CS FOR HOUSE BILL NO. 563(JUD) am(efd add)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 5/7/04
Offered: 5/6/04

Sponsor(s): HOUSE RULES COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act relating to legislative branch ethics, to open meetings guidelines applicable to legislators, to the confidentiality of complaints and proceedings involving alleged violations of AS 24.60, and to hearings on formal charges by the Select Committee on Legislative Ethics or its subcommittees; and providing for an effective date."

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

*** Section 1.** AS 24.60.037 is repealed and reenacted to read:

Sec. 24.60.037. Open meetings guidelines. (a) A meeting of a legislative body is open to the public in accordance with the open meetings guidelines established in this section. A legislator may not participate in a meeting held in violation of these open meeting guidelines.

(b) For purposes of the legislative open meetings guidelines, a meeting occurs when a majority of the members of a legislative body is present and action, including voting, is taken or could be taken, or if a primary purpose of the meeting is the discussion of legislation or state policy. The Uniform Rules of the Alaska State

Legislature control the procedure for conducting open and executive sessions of a legislative body.

(c) Legislators may meet in a closed caucus or in a private, informal meeting to discuss and deliberate on political strategy. Those meetings are exempt from the legislative open meetings guidelines. For purposes of this subsection, "political strategy" includes organization of the houses, assignment of committee membership, scheduling of bills, vehicles for adoptions, House-Senate relations, other procedural matters, caucus operations, meetings between majority and minority caucus leaders, meetings between majority and minority caucus leaders of both houses, meetings with the governor, deliberations with regard to political strategy, and discussions of issues in the context of political strategy.

(d) Notwithstanding AS 24.60.130(h) and (n), if a complaint alleges a violation of this section by a group of legislators that includes a legislative member of the committee and that member's alternate, the member and alternate member are disqualified from serving on the committee with regard to the complaint. If the disqualified members are part of the majority caucus, the presiding officer of the house in which the disqualified members serve shall appoint another member of that house to serve on the committee with regard to the complaint. Otherwise, the minority caucus leader shall appoint the member. If a complaint alleges a violation that includes all legislative members of the majority caucus of one house, the presiding officer of that house shall appoint from the other house a member to serve with regard to the complaint. Otherwise, the minority caucus leader shall appoint from the other house the member.

(e) In cases where there are conflicts between these guidelines and the Uniform Rules adopted by the Alaska State Legislature, the Uniform Rules prevail.

(f) The legislative open meetings guidelines are the guidelines that shall be used by the committee when considering complaints filed regarding open meetings.

(g) In the legislative open meetings guidelines,

(1) "caucus" means a group of legislators who share a political philosophy, or have a common goal, and who organize as a group;

(2) "legislative body"

(A) includes

(i) the Senate;

(ii) the House of Representatives;

(iii) the Senate and the House of Representatives meeting in joint session;

(iv) a committee of the legislature, other than the Committee on Committees, but including a standing committee, special committee, joint committee, conference or free conference committee, committee of the whole, and permanent interim committee;

(v) a legislative commission, task force, or other group established by statute or resolution; or

(vi) a caucus of members of one or more of the bodies set out in (i) - (v) of this subparagraph;

(B) does not include

(i) any committee or group of legislators considering only matters involving the organization of a committee or a house of the legislature, including selection of legislative officers;

(ii) any committee or group of legislators and the governor or staff of the Office of the Governor;

(iii) legislative leadership meetings;

(iv) officers of a caucus;

(3) "meeting" does not include

(A) a gathering of members of a legislative body for primarily ministerial or social purposes; or

(B) forums where members of a legislative body have been invited to address a group on legislative issues or concerns.

*** Sec. 2.** AS 24.60.170(j) is amended to read:

(j) If the committee has issued a formal charge under (h) of this section, and if the person charged has not admitted the allegations of the charge, the committee shall schedule a hearing on the charge. **<u>The committee may appoint an individual to present the case against the person charged if that individual does not provide</u>**

and has not provided legal advice to the committee except in the course of presenting cases under this subsection. The hearing shall be scheduled for a date more than 20 **and less than 90** days after service of the charge on the person charged, unless the person agrees to **a later** [AN EARLIER] hearing date. At the hearing, the person charged shall have the right to appear personally before the committee, to subpoena witnesses and require the production of books or papers relating to the proceedings, to be represented by counsel, and to cross-examine witnesses. A witness shall testify under oath. The committee is not bound by the rules of evidence, but the committee's findings must be based upon clear and convincing evidence. Testimony taken at the hearing shall be recorded, and evidence shall be maintained.

*** Sec. 3.** AS 24.60.170(*l*) is amended to read:

(*l*) Proceedings of the committee relating to complaints before it are confidential until the committee determines that there is probable cause to believe that a violation of this chapter has occurred. **Except to the extent that the confidentiality provisions are waived by the subject of the complaint, the person filing a complaint shall keep confidential the fact that the person has filed a complaint under this section as well as the contents of the complaint filed.** The complaint and all documents produced or disclosed as a result of the committee investigation are confidential and not subject to inspection by the public. If in the course of an investigation or probable cause determination the committee finds evidence of probable criminal activity, the committee shall transmit a statement and factual findings limited to that activity to the appropriate law enforcement agency. If the committee finds evidence of a probable violation of AS 15.13, the committee shall transmit a statement to that effect and factual findings limited to the probable violation to the Alaska Public Offices Commission. All meetings of the committee before the determination of probable cause are closed to the public and to legislators who are not members of the committee. However, the committee may permit the subject of the complaint to attend a meeting other than the deliberations on probable cause. The confidentiality provisions of this subsection may be waived by the subject of the complaint. **Except to the extent that the confidentiality provisions are waived by the subject of the complaint, if the committee finds that a complainant has**

violated any confidentiality provision, the committee shall immediately dismiss the complaint. Dismissal of a complaint under this subsection does not affect the right of the committee or any person other than the complainant to initiate a complaint based on the same factual allegations.

*** Sec. 4.** AS 24.60.170 is amended by adding a new subsection to read:

(r) At any point in the proceedings when the subject of a complaint appears before the committee, the subject of a complaint may choose to be accompanied by legal counsel or another person who may also present arguments before the committee. The choice of counsel or another person is not subject to review and approval or disapproval by the committee. The choice by the subject of a complaint to be accompanied under this subsection does not constitute a waiver of any confidentiality provision in this chapter.

*** Sec. 5.** Section 10, ch. 69, SLA 1994, is repealed.

*** Sec. 6**. This Act takes effect immediately under AS 01.10.070(c).