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Bullard
3/27/14

CS FOR HOUSE BILL NO. 235()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE HIGGINS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to complaints filed with the Alaska Public Offices Commission;**
2 **requiring employees of the commission and persons who file complaints with the**
3 **commission to maintain the confidentiality of certain proceedings, documents, and**
4 **information; and establishing sanctions for persons who file false complaints and**
5 **frivolous, vexatious, or other complaints made in bad faith with the commission."**

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

7 *** Section 1.** AS 15.13.045 is amended by adding a new subsection to read:

8 (e) Proceedings of the commission relating to an investigation conducted
9 under this section concerning a potential violation of AS 15.13 or AS 39.50 are
10 confidential until the commission determines that a violation has occurred. Hearings
11 of the commission relating to the investigation are closed to the public until the
12 commission determines that a violation has occurred. Except for documents released
13 by the commission under AS 15.13.380(m), all documents produced or disclosed as a

1 result of the commission's investigation are confidential and are not public records for
2 purposes of AS 40.25.110 - 40.25.140 until the commission determines that a violation
3 has occurred. A member or employee of the commission may not knowingly make an
4 unauthorized disclosure of information that is made confidential under this section and
5 that the member or employee acquired in the course of the member's or employee's
6 official duties. A person who violates this subsection may be subject to prosecution
7 under AS 11.56.860 or another law. The subject of the investigation may waive the
8 confidentiality provisions of this subsection.

9 * **Sec. 2.** AS 15.13.380(b) is amended to read:

10 (b) A person who believes a violation of this chapter or a regulation adopted
11 under this chapter has occurred or is occurring may file an administrative complaint
12 with the commission within five years after the date of the alleged violation. If a
13 member of the commission has filed the complaint, that member may not participate
14 as a commissioner in any proceeding of the commission with respect to the complaint.
15 The commission may consider a complaint on an expedited basis or a regular basis.
16 **Except to the extent that the confidentiality provisions are waived by the subject**
17 **of the complaint under (l) of this section, the complainant shall keep confidential**
18 **the fact that the complainant has filed a complaint under this section as well as**
19 **the contents of the complaint filed until the commission has entered an**
20 **emergency order under (d)(1) or (2) of this section or the commission has**
21 **determined under (m) of this section whether the facts alleged in the complaint**
22 **constitute a violation. If the commission finds that a complainant has violated any**
23 **confidentiality provision before the commission enters an order under (d)(1) or**
24 **(2) of this section or makes its determination under (m) of this section, the**
25 **commission shall immediately dismiss the complaint. Dismissal of a complaint**
26 **under this subsection does not affect the right of the commission or any person**
27 **other than the complainant to initiate a complaint based on the same factual**
28 **allegations.**

29 * **Sec. 3.** AS 15.13.380(g) is amended to read:

30 (g) A commission order under (d), [OR] (e), **or (n)** of this section may be
31 appealed to the superior court by either the complainant or respondent within 30 days

1 in accordance with the Alaska Rules of Appellate Procedure.

2 * **Sec. 4.** AS 15.13.380 is amended by adding new subsections to read:

3 (l) Proceedings of the commission relating to a complaint made under (b) of
4 this section are confidential until the commission determines that a violation of this
5 chapter has occurred. All meetings of the commission relating to a complaint are
6 closed to the public until the commission determines that a violation has occurred.
7 Except for documents released by the commission under (m) of this section, the
8 complaint and all documents produced or disclosed as a result of the commission's
9 investigation are confidential and are not public records for purposes of AS 40.25.110
10 - 40.25.140 until the commission determines that a violation has occurred. A member
11 or employee of the commission may not knowingly make an unauthorized disclosure
12 of information that is made confidential under this section and that the member or
13 employee acquired in the course of the member's or employee's official duties. A
14 person who violates this subsection may be subject to prosecution under AS 11.56.860
15 or another law. The subject of the complaint may waive the confidentiality provisions
16 of this subsection.

17 (m) Unless a complaint is expedited under (c) of this section, within 30 days
18 after accepting a complaint, the commission shall determine whether the facts
19 substantiate an alleged violation and whether there is credible evidence that further
20 investigation and proceedings are warranted. The commission may delegate the duty
21 to make this determination to an employee of the commission. The record of the
22 commission's or the employee's determination under this subsection is a public
23 document, and the commission shall provide it, with any supporting documentation, to
24 both the complainant and respondent.

25 (n) If the commission or the commission's employee determines by clear and
26 convincing evidence that a person has filed a complaint under this section knowing
27 that material statements in the complaint are false, filed a complaint with reckless
28 disregard for whether the statements in the complaint are true, or filed a complaint that
29 is frivolous, vexatious, or otherwise in bad faith, the commission shall dismiss the
30 complaint and

31 (1) shall order the complainant to reimburse the respondent for the

1 resulting reasonable costs, including attorney fees, incurred by the respondent;

2 (2) shall order the complainant to reimburse the commission for the
3 actual costs of its investigation; and

4 (3) may decline to consider further complaints filed by the
5 complainant.

6 (o) The sanctions authorized in this section are not exclusive and do not
7 preclude any other remedies or rights of action the respondent may have against the
8 complainant.

9 * **Sec. 5.** AS 39.50.055 is amended by adding new subsections to read:

10 (d) Proceedings of the commission relating to a complaint made under this
11 section are confidential until the commission determines that a violation of this
12 chapter has occurred. All meetings of the commission relating to a complaint are
13 closed to the public until the commission determines that a violation of this chapter
14 has occurred. Except as provided in (e) of this section, until the commission
15 determines that a violation has occurred, the complaint and all documents produced or
16 disclosed as a result of the commission's investigation are confidential and are not
17 public records for purposes of AS 40.25.110 - 40.25.140. A member or employee of
18 the commission may not knowingly make an unauthorized disclosure of information
19 that is made confidential under this section and that the member or employee acquired
20 in the course of the member's or employee's official duties. A person who violates this
21 subsection may be subject to prosecution under AS 11.56.860 or another law. The
22 person filing a complaint shall keep confidential the fact that the person has filed a
23 complaint under this section as well as the contents of the complaint filed until the
24 commission has determined under (e) of this section whether the facts alleged in the
25 complaint constitute a violation. If the commission finds that a complainant has
26 violated any confidentiality provision, the commission shall immediately dismiss the
27 complaint. Dismissal of a complaint under this subsection does not affect the right of
28 the commission or any person other than the complainant to initiate a complaint based
29 on the same factual allegations. The subject of the complaint may waive the
30 confidentiality provisions of this subsection.

31 (e) The commission shall determine within 30 days after accepting a

1 complaint under this section whether the facts substantiate an alleged violation and
2 whether there is credible evidence that further investigation and proceedings are
3 warranted. The commission may delegate the duty to make this determination to an
4 employee of the commission. The record of the commission's or the employee's
5 determination under this subsection is a public document and shall be provided to the
6 both the complainant and the subject of the complaint with any supporting
7 documentation.

8 (f) If the commission or the commission's employee determines by clear and
9 convincing evidence that a person has filed a complaint under this section knowing
10 that material statements in the complaint are false, filed a complaint with reckless
11 disregard for whether the statements in the complaint are true, or filed a complaint that
12 is frivolous, vexatious, or otherwise in bad faith, the commission shall dismiss the
13 complaint and

14 (1) shall order the complainant to reimburse the respondent for the
15 resulting reasonable costs, including attorney fees, incurred by the respondent;

16 (2) shall order the complainant to reimburse the commission for the
17 actual costs of its investigation; and

18 (3) may decline to consider further complaints filed by the
19 complainant.

20 (g) The sanctions authorized in this section are not exclusive and do not
21 preclude any other remedies or rights of action the subject of the complaint may have
22 against the complainant.