

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

May 2, 2005  
8:49 a.m.

**MEMBERS PRESENT**

Senator Ralph Seekins, Chair  
Senator Charlie Huggins, Vice Chair  
Senator Gene Therriault  
Senator Hollis French  
Senator Gretchen Guess

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 187

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

MOVED CSSB 187(JUD) OUT OF COMMITTEE

SENATE BILL NO. 127

"An Act prohibiting a public officer from taking official action regarding a matter in which the public officer has a significant financial interest; and defining 'official action' for purposes of the chapter generally referred to as the Executive Branch Ethics Act."

SCHEDULED BUT NOT HEARD

SENATE BILL NO. 165

"An Act relating to card rooms and card operations."

SCHEDULED BUT NOT HEARD

SENATE BILL NO. 186

"An Act relating to the Alaska Executive Branch Ethics Act."

MOVED CSSB 186(JUD) OUT OF COMMITTEE on 5/1/05

CS FOR HOUSE BILL NO. 33(FIN)

"An Act relating to required notification of the Department of Commerce, Community, and Economic Development, economic effect statements, and regulatory flexibility analyses regarding the adoption of regulations that may govern the conduct of small businesses; relating to a private cause of action, regulation invalidation, and judicial review related to required notification, economic effect statements, and regulatory flexibility analyses for the adoption of regulations that may govern the conduct of small businesses; and providing for an effective date."

SCHEDULED BUT NOT HEARD

CS FOR HOUSE BILL NO. 81(L&C)

"An Act establishing an administrative fine and procedure for construction contractors in certain circumstances; increasing the amount of a civil penalty for persons acting in the capacity of contractors or home inspectors; modifying the elements of a crime involving contractor registration and residential contractors; modifying the exemptions from regulation under AS 08.18 for contractors; and exempting the administrative hearings for imposing an administrative fine on construction contractors from the hearings conducted by the office of administrative hearings in the Department of Administration."

SCHEDULED BUT NOT HEARD

CS FOR HOUSE BILL NO. 149(FIN) am

"An Act relating to controlled substances; relating to the crimes of manslaughter, endangering the welfare of a child, and misconduct involving a controlled substance; relating to the manufacture of methamphetamine and to the sale, possession, and delivery of certain substances and precursors used in the manufacture of methamphetamine; relating to listing certain anabolic steroids as controlled substances; and providing for an effective date."

SCHEDULED BUT NOT HEARD

CS FOR HOUSE BILL NO. 183(JUD) am

"An Act relating to the use of campaign contributions for shared campaign activity expenses and to reimbursement of those expenses; and amending the definition of 'contribution' in regard to sharing fundraising lists between candidates and political parties without compensation."

SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 184 am  
"An Act relating to firearms."

SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 201  
"An Act relating to an application for a permanent fund dividend for a member of the armed forces of the United States serving on active duty outside of the state; and providing for an effective date."

SCHEDULED BUT NOT HEARD

CS FOR HOUSE BILL NO. 210(JUD)  
"An Act relating to blood testing of certain persons alleged to have committed certain offenses directed toward peace officers or emergency workers."

SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 187  
SHORT TITLE: LEGISLATIVE ETHICS/MEETINGS  
SPONSOR(S): SENATOR(S) SEEKINS

04/22/05	(S)	READ THE FIRST TIME - REFERRALS
04/22/05	(S)	STA, JUD
04/26/05	(S)	STA AT 3:30 PM BELTZ 211
04/26/05	(S)	Moved CSSB 187(STA) Out of Committee
04/26/05	(S)	MINUTE(STA)
04/27/05	(S)	JUD AT 8:30 AM BUTROVICH 205
04/27/05	(S)	Scheduled But Not Heard
04/28/05	(S)	STA RPT CS 1AM 1DNP 2NR SAME TITLE
04/28/05	(S)	AM: THERRIAULT
04/28/05	(S)	DNP: ELTON
04/28/05	(S)	NR: WAGONER, HUGGINS
04/28/05	(S)	JUD AT 8:30 AM BUTROVICH 205
04/28/05	(S)	Scheduled But Not Heard
04/29/05	(S)	JUD AT 8:30 AM BUTROVICH 205
04/30/05	(S)	JUD AT 9:00 AM BUTROVICH 205
04/30/05	(S)	Scheduled But Not Heard
05/01/05	(S)	JUD AT 4:00 PM BUTROVICH 205
05/01/05	(S)	Heard & Held

05/01/05 (S) MINUTE(JUD)  
05/02/05 (S) JUD AT 8:30 AM BUTROVICH 205

**WITNESS REGISTER**

Ms. Joyce Anderson  
Legislative Ethics Committee  
**POSITION STATEMENT:** Commented on SB 187

Mr. Merle Thompson  
Susitna Valley, Alaska  
**POSITION STATEMENT:** Testified in opposition of SB 187

Ms. Barbara Lewis  
Haines, Alaska  
**POSITION STATEMENT:** Testified in opposition of SB 187

**ACTION NARRATIVE**

**CHAIR RALPH SEEKINS** called the Senate Judiciary Standing Committee meeting to order at [8:49:20 AM](#). Present were Senators Hollis French, Charlie Huggins, and Chair Ralph Seekins.

**SB 187-LEGISLATIVE ETHICS/MEETINGS**

[8:49:44 AM](#)

CHAIR RALPH SEEKINS announced SB 187 to be up for consideration. He directed committee members to Section 10 of the bill. He proposed Amendment 3.

Section 10, line 10 following the word "complaint", insert "In any case the opinion is open for inspection by the public on the twenty first day following notice to the complainant." The amendment gives the complainant a 20-day period of time to have a meeting and go over the opinion.

SENATOR FRENCH asked how the amendment would affect the hearing that may take place after the opinion is released.

[8:51:47 AM](#)

CHAIR SEEKINS replied all of that would have to take place within the 21 days.

SENATOR FRENCH expressed favor for providing information to the public but expressed opposition to the final sections, which appear to hold everything confidential.

CHAIR SEEKINS commented if no hearing is requested it is available 21 days after the notice to the complainant. If the complainant does request a hearing and there are still recommendations for directive action it becomes available after that hearing.

[8:54:30 AM](#)

CHAIR SEEKINS asked Ms. Joyce Anderson whether she would be able to follow the instructions discussed in SB 187.

MS. JOYCE ANDERSON, member, Legislative Ethics Committee, said yes.

CHAIR SEEKINS reiterated the procedures for and the intent of Section 10.

[8:58:17 AM](#)

Section 11 permits the limited release of information.

SENATOR FRENCH asked whether the subject of the complaint would have access to the legal opinions from the committee counsel as well as any supporting documentation.

CHAIR SEEKINS said the complainant is held to a level of confidentiality as well. At the point where s/he goes public the entire record goes public. SB 187 is trying to give the person the ability to conduct an investigation necessary for a defense so there has to be a certain amount of limited release.

[9:01:02 AM](#)

SENATOR FRENCH stated he is unclear as to the reason for limitation.

CHAIR SEEKINS remarked documents and other things like that should not be released in total and the person should not be able to take copies of the documents.

MS. ANDERSON noted the current process allows the complainant copies of any documents and decisions. There have only been three public hearings since the statute has been in place.

CHAIR SEEKINS asked whether the committee has the ability to pose restrictions.

MS. ANDERSON answered yes.

[9:05:15 AM](#)

SENATOR FRENCH asked the nature of the changes in Section 13 regarding confidentiality.

CHAIR SEEKINS responded the committee would come back to Section 13. Section 14 allows the candidate to waive suspensions during a campaign period. Section 15 deals with the confidentiality process of bringing the person filing the complaint in to the chain of confidentiality.

SENATOR FRENCH asked Chair Seekins to explain how the confidentiality of the new subsection compares with the existing system.

CHAIR SEEKINS explained the system as it exists now says if the person filing the complaint makes the complaint public the complaint is dismissed. However, the committee can proceed forward with the complaint if they want to.

[9:10:17 AM](#)

SENATOR HUGGINS voiced support.

CHAIR SEEKINS said if it is serious enough to file a complaint, it should be investigated.

SENATOR FRENCH asked whether the hearings would be open to the public or confidential.

CHAIR SEEKINS responded they would be confidential up until the point where probable cause is determined, as set out in Section 12.

[9:12:21 AM](#)

SENATOR FRENCH noted that doesn't cover the hearing, it covers the decision.

CHAIR SEEKINS asserted a hearing would end in a decision.

SENATOR FRENCH disagreed. The hearing ends in a decision of a violation or not. Probable cause determination happens upstream of that.

MS. ANDERSON suggested leaving the first sentence of Section 13 in the bill.

CHAIR SEEKINS stated the intent is all hearings would be confidential until indication of probable cause. He asked Ms. Anderson to explain the process of determining probable cause.

MS. ANDERSON walked the committee through the process. The committee would first take a look at an alleged complaint. If the allegations, if proved true, would be a violation, the committee would determine the scope of investigation. The materials would be reviewed.

SENATOR FRENCH interrupted to clarify the point at which the committee makes the probable cause determination.

MS. ANDERSON was not familiar with probable cause parameters. The committee is committed by statute to pursue an investigation if the allegation is true.

[9:16:12 AM](#)

CHAIR SEEKINS disputed Senator French's indication of the point where the investigation would become public. He stated the committee's investigation would be indication of prima facie evidence.

MS. ANDERSON agreed.

[9:18:00 AM](#)

MS. ANDERSON said after the investigation is conducted the committee would then meet again to either garner more information or to determine whether or not probable cause exists.

[9:19:32 AM](#)

CHAIR SEEKINS asked the Senate Judiciary Standing Committee to review AS 24.60.170.

[9:20:47 AM](#)

Senator Gretchen Guess joined the committee.

[9:23:07 AM](#)

CHAIR SEEKINS said AS 24.60.170(k) is the point where the investigation becomes public.

Chair Seekins announced a brief recess at [9:24:48 AM](#).

Chair Seekins reconvened the meeting at [9:31:12 AM](#).

CHAIR SEEKINS asked Ms. Anderson to help him step through the process:

First a complaint is file. There is an indication by the staff as to whether or not there is prima facie evidence to go forward. If that step of prima facie

evidence is accomplished, an investigation begins. The investigator comes back to the committee and indicates a reason for the hearing. You have a hearing at that point. Following the hearing a decision is made as to whether or not a violation has occurred. Am I correct?

MS. ANDERSON said yes except it is not referred to as a hearing.

CHAIR SEEKINS noted AS 24.60.170(k) says, "Following the hearing, the committee shall issue a decision stating whether or not the subject of the complaint violated this chapter."

MS. ANDERSON said that is at the point where the subject of the complaint has requested a hearing.

[9:33:13 AM](#)

MS. ANDERSON clarified after the determination of probable cause the committee could formally charge the person. AS 24.60.170(k) refers to that.

Chair Seekins announced a short recess at [9:34:34 AM](#).  
Chair Seekins reconvened the meeting at [9:47:46 AM](#).

CHAIR SEEKINS referred the committee to AS 24.60.170(h). Paragraph (g) is Section 10 of the bill.

[9:51:16 AM](#)

SENATOR HUGGINS clarified a charge issued is the trigger for public disclosure.

CHAIR SEEKINS agreed.

[9:53:12 AM](#)

Amendment 3 was unanimously adopted.

[9:57:03 AM](#)

SENATOR FRENCH moved Amendment 4:

Re-insert the first sentence in Section 13.  
Hearing no objections, the motion carried.

[10:03:16 AM](#)

SENATOR FRENCH aired citizens have a right to file complaints and speak out against the government without fear of penalization. He proposed Amendment 5; beginning on Page 8, line 18 strike the language up to line 24.

[10:04:55 AM](#)

CHAIR SEEKINS objected. He said Senator Elton testified in Senate State Affairs Standing Committee there is evidence of abuse. He said it is important that confidentiality be maintained until probable cause is found.

Roll call proved Amendment 5 failed with Senators Huggins, Therriault, and Chair Seekins dissenting.

[10:07:46 AM](#)

MR. MERLE THOMPSON testified against SB 187. There is a need for open proceedings. SB 187 does not protect public interest. The history of Title 24 and AS 24.60.170 originally said the class A misdemeanor specifically addressed the members of the committee, and the freedom of speech of the general public remained intact.

[10:11:07 AM](#)

MR. THOMPSON continued the main problem with SB 187 is the freedom of speech issue. He asked the committee to read the (U.S. Constitution) First Amendment. He asserted any government that doesn't trust the people doesn't deserve the people's trust. SB 187 protects the interest of people sitting in Legislature and not the general public.

[10:13:41 AM](#)

CHAIR SEEKINS asked Ms. Anderson the section that harbors the provision that allows a complaint to be dropped.

[10:14:54 AM](#)

MS. ANDERSON responded Section 13, sub-subparagraph (1). She said she would feel more comfortable if there was language that said the subject of the complaint could waive the confidentiality of a dismissal order being public.

[10:16:55 AM](#)

MS. ANDERSON added Section 9 used to be public but the bill needs to make sure the subject of the complaint could waive confidentiality. Also when there is a complaint regarding a candidate during a campaign period they should be able to waive confidentiality.

[10:18:11 AM](#)

CHAIR SEEKINS alleged Page 9; line 5 allows the subject to waive confidentiality on any document.

SENATOR FRENCH asked Ms. Anderson if her concerns would be addressed if the committee changed the word "subsection" to "section" on Page 9, line 2.

MS. ANDERSON agreed.

CHAIR SEEKINS stated no objection.

SENATOR FRENCH moved Amendment 6.  
Page 9, line 2 strike "subsection" and insert "section." Hearing  
no objections, the motion carried.

[10:19:50 AM](#)

MS. ANDERSON assessed there was a problem using the term  
"hearing" in Section 15. A hearing is different than a meeting.

[10:22:51 AM](#)

MS. ANDERSON referred to the history of the Legislative Ethics  
Committee. The ethics statute was passed in 1992 where there  
were 5 public members and 4 legislators. In 1998 language was  
added to allow for an alternate member. The complaint process is  
similar to an executive session. During the complaint process it  
is appropriate only to have members of the committee present and  
not the alternate.

[10:26:36 AM](#)

SENATOR HUGGINS asked Ms. Anderson whether she sees any problems  
with accountability in regards to conflicts of interest.

MS. ANDERSON said the statute is clear regarding conflicts of  
interest.

CHAIR SEEKINS said in one particular case there was an ethics  
referral.

MS. ANDERSON was not allowed to comment.

[10:29:35 AM](#)

SENATOR THERRIAULT said the people who alleged the violation  
refused to file a complaint.

[10:30:37 AM](#)

MS. BARBARA LEWIS testified in opposition to SB 187. She  
expressed concern that a citizen could be punished for filing  
a complaint.

Chair Seekins announced a brief recess at [10:32:17 AM](#).

Chair Seekins reconvened the meeting at [10:35:43 AM](#).

CHAIR SEEKINS closed public testimony.

SENATOR HUGGINS moved CSSB 187(JUD) from committee with individual recommendations and attached fiscal note(s).

SENATOR FRENCH objected.

Roll call proved CSSB 187(JUD) passed out of committee with Senators Guess and French dissenting.

CHAIR SEEKINS recessed the meeting at [10:38:54 AM](#).