

**"CHAPTER 96
THE OMBUDSMAN**

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" **§96-1 Definitions.** (a) "Agency" includes any permanent governmental entity, department, organization, or institution, and any officer, employee, or member thereof acting or purporting to act in the exercise of the officer's, employee's, or member's official duties, except:

- (1) The judiciary and its staff;
- (2) The legislature, its committees, and its staff;
- (3) An entity of the federal government;
- (4) A multistate governmental entity;
- (5) The governor and the governor's personal staff;
- (6) The lieutenant governor and the lieutenant governor's personal staff;
- (7) The mayors of the various counties; and
- (8) The councils of the various counties.

(b) "Administrative act" includes any action, omission, decision, recommendation, practice, or procedure, but does not include the preparation or presentation of legislation. [L 1967, c 306, §2; HRS §96-1; am L 1974, c 46, §1; gen ch 1985]

" **§96-2 Ombudsman; office established, appointment, tenure, removal, qualifications, salary, 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 and thereafter until a successor shall have been appointed. 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 the person served as a member of the legislature, or while the person is a candidate for or holds any other state office, or while the person is engaged in any other occupation for reward or profit. Effective July 1, 2005, the salary of the ombudsman shall be the same as the salary of the director of health. The salary of the ombudsman shall not be diminished during the ombudsman's 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. [L 1967, c 306, §3; HRS §96-2; am L 1969, c 127, §6; am L 1974, c 46, §2; am L 1975, c 58, §33; am L 1982, c 129, §32(1); gen ch 1985; am L 1986, c 128, §30(1); am L 1989, c 329, §20(1); am L 2005, c 225, §6]

Funds for operation of office constitute funds for "expenses of the legislature" within meaning of Const., Art. VI, §5. Att. Gen. Op. 69-4.

Law Journals and Reviews

The Ombudsman in Hawaii: The Basic Premises. 7 HBJ 17.

" **§96-3 Assistance, staff, delegation, funding.** (a) The ombudsman shall appoint a first assistant and other officers and employees as may be necessary to carry out this chapter. All employees, including the first assistant, shall be hired by the ombudsman and shall serve at the ombudsman's pleasure.

(b) In determining the salary of each employee, the ombudsman shall consult with the department of human resources development and shall follow as closely as possible the recommendations of the department. Effective July 1, 2007, the first assistant's salary shall be not more than ninety-two per cent of the salary of the ombudsman.

(c) The ombudsman and the ombudsman's full-time staff shall be entitled to participate in any employee benefit plan.

(d) The ombudsman may delegate to the ombudsman's appointees any of the ombudsman's duties except those specified in sections 96-12 and 96-13; provided that during the absence of the ombudsman from the island of Oahu, or the ombudsman's temporary inability to exercise and discharge the powers and duties of the ombudsman's office, the powers and duties as contained in sections 96-12 and 96-13 shall devolve upon the first assistant during the ombudsman's absence or inability.

(e) The funds for the support of the office of the ombudsman shall be provided for in the act providing for the expenses of the legislature. [L 1967, c 306, §4; HRS §96-3; am L 1974, c 46, §3; am L 1975, c 58, §34; am L 1982, c 129, §32(2); gen ch 1985; am L 1986, c 128, §30(2); am L 1989, c 329, §20(2); am L 1994, c 56, §21; am L 2005, c 225, §7; am L 2007, c 63, §3]

" **§96-4 Procedure.** The ombudsman may establish procedures for receiving and processing complaints, conducting investigations, and reporting the ombudsman's findings. However, the ombudsman may not levy fees for the submission or investigation of complaints. [L 1967, c 306, §5; HRS §96-4; gen ch 1985]

" **§96-5 Jurisdiction.** The ombudsman has jurisdiction to investigate the administrative acts of agencies and the ombudsman may exercise the ombudsman's powers without regard to

the finality of any administrative act. [L 1967, c 306, §6; HRS §96-5; gen ch 1985]

Attorney General Opinions

Ombudsman has no jurisdiction over employee complaints covered by collective bargaining agreements executed under chapter 89. Att. Gen. Op. 73-6.

" **§96-6 Investigation of complaints.** (a) The ombudsman may investigate any complaint which the ombudsman determines to be an appropriate subject for investigation under section 96-8.

(b) The ombudsman may investigate on the ombudsman's own motion if the ombudsman reasonably believes that an appropriate subject for investigation under section 96-8 exists. [L 1967, c 306, §7; HRS §96-6; am L 1974, c 46, §4; gen ch 1985]

" **§96-7 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. [L 1967, c 306, §8; HRS §96-7]

" **§96-8 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. [L 1967, c 306, §9; HRS §96-8]

" **§96-9 Investigation procedures.** (a) In an investigation, the ombudsman may make inquiries and obtain information as the ombudsman 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 the ombudsman except so far as disclosures may be necessary to enable the ombudsman to carry

out the ombudsman's duties and to support the ombudsman's recommendations. [L 1967, c 306, §10; HRS §96-9; gen ch 1985]

" **§96-10 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. [L 1967, c 306, §11; HRS §96-10]

" **§96-11 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. [L 1967, c 306, §12; HRS §96-11]

" **§96-12 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 canceled;
- (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;

the ombudsman shall report the ombudsman's opinion and recommendations to the agency. The ombudsman may request the agency to notify the ombudsman, within a specified time, of any action taken on the ombudsman's recommendations. [L 1967, c 306, §13; HRS §96-12; gen ch 1985]

" **§96-13 Publication of recommendations.** After a reasonable time has elapsed, the ombudsman may present the ombudsman's 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. [L 1967, c 306, §14; HRS §96-13; gen ch 1985]

" **§96-14 Notice to the complainant.** After a reasonable time has elapsed, the ombudsman shall notify the complainant of the actions taken by the ombudsman and by the agency. [L 1967, c 306, §15; HRS §96-14; gen ch 1985]

" **§96-15 Misconduct by agency personnel.** If the ombudsman has a reasonable basis to believe that there may be a breach of duty or misconduct by any officer or employee of an agency, the ombudsman may refer the matter to the appropriate authorities without notice to that person. [L 1967, c 306, §16; HRS §96-15; gen ch 1985; am L 1996, c 52, §2]

" **§96-16 Annual report.** The ombudsman shall submit to the legislature and the public an annual report discussing the ombudsman's activities under this chapter. [L 1967, c 306, §17; HRS §96-16; gen ch 1985]

" **§96-17 Judicial review, immunity.** No proceeding or decision of the ombudsman may be reviewed in any court, unless it contravenes the provisions of this chapter. The ombudsman has the same immunities from civil and criminal liability as a judge of this State. The ombudsman and the ombudsman's staff shall not testify in any court with respect to matters coming to their attention in the exercise or purported exercise of their official duties except as may be necessary to enforce the provisions of this chapter. [L 1967, c 306, §18; HRS §96-17; gen ch 1985]

" **§96-18 Agencies may not open letters to ombudsman.** A letter to the ombudsman from a person held in custody by an agency shall be forwarded immediately, unopened, to the ombudsman. [L 1967, c 306, §19; HRS §96-18]

" **§96-19 Penalty for obstruction.** A person who willfully hinders the lawful actions of the ombudsman or the ombudsman's staff, or willfully refuses to comply with their lawful demands, shall be fined not more than \$1,000. [L 1967, c 306, §20; HRS §96-19; gen ch 1985]