

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

May 8, 2004
9:50 a.m.

TAPE(S) 04-69

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Scott Ogan, Vice Chair
Senator Gene Therriault
Senator Hollis French

MEMBERS ABSENT

Senator Johnny Ellis

COMMITTEE CALENDAR

SENATE BILL NO. 397

"An Act relating to open meetings guidelines applicable to legislators, to the confidentiality of complaints and proceedings involving alleging violations of AS 24.60, and to hearings on formal charges by the Select Committee on Legislative Ethics or its subcommittees."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 563

SHORT TITLE: LEGISLATIVE PROCEDURE & ETHICS GUIDELINES

SPONSOR(S): RULES

05/04/04	(H)	READ THE FIRST TIME - REFERRALS
05/04/04	(H)	JUD
05/05/04	(H)	JUD AT 1:00 PM CAPITOL 120
05/05/04	(H)	Moved CSHB 563(JUD) Out of Committee
05/05/04	(H)	MINUTE(JUD)
05/06/04	(H)	JUD RPT CS(JUD) NT 2DP 4NR
05/06/04	(H)	DP: GRUENBERG, MCGUIRE; NR: HOLM, GARA,
05/06/04	(H)	SAMUELS, OGG
05/08/04	(S)	JUD AT 9:00 AM BUTROVICH 205

WITNESS REGISTER

Representative Norm Rokeberg

Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of HB 563, companion legislation to SB 397

Ms. Andree McCloud
No address provided

POSITION STATEMENT: Opposed to confidentiality provision in SB 397

Mr. Myrl Thompson
Big Lake, AK

POSITION STATEMENT: Opposed to SB 397

ACTION NARRATIVE

TAPE 04-68, SIDE A

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 9:50 a.m. Senators Ogan, French and Seekins were present. The committee took up SB 397.

^#SB397

SB 397-LEGISLATIVE PROCEDURE & ETHICS GUIDELINES

CHAIR SEEKINS moved to adopt a proposed committee substitute (CS) to SB 397, labeled version H.

SENATOR FRENCH objected for the purpose of discussion.

REPRESENTATIVE ROKEBERG told members that version H includes the amendments to HB 563 adopted by the House Judiciary Committee and the Committee of the Whole on the House floor last night. HB 563 is the House companion bill to SB 397. He asked to first respond to an issue that arose on the House floor yesterday, that being the reason for the introduction of the bill. He explained:

Mr. Chairman, historically, going back to I believe ... '94 when the latest version of our ethics statutes were adopted, there was a requirement that in order for the Legislature to meet the principles but not the statutes regarding open meetings, there was an exception made in allowance for closed caucuses, closed meetings, and informal discussions for the purpose of legislative strategy. The guidelines would be developed by the Select Committee on Ethics,

forwarded to the Legislature for their approval and edification.

Mr. Chairman, that's been done annually with the exception of one year since that time. Those guidelines have either been rejected and/or not taken up by the body for a period of almost over 10 years.

Mr. Chairman, at the request of Representative Croft, the legal opinion was given to the committee this last fall indicating that notwithstanding that they haven't adopted guidelines, the committee had jurisdiction to assert its authority in the area of violations or breaches of open meetings principles. Therefore, this was from Tam Cook from Legislative Legal. The committee asked their own counsel for an opinion, which is part of the record in your package from Mr. Brent Cole who indicated much the same thing, giving the rationale to the committee that they did have the right to assert jurisdiction. Whether the guidelines have been adopted by the Legislature or not, it was up to the sole discretion of the committee to basically adopt guidelines as they wished fundamentally from various sources in order to assert their jurisdiction.

Mr. Chairman, I think you're [indisc.] criminal law and perhaps Senator French could verify this, I think there's a sound constitutional provision that, particularly in the area of criminal law, that a statute or a code is not enforceable if it's vague on its face or it's vague or ambiguous because people can't understand it. That's the situation and the conundrum we found ourselves in because here we had the assumption of the jurisdiction, which I agreed to personally. I think the committee does have that but we have a situation where there's no guideline so we have a situation where you're trying to enforce basically the law and you don't know what the law is and that's the problem.

Therefore Mr. Chairman, I felt it was necessary to move forward because - let me just back up a moment. When this occurred and the committee had served its jurisdiction by formal vote, it looked at the guidelines that had been submitted earlier and we discussed that. We felt that they were not really sufficient. They were, frankly, a pretty manila

package but there were a few problems with them so we selected and appointed a subcommittee to work on these guidelines once again and ... that subcommittee has had six meetings - five or six meetings in the course of the last several months endeavoring to find some consensus and put them in guidelines.

Quite frankly ... Mr. Chairman, we were making what I call glacial progress. We're moving at a snail's pace debating the definition of what a meeting was, what political strategy was, what a caucus was. We were getting basically nowhere. Several iterations and recommendations came from Senator Elton, Conner Thomas, the chair of the subcommittee and myself and we started making a little progress. But when the committee noticed their meeting, the next formal meeting last month, they noticed it for the 7th of May and so it was about three or four weeks prior to the meeting they gave out notice they were going to meet on the 7th of May and take up business. They put on the agenda just a discussion of the guidelines but at the last subcommittee meeting, we had no recommendations. There was no consensus on the subcommittee. As a member of the subcommittee I realized the Legislature was going to adjourn and we wouldn't have any guidelines. So that was my motivation for putting it into a bill.

Those comments on the floor last night - the committee is on the verge of adopting guidelines so that's not true at all. There was no consensus from the subcommittee and, believe me, from my experience as a member of the committee, I understood that we couldn't find consensus and they wouldn't just pick up a guideline and send it forward. But point in fact, Mr. Chairman, the reason I introduced this was because of the 7th of May meeting. Even if they had guidelines that they'd had unanimous agreement on, we would not have had time to take up a resolution, introduce it, and put it before the Legislature in four days. It's impossible under our rules. You can't do that.

CHAIR SEEKINS asked if the subcommittee members knew that.

REPRESENTATIVE ROKEBERG didn't know whether they knew or not but said the notion that the committee was on the verge of adopting

guidelines was false. Second, had the committee had consensus, no action could have been taken.

CHAIR SEEKINS asked who decides on the date of the meetings.

REPRESENTATIVE ROKEBERG said the chair of the committee, mostly with the support of staff or the executive director, tries to find a date that all members are available to meet.

CHAIR SEEKINS asked if the chair of that committee is unfamiliar with the legislative process and timeframe that it takes for both houses to deliberate.

REPRESENTATIVE ROKEBERG thought the notion that the ethics committee would put any recommendations before the Legislature was false or not contemplated. He said his point is that he does not believe that anyone had contemplated whether the guidelines had been finished. He continued:

At any rate, that was what I felt was the need to have these guidelines in place. In June of 2000, the committee went through this process again four years ago and they ultimately decided we can't find consensus. The Legislature needs guidelines and they sent a letter to the Legislature saying you guys adopt your own guidelines. They probably should have been adding that as an addendum to their recommendations over the last several years. We can't seem to get our act together. Why don't you guys do it because they're your rules anyway?

One of the issues in the legal opinion in the packet from Ms. Tam Cook is that the current statute says the Legislature should adopt the initial guidelines but the legal opinion goes on to say that because of the language in the statute, after the adoption of the initial guidelines, the Select Committee on Ethics could make modifications to the guidelines without getting ratified by the Legislature. I think that's a real defect. It's like giving our power to create our rules and ceding it to somebody else.

Quite frankly, Mr. Chairman, I was kind of disturbed because some of the legal opinions and the back and forth and the discussions in the committee and the way the committee was acting, I believe they were endeavored to assert their jurisdiction on a superior

basis over our Uniform Rules. That is a very dangerous situation and this particular bill takes care of it. It clearly delineates that the Uniform Rules are superior to any regulations that they would promulgate that we typically have administratively.

CHAIR SEEKINS asked if that is in sections (e) and (f) on page 2.

REPRESENTATIVE ROKEBERG said that is correct. He added that a recent advisory opinion from Legislative Legal came to that conclusion. He said that is an important factor because the Uniform Rules are required by the Constitution and Alaska statute requires a two-thirds vote of both bodies to adopt the Uniform Rules.

REPRESENTATIVE ROKEBERG gave the following explanation of the bill.

The first page of the bill indicates ... what a meeting is - fact number one that meetings have to be open to the public - that's just the baseline, that's the given. And then the next provision is subsection (b). It basically defines what a meeting is - a majority or quorum of the members of the legislative body is present, an action, including voting, is taken or could be taken, or disjunctively if the primary purpose of the meeting is the discussion of legislation or state policy then you have a meeting. You look over on - to follow the bill - on the bottom of page 2, line 31, 'legislative body' - going on to page 3, includes those [indisc.] - Senate, House, etcetera, joint, all of the committees under the rules - sub (v), a legislative commission, task force or other group established by statute or resolution; or operatively on line 12, page 3, a caucus of members of one or more of the bodies set out above 1 through 5 of this paragraph. Just as long as we're on that, you get to the definition of caucus - back up to page 2, line 29, caucus means a group of legislators who share a political philosophy or have a common goal and who organizes a group. In terms of drafting there, I think the operative word is 'share a political philosophy - I think they need to be organized. The way it's drafted now I think it's adequate for that.

So, moving on Mr. Chairman, moving over to page 2, once we have a baseline that all meetings are open as defined as part of a legislative body, subsection (c) is the crux of the definition of what political strategy is or the operative language is where 'legislators may meet in a closed caucus or in a private, informal meeting to discuss and deliberate on political strategy.' That's a reflection fundamentally of the current law but then what we've done here is try to clarify the meaning of that for the purposes of this section, 'political strategy' includes these various things: organization of the houses, assignment of committees, adoption of vehicles, scheduling, House-Senate relations, other procedural matters, etcetera, etcetera, meetings between the majority and minority and the governor, etcetera, etcetera, meetings and then the operative words on lines 10 and 11 are 'deliberations with regard to political strategy, and discussions of issues in the context of political strategy.' Those reflect fundamentally even the '95 guidelines to a degree where the idea was where you need some sideboards but you don't want to make them too narrow but the idea is that you cannot go in to a closed caucus and discuss general public policy issues privately unless they're in the context of political strategy. The rub comes when you try to make the distinction between what's political strategy and what isn't. I mean that was one of the criticisms before. It says that oh, you could preface an open - you close the door on a meeting and say this is for political strategy and then you talk about anything you want. Well that's wrong and I think we need to examine and review some of our practices and how we conduct our practices.

I think in the main we've endeavored to try to meet the spirit of the open meetings law the last 10 years since the law was enacted, but I think in certain instances we've fallen short and we need this bill with the guidelines [which] hopefully will open up that process when it should be open but make clear when we should be able to close it and that was my intention, Mr. Chairman. It depends on what side of the issue you're on, you don't throw the thing out - you're not going to be satisfied until it's totally open but, on the other hand, you're trying to find a

ground here that is workable and we have some guidelines. Let's see how these work and move forward.

Let's see, I talked about the caucus and the legislative body. Let's see. Directing the committee's attention to page 3, line 14, this does not include any committee or group of legislators considering only matters involving the organization of a committee or a house, including selection of officers. That was one thing in the old bill that was really unclear. I mean it should be obvious to the casual observer that either body - the caucuses or the political organizations of the majority and minority should be able to meet for organizational purposes behind closed doors. Those can be knockdown, drag out - the first one I ever attended I thought was the most Byzantine political exercise I ever witnessed in my life. Without going into details, Mr. Chairman, it was so bizarre we don't want to - those things, ministerial matters ... that should be allowable - organizing - that's internal business, not necessarily the business of the state.

So for legislative leadership meetings and officers of the caucus, they should really be able to get together. These things are how we conduct business frankly. But before it was questionable whether those were allowable. We think they are. They constitute primarily political strategy. There's no reason the minority and the majority, the leadership of those caucuses shouldn't be able to sit down in their offices and talk about stuff and then worry about whether they are meeting the open meetings guidelines. I mean that's just silly. These are practical matters of human discourse that frankly are their First Amendment rights. What we have to balance here is the right of the public to know what's going on. But we should be able to talk. That's our job. We're all policy [indisc.] or we wouldn't be here.

Moving on to page 3, line 22, a meeting does not include a gathering of members of a legislative body for primarily ministerial or other social purposes. If you go down to the Baranof to have a drink you're not worried about it. But if you go down to the Baranof and often you get a group of guys in a room down there and start drafting bills, then you've got something to

be concerned about. You can't be doing that. That's not right. But you can talk about policy. You can get together and talk about things. That's allowable.

SENATOR OGAN questioned how a group that is trying to organize a vote would fit in.

REPRESENTATIVE ROKEBERG said if Senator Ogan is referring to chit sheets or serial meetings that is ludicrous.

SENATOR OGAN noted that one time he and another legislator drove around town marking up a bill.

REPRESENTATIVE ROKEBERG said the idea is that every time a few legislators get together, they are not a "caucus." He said the point is that legislators cannot create a subterfuge to avoid open meetings.

SENATOR OGAN said he wanted to put on the record that legislators can draft a bill elsewhere.

REPRESENTATIVE ROKEBERG cautioned that if a majority of the Senate Judiciary Committee drafted a bill at the Baranof, they'd be violating the [Open Meetings Act].

CHAIR SEEKINS jested that the committee would never accomplish anything at the Baranof.

REPRESENTATIVE ROKEBERG said he understood Senator Ogan's point but some parameters are necessary. He said the intention is not to sever discourse among members but members should not meet elsewhere as a subterfuge.

CHAIR SEEKINS said that several people have testified this session that there is some dark, locked, smoke-filled room where people get together to plot a course of what legislation will pass and what will not. He has yet to find that room. He said he thinks the system is very transparent.

REPRESENTATIVE ROKEBERG responded, "Well I'd just make a comment on that, Mr. Chairman. Since the Republicans have ascended from the [indisc.] into the majority in both houses down here and have a bunch of old stodgy conservatives, the lights go out pretty early unless we're on the floor and we're a bunch of stick-in-the-muds. There's not a lot of smoke-filled rooms."

CHAIR SEEKINS said it seems like there are no secrets in the Capitol Building and that people question when he plans to introduce legislation on a matter he was only thinking about.

REPRESENTATIVE ROKEBERG continued describing the bill.

Mr. Chairman, in Sec. 2 on page 3, line 27, we put a provision in here that 'The committee may appoint an individual to present the case against the person charged if that individual does not provide and has not provided legal advice to the committee except in the course of presenting cases under this subsection.' We had a situation where the committee counsel would advise the committee about whether there's probable cause and then turn around and prosecute so this was Senator Torgerson's recommendation.

CHAIR SEEKINS said under this bill there is no way that someone who became an advisor could ever become the prosecutor.

REPRESENTATIVE ROKEBERG added that is correct as it creates an obvious conflict. He continued describing the bill.

Then on page 4, line 3, we had a provision in the old statute that says you can schedule a hearing if not more than 20 days after the service but they didn't have an inside date so 'or less than 90 days' - so you have to bring a hearing within 90 days after a complaint. You cannot wait because of due process and timing.

CHAIR SEEKINS noted you can't just let it hang over someone's head.

REPRESENTATIVE ROKEBERG continued:

Right. There's no statute or provision about timeliness for taking up the matter.

Section 3 - this is a provision - looking on line 14 - except to the extent that the confidentiality provisions are waived by the subject of the complaint, which is the former law, the person filing the complaint shall keep confidential the fact the person has filed the complaint under this section as well as the contents of the complaint. Mr. Chairman this is a key element. Under the current statute, there's

nothing that prohibits an individual who files a complaint to keep it confidential, notwithstanding the fact for years we...somebody filed a complaint on the television camera. They called a press conference and signed the complaint form on the TV camera.

SENATOR FRENCH said he believed that happened two years ago.

SENATOR OGAN said it has been his experience that people file ethics complaints for politically motivated reasons and have press conferences - usually before an election. He thought there was a lot of political motivation behind APOC violations too.

SENATOR FRENCH noted the complaint against him took two years to be dismissed.

CHAIR SEEKINS asked if the bill contains a penalty for filing a complaint publicly.

REPRESENTATIVE ROKEBERG referred to the language on page 4, line 30, and noted the committee can immediately dismiss the complaint if the person speaks publicly and uses the complaint as a political tool. He pointed out the criticism was what constitutes a breach of confidentiality. He said that is clearly in the eyes of the beholder and requires common sense. He said the next sentence is the save-all because if someone files a complaint publicly, the committee must dismiss it but if there is a foundation to the complaint, such as a criminal act, the committee can initiate the complaint.

CHAIR SEEKINS asked if the committee violates that provision, the complaint would be dismissed again.

REPRESENTATIVE ROKEBERG said that is the issue. Another person could also file the complaint again, but that person would be in violation if he or she did not keep the complaint confidential.

CHAIR SEEKINS surmised that a complaint could be dismissed three or four times if confidentiality was breached.

REPRESENTATIVE ROKEBERG said that is correct and added,

...or you could have the same cause of action, if you will, going under a confidential screen and that's the idea. Anybody has the right to bring a complaint but it has to be confidential during the investigative probable cause stage. Then it becomes public. Under

current statute, and there's no change there, once a probable cause is found and it moves to the formal hearing stage, then everybody is allowed to speak about it because it's a matter of public record and basically goes into a formal hearing.

REPRESENTATIVE ROKEBERG explained that the fourth section and last section say a person has a right to counsel. He said there was some question in the Irwin case last year about who represents the person who the complaint was filed against. This clearly sets up that somebody has the right to legal counsel so that a person can't be forced into a quasi-judicial hearing without right to counsel.

CHAIR SEEKINS noted the arrival of Senator Therriault.

REPRESENTATIVE ROKEBERG referred members to page 2, line 12, subsection (d), and then told members that if a group of legislators are involved in any way in the complaint process, either as the complainee or a witness to it, that member would have to recuse himself from participating. He explained that a member from that political party would probably have no representation on the jurisdictional House or Senate subcommittee so this allows the presiding officer to appoint a replacement so that there is always a member from the majority and minority in order to have representation.

CHAIR SEEKINS announced an at-ease.

REPRESENTATIVE ROKEBERG explained that if there was a complaint against the whole caucus of one house for breach of open meetings, there is no way now for any representation from that caucus at the subcommittee hearing so nobody could serve on an adjudicatory basis. This provision would allow the presiding officer of the other body to appoint a member of the same political party so that there would be representation on the committee.

CHAIR SEEKINS asked how confidentiality would be maintained if the presiding officer of the other house has to appoint another member. He asked if that appointment can be made outside the public eye.

REPRESENTATIVE ROKEBERG said he hoped so.

SENATOR THERRIAULT pondered whether the appointment should be left to the presiding officer of the other body or whether it

would be preferable to say the other speaker shall solicit a member from the other body and leave the choice to the speaker.

CHAIR SEEKINS said he would prefer that the presiding officer in that body select a member of the other body.

SENATOR THERRIAULT questioned whether if there was an allegation against every member of the Senate majority, he would want the Speaker of the House, who might be a Democrat, to select someone to represent the Senate majority or whether he would prefer to look over the membership of the House and request that a Republican from the House represent his caucus and vice versa.

REPRESENTATIVE ROKEBERG agreed with Senator Therriault's point.

CHAIR SEEKINS announced a brief at-ease.

CHAIR SEEKINS asked if amending the bill will throw the timing off. He asked if version H of SB 397 is identical to the version of HB 563 that passed the House.

REPRESENTATIVE ROKEBERG said that is correct but noted it is under reconsideration in the House.

CHAIR SEEKINS announced another at-ease.

Upon reconvening, CHAIR SEEKINS suggested deleting the phrase "request the presiding officer of the other house to" on lines 20 and 21 of page 2, so that the sentence reads, "However, if a complaint alleges a violation that includes all legislative members of the same political party of one house, the presiding officer of that house shall appoint from the other house an alternate member of the same political party as the disqualified member...."

REPRESENTATIVE ROKEBERG noted the following language on lines 22 and 23 would have to be deleted: "and the presiding officer of the other house shall make an appointment."

CHAIR SEEKINS moved the aforementioned change as a conceptual amendment [Amendment 1].

SENATOR THERRIAULT pointed out that the word "member" on line 21 should be plural and moved to amend Amendment 1.

CHAIR SEEKINS summarized that the remainder of the sentence should read, "...appoint from the other house an alternate

member of the same political party as the disqualified members to serve with regard to the complaint" and asked if there was any objection to that amendment.

With no objection, CHAIR SEEKINS announced that Amendment 1 was amended.

10:30 a.m.

CHAIR SEEKINS took public testimony and announced a two-minute time limit due to time constraints.

MS. ANDREE McCLOUD, representing herself, referred to line 31 on page 4 and said she has been following the confidentiality clause of this bill since last fall. She believes that keeping all proceedings transparent is preferable to keeping confidentiality. She said that while a complainant's complaint may be driven by a political agenda, if everything is kept secret, the public will think the legislature is trying to keep people from knowing what happened. She stated:

Dismissing an ethics complaint because someone violated the confidentiality provisions does not negate the fact that an ethics violation might have occurred. I think that dismissing the complaint is a rather drastic step. The public has the right to know what you guys are doing in order to elect ethical people and that can't be done when you keep everything secret or when you dismiss complaints. Furthermore, what would stop the subject of a complaint from finding a way to make the complaint public without leaving her fingerprints on it, thereby affecting the complaint to be dismissed? Let's say a staffer had a complaint put against him or her. What would stop anyone from making that public and dismissing the complaint so that a legislator would not be impacted negatively? So I am against this particular provision. I think that a compelling government interest has not been demonstrated and I thank you for your time.

CHAIR SEEKINS asked if objection to the adoption of version H was maintained.

SENATOR FRENCH withdrew his objection.

SENATOR OGAN pointed out that the committee adopted an amendment to a version that it had not yet adopted.

CHAIR SEEKINS stated, for the record, that version H was adopted and then he moved to adopt Amendment 1 as amended [as previously adopted]. Without objection, Amendment 1 as amended was adopted.

MR. MYRL THOMPSON, representing himself, told members that high moral and ethical standards among public servants in the legislative branch of government are essential to gain the respect and confidence of the citizens. He maintained that an open government requires that legislators and legislative employees conduct public business in a manner that serves the integrity and legislative process and avoids conflicts of interest or even the appearance of a conflict of interest. He cautioned that the legislature has lost the trust of the people and that the best place to address this issue is in the Ethics Committee, whose membership is balanced. He stated:

Having them produced by a committee of one, such as this bill, is almost laughable and it's pretty pathetic for that matter. Mr. Rokeberg said earlier that him not being able to speak at a bar or whatever about something is not protecting his First Amendment right. Well, I have to say that the last line of this bill that's being put in here is not protecting the people's freedom of speech or the freedom of the press. So there's a lot [indisc.] this bill and it should never make it out of committee. It should never have been proposed. These cheat sheets that are going on in the House [are] a quasi-vote and you could spin it any way you want but it's nothing but that. In the past, testimony in the committee meetings have all supported tightening the rules on open meetings.

CHAIR SEEKINS thanked Mr. Thompson and closed public testimony.

SENATOR FRENCH said Representative Rokeberg did a good job of describing the bill and that he wanted to make a few comments. He stated:

There is a balance in these issues and the balance runs from total secrecy, which - it's worth mentioning that our constitution was drafted in total secrecy. Senator Ogan shared with me a book he has last night that actually had the oath that the members signed before they went in to draft the constitution. They took an oath of secrecy before they met to draft it. I

looked at that last night and I was reminded of that fact. And the other extreme, of course, is some system where every single communication, whether written or verbal between two legislators would be somehow recorded and available for public inspection, and of course I think that's too far on the other side, so I guess it's interesting, at least to me, when I find one portion of this bill that's I think too far open and one portion of the bill is too far closed.

Taking the too far open part first on page 2, lines 29 and 30, there's a definition of caucus. Caucus says a group of legislators that share a political philosophy or have a common goal and who organize as a group. I think there's a lot of wiggle room in there. People who share a political philosophy - I guess you could say on some days that you and I share a political philosophy, or Senator Ogan and I do, or Senator Therriault. A lot of days we don't but there are sometimes when we're in total alignment. So, I'm thinking that could be construed in a way to be used sort of as a weapon. I would add a couple words to this I think, and clear it up that a caucus could be a group of not less than five legislators. That is, you couldn't - a caucus of four can meet whenever they want and discuss whatever they want. And the reason I picked four is because the most restrictive vote we have is a three-quarter vote and so any six legislators can be a three-quarter vote and that would be far short of that and so four people getting together to scheme or plot or maneuver aren't going to be able to touch a three-quarter vote in this building and so I thought that's a way to sort of constrain that from being used against three people who meet together because I don't think you can have a group of two - I think you have to have a group of three but a group of three who share a political philosophy who get together to talk about political matters, I just think they should be able to do it - or four. I just think that's too restrictive to say that four people can sit down and kick around [indisc.].

REPRESENTATIVE ROKEBERG said he agrees with the concept that Senator French was describing but he does not agree with the methodology. He advised for the need to avoid numbers games and said he doesn't believe the language is intended to restrict a

group of four or more legislators from discussing something that relates to legislation or deliberative activity.

TAPE 04-69, SIDE B

REPRESENTATIVE ROKEBERG said his view of the definition of a caucus includes organization and he does not believe that just meeting together and talking constitutes a group. He said the intent is that the group has to be a caucus.

CHAIR SEEKINS suggested conceptually amending that sentence to say a more formalized group.

REPRESENTATIVE ROKEBERG said he worked with Common Cause on this but the way it is written, a caucus could mean two or three people who share a political philosophy, which is Senator French's point.

CHAIR SEEKINS said the construction of that language indicates that the group has to be organized. He pointed out that the group of legislators has to share a political philosophy or have a common goal, two qualifiers, and who organize as a group.

REPRESENTATIVE ROKEBERG agreed.

CHAIR SEEKINS said he and Senator French could belong to the Children's Caucus but not the Health Caucus but if the two sat down to talk about political philosophy as an unorganized group because they were having lunch with Senators Ogan and Therriault that would not be a caucus.

SENATOR FRENCH was unsure.

SENATOR OGAN noted that if a number is included, such as a group of four, that might work for the Senate but not for the House. He then pointed out that the lounge is a sanctuary for legislators; a place where the press or lobbyists can't hound them but that is not a public place.

REPRESENTATIVE ROKEBERG repeated that the group must be organized.

SENATOR FRENCH moved to add "not less than five" between the words "of" and "legislators" on line 29, page 2 [Amendment 2].

SENATOR OGAN objected.

REPRESENTATIVE ROKEBERG repeated that he does not want to get involved in a numbers game, since the make-up of the bodies differs.

Amendment 2 failed with Senators Ogan, Therriault and Seekins opposed and Senator French in favor.

SENATOR FRENCH said his bigger concern is the confidentiality provision on pages 4 and 5. He said his thoughts on the matter align with the comments of some of the testifiers today. He said the right to complain about the government is absolutely at the center of the First Amendment. He said if a demonstration happens to coincide with a complaint about a violation of the Open Meetings Act, that is just tough luck. He reminded members that politics is a tough business and that people launch attacks on legislators for all kinds of reasons. If those complaints are valid, they will prevail; if not, people will see through them in a hurry. He said the language is so circular - if a person publicizes a complaint it can be dismissed but then can be revitalized 10 minutes later by someone else. He said he understands that such complaints can be used as political weapons; the APOC violation complaint against him was baseless and took 18 months to get dismissed but he sees it as part of what legislators sign up for.

SENATOR THERRIAULT said a person could parade up and down the street with a placard alleging that he did something unethical even if that person filed an ethics complaint against him. However, saying Senator Therriault is unethical on a placard is different than saying there is a pending complaint against him. He does not see how freedom of speech is being abridged at all. He thought that to use an ethics complaint as a stamp of legitimacy until it is deemed to be so allows a person to use it as a political tool.

SENATOR OGAN said he is particularly sensitive to this issue, having been subjected to an allegation of criminal behavior through a different process. He said if he can't handle the heat, he should "get out of the kitchen." He said he, too, has concerns about that provision and would rather take a different approach and see the bill contain ramifications for people who abuse the complaint process for political reasons and he agrees with Senator French that people have a basic right to redress their government for their grievances. He said he has no problem with "upping the ante" for people who file complaints for political reasons and would prefer that to keeping the process completely confidential.

REPRESENTATIVE ROKEBERG pointed out that the Ethics Committee endorsed the changes in the bill and that there is a frustration within the ethics committee itself about having to deal with complaints that they know on the face are politically motivated. The committee feels their hands are tied so this will give them a tool to dismiss those cases. He believes there is a compelling state interest because the process is now being abused since there is no sanction. However, the bill will still allow the Ethics Committee to take up those complaints that have merit and should be further investigated on a confidential basis until the committee has probable cause. He likened it to the grand jury process.

CHAIR SEEKINS wondered whether there is any other penalty for a person who files a complaint as a political weapon.

REPRESENTATIVE ROKEBERG said the person would be making a false accusation.

CHAIR SEEKINS announced a 5-minute recess.

REPRESENTATIVE ROKEBERG asked that the Senate Judiciary Committee formally adopt the minutes of the May 7, 2004 meeting of the Select Committee on Legislative Ethics. He explained that during that meeting, the committee endorsed the amendments that the Senate Judiciary Committee has been discussing. He felt adopting those minutes is important to provide a more complete legislative history.

CHAIR SEEKINS ruled that the aforementioned ethics committee minutes would be included in the record by reference.

SENATOR OGAN asked Representative Rokeberg to explain the contents of those minutes.

REPRESENTATIVE ROKEBERG said the committee did some wordsmithing, made conceptual recommendations and then several amendments were drafted for action on the House floor based on those recommendations.

SENATOR OGAN said he still would prefer to look at alternatives, maybe along the line of a civil penalty, and would ask his staff to look into that.

11:00 a.m.

CHAIR SEEKINS noted that as chair of the Senate Judiciary Committee, he is aware of the difficulty of scheduling meetings. This committee meets in the morning and tries to accommodate the Minority Caucus, which routinely meets before session. He said both parties in both houses occasionally hold caucus meetings to discuss political strategy or to do `whatever takes place behind those closed doors. He thanked Representative Rokeberg for his effort to make sure those meetings are addressed properly in the Uniform Rules. He then recessed the meeting to the call of the chair and said the committee may reconvene during a break in the Senate floor session to address this issue.

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