

CS FOR SENATE BILL NO. 187(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 4/28/05

Referred: Judiciary

Sponsor(s): SENATOR SEEKINS

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 4 provisions of another law unless the law is expressly superseded or incompatibly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 not more than one may be employed by**
 15 **the state or a 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 meetings and**
 23 **hearings to the same extent as the regular member for whom the person serves as**
 24 **an alternate. The alternate shall vote in place of the regular member if the**
 25 **regular member is absent and the alternate member is present. The alternate**
 26 **may not vote in place of a regular member if the alternate is disqualified from**
 27 **voting as provided in this subsection.** If a regular legislative member of the
 28 committee or a subcommittee is disqualified under (h) of this section from serving on
 29 the committee or the subcommittee concerning a proceeding under AS 24.60.170, the
 30 chair of the committee or a subcommittee shall designate the regular member's
 31 alternate to serve in place of the regular member in the proceeding unless the alternate

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (1) impose reasonable restrictions on the time for this discovery and on

1 the materials that may be discovered;

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

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

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

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

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

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

1 THAT THE CONFIDENTIALITY PROVISIONS ARE WAIVED BY THE
 2 SUBJECT OF THE COMPLAINT, THE PERSON FILING A COMPLAINT SHALL
 3 KEEP CONFIDENTIAL THE FACT THAT THE PERSON HAS FILED A
 4 COMPLAINT UNDER THIS SECTION AS WELL AS THE CONTENTS OF THE
 5 COMPLAINT FILED. THE COMPLAINT AND ALL DOCUMENTS PRODUCED
 6 OR DISCLOSED AS A RESULT OF THE COMMITTEE INVESTIGATION ARE
 7 CONFIDENTIAL AND NOT SUBJECT TO INSPECTION BY THE PUBLIC.] If,
 8 in the course of an investigation or probable cause determination, the committee finds
 9 evidence of probable criminal activity, the committee shall transmit a statement and
 10 factual findings limited to that activity to the appropriate law enforcement agency. If
 11 the committee finds evidence of a probable violation of AS 15.13, the committee shall
 12 transmit a statement to that effect and factual findings limited to the probable violation
 13 to the Alaska Public Offices Commission. [ALL MEETINGS OF THE
 14 COMMITTEE BEFORE THE DETERMINATION OF PROBABLE CAUSE ARE
 15 CLOSED TO THE PUBLIC AND TO LEGISLATORS WHO ARE NOT MEMBERS
 16 OF THE COMMITTEE. HOWEVER, THE COMMITTEE MAY PERMIT THE
 17 SUBJECT OF THE COMPLAINT TO ATTEND A MEETING OTHER THAN THE
 18 DELIBERATIONS ON PROBABLE CAUSE. THE CONFIDENTIALITY
 19 PROVISIONS OF THIS SUBSECTION MAY BE WAIVED BY THE SUBJECT OF
 20 THE COMPLAINT. EXCEPT TO THE EXTENT THAT THE
 21 CONFIDENTIALITY PROVISIONS ARE WAIVED BY THE SUBJECT OF THE
 22 COMPLAINT, IF THE COMMITTEE FINDS THAT A COMPLAINANT HAS
 23 VIOLATED ANY CONFIDENTIALITY PROVISION THE COMMITTEE SHALL
 24 IMMEDIATELY DISMISS THE COMPLAINT. DISMISSAL OF A COMPLAINT
 25 UNDER THIS SUBSECTION DOES NOT AFFECT THE RIGHT OF THE
 26 COMMITTEE OR ANY PERSON OTHER THAN THE COMPLAINANT TO
 27 INITIATE A COMPLAINT BASED ON THE SAME FACTUAL ALLEGATIONS.]

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

29 (p) When the committee has a complaint concerning the conduct of a
 30 candidate for state office pending before it at the beginning of a campaign period that
 31 has not resulted in the issuance of formal charges under (h) of this section, the

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

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

18 (s) A person may not disclose to any other person the filing of a complaint
 19 under this section or the intention to file a complaint under this section if the person
 20 subsequently files a complaint on the same matter, except to a person assisting in the
 21 filing of the complaint. A person may not disclose the intention of another to file a
 22 complaint under this section. Except as provided in this section, a person may not
 23 disclose information regarding an investigation or proceeding conducted under this
 24 section. Except as provided in this section, all proceedings conducted under this
 25 section and actions taken by the committee under this section are confidential.
 26 Meetings of the committee held under this section are closed to the public and to
 27 legislators who are not members of the committee. However, the committee may
 28 permit the subject of the complaint to attend a meeting other than the deliberations on
 29 probable cause. Except as provided in this section, the complaint and all documents
 30 filed with the committee, produced by the committee, or obtained or disclosed as a
 31 result of the committee investigation, discovery, or a hearing are confidential and not

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