

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 22, 2021

1:32 p.m.

MEMBERS PRESENT

Senator Lora Reinbold, Chair
Senator Shelley Hughes
Senator Robert Myers
Senator Jesse Kiehl

MEMBERS ABSENT

Senator Mike Shower, Vice Chair

COMMITTEE CALENDAR

CONFIRMATION HEARING:

Commission on Judicial Conduct
Aldean Kilbourn - Fairbanks

- CONFIRMATION ADVANCED

SENATE BILL NO. 15

"An Act relating to the Open Meetings Act; and establishing a civil penalty for violations of the open meeting requirements by members of governmental bodies."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 15

SHORT TITLE: OPEN MEETINGS ACT; PENALTY

SPONSOR(s): SENATOR(s) COSTELLO

01/22/21	(S)	PREFILE RELEASED 1/8/21
01/22/21	(S)	READ THE FIRST TIME - REFERRALS
01/22/21	(S)	CRA, JUD
02/25/21	(S)	CRA AT 3:30 PM BELTZ 105 (TSBldg)
02/25/21	(S)	Heard & Held
02/25/21	(S)	MINUTE(CRA)
03/04/21	(S)	CRA AT 3:30 PM BELTZ 105 (TSBldg)

03/04/21	(S)	Heard & Held
03/04/21	(S)	MINUTE(CRA)
03/09/21	(S)	CRA AT 3:30 PM BELTZ 105 (TSBldg)
03/09/21	(S)	Moved CSSB 15(CRA) Out of Committee
03/09/21	(S)	MINUTE(CRA)
03/10/21	(S)	CRA RPT CS 1DP 1DNP 2NR NEW TITLE
03/10/21	(S)	DP: HUGHES
03/10/21	(S)	DNP: GRAY-JACKSON
03/10/21	(S)	NR: MYERS, WILSON
03/17/21	(S)	JUD AT 1:30 PM BUTROVICH 205
03/17/21	(S)	Heard & Held
03/17/21	(S)	MINUTE(JUD)
03/22/21	(S)	JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

ALDEAN KILBOURN, Appointee
 Commission on Judicial Conduct
 Alaska Court System
 Fairbanks, Alaska

POSITION STATEMENT: Testified as appointee to the Commission on Judicial Conduct.

MELODIE WILTERDINK, Staff
 Senator Mia Costello
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Provided a PowerPoint and answered questions on SB 15, on behalf of the sponsor, Senator Mia Costello.

ACTION NARRATIVE

[1:32:46 PM](#)

CHAIR LORA REINBOLD called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Kiehl, Hughes, Myers, and Chair Reinbold.

CONFIRMATION HEARING
Commission on Judicial Conduct

[1:33:53 PM](#)

CHAIR REINBOLD announced the consideration of Governor Appointees to Boards and Commissions.

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ALDEAN KILBOURN, Appointee, Commission on Judicial Conduct (CJC), Fairbanks, Alaska, testified as the public member appointee to the Commission on Judicial Conduct. After she graduated from the University of Washington in 1972, she moved to Fairbanks, where she taught middle and high school political science. She said she would like to use her listening and analytical skills to assist the Commission on Judicial Conduct (CJC) in making its determinations.

[1:36:35 PM](#)

CHAIR REINBOLD asked if she has participated in any campaigns or elections. She explained that a ballot initiative related to parental rights on abortion and a bill that would have limited funding for abortions were struck down by the Alaska Supreme Court. She characterized this as "legislating from the bench" and asked for her position.

MS. KILBOURN answered that she has worked on various campaigns, walking in neighborhoods, making phone calls to get out the vote and driving people to the polls.

MS. KILBOURN also responded that judges are responsible for considering whether laws are unconstitutional. She offered her view that judges must put their personal biases on hold and apply the Alaska Constitution when ruling on cases. Unfortunately, the legislature and executive branches do not adequately assess the constitutionality of legislation. Instead, these branches of government rely on the judiciary to determine the constitutionality of bills passed. She offered her belief that legislative and executive branches, nationally and in Alaska, should pay more attention to ensure that measures adhere to the US Constitution and the Alaska Constitution so judges will not have an opportunity to question the constitutionality of measures.

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CHAIR REINBOLD asked to focus on the separation of powers issue. She asked whether the legislative branch should define and set policy in Alaska. She maintained her view that the legislative branch sets policy and judges should not strike down laws simply because they don't like the policies.

MS. KILBOURN responded that the separation of powers impacts every bill passed by the legislature since these powers are enshrined in the constitution. She maintained her view that the executive and legislative branches of government should better analyze bills, so judges do not have an opportunity to question

the constitutionality of legislation. All three branches of government have a responsibility to do so. If someone does not like a decision issued by the Alaska Supreme Court, it does not necessarily mean the court erred by overturning the legislation.

CHAIR REINBOLD asked whether the judicial branch should set policy.

MS. KILBOURN responded that the US Constitution establishes the powers for all three government branches, so every state's policies are affected by judicial decisions.

CHAIR REINBOLD offered his belief that the constitution gives the legislature the sole authority to set policy.

MS. KILBOURN responded that the legislature passes laws. However, the executive branch issues orders and establish policies to implement the administration's agenda. The administration's policies may differ from those the legislature or Congress enact.

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CHAIR REINBOLD asked where the authority to enact laws and set policies lies in the constitution.

MS. KILBOURN responded that in her view the legislature enacts laws, but the policies are set by the executive and judiciary branches of government.

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SENATOR KIEHL stated that the confirmation hearing should focus on the applicant's character, qualifications, training, and any issues that would fall under the Commission on Judicial Conduct jurisdiction.

CHAIR REINBOLD remarked that she asks all applicants these questions. She asked why she was interested in serving on the Commission on Judicial Conduct.

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MS. KILBOURN answered that she would like to serve because she is interested in the law and the constitution. She said that her background helps her to better understand the issues that will come before the commission. As a history teacher, she understands the importance of the constitution, she said. She lamented that most citizens do not receive adequate education on the US Constitution.

CHAIR REINBOLD asked her to elaborate.

MS. KILBOURN related her understanding that the commission takes up judicial misconduct and ethics matters. She has read the ethics act and understands it. She surmised that Chair Reinbold's previous questions were related to disagreements over judicial decisions. While she often disagrees with Supreme Court rulings, she has a deep commitment to the rule of law and a constitutional government like many Americans. She said that each branch has responsibilities to carry out based on the language in the US Constitution.

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CHAIR REINBOLD asked how the legislature and executive branch could do better.

MS. KILBOURN said the legislature and executive branch could better examine any constitutional issues for legislation and policies to limit the number of cases that will be appealed to the courts.

CHAIR REINBOLD asked if she could cite a specific example.

MS. KILBOURN answered no.

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CHAIR REINBOLD opened public testimony and, after first determining no one wished to testify, closed public testimony on the confirmation hearing for Aldean Kilbourn.

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SENATOR HUGHES stated that in accordance with AS 39.05.080, the Senate Judiciary Standing Committee reviewed the following and recommends the appointments be forwarded to a joint session for consideration:

Commission on Judicial Conduct
Aldean Kilbourn - Fairbanks

Signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees; the nominations are merely forwarded to the full legislature for confirmation or rejection.

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At ease

SB 15-OPEN MEETINGS ACT; PENALTY

[1:49:16 PM](#)

CHAIR REINBOLD reconvened the meeting and announced the consideration of SB 15, SENATE BILL NO. 15, "An Act relating to the Open Meetings Act; and establishing a civil penalty for violations of the open meeting requirements by members of governmental bodies."

[CSSB 15(CRA) was before the committee. The bill was previously heard on 3/17/21.]

[1:49:27 PM](#)

MELODIE WILTERDINK, Staff, Senator Mia Costello, Alaska State Legislature, Juneau, Alaska, began a PowerPoint on SB 15. On February 23, 1965, the late US Senator Stevens, who was then a state representative, introduced House Bill 170, "An Act requiring that the meetings of agencies of the state and its subdivisions be open to the public with certain exceptions." This bill is known today as the Open Meetings Act, she said. Prior to passage of House Bill 170, the legislature removed the penalty provision that established a fine of up to \$1,000 from the bill.

MS. WILTERDINK said SB 15 would amend the Open Meetings Act by adding a civil penalty of up to \$1,000 for any violations. CSSB 15(CRA) identifies the Alaska Public Offices Commission as the entity to receive complaints and assess any penalties, she said.

[1:52:04 PM](#)

MS. WILTERDINK reviewed states with penalties for violating open meeting requirements shown on slide 3. In 2002, a Florida jury convicted a county commissioner for discussing redistricting with a county election supervisor while another commissioner listened via speakerphone. The judge sentenced the commissioner to 60 days in jail, fined him \$500 and required him to pay \$3,600 in court fees.

[1:52:53 PM](#)

MS. WILTERDINK reviewed slide 4, highlighting several residents' comments that illustrated their frustration when the Anchorage Assembly did not allow the public to participate in a meeting due to COVID-19.

[1:53:19 PM](#)

SENATOR MYERS recalled that the bill then-Representative Stevens introduced initially included language to establish a \$1,000 fine but it was ultimately not adopted. He noted that the fine in SB 15 was not adjusted for inflation but if so, the fine would likely be \$5,000 to \$7,000.

MS. WILTERDINK agreed it would be higher.

SENATOR MYERS asked why the bill did not adjust the \$1,000 fine.

MS. WILTERDINK answered that the sponsor thought it made the most sense to initially set the civil penalty at \$1,000 fine. She said that then Representative Steven's bill initially established the penalty as a misdemeanor punishable by up to one year in jail and a fine up to \$1,000. She explained that establishing a civil penalty meant that it would not go to court unless APOC appealed the ruling.

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CHAIR REINBOLD asked whether SB 15 would establish a misdemeanor penalty and if the previous committee discussed it.

MS. WILTERDINK answered no, it does not establish a misdemeanor penalty and she did not believe the Community and Regional Affairs Committee discussed it.

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SENATOR HUGHES commented that the Community and Regional Affairs Committee deferred the question of whether the penalty was appropriate for the Senate Judiciary Committee to discuss since it was the next committee of referral.

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MS. WILTERDINK presented the sectional analysis for the committee substitute (CS) SB 15 (CRA), Version G. She paraphrased the following:

Sec. 1 - AS 15.13 Page 1, Lines 5-14

Is amended by adding a new section AS 15.13.395 outlining the duties of the Alaska Public Offices Commission with regards to hearing and enforcing complaints of violations of section 4 of this bill AS 44.62.310(i). This section also excludes members of the commission from being subject to enforcement of AS 44.62.310(i) under this section.

Sec. 2 - AS 44.23.020 Page 2, Lines 1-10 Adds a new section outlining the duties of the Alaska Attorney General with regards to hearing and enforcing complaints of violations of section 4 of this bill AS 44.62.310(i) directed towards members of the Alaska Public Offices Commission.

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Sec. 3- AS 44.62.310(h) Page 2 Lines 11-14 Is amended to define the terms "knowingly" and "public official." Under this section, "knowingly" has the meaning given in AS 11.81.900(a)(2). "Public official" has the meaning given in AS 39.50.200(a)(9) but is changed to exclude "judicial officers" with regards to this bill.

Sec. 4- 44.62.310 Page 2, Lines 15-23 Is amended to add a civil penalty of up to \$1,000 for elected or appointed members of a governmental body who knowingly attend a meeting that violates the Open Meetings Act. This section is changed to outline that the Alaska Public Offices Commission will enforce this penalty in all cases except when a member of the commission is accused of a violation. This section also explicitly excludes community councils from the types of governmental bodies subject to this section.

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Sec. 5 - Page 2, Lines 24-29 Provides that the penalties added by this bill apply to offenses occurring on or after the effective date of this Act and is amended to conform to the addition of new sections of the bill.

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SENATOR KIEHL referring to the map on slide 3, asked why Alaska was not listed among the states where actions of a body could be invalidated. He related his understanding that the Open Meetings Act allows for invalidations.

MS. WILTERDINK answered that the map does not show states that targeted specific individuals for violations. Alaska's Open Meetings Act specifically says that governmental bodies can be targeted. It would void any actions of that body but it does not apply to actions taken by a specific individual.

[1:59:33 PM](#)

SENATOR HUGHES asked if actions in Idaho and Colorado, as shown on the slide, could be taken against an individual person but not a body.

MS. WILTERDINK replied that was her understanding. She offered to verify this and report back to the committee.

2:00:07 PM

SENATOR KIEHL referred to the definition of a public official in Section 3. He asked how the exclusion for judicial officers would apply if a municipality used a hearing officer to conduct administrative appeals.

MS. WILTERDINK explained that the sponsor used that definition since it includes everyone the Open Meetings Act covers. It was not based on what occurs at hearings at the municipal level.

SENATOR KIEHL asked whether an appointed official acting as a hearing officer would be considered a judicial officer since they conduct administrative appeals.

MS. WILTERDINK answered that she was unsure. She offered to research this and report back to the committee.

2:01:30 PM

CHAIR REINBOLD asked why the legislature and the judiciary were excluded from the bill.

MS. WILTERDINK answered that the Open Meetings Act excludes the legislature since legislative acts are covered under the Uniform Rules. She explained that changing that process would require using a different process. She said the Open Meetings Act currently exempts the judiciary.

2:02:39 PM

CHAIR REINBOLD said she believes the Anchorage Assembly violated the Open Meetings Act this summer when it banned the public due to COVID-19 concerns. She asked whether she would be subject to a fine if she had testified before the Anchorage Assembly.

MS. WILTERDINK answered no; that was not the intent of the bill. Elected officials who were conducting the meeting would be subject to fines.

CHAIR REINBOLD suggested this language is confusing and it should be amended.

[2:04:33 PM](#)

SENATOR HUGHES recalled that community councils were exempted. She asked whether this bill would apply to those serving on planning commissions, advisory boards and road service area boards. She asked whether the bill applies only to elected officials.

MS. WILTERDINK suggested that reading the definition for public official may help. She read AS 39.50.200 (a) (9):

"public official" means

(A) a judicial officer
(B), the governor or the lieutenant governor
(C) a person hired or appointed in a department in a department in the executive branch as

(i) the head or deputy head of the department
(ii) the director or deputy director of a division
(iii) a special assistant to the head of the department
(iv) a person serving as the legislative liaison for the department

(D) an assistant to the governor or the lieutenant governor
(E) the chair or a member of a state commission or board
(F) state investment officers and the state comptroller in the Department of Revenue
(G) the chief procurement officer appointed under AS 36.30.010; (H) the executive director of the Alaska Workforce Investment Board; and
(I) each appointed or elected municipal officer
(J) the members of the board of trustees, the executive director, and the investment officers of the Alaska Permanent Fund Corporation;"

SENATOR HUGHES pointed out that this definition includes appointed or elected municipal officers. She suggested the committee should explore whether the sponsor intended this to apply to local planning commission members, advisory board, and road service area board members.

MS. WILTERDINK related her understanding that the sponsor intended SB 15 to apply to those that the Open Meetings Act currently affects.

CHAIR REINBOLD related her understanding that this bill would primarily apply to the executive branch.

MS. WILTERDINK responded that it was meant to apply to everyone subject to the Open Meetings Act, which would also apply to board and commission members and the majority of the executive branch. She said it would exclude community council members and those serving in similar capacities.

CHAIR REINBOLD asked how this bill would affect the Anchorage Assembly.

MS. WILTERDINK answered that this would directly impact the Anchorage Assembly since its members are elected municipal officials.

[2:08:01 PM](#)

SENATOR KIEHL said this bill appears to affect the Utility Advisory Board and Planning Commission members. He asked if there was a reason that school site councils were not exempted.

MS. WILTERDINK offered to research this and report back to the committee. She related that Legislative Legal was not certain if community councils were impacted, so the bill specifically excluded them.

[2:09:14 PM](#)

SENATOR KIEHL asked whether the sponsor considered limiting the open meeting requirements specifically to municipal officials who must file a financial disclosure.

MS. WILTERDINK offered to take up this with the sponsor.

[2:09:47 PM](#)

SENATOR KIEHL related his understanding that the bill would apply to those who knowingly attend a governmental body meeting that violates the Open Meetings Act. He described an assembly meeting he attended. An assembly member became aware that the outside doors had been locked for 30 minutes. He was uncertain when the assembly member knew the doors were locked, but the Chair stopped the meeting and took the appropriate steps once it was brought to his attention. He asked if the assembly member

was guilty of violating the Open Meetings Act because he knew about the locked doors.

MS. WILTERDINK said she did not think that it would be a violation given the definition of "knowingly" and since the meeting was stopped as soon as the Chair was informed that the meeting was not public.

SENATOR KIEHL clarified that at some point, the member knew the doors were locked but it is unclear how long the person knew that the meeting was not public.

MS. WILTERDINK offered her view that the meeting was stopped when the violation became obvious.

SENATOR KIEHL expressed concern that unless the assembly member immediately "stepped away," the assembly member would be in violation.

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SENATOR KIEHL acknowledged some Alaskans' frustrations at an Anchorage Assembly meeting this summer. He expressed concern that government lawyers would need to defend members who were conducting official business if the bill were to pass.

MS. WILTERDINK described the process. The Alaska Public Offices Commission (APOC) would take up complaints. APOC would determine if the complaint will go forward. If numerous people complained about one meeting, APOC would likely combine the complaints. Each side would present their case, APOC staff would make a recommendation, a hearing would be conducted and a penalty would be assessed or not assessed. Decisions could be appealed, she said. She envisioned that the costs would be levied against the state.

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SENATOR KIEHL offered his view that a municipal official or nonprofit would be entitled to counsel. He said absent gross malfeasance, the city attorney would need to defend the assembly members at a hearing. He recalled that tens of thousands of dollars could be spent to defend those acting in their official capacity. He offered his view that those costs would be passed on to the taxpayers.

MS. WILTERDINK answered that the intent of SB 15 is to target the individuals who violate the Open Meetings Act. Many states reduce the number of frivolous complaints by requiring the

losing party to pay any legal fees. However, she did not think the costs would be passed on to taxpayers.

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SENATOR KIEHL offered to do some additional research.

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SENATOR HUGHES asked to hear from Legislative Legal Services on this issue. This bill does not specify that the individual would be responsible. She suggested that this section might need an amendment to ensure that happens. She said she would support requiring the losing parties to pay court fees since elected officials such as assembly members could be targeted by frivolous complaints. She suggested that the sponsor would need to clarify whether the sponsor intended to have individuals bear the costs.

CHAIR REINBOLD concurred with Senator Hughes.

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SENATOR HUGHES recalled that Senator Myers previously raised the issue of inflation adjustments to the fines, which seemed reasonable. She asked if the 1965 committee held any discussions when removing the fines from the enabling legislation. She offered her view that the Open Meetings Act does not have any consequences unless the actions taken by the body become invalid if violations occur.

MS. WILTERDINK responded that the Legislative Reference Library does not have any notes from the 1965 committee action that could provide insight.

[SB 15 was held in committee.]

[2:21:33 PM](#)

There being no further business to come before the committee, Chair Reinbold adjourned the Senate Judiciary Standing Committee meeting at 2:21 p.m.