

SENATE BILL NO. 187

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY SENATOR SEEKINS

Introduced: 4/22/05

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to legislative ethics open meetings guidelines, to the public members of**
2 **the Select Committee on Legislative Ethics, to alternate members of the legislative**
3 **subcommittees, to advisory opinions, and to confidential information and proceedings**
4 **regarding legislative ethics complaints and investigations."**

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

6 * **Section 1.** AS 11.56 is amended by adding a new section to read:

7 **Sec. 11.56.803. Disclosing confidential ethics information.** (a) A person
8 commits the crime of disclosing confidential ethics information if the person
9 knowingly violates a confidentiality requirement of AS 24.60.170(s).

10 (b) Disclosing confidential ethics information is a class A misdemeanor.

11 * **Sec. 2.** AS 24.60.020(b) is amended to read:

12 (b) The provisions of this chapter specifically supersede the provisions of the
13 common law relating to legislative conflict of interest that may apply to a member of
14 the legislature or a legislative employee. This chapter **does not supersede the**

1 **uniform rules of procedure adopted by the legislature under art. II, sec. 12,**
 2 **Constitution of the State of Alaska, and** does not supersede or repeal provisions of
 3 the criminal laws of the state. This chapter does not exempt a person from applicable
 4 provisions of another law unless the law is expressly superseded or incompatibly
 5 inconsistent with the specific provisions of this chapter.

6 * **Sec. 3.** AS 24.60.037(e) is amended to read:

7 (e) In cases where there are conflicts between **the open meetings** [THESE]
 8 guidelines **established in this section** and the uniform rules adopted by the Alaska
 9 State Legislature, the uniform rules prevail.

10 * **Sec. 4.** AS 24.60.130(c) is amended to read:

11 (c) **Not** [NO] more than one public member may be a former legislator and
 12 **not** [NO] more than two public members of the committee may be members of the
 13 same political party. **Public members shall be selected to represent a diversity of**
 14 **professions and geographic regions and may not be employed by the state or a**
 15 **political subdivision of the state.**

16 * **Sec. 5.** AS 24.60.130(n) is amended to read:

17 (n) When appointing members of the legislature to serve on the committee, the
 18 speaker of the house or the president of the senate, as appropriate, shall appoint an
 19 alternate member for each regular member. An alternate must have the same
 20 qualifications as the regular member for whom the alternate stands as alternate and is
 21 subject to confirmation as required for the regular member. **An alternate member**
 22 **may not vote but may attend all committee and subcommittee hearings to the**
 23 **same extent as the regular member for whom the person serves as an alternate.**
 24 **The alternate shall vote in place of the regular member if the regular member is**
 25 **absent and the alternate member is present. The alternate may not vote in place**
 26 **of a regular member if the alternate is disqualified from voting as provided in**
 27 **this subsection.** If a regular legislative member of the committee or a subcommittee
 28 is disqualified under (h) of this section from serving on the committee or the
 29 subcommittee concerning a proceeding under AS 24.60.170, the chair of the
 30 committee or a subcommittee shall designate the regular member's alternate to serve in
 31 place of the regular member in the proceeding unless the alternate is also disqualified

1 from serving. The designation shall be treated as confidential to the same extent that
 2 the identity of the subject of a complaint is required to be kept confidential.

3 * **Sec. 6.** AS 24.60.160(b) is amended to read:

4 (b) An opinion issued under this section is binding on the committee in any
 5 subsequent proceedings concerning the facts and circumstances of the particular case
 6 unless material facts were omitted or misstated in the request for the advisory opinion.
 7 Except as provided in this chapter, an advisory opinion is confidential but shall be
 8 made public if a written request by the person who requested the opinion is filed with
 9 the committee. **In the request for an opinion, if the requestor identifies another**
 10 **person subject to this chapter, the opinion shall be provided to that person as**
 11 **well as the requestor and shall remain confidential. The opinion may not be**
 12 **released unless all persons who are required to be provided with the opinion**
 13 **consent in writing to the release of the opinion.**

14 * **Sec. 7.** AS 24.60.170(c) is amended to read:

15 (c) When the committee receives a complaint under (a) of this section, it may
 16 assign the complaint to a staff person. The staff person shall conduct a preliminary
 17 examination of the complaint and advise the committee whether the allegations of the
 18 complaint, if true, constitute a violation of this chapter and whether there is credible
 19 information to indicate that a further investigation and proceeding is warranted. The
 20 staff recommendation shall be based on the information and evidence contained in the
 21 complaint as supplemented by the complainant and by the subject of the complaint, if
 22 requested to do so by the staff member. The committee shall consider the
 23 recommendation of the staff member, if any, and shall determine whether the
 24 allegations of the complaint, if true, constitute a violation of this chapter. If the
 25 committee determines that the allegations, if proven, would not give rise to a violation,
 26 that the complaint is frivolous on its face, that there is insufficient credible information
 27 that can be uncovered to warrant further investigation by the committee, or that the
 28 committee's lack of jurisdiction is apparent on the face of the complaint, the
 29 committee shall dismiss the complaint and shall notify the complainant and the subject
 30 of the complaint of the dismissal. The committee may ask the complainant to provide
 31 clarification or additional information before it makes a decision under this subsection

1 and may request information concerning the matter from the subject of the complaint.
 2 Neither the complainant nor the subject of a complaint is obligated to provide the
 3 information. [A PROCEEDING CONDUCTED UNDER THIS SUBSECTION,
 4 DOCUMENTS THAT ARE PART OF A PROCEEDING, AND A DISMISSAL
 5 UNDER THIS SUBSECTION ARE CONFIDENTIAL AS PROVIDED IN (I) OF
 6 THIS SECTION UNLESS THE SUBJECT OF THE COMPLAINT WAIVES
 7 CONFIDENTIALITY AS PROVIDED IN THAT SUBSECTION.]

8 * **Sec. 8.** AS 24.60.170(d) is amended to read:

9 (d) If the committee determines that some or all of the allegations of a
 10 complaint, if proven, would constitute a violation of this chapter, or if the committee
 11 has initiated a complaint, the committee shall investigate the complaint [, ON A
 12 CONFIDENTIAL BASIS]. Before beginning an investigation of a complaint, the
 13 committee shall adopt a resolution defining the scope of the investigation. A copy of
 14 this resolution shall be provided to the complainant and to the subject of the
 15 complaint. As part of its investigation, the committee shall afford the subject of the
 16 complaint an opportunity to explain the conduct alleged to be a violation of this
 17 chapter.

18 * **Sec. 9.** AS 24.60.170(f) is amended to read:

19 (f) If the committee determines after investigation that there is not probable
 20 cause to believe that the subject of the complaint has violated this chapter, the
 21 committee shall dismiss the complaint. The committee may also dismiss portions of a
 22 complaint if it finds no probable cause to believe that the subject of the complaint has
 23 violated this chapter as alleged in those portions. The committee shall issue a
 24 **dismissal order and** decision explaining its dismissal. [COMMITTEE
 25 DELIBERATIONS AND VOTE ON THE DISMISSAL ORDER AND DECISION
 26 ARE NOT OPEN TO THE PUBLIC OR TO THE SUBJECT OF THE
 27 COMPLAINT.] A copy of the dismissal order and decision shall be sent to the
 28 complainant and to the subject of the complaint. [NOTWITHSTANDING (I) OF
 29 THIS SECTION, A DISMISSAL ORDER AND DECISION IS OPEN TO
 30 INSPECTION AND COPYING BY THE PUBLIC.]

31 * **Sec. 10.** AS 24.60.170(g) is amended to read:

1 (g) If the committee investigation determines that a probable violation of this
 2 chapter exists that may be corrected by action of the subject of the complaint and that
 3 does not warrant sanctions other than correction, the committee may issue an opinion
 4 recommending corrective action. This opinion shall be provided to the complainant
 5 and to the subject of the complaint [, AND IS OPEN TO INSPECTION BY THE
 6 PUBLIC]. Within 20 days after receiving the opinion, the subject of the complaint
 7 may request a [CONFIDENTIAL] meeting with the committee at which meeting the
 8 committee shall explain the reasons for its recommendations. The committee may
 9 divulge confidential information to the subject of the complaint. [THE
 10 INFORMATION REMAINS CONFIDENTIAL.] The subject of the complaint may
 11 comply with the opinion or may request a hearing before the committee under (j) of
 12 this section. After the hearing, the committee may amend or affirm the opinion. If the
 13 subject of the complaint agrees to comply with the opinion but later fails to complete
 14 the corrective action in a timely manner, the committee may formally charge the
 15 person as provided in (h) of this section or may refer the matter to the appropriate
 16 house of the legislature, in the case of a legislator, or, in the case of a legislative
 17 employee, to the employee's appointing authority. The appropriate house of the
 18 legislature or the appointing authority, as appropriate, may take action to enforce the
 19 corrective action or may decline to take action and refer the matter to the committee.
 20 In either case, the committee may formally charge the person under (h) of this section.
 21 **The committee order making a referral to a house or appointing authority under**
 22 **this subsection, together with any record of action taken on the referral order by**
 23 **the house or appointing authority, are public records. Proceedings of the house**
 24 **regarding the referral order, or of a legislative committee to which the referral**
 25 **order is referred, are open to the public.**

26 * Sec. 11. AS 24.60.170(i) is amended to read:

27 (i) A person charged under (h) of this section may engage in discovery in a
 28 manner consistent with the Alaska Rules of Civil Procedure. The committee may
 29 adopt procedures that

30 (1) impose reasonable restrictions on the time for this discovery and on
 31 the materials that may be discovered;

1 (2) permit a person who is the subject of a complaint to engage in
2 discovery at an earlier stage of the proceedings;

3 (3) **permit limited** [IMPOSE REASONABLE RESTRICTIONS ON
4 THE] release of information that the subject of a complaint acquires from the
5 committee in the course of discovery, or on information obtained by use of the
6 committee's authority, in order to **enable the subject of the complaint to conduct**
7 **investigations necessary for a defense; however the committee shall, to the**
8 **maximum extent possible**, protect the privacy of persons not under investigation to
9 whom the information pertains [; HOWEVER, THE COMMITTEE MAY NOT
10 IMPOSE RESTRICTIONS ON THE RELEASE OF INFORMATION BY THE
11 SUBJECT OF THE COMPLAINT UNLESS THE COMPLAINANT HAS AGREED
12 TO BE BOUND BY SIMILAR RESTRICTIONS AND HAS NOT MADE PUBLIC
13 THE INFORMATION CONTAINED IN THE COMPLAINT, INFORMATION
14 ABOUT THE COMPLAINT, OR THE FACT OF FILING THE COMPLAINT].

15 * **Sec. 12.** AS 24.60.170(k) is amended to read:

16 (k) Following the hearing, the committee shall issue a decision stating whether
17 [OR NOT] the subject of the complaint violated this chapter, and explaining the
18 reasons for the determination. The committee's decision may also indicate whether
19 the subject cooperated with the committee in its proceedings. If the committee finds a
20 violation, or lack of cooperation by the subject, the decision shall recommend what
21 sanctions, if any, the committee believes are appropriate. If there has not been a
22 hearing because the person charged admitted to the allegations of the charge, the
23 committee shall issue a decision outlining the facts of the violation and containing a
24 sanctions recommendation. **The decision issued under this subsection is a public**
25 **record.**

26 * **Sec. 13.** AS 24.60.170(l) is amended to read:

27 (l) [PROCEEDINGS OF THE COMMITTEE RELATING TO
28 COMPLAINTS BEFORE IT ARE CONFIDENTIAL UNTIL THE COMMITTEE
29 DETERMINES THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT A
30 VIOLATION OF THIS CHAPTER HAS OCCURRED. EXCEPT TO THE EXTENT
31 THAT THE CONFIDENTIALITY PROVISIONS ARE WAIVED BY THE

1 SUBJECT OF THE COMPLAINT, THE PERSON FILING A COMPLAINT SHALL
 2 KEEP CONFIDENTIAL THE FACT THAT THE PERSON HAS FILED A
 3 COMPLAINT UNDER THIS SECTION AS WELL AS THE CONTENTS OF THE
 4 COMPLAINT FILED. THE COMPLAINT AND ALL DOCUMENTS PRODUCED
 5 OR DISCLOSED AS A RESULT OF THE COMMITTEE INVESTIGATION ARE
 6 CONFIDENTIAL AND NOT SUBJECT TO INSPECTION BY THE PUBLIC.] If,
 7 in the course of an investigation or probable cause determination, the committee finds
 8 evidence of probable criminal activity, the committee shall transmit a statement and
 9 factual findings limited to that activity to the appropriate law enforcement agency. If
 10 the committee finds evidence of a probable violation of AS 15.13, the committee shall
 11 transmit a statement to that effect and factual findings limited to the probable violation
 12 to the Alaska Public Offices Commission. [ALL MEETINGS OF THE
 13 COMMITTEE BEFORE THE DETERMINATION OF PROBABLE CAUSE ARE
 14 CLOSED TO THE PUBLIC AND TO LEGISLATORS WHO ARE NOT MEMBERS
 15 OF THE COMMITTEE. HOWEVER, THE COMMITTEE MAY PERMIT THE
 16 SUBJECT OF THE COMPLAINT TO ATTEND A MEETING OTHER THAN THE
 17 DELIBERATIONS ON PROBABLE CAUSE. THE CONFIDENTIALITY
 18 PROVISIONS OF THIS SUBSECTION MAY BE WAIVED BY THE SUBJECT OF
 19 THE COMPLAINT.] Except to the extent that the confidentiality provisions are
 20 waived by the subject of the complaint, if the committee finds that a complainant has
 21 violated any confidentiality provision of this section, the committee shall immediately
 22 dismiss the complaint. Dismissal of a complaint under this subsection does not affect
 23 the right of the committee or any person other than the complainant to initiate a
 24 complaint based on the same factual allegations.

25 * **Sec. 14.** AS 24.60.170(p) is amended to read:

26 (p) When the committee has a complaint concerning the conduct of a
 27 candidate for state office pending before it at the beginning of a campaign period that
 28 has not resulted in the issuance of formal charges under (h) of this section, the
 29 committee may proceed with its consideration of the complaint [ONLY TO THE
 30 EXTENT THAT THE COMMITTEE'S ACTIONS ARE CONFIDENTIAL UNDER
 31 THIS SECTION]. The committee may not, during a campaign period, issue a

1 dismissal order or decision under (f) of this section, issue an opinion under (g) of this
 2 section, or formally charge a person under (h) of this section. If the committee has
 3 formally charged a person under (h) of this section and the charge is still pending
 4 when a campaign period begins, the committee shall suspend any [PUBLIC] hearings
 5 on the matter until after the campaign period ends. The parties [TO THE HEARING]
 6 may continue with discovery during the campaign period. If a hearing has been
 7 completed before the beginning of a campaign period but the committee has not yet
 8 issued its decision, the committee may not issue the decision until after the end of the
 9 campaign period. Notwithstanding the suspension of [PUBLIC] proceedings provided
 10 for in this subsection, a candidate who is the subject of a complaint may notify the
 11 committee in writing that the candidate **waives the suspensions under this**
 12 **subsection and** chooses to have the committee proceed with **all proceedings under**
 13 the complaint [UNDER THIS SECTION].

14 * **Sec. 15.** AS 24.60.170 is amended by adding a new subsection to read:

15 (s) A person may not disclose to any other person the filing of or intention to
 16 file a complaint under this section except to a person assisting in the filing of the
 17 complaint. A person may not disclose the intention of another to file a complaint
 18 under this section. Except as provided in this section, a person may not disclose
 19 information regarding an investigation or proceeding conducted under this section.
 20 Except as provided in this section, all proceedings conducted under this section and
 21 actions taken by the committee under this section are confidential. Meetings of the
 22 committee held under this section are closed to the public and to legislators who are
 23 not members of the committee. However, the committee may permit the subject of the
 24 complaint to attend a meeting other than the deliberations on probable cause. Except
 25 as provided in this section, the complaint and all documents filed with the committee,
 26 produced by the committee, or disclosed as a result of the committee investigation,
 27 discovery, or a hearing are confidential and not subject to inspection by the public.
 28 The subject of a complaint may waive specific confidentiality requirements of this
 29 subsection. However, if confidentiality is waived for a meeting or proceeding before
 30 the committee, the proceeding is open to all members of the public, and no
 31 confidentiality requirement applies with respect to any aspect of the open proceeding.

1 If confidentiality is waived for a document or information, the document or
2 information is available to all members of the public, and no confidentiality
3 requirement applies with respect to any aspect of the document or information. The
4 committee shall make appropriate efforts to provide notice of the confidentiality
5 requirements of this subsection. This subsection does not make any record of an
6 agency of the state, other than the committee, confidential or prevent a person from
7 obtaining directly from the agency a public record that has also been made available to
8 the committee in the course of a proceeding under this section.

9 * **Sec. 16.** AS 24.60.037(c) and 24.60.170(m) are repealed.