the Senate President and a minority member of the House appointed by the Speaker of the House. This insured minority representation since the remainder of the committee was to be the President of the Senate, Speaker of the House, Chairman of the Senate Judiciary Committee. Senate Bill 13 also changed the term of office. Prior bills had established the term of office at three years with reappointment of no more than four terms. This was changed to a six-year term with no re-appointment restriction. The salary was also revised in Senate Bill 13 from \$22,500 per year to an annual salary equal to that of a Superior Court judge. Under investigation of complaints, the statement allowing the ombudsman to decline an investigation if there are other complaints more worthy of his attention was omitted from Senate Bill 13.

The most recent bill, House Bill 15, contained the same revisions as Senate Bill 13 with the exception of changing the salary to an annual amount equal to a range 28C position in the classified service. The clause allowing the ombudsman to decline an investigation if there were more worthy complaints was also reinstated. A new statement was added under procedures after investigation; i.e., the ombudsman shall report his opinion and recommendation to an agency even when there are no grounds for any action by the agency.

An article appeared in the June, 1965 issue of the Harvard Journal on Legislation containing a draft model statute for state legislatures creating

an Office of Ombudsman.<sup>1</sup> This was followed by a section-by-section analysis of the draft. With only a few minor exceptions, House Bill No. 15 is identical to this model statute.

Some of the differences between the model and House Bill 15 are: The model provides for appointment by the Governor with advice and consent of the Senate. Another is that the ombudsman be limited to three six-year terms. An interesting section of the model, but not found in House Bill 15, is a section entitled, "Agencies may not open letters to Ombudsman." The section states, "A letter to the Ombudsman from a person held in custody by an agency shall be forwarded immediately, unopened, to the Ombudsman."

As stated earlier, House Bill 15 of the eighth legislature was reported out of the State Affairs Committee with one substantial amendment. Under compensation, range seventeen of the classified service was deleted and the salary of a State Supreme Court Judge was inserted.

Although no committee records are available to determine what discussion occurred on any of the previous bills, it appears that there has been very little interest in its passage. At least no apparent pressure has been exerted that would bring it out of committee. On one of the two occasions the bill was reported out of the original committee, the recommendation was do not pass; however, it was a close committee vote, three to two in favor of the recommendation.

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<sup>1</sup>"A State Statute to Create the Office of Ombudsman," Harvard Journal on Legislation, (June, 1965), pp. 221-238.

## CHAPTER V

### Conclusion

The American experience with the ombudsman idea to date indicates that there are widespread, practical and immediate benefits to be accrued by the Alaska public from this institution at a modest cost. That experience, particularly in Hawaii, demonstrates conclusively that the ombudsman idea represents much more than a nebulous, idealistic notion with little or even negative practical application. The tabulation in the appendix indicates the diversity of citizen inquiries and complaints in Hawaii. There is no reason to believe there would be any less diversity or magnitude if adopted in Alaska.

Lacking the legal authority either to prosecute wrongdoing or to compel administrative agencies to act against their will, the ombudsman can still correct inequities in government agencies dealing with individual citizens. The ombudsman's office can preserve a measure of confidence among the public that their governmental agencies have been established to serve them. The power to persuade and to conciliate can be very powerful when provided with an adequate forum.

In implementing the ombudsman idea into its complex system of federal-state-local government, the American experience also indicates that the state level of government offers the greatest potential for the ombudsman. Alaskans can benefit from the same results the people of Hawaii have enjoyed in the

recent years since the ombudsman was established in that state. As this proposal for an Alaska ombudsman is developed, questions such as the following arise: Is the concept of an ombudsman feasible in Alaska? Whom would it benefit? What would be required to implement it? The following conclusion is an attempt to answer each of these questions.

From the standpoint of feasibility, the geographic vastness of the state presents formidable obstacles to the effective functioning of a sparsely staffed ombudsman's office. There are, however, definite population centers (Anchorage, Fairbanks, Juneau, and Ketchikan) which could be visited by the ombudsman on a frequent, scheduled basis. The smaller towns and the bush areas could be visited by the ombudsman and his staff on a less frequent basis. The twelve new native regional corporations might be induced to play a liaison function between the ombudsman and the bush areas to bring a much needed improvement in state governmental services to the outlying areas of the state. Complaints from these villages might be channeled through the corporations on a scheduled basis. Hawaii, made up of islands, also has a geographical problem, although not of the magnitude of Alaska.

Lack of a homogenous population presents another feasibility obstacle. The Hawaii experience indicates, however, that a geographically and culturally disparate population can be well served by an ombudsman on the state level. From this, Alaskans have good reason to conclude that a state with a scattered and heterogenous population needs an ombudsman all the more and that the office can be successfully implemented to meet the needs of all the people in all of its regions.

If implemented successfully, the people of the state themselves would be the chief beneficiaries of the ombudsman. They would have a sympathetic intermediary who is knowledgeable of the internal workings of governmental agencies. Legislators and their staffs, the Governor and his staff, and the departmental commissioners and their line and staff agencies would also be benefitted as shown in the succeeding paragraphs. The widespread popular benefits, however, that the ombudsman could produce need to be stressed primarily. It is designed to serve the people now in a myriad of practical ways which they can understand and appreciate. Open to all who need its services, the ombudsman's office is essentially a classless type of agency. It meets, however, the needs of those less articulate and knowledgeable about governmental affairs to a greater extent than the more fortunate members of society.

The American experience with the ombudsman, and worldwide experience as well, demonstrates that the existence of the office does not affect existing political and administrative power structures or the distribution of power between legislative, executive and judicial agencies. This experience also demonstrates that the ombudsman does not challenge existing structures at the top of the power pyramid or become a meddlesome nuisance in its lower reaches. The justification for the office rests on the simple, observable facts that modern government is complex and that the public often fails to understand its processes and how to avail itself of its services.

What effect then would the ombudsman have on existing legislative and executive agencies in Alaska? (Proposals for an Alaska ombudsman do not include the state judiciary within the jurisdiction of the office.) Generally

speaking, experience indicates that the ombudsman would increase their efficiency. Individual legislators and their staffs would have an agency at their disposal to which they may refer all citizens' complaints for investigation and action. This would relieve them of a burden which hampers the primary function of the legislative process, that of formulating and deliberating upon legislation. The year-round service of the ombudsman's office would assure that all meritorious complaints would be received and processed in even fashion. As a central receiving office, the ombudsman would be situated to observe patterns of grievances and be able frequently to suggest administrative remedies which would benefit all persons similarly affected when an individual complaint is processed.

This proposed system of citizen complaint processing under the auspices of an ombudsman could serve to clarify to the public the essential nature of the legislative process and the inherent limitations under which an individual legislator attempts to serve the public who elected him or her and the state at large. Aside from those who have shouldered the burden of serving in the state legislature, there are relatively few who understand the extent of the demands which legislative service imposes upon the time and the financial resources of the individual. Even though there is little prospect that the public will ever understand this very well, the ombudsman offers to the individual legislator a realistic hope that he or she, as well as constituents, will be served by the ombudsman.

Assessing the impact of the ombudsman on the executive branch presents a more complex and elusive problem than that of assessing its effects on the

state legislature. But, again, both the American and the worldwide experience with the ombudsman experiment should serve to allay any doubts that the office is designed to effect a significant shift of either political or administrative power.

Given the broad scope of the ombudsman's investigatory powers over the executive branch, the most formidable objections to the creation of the office have usually come from this source when ombudsman proposals have been advanced. However, after overcoming the initial negative reaction to the idea, it has proved to be an even more welcome addition to the governmental scene among executive branch agencies than among legislators and their staffs wherever the experiment has been tried. How does one account for this ready acceptance of the ombudsman in practice?

The essential role of the ombudsman as a conciliation service between the public and its governmental agencies has quickly emerged when the experiment has been tried. In the evolution of the office, ombudsmen have been armed at various times with the power to prosecute and to take lessor yet stern corrective measures in resolving citizen's complaints. Such powers have not proved to be consistent with the style and the technique of the successful ombudsman. It is noteworthy that where the power to prosecute is vested in the office, as it presently is in some of the Scandanavian countries, it has seldom been exercised. One does not find any American ombudsman experiment where the power to prosecute is vested in the office. Such powers have not been included in any of the proposals for an Alaska ombudsman.

Typically, the ombudsman has had an extensive background in the governmental system in which he is appointed to serve and is aware of the policies and procedures of the system's various governmental agencies. When specific citizens' complaints do arise, the formal, legal power of the ombudsman to compel the disclosure of specific information seldom needs to be invoked. Informal and semi-formal procedures in complaint processing are characteristic of the ombudsman's practice.

There are a variety of complaint processing patterns to be found among governmental agencies. There is one characteristic problem, though, which one regularly encounters. Too many complaints are either received at or are referred up to a too high level in the administrative hierarchy. The typical citizens' complaint neither requires the attention of top management nor can it be satisfactorily resolved on that level. Its merit is difficult to assess on that level and even when such problems are resolved to the citizen's satisfaction, top management officials may have disrupted agency policies and procedures which have been soundly devised at the operating level.

The higher the complaint is lodged and accepted, the more agency officials in the chain of command hierarchy are brought into confrontation with each other, frequently in a crisis type of atmosphere. Relatively simple citizens' complaints have been known to demoralize an agency seriously from top to bottom, to substantially reduce its capacity for productive work output and to leave it in a state of tense anticipation that such an event will soon recur with similar results.

The impartiality of the ombudsman also benefits the entire administrative organization when unreasonable citizens' complaints are received or when service demands are made of an organization which either lie beyond the resources of the agency to fulfill or which would disproportionately divert agency resources to the benefit of one person. Ombudsmen are perceptive to such situations and assume the responsibility of explaining to the dissatisfied citizen why his demands cannot be met. Fair-minded citizens tend to regard an ombudsman's explanation as more objective and reliable than that of a representative of the agency and as a result they tend to accept his conclusions rather than to press their case further or to renew it at a later date. In those instances where the complaining citizen demonstrates a lack of concern for fairness and reasonableness, the ombudsman serves as a protective buffer for the agency against overly aggressive conduct.

Top management in an administrative agency are less involved in the entire citizens' complaint process when the services of an ombudsman are available. From their point of view the ombudsman provides both a species of consulting service affording them reliable reports on the performance of their operating personnel and a species of in-service training for their operating personnel when the job can be done better.

The ombudsman intervenes at the lowest level of the administrative hierarchy where citizens' complaints can be resolved. In this manner he may correct inequitable practices of which top level administrators are unaware. His very presence can stimulate first line supervisors and their personnel into re-examining problems within the framework of agency policy and to attempt to

resolve citizens' complaints without referring the issue to higher administrative officials. In modern management terminology, the ombudsman brings "positive reinforcement" to the first line supervisor and his personnel.

During the first year of operation in Hawaii, \$103,000 was provided as an operating budget.<sup>1</sup> The first year of operation in Alaska would require only a small staff, probably the ombudsman himself and a secretary. The objective during the first year would be setting up the office and publicizing it. Some travel outside Alaska would be involved to observe other ombudsmen in action. Extensive use of long distance telephone service would be necessary in a state the size of Alaska. No matter in which city the ombudsman were to be located, extensive travel within the state would be required.

A budget figure of \$100,000 would appear to be adequate for the first year of operation. This would allow \$50,000 for salaries, \$20,000 for travel and \$30,000 for office expenses, depending upon what facilities and equipment were made available. This figure would probably double or triple during the second year of operation due to increases in staff, travel and related expenses as the services provided became more widely known. The budget would then level off and remain fairly static (subject to inflation) since primary advantages of the concept are small size and personal attention.

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<sup>1</sup>State of Hawaii, Report Number 1, p. 2.

## APPENDIX

The actual record of the Hawaii experience with its Office of the Ombudsman presents the kind of data which concretely demonstrates the broad range of problems with which their ombudsman has been concerned and his effective disposition of a heavy caseload.<sup>1</sup> The following summaries of cases were taken from the Hawaiian Ombudsman's Report Number 2 for the fiscal year 1970-1971. The cases were selected to give a general idea of the types of complaints received and their resolution. They cover areas where agency corrective action was indicated, where the agency had taken appropriate action, and where legislative action was required. Following the summaries is a chart indicating complaints broken down by department and whether or not they were justified.

### Selected Cases

An unsuccessful bidder on some office equipment complained about bidding irregularities. The Department of Education was contacted and a subsequent Attorney General decision called for rejection of all bids and re-advertisement.

A community schools instructor complained about being underpaid for actual number of hours taught. After interviews with students and the

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<sup>1</sup>See State of Hawaii, Office of the Ombudsman, Fiscal Year 1969-1970/Report Number 1, Fiscal Year 1970-1971/Report Number 2, and Fiscal Year 1971-1972/Report Number 3 (Honolulu: Office of the Ombudsman, 1971, 1972 and 1973). A Report Number 4 was not yet available when this governmental project report was finalized.

registrar it was determined that an error had been made and the Department of Education voluntarily agreed to pay the contested amount.

A State Board was accused of being prejudiced against a certain racial group in its work. The ombudsman made a study of statistics, board files and actions and then determined the charges were unfounded.

A citizen complained of unsanitary odors coming from a neighbor's hog farm. Following the ombudsman's inquiry, a sanitarian inspected the farm and found waste from the pigpen being discharged into a non-functioning cesspool. Orders were issued by the Department of Health to remove the hogs.

A complaint was received regarding the lack of school bus service to an area. The ombudsman investigated and found the reasoning for not serving the area justified, but suggested ways in which the situation might be resolved. The suggestions were followed and the situation was resolved by the complainants themselves.

A claimant for unemployment compensation complained that he was experiencing undue delay in receiving his compensation. The ombudsman investigated and found that corrective action had already been instigated by the department.

A citizen complained of rude and uncalled for treatment by the Parks Division personnel while camping in a state park. The employee did not furnish any identification at the time. Following the ombudsman's inquiry, the employee was reprimanded and all employees were provided identifying shoulder patches.

Welfare recipients claimed rental allowances were not sufficient to maintain health and comfort. The ombudsman found the rates were set by the

legislature, not the agency, and suggested the group testify before the appropriate legislative committee.

A citizen action group complained they were denied a copy of a public hearing transcript. The ombudsman informed the responsible official that a Hawaii Statute made minutes of boards and agencies public records and thus available to the general public with a fee assessed for copying. Subsequently, arrangements were worked out whereby the complainant was provided a copy.

A complaint was received that the State of Hawaii should provide parking for citizens on jury duty. The ombudsman investigated and found there was no reasonable way the State could provide parking until additional parking lots were made available.

A welfare recipient complained that despite repeated requests to the Department of Social Services, she had not been assigned a social worker. The ombudsman's investigation disclosed that the Department had tried repeatedly to contact the complainant, but she was never at the address given. The complainant was informed she must make an effort to be available.

A taxpayer complained that although he had paid a previous year's State Income Tax, he had been notified of tax delinquency. He could not locate any records and could not afford to pay the bank to search for a copy of his cancelled check. The ombudsman convinced the Department of Taxation to make a more thorough search and the return was found misfiled.

A resident living on a narrow dirt road that was nevertheless a public thoroughfare complained of lack of garbage collection. The ombudsman investigated and agreement was reached with the City and County of Honolulu that they would service the area with a smaller than normal vehicle provided the resident would allow turning around in his driveway.

TABULATION OF CASES  
OFFICE OF OMBUDSMAN, STATE OF HAWAII  
FISCAL YEARS, 1969-1970, 1970-1971, 1971-1972  
(by department)<sup>1</sup>

Department	1969-1970				1970-1971				1971-1972			
	Received <sup>2</sup>	Justi- fied	Unjusti- fied	Infor- <sup>3</sup> mation	Received	Justi- fied	Unjusti- fied	Infor- mation	Received	Justi- fied	Unjusti- fied	Infor- mation
Accounting and General Services . . . . .	33	19	7	5	24	12	7	11	24	12	5	6
Agriculture . . . . .	10	1	7	2	6	2	4	3	3	0	2	1
Attorney General . . . . .	10	4	3	3	6	2	3	7	8	2	4	7
Budget and Finance . . . . .	11	5	3	1	18	7	6	3	18	7	8	6
Defense . . . . .	1	0	1	0	3	0	2	2	2	0	1	0
Education . . . . .	68	38	17	7	61	29	22	18	66	23	25	23
Hawaiian Home Lands . . . . .	5	1	1	0	13	4	5	1	8	4	4	2
Health . . . . .	60	29	18	4	45	17	15	37	40	8	19	24
Labor and Industrial Relations . . . . .	56	22	20	10	81	27	36	47	93	43	43	47
Land and Natural Resources . . . . .	29	9	14	3	25	9	14	10	30	12	10	13
Personnel Services . . . . .	18	5	5	6	15	3	11	8	12	2	7	6
Planning and Economic Development . . . . .	4	0	0	4	2	0	1	2	4	1	2	6
Regulatory Agencies . . . . .	50	11	16	11	58	23	15	55	41	7	24	34
Social Services and Housing . . . . .	83	22	38	14	103	27	59	56	147	32	76	62
Taxation . . . . .	38	7	14	8	50	18	25	34	42	10	22	20
Transportation . . . . .	52	13	27	5	46	19	14	13	43	12	14	6
University of Hawaii . . . . .	41	20	9	7	50	23	10	19	57	16	19	20
Counties . . . . .	229	65	82	40	209	64	72	115	155	40	71	65
Lieutenant Governor . . . . .	1	1	0	0	1	0	0	7	0	0	0	2
Consumer Protection . . . . .	11	3	4	3	6	2	2	37	8	0	7	14
Hawaii Office of Equal Opportunity . . . . .	1	0	0	0	0	0	0	1	1	1	0	0
TOTAL . . . . .	811	275	286	133	822	298	323	496	807	232	364	365

<sup>1</sup>Abstracted from State of Hawaii, Office of the Ombudsman, Fiscal Year Reports No. 1, 2 and 3.

<sup>2</sup>At the end of each fiscal year there were Received complaints which were either subsequently withdrawn or in the process of investigation and resolution. Therefore the sum of the figures in the Justified and Unjustified columns does not usually equal the figure in the Received column.

<sup>3</sup>As the Hawaii Ombudsman's office developed over the three years shown, it was perceived that certain inquiries should not be classified as citizens' "complaints" since the inquiring citizen needed only to be given correct information and guidance to solve his problem. For fiscal years 1970-1971 and 1971-1972 informational inquiries were not included in the total of Received complaints. For the purpose of this study the Information column has been included because it lends perspective to the broad range of public services which the Hawaii Office of Ombudsman performs.

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# RECORDS CERTIFICATION



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James O. Smith  
Signature of Camera Operator

2/8/90  
Date

"An Act creating the office of the ombudsman."

# COMMITTEE REPORT

HOUSE

2/29/75

Mr. Speaker:

Date March 5, 1975

The Committee on FINANCE has had CSSE 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 CSSE 1 (C.D. & Ct. Rule) 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 recommendations*

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