

CS FOR SENATE BILL NO. 187(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/4/05

Referred: Rules

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 24.60.020(b) is amended to read:

7 (b) The provisions of this chapter specifically supersede the provisions of the
8 common law relating to legislative conflict of interest that may apply to a member of
9 the legislature or a legislative employee. This chapter **does not supersede the**
10 **uniform rules of procedure adopted by the legislature under art. II, sec. 12,**
11 **Constitution of the State of Alaska, and** does not supersede or repeal provisions of
12 the criminal laws of the state. This chapter does not exempt a person from applicable
13 provisions of another law unless the law is expressly superseded or incompatibly
14 inconsistent with the specific provisions of this chapter.

1 * **Sec. 2.** AS 24.60.037(e) is amended to read:

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

5 * **Sec. 3.** AS 24.60.060 is amended by adding new subsections to read:

6 (c) A legislator or legislative employee may not disclose information that is
7 confidential under AS 24.60.170(l) or (s).

8 (d) Except for a legislator or legislative employee covered by (c) of this
9 section, a person who discloses information that is confidential under AS 24.60.170(l)
10 or (s) is subject to a civil penalty of up to \$5,000.

11 (e) The attorney general may enforce (d) of this section by filing an
12 appropriate civil action upon the request of the committee.

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

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

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

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

1 the committee or the subcommittee concerning a proceeding under AS 24.60.170, the
2 chair of the committee or a subcommittee shall designate the regular member's
3 alternate to serve in place of the regular member in the proceeding unless the alternate
4 is also disqualified from serving. The designation shall be treated as confidential to
5 the same extent that the identity of the subject of a complaint is required to be kept
6 confidential.

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

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

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

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

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

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

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

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

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

1 complainant and to the subject of the complaint. [NOTWITHSTANDING (I) OF
 2 THIS SECTION, A DISMISSAL ORDER AND DECISION IS OPEN TO
 3 INSPECTION AND COPYING BY THE PUBLIC.]

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

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

30 * **Sec. 11.** AS 24.60.170(h) is amended to read:

31 (h) If the subject of a complaint fails to comply with an opinion and the

1 committee decides under (g) of this section to charge the person, or if the committee
 2 determines after investigation that there is probable cause to believe that the subject of
 3 the complaint has committed a violation of this chapter that may require sanctions
 4 instead of or in addition to corrective action, the committee shall formally charge the
 5 person. The charge shall be served on the person charged, in a manner consistent with
 6 the service of summons under the rules of civil procedure, and a copy of the charge
 7 shall be sent to the complainant. The person charged may file a responsive pleading to
 8 the committee admitting or denying some or all of the allegations of the charge. **A**
 9 **charge issued under this subsection and any responsive pleading are public**
 10 **records.**

11 * **Sec. 12.** AS 24.60.170(i) is amended to read:

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

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

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

19 (3) **permit limited** [IMPOSE REASONABLE RESTRICTIONS ON
 20 THE] release of information that the subject of a complaint acquires from the
 21 committee in the course of discovery, or on information obtained by use of the
 22 committee's authority, in order to **enable the subject of the complaint to conduct**
 23 **investigations necessary for a defense; however the committee shall, to the**
 24 **maximum extent possible,** protect the privacy of persons not under investigation to
 25 whom the information pertains [; HOWEVER, THE COMMITTEE MAY NOT
 26 IMPOSE RESTRICTIONS ON THE RELEASE OF INFORMATION BY THE
 27 SUBJECT OF THE COMPLAINT UNLESS THE COMPLAINANT HAS AGREED
 28 TO BE BOUND BY SIMILAR RESTRICTIONS AND HAS NOT MADE PUBLIC
 29 THE INFORMATION CONTAINED IN THE COMPLAINT, INFORMATION
 30 ABOUT THE COMPLAINT, OR THE FACT OF FILING THE COMPLAINT].

31 * **Sec. 13.** AS 24.60.170(k) is amended to read:

1 (k) Following the hearing, the committee shall issue a decision stating whether
 2 [OR NOT] the subject of the complaint violated this chapter, and explaining the
 3 reasons for the determination. The committee's decision may also indicate whether
 4 the subject cooperated with the committee in its proceedings. If the committee finds a
 5 violation, or lack of cooperation by the subject, the decision shall recommend what
 6 sanctions, if any, the committee believes are appropriate. If there has not been a
 7 hearing because the person charged admitted to the allegations of the charge, the
 8 committee shall issue a decision outlining the facts of the violation and containing a
 9 sanctions recommendation. **The decision issued under this subsection is a public**
 10 **record.**

11 * **Sec. 14.** AS 24.60.170(l) is amended to read:

12 (l) Proceedings of the committee relating to complaints before it are
 13 confidential until the committee determines that there is probable cause to believe that
 14 a violation of this chapter has occurred. [EXCEPT TO THE EXTENT THAT THE
 15 CONFIDENTIALITY PROVISIONS ARE WAIVED BY THE SUBJECT OF THE
 16 COMPLAINT, THE PERSON FILING A COMPLAINT SHALL KEEP
 17 CONFIDENTIAL THE FACT THAT THE PERSON HAS FILED A COMPLAINT
 18 UNDER THIS SECTION AS WELL AS THE CONTENTS OF THE COMPLAINT
 19 FILED. THE COMPLAINT AND ALL DOCUMENTS PRODUCED OR
 20 DISCLOSED AS A RESULT OF THE COMMITTEE INVESTIGATION ARE
 21 CONFIDENTIAL AND NOT SUBJECT TO INSPECTION BY THE PUBLIC.] If,
 22 in the course of an investigation or probable cause determination, the committee finds
 23 evidence of probable criminal activity, the committee shall transmit a statement and
 24 factual findings limited to that activity to the appropriate law enforcement agency. If
 25 the committee finds evidence of a probable violation of AS 15.13, the committee shall
 26 transmit a statement to that effect and factual findings limited to the probable violation
 27 to the Alaska Public Offices Commission. [ALL MEETINGS OF THE
 28 COMMITTEE BEFORE THE DETERMINATION OF PROBABLE CAUSE ARE
 29 CLOSED TO THE PUBLIC AND TO LEGISLATORS WHO ARE NOT MEMBERS
 30 OF THE COMMITTEE. HOWEVER, THE COMMITTEE MAY PERMIT THE
 31 SUBJECT OF THE COMPLAINT TO ATTEND A MEETING OTHER THAN THE

1 DELIBERATIONS ON PROBABLE CAUSE. THE CONFIDENTIALITY
 2 PROVISIONS OF THIS SUBSECTION MAY BE WAIVED BY THE SUBJECT OF
 3 THE COMPLAINT. EXCEPT TO THE EXTENT THAT THE
 4 CONFIDENTIALITY PROVISIONS ARE WAIVED BY THE SUBJECT OF THE
 5 COMPLAINT, IF THE COMMITTEE FINDS THAT A COMPLAINANT HAS
 6 VIOLATED ANY CONFIDENTIALITY PROVISION THE COMMITTEE SHALL
 7 IMMEDIATELY DISMISS THE COMPLAINT. DISMISSAL OF A COMPLAINT
 8 UNDER THIS SUBSECTION DOES NOT AFFECT THE RIGHT OF THE
 9 COMMITTEE OR ANY PERSON OTHER THAN THE COMPLAINANT TO
 10 INITIATE A COMPLAINT BASED ON THE SAME FACTUAL ALLEGATIONS.]

11 * **Sec. 15.** AS 24.60.170(p) is amended to read:

12 (p) When the committee has a complaint concerning the conduct of a
 13 candidate for state office pending before it at the beginning of a campaign period that
 14 has not resulted in the issuance of formal charges under (h) of this section, the
 15 committee may proceed with its consideration of the complaint [ONLY TO THE
 16 EXTENT THAT THE COMMITTEE'S ACTIONS ARE CONFIDENTIAL UNDER
 17 THIS SECTION]. The committee may not, during a campaign period, issue a
 18 dismissal order or decision under (f) of this section, issue an opinion under (g) of this
 19 section, or formally charge a person under (h) of this section. If the committee has
 20 formally charged a person under (h) of this section and the charge is still pending
 21 when a campaign period begins, the committee shall suspend any [PUBLIC] hearings
 22 on the matter until after the campaign period ends. The parties [TO THE HEARING]
 23 may continue with discovery during the campaign period. If a hearing has been
 24 completed before the beginning of a campaign period but the committee has not yet
 25 issued its decision, the committee may not issue the decision until after the end of the
 26 campaign period. Notwithstanding the suspension of [PUBLIC] proceedings provided
 27 for in this subsection, a candidate who is the subject of a complaint may notify the
 28 committee in writing that the candidate **waives the suspensions under this**
 29 **subsection and** chooses to have the committee proceed with **all proceedings under**
 30 the complaint [UNDER THIS SECTION].

31 * **Sec. 16.** AS 24.60.170 is amended by adding a new subsection to read:

1 (s) A person may not disclose to any other person the filing of a complaint
2 under this section or the intention to file a complaint under this section if the person
3 subsequently files a complaint on the same matter, except to a person assisting in the
4 filing of the complaint. A person may not disclose the intention of another to file a
5 complaint under this section. Except as provided in this section, a person may not
6 disclose information regarding an investigation or proceeding conducted under this
7 section. Except as provided in this section, all proceedings conducted under this
8 section and actions taken by the committee under this section are confidential.
9 Meetings of the committee held under this section are closed to the public and to
10 legislators who are not members of the committee. However, the committee may
11 permit the subject of the complaint to attend a meeting other than the deliberations on
12 probable cause. Except as provided in this section, the complaint and all documents
13 filed with the committee, produced by the committee, or obtained or disclosed as a
14 result of the committee investigation, discovery, or a hearing are confidential and not
15 subject to inspection by the public. The subject of a complaint may waive specific
16 confidentiality requirements of this section. However, if confidentiality is waived for
17 a meeting or proceeding before the committee, the proceeding is open to all members
18 of the public, and no confidentiality requirement applies with respect to any aspect of
19 the open proceeding. If confidentiality is waived for a document or information, the
20 document or information is available to all members of the public, and no
21 confidentiality requirement applies with respect to any aspect of the document or
22 information. The committee shall make appropriate efforts to provide notice of the
23 confidentiality requirements of this section. This section does not make any record of
24 an agency of the state, other than the committee, confidential or prevent a person from
25 obtaining directly from the agency a public record that has also been made available to
26 the committee in the course of a proceeding under this section.