

ACT 306

S. B. 19.

A Bill for an Act Relating to the Office of the Ombudsman.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Short title. This Act may be called "The Ombudsman Act of 1967".

SECTION 2. Definitions. (a) "Agency" includes any permanent governmental entity, department, organization, or institution, and any officer, employee, or member thereof acting or purporting to act in the exercise of his official duties, except:

- (1) a court;
- (2) the legislature, its committees, and its staff;
- (3) an entity of the federal government;
- (4) a multi-state governmental entity; and
- (5) the governor and his personal staff.

(b) "Administrative act" includes any action, omission, decision, recommendation, practice, or procedure, but does not include the preparation or presentation of legislation.

SECTION 3. Ombudsman; office established, appointment, tenure, removal, qualifications, compensation, vacancy. The office of ombudsman is established. The legislature, by a majority vote of each house in joint session, shall appoint an ombudsman who shall serve for a period of six years. An ombudsman may be reappointed but may not serve for more than three terms. The legislature, by two-thirds vote of the members in joint session, may remove or suspend the ombudsman from office, but only for neglect of duty, misconduct, or disability.

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

The compensation of the ombudsman shall be \$22,000 per annum. The compensation of the ombudsman shall not be diminished during his term of office, unless by general law applying to all salaried officers of the State.

If the ombudsman dies, resigns, becomes ineligible to serve, or is removed or suspended from office, the first assistant to the ombudsman becomes the acting ombudsman until a new ombudsman is appointed for a full term.

SECTION 4. Assistance, staff, delegation. The ombudsman shall

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

The ombudsman may delegate to his appointees any of his duties except those specified in sections 13 and 14.

SECTION 5. Procedure. The ombudsman may establish procedures for receiving and processing complaints, conducting investigations, and reporting his findings. However, he may not levy fees for the submission or investigation of complaints.

SECTION 6. Jurisdiction. The ombudsman has jurisdiction to investigate the administrative acts of agencies and he may exercise his powers without regard to the finality of any administrative act.

SECTION 7. Investigation of complaints. (a) The ombudsman shall investigate any complaint which he determines to be an appropriate subject for investigation under section 9.

(b) The ombudsman may investigate on his own motion if he reasonably believes that an appropriate subject for investigation under section 9 exists.

SECTION 8. Notice to complainant and agency. If the ombudsman decides not to investigate, he shall inform the complainant of that decision and shall state his reasons.

If the ombudsman decides to investigate, he shall notify the complainant of his decision and he shall also notify the agency of his intention to investigate.

SECTION 9. Appropriate subjects for investigation. An appropriate subject for investigation is an administrative act of an agency which might be:

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

The ombudsman may investigate to find an appropriate remedy.

SECTION 10. Investigation procedures. (a) In an investigation,

the ombudsman may make inquiries and obtain information as he thinks fit; enter without notice to inspect the premises of an agency; and hold private hearings.

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

SECTION 11. Powers. Subject to the privileges which witnesses have in the courts of this State, the ombudsman may:

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

(2) Compel any person to produce documents, papers, or objects which the ombudsman reasonably believes may relate to a matter under investigation.

The ombudsman may bring suit in an appropriate state court to enforce these powers.

SECTION 12. Consultation with agency. Before giving any opinion or recommendation that is critical of an agency or person, the ombudsman shall consult with that agency or person.

SECTION 13. Procedure after investigation. If, after investigation, the ombudsman finds that:

(1) A matter should be further considered by the agency;

(2) An administrative act should be modified or cancelled;

(3) A statute or regulation on which an administrative act is based should be altered;

(4) Reasons should be given for an administrative act; or

(5) Any other action should be taken by the agency; he shall report his opinion and recommendations to the agency. He may request the agency to notify him, within a specified time, of any action taken on his recommendations.

SECTION 14. Publication of recommendations. After a reasonable time has elapsed, the ombudsman may present his opinion and recommendations to the governor, the legislature, the public, or any of these. The ombudsman shall include with this opinion any reply made by the agency.

SECTION 15. Notice to the complainant. After a reasonable time has elapsed, the ombudsman shall notify the complainant of the actions taken by him and by the agency.

SECTION 16. Misconduct by agency personnel. If the ombudsman thinks there is a breach of duty or misconduct by any officer or employee of an agency, he shall refer the matter to the appropriate authorities.

SECTION 17. Annual report. The ombudsman shall submit to the legislature and the public an annual report discussing his activities under this Act.

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

SECTION 19. Agencies may not open letters to ombudsman. A letter to the ombudsman from a person held in custody by an agency shall be forwarded immediately, unopened, to the ombudsman.

SECTION 20. Penalty for obstruction. A person who willfully hinders the lawful actions of the ombudsman or his staff, or willfully refuses to comply with their lawful demands, shall be fined not more than one thousand dollars.

SECTION 21. Effective date. This Act shall take effect upon its approval.

(Became law June 24, 1967, without Governor's signature pursuant to State Constitution, Art. III, § 17.)