

HB

563

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 563
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Legislature
 Title: "An Act relating to open meeting guidelines
applicable to legislators, to the confidentiality of..." BRU: Legislative Council
 Sponsor: House Rules Committee Component: Select Committee on
Legislative Ethics
 Requestor: House Judiciary Component No. 2321

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time					
Part-time					
Temporary					

ANALYSIS: (Attach a separate page if necessary)

This legislation has zero fiscal impact on the Legislative Affairs Agency.

Prepared by: Karla Schofield, Deputy Director Phone 465-6626
 Division: Administrative Services Date/Time 5/5/04 3:47 PM
 Approved by: Pamela Varni, Executive Director Date 5/5/2004
 Agency: Legislative Affairs Agency

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Tam Cook, Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: May 5, 2004
Re: CS Request – RUSH ☺

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS1932\Q, HB 563, incorporating the attached eight amendments (Amendment #1A, Amendment #3, Amendment #4, Amendment #5, Amendment #7, Amendment #9, Amendment #10, and Conceptual Amendment #11). The bill was passed out of committee today and is calendared for the House floor tomorrow.

If you have any questions, please call me at 4990. Thank you so much for all of your hard work!

The information attached to this memo is **CONFIDENTIAL** and/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

HB 563

Amendment #1A - PASSED
by Rep. Gruenberg

Page 1, Line 13

After "taken"

Insert "or could be taken,"

Amendment # 3
Offered by Representative Greenberg PASSED

Page 4, line 21, after "if" add "the committee finds that"

page 4 line 21 delete "violates" and insert "has violated"

AMENDMENT #4 PASSED

OFFERED IN THE HOUSE

REP. Ogg

TO: HB 563

~~Page 1, line 13: After "voting, is" INSERT "or could be"~~

Page 2, line 8: after "regard to" INSERT "political"

Page 2, line 9: after "context of" INSERT "political"

HB 563

Amendment #5 - PASSED
by Rep. Gara

Page 1, Line 13

After "or could be taken,"

Insert "or if a primary purpose of the meeting
is the discussion of legislative or state policy."

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Amendment # 7 - PASSED
by Rep. Gara

Page 3, Lines 12-13

Delete all material & renumber accordingly.

HB 563

Amendment #9
by Rep. Gruenberg

Page 3, Line 12
Insert "(iii) legislative leadership

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Amendment #10 - PASSED
by Rep. Ogg

Page 3, Lines 16-17
Delete "purely"
Insert "primarily"

and after "purposes"
Delete "where there is no deliberation of policy
issues"

conceptual (for purposes of proper placement)
A#11
by Rep. Ogg
PASSED

bodies set out in A-E of this paragraph; but
a. does not include

- i. a committee on committees
- ii. any committee or group of legislators considering only matters involving the organization of a committee or a house of the legislature, including selection of legislative officers;
- iii. any committee or group of legislators and the governor or staff of the Office of the Governor;
- iv. officers of the legislature, including committee chairs;
- v. officers of a caucus;

Insert:

b. For the purposes of these Guidelines, "caucus" means a group of legislators who share a political philosophy and who organize as a group with a common goal. A caucus may vote on whether or not caucus meetings may be closed. A caucus meeting is not subject to any notice rules and is exempt from these Guidelines. Closed caucuses may not conduct votes on legislation. Closed caucuses may discuss items of political strategy.

OK

Section 3: Executive Sessions: Uniform Rule 22 as adopted by the Legislature controls the method and manner of open and executive sessions of a legislative body. [(a) A LEGISLATIVE BODY MAY CALL AN EXECUTIVE SESSION AT WHICH MEMBERS OF THE PUBLIC MAY BE EXCLUDED.

(b) IF PERMITTED SUBJECTS ARE TO BE DISCUSSED AT A MEETING IN EXECUTIVE SESSION, THE MEETING MUST FIRST BE CONVENED AS A PUBLIC MEETING AND THE QUESTION OF HOLDING AN EXECUTIVE SESSION TO DISCUSS MATTERS THAT ARE LISTED IN (C) OF THIS SECTION SHALL BE DETERMINED BY A MAJORITY VOTE OF THE LEGISLATIVE BODY. THE MOTION TO CONVENE IN EXECUTIVE SESSION MUST CLEARLY AND WITH SPECIFICITY DESCRIBE THE SUBJECT OF THE PROPOSED EXECUTIVE SESSION WITHOUT DEFEATING THE PURPOSE OF ADDRESSING THE SUBJECT IN PRIVATE. SUBJECTS

HB 563

Amendment # 1

Offered by Representative Gruenberg

A #1 A P.1, Line 13 after "taken" insert "or could be taken" - PASSED

Page 1, line 12, delete "and action, including voting, is taken" and insert "and discusses pending legislation."

A #1 B
PASSED

Page 2, line 2, after "strategy" add "but no action, including voting, may be taken."

recinded

P.2, L.1 after "may" insert "only"

A #1 C P.2, L.2 - withdrawn

but this prov. does not prohibit the discussion of pending issues in legislation provided members do not act to approve or disapprove the legislation.

~~A #1 A mandata~~

HBS63

Amendment 5 by Rep. Gara

PASSED

Insert at p. 1 line 13

After "taken,"

~~(*) A meeting under this section shall be open if ^{could be} ~~the~~ a primary purpose of the meeting is the discussion of the merits of legislation or ^{state policy} ~~potential~~ legislation or changes to legislation. ☺~~

Amendment 6 - withdrawn
at page 2 line 8, after "deliberations" add
"and # discussions"
Delete remainder of sentence after
"strategy".

~~Amendment 7 not offered
at page 1 line 12, delete ~~the~~ remainder of
sentence after "present."~~

Amendment 8 - PASSED
by Rep. Gara
At page 3 delete lines 12-13 and
renumber

Amendment 8 - withdrawn
At page 3 line 4 insert ~~a~~ "minority
or majority" after "a".

A# 9 by Gruenberg
P. 3, L. 12 insert (iii) legislative leadership
meeting

HB 563

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Amendment # 2

Offered by Representative Greenberg - withdrawn

Page 2, line 8, after "governor" add "discussions about a bill among potential co-sponsors"

HB 563 ~~amendment~~ not offered

Amendment # 11
Offered by Representative _____

Page 3, line 10, delete "(ii) any committee or group of legislators and the governor or staff of the Office of the Governor."



Alaska State Legislature

PAGE #1

Please enter into the record my testimony to the House Judiciary committee name

committee on HB 563, dated 5/5/04
bill/subject

I would like to have testified to this bill; if you are reading this instead, it is because I had to leave to coach my baseball team. Please consider this fax as my testimony. HB 563 is not a very good bill. Any procedure that reduces the ethics committee's ability to create open meeting guidelines is not in the best interest of the public. We need to strengthen open meetings and limit closed door politics to the upmost. Prior public testimony before the ethics comm was overwhelming in support of very tight restrictions on the closed door process. (Contrary to this bill) This Bill coming so late in the session restricts public input even more, as I know a number of citizens that wished to participate and can not. Page 1 line 12 should be removed or anything else that lets lobbyists into closed door meetings, no matter what. Page 2 Line 3 through 9 is way to broad and contrary to what the public testified to. The governor or staff also should not be allowed to meet in private with another branch behind closed doors in caucus, so legislators should not be able to vote on bills just because they invite the Gov. or staff

Signed: MYRL THOMPSON

Testifier

People

(page 3) (line 10)

Representing (Optional)

PO Box 877189 WAS, IA AK 99687

Mailing Address

373--1686

Phone Number

There needs to be guidelines that allow reforming of closed caucus's, the public no longer trusts or respects this process as is and certainly not in the form of this bill either. Ask for testimony from the sessions ethics comm meetings, it will open this comm. eyes to what needs done.



Alaska State Legislature

PAGE 2

Please enter into the record my testimony to the House Judiciary Comm
committee name

committee on HB 563, dated 5/5/04
bill/subject

In closing: NO chat sheets.

The ethics comm. is the best place to develop open meeting guidelines because it is far more balanced and apt to come up with fair and equal guidelines. the legislative approach that this bill allows would favor the party in power. in this case one party has a large majority and is in control of the house, senate and exec branch. the ethics comm is at least balanced in this respect. A sitting member of the ethics comm should not even be making a bill that deals with this subject, much less the legislature in general.

Thank you

Signed: MYRC THOMPSON

Testifier People

Representing (Optional) PO Box 877189 Wasilla

Mailing Address 373-1686

Phone Number

I would liked to have refuted much of what Norm Rokelberg said but he talked till the end of your time and mine. His opinion is skewed to his and his party's advantage. I'm non-partisan



Alaska State Legislature

Please enter into the record my testimony to the HJUD committee name
 committee on HB 563 bill/subject, dated 5-5-04

The legislature is charged with conducting itself with high moral & ethical standards and to avoid even the appearance of conflict of interest. This bill appears geared towards ~~lowering~~ ^{lowering} that bar. The ethics committee should be tasked with developing guidelines for legislative ethics, not the legislature. Sec. 24.60.037 (c) is way too broad. This allows pretty much any discussion to be allowed in a closed caucus. The legislature should do the public's work in full view of the public eye. The sealed legislature has left me with nothing but a cynical view of the state legislature. "Ethics" is a word that too many (all) of our local legislatures seem unfamiliar with.

Signed: Michelle Church
 Testifier self
 Representing (Optional) _____
 Mailing Address HCO1 Box 6218 Palmer Ak. 99645
 Phone Number 7450130

This bill needs to tighten ethics guidelines not loosen them.



FAIRBANKS LEGISLATIVE INFORMATION OFFICE
119 N. CUSHMAN ST. SUITE 101
FAIRBANKS, AK 99701

WRITTEN TESTIMONY TRANSMITTAL SHEET

TO: Rep. Lesil McGuire, Chair	FROM: Fran/Fbx LJO
COMMITTEE: House Judiciary Committee	DATE: 5/5/2004
FAX NUMBER: 465 6592	PAGES: 2
PHONE NUMBER: 465-4990	FAXED ON: 5/5/2004
RE: Written Testimony: HB 535	TELECONFERENCED ON: 5/5/2004

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:
Written testimony for HB 535 before the HJUD committee, teleconferenced on 05/05/04. The originals will be pouched to the committee chair.

Fran/Fbx LJO

PHONE: 452-4448
FAX: 456-3346

Senate Bill 364/HR 535

May 5, 2004

My name is Jeanette Grasto. I am a member of the Alaska Mental Health Board, NAMI Fairbanks, NAMI Alaska and a long time advocate for people with mental illness and their families. Thank you for the opportunity to testify on HB 535 today.

SB 364/HR 535 represents a major philosophical change without any discussion. It conflicts with principles articulated in Alaska Statute 47.30.655 and a Shared Vision II, our current plan for mental health services. It violates the principle that services will be provided in the least restrictive setting and as close to the client's home as possible. If changes in policy are going to be made, it should be with discussion and input from mental health consumers, the AMHB, hospitals, the Division of Behavioral Health and other stakeholders.

The utilization review section of this bill that would allow more efficient use of resources appears to be a positive step on behalf of the administration. Savings from improved management should be used for added service capacity.

The rest of the bill represents a giant step backwards. In Fairbanks, we are so grateful to have the capacity and quality of program that we currently have at Fairbanks Memorial Hospital for Designated Evaluation and Treatment Beds in our mental health unit. These beds are a critical part of the community-based services that we rely on. Before this unit was expanded to 20 beds, many Fairbanksans in acute need spent up to 3 days in jail and then were transported to API in Anchorage, 300 miles away from their families and natural support system. This was a terrible situation for both the consumers and their families and often exacerbated their illness and symptoms. It seems like the dark ages now looking back at it. We have come so far.

Our state is currently expanding DET beds so that people can access services in their community. Providing DET beds was a consensus decision by the mental health community and seen as an appropriate alternative to sending people to API. API is downsizing and is to be reserved for the most complex patients who needs cannot be met locally. It will no longer be a dumping ground for people no one else wants. Communities are expected to take care of their own whenever possible.

The people we are talking about in this bill are among the most vulnerable Alaskans. They are either a danger to themselves or others or gravely disabled and unable to take care of themselves. They are the poorest of the poor, without even a disability income or Medicaid. Alaska clearly has a responsibility to take care of these vulnerable people.

The bill also is discriminatory. We are denying them access to the community system of care that everyone else uses to be sent off to a state institution. They become second-class citizens even among an already marginalized group. Would we even consider a similar bill for someone suffering from heart disease or cancer?

Maybe you think it doesn't matter because it doesn't affect anyone you know or care about, just strangers who live under the bridge. Mental illness affects 1 in 5 Alaskan families. It is not a rare condition and treatment for mental illness is more effective than for heart disease or cancer. I am amazed how many of my friends are struggling with mental illness either themselves or in a family member. It truly is a crisis when it affects you or someone you love. It isn't uncommon when mental illness first strikes, the person is unable to work and has no other income and is indigent until they can either return to work or qualify for disability income.

Finally, many DET patients are involuntarily committed. It is appropriate to take away the civil rights of an indigent individual and then not cover their treatment?

What kind of state are we becoming as we pretend to be broke? If Alaska is so broke that we cannot take care of these most vulnerable Alaskans, then it is imperative that we have a sound fiscal plan that guarantees that we can serve their needs. Cuts to our state budget need be made from excess not from need.

Thank you,
Jeanette Grasto
907-455-6263

Jeanette Grasto

Alaska State Legislature

Select Committee on Legislative Ethics

716 W. 4th, Suite 230
Anchorage AK 99501-2133
(907) 269-0150
FAX: 269-0152

Mailing Address:
P.O. Box 101468
Anchorage, AK.
99510 - 1468

TO: House and Senate Legislators

FROM: Joyce Anderson
Administrator, Ethics Committee

DATE: May 6, 2004

RE: HB 563/SB 397 - Open Meetings and Legislative Ethics

The Select Committee on Legislative Ethics has not had a chance to review this bill and formulate comments. However, I would like to comment on several sections of the bill.

First of all, I would like to give a brief overview of the open meetings process. The committee has proposed open meetings guidelines since 1993 as stipulated by state statute. The legislature has not acted on any of the proposals to date. Since March, the committee has held six subcommittee meetings on this subject. The full ethics committee is meeting on Friday, May 7 to review three proposals that have been submitted by the subcommittee and finalize a proposal. The plan was to submit the proposal to the legislature. In light of the introduction of HB 563/SB 397 on May 4, the committee was planning to consider this bill at the Friday meeting and offer recommendations to the legislature.

There are three sections in the bill that relate to the ethics complaint process. The committee has discussed these three topics at previous meetings over the last two years.

Section 1 (d) talks about dividing a group of open meetings complaints against one party in one body that are identical in nature into two groups and allowing the subject of one of complaints who is also on the ethics committee to evaluate a portion of the complaints. Current statute does not allow for this to happen. If the member or alternate member is the subject of a complaint they may not sit on the subcommittee hearing the complaint. The statute is very clear on this subject. It is evident a previous legislature anticipated this type of scenario.

The ethics House Subcommittee recently discussed this issue at length and determined it was not appropriate to have a legislator that was the subject of a group complaint sit on the committee that evaluates the complaints even if the complaints were divided into two separate groups. They felt it was a conflict of interest for the subject to be a part of the discussion of the merits of the complaint. The subject certainly would have a preconceived notion about the complaint. Additionally, two subcommittees of different members would be considering the same circumstances. It is possible to have two different results. This scenario poses a variety of problems and some of which can't even be thought of until the situation were to arise.

Further is it not defined in the bill that the subject is not to be a member of the subcommittee evaluating the group of complaints that the subject is grouped with. This could conceivable mean the subject could be part of the subcommittee that hears the subject's own complaint.

The subcommittee did not see a way to fix this problem. The subcommittee noted the ethics committee is comprised of five public members and no more than two public members may be members of the same political party. The subcommittee felt the ethics committee make up was well balanced. The subcommittee is also comprised of two legislators – one from the majority and one from the minority. Statute requires three public members and one legislator for a quorum of the subcommittee. The subcommittee was adamant that the subject of a complaint not be a member of the committee evaluating the compliant.

Section 2. Outside Counsel for the public hearing complaint process. The committee discussed this particular scenario during and after the last public hearing that was held in early 2003. The committee, after evaluating the events of the last public hearing, did not have an objection to having two different counsels in this type of situation. Therefore, I believe the committee would agree with this section.

Keep in mind there would be a minimal cost involved – getting the new counsel up to speed on committee operations and procedures.

Section 3. Confidentiality of the complaint process. The committee has had several meetings this last year on the subject of confidentiality of complaints. The current statute does not place any restrictions on the complainant in regard to keeping the compliant confidential. The committee strongly feels complaints should remain confidential. LAA legal researched the issue as well as myself. There are varying requirements across the United States. Some states have fines, some consider it a misdemeanor, and some dismiss complaints that have been made public.

The committee expressed reservations about a blanket dismissal for confidentiality reasons. Perhaps consideration should be given to the merits of the complaint.

I would like to point out that the bill contains only one sentence on confidentiality. This sentence does not address "what makes the complaint public". For example: the person filing the complaint talks to a neighbor in confidence who then talks to someone else and so on and one of these individuals makes the complaint public. Does this mean the complaint should be dismissed? Does this mean the complainant made the complaint public? What if the complaint is already in the investigative stage? If the complaint is dismissed for confidentiality reasons, could another person resubmit the complaint? These are only a few of the questions that come to mind in this short time.

As you can see, this is a very complicated issue and needs further thought, research and discussion. The ethics committee would need additional language in the statute in order to administer this section. I have no recommendations for additional language at this time.

I am leaving for Juneau on a 1:00 p.m. flight today and will be in Juneau on Thursday afternoon and Friday. If you have any questions, please leave a message on my office phone 269-0150 and I will return your call as soon as possible.

Alaska State Legislature

House of Representatives



State Capitol, Rm. 214
Juneau, Ak 99801-1182
(907) 465-3764

Official Business

COMMITTEE ON RULES Representative Norman Rokeberg, Chairman


MEMORANDUM

TO: Representative Lesil McGuire, Chair
House Judiciary Committee

FROM: Representative Norman Rokeberg, Chairman
House Rules Committee

DATE: May 4, 2004

RE: HB 563 - LEGISLATIVE PROCEDURE & ETHICS GUIDELINES



Thank you for scheduling House Bill 563 to be heard before your committee on Wednesday, May 5, at 1:30 p.m. I appreciate your cooperation. Attached are the following:

1. HB 563
2. Sponsor Statement
3. Sectional Analysis
4. Copy of AS 24.60.037
5. January 13, 2004 – History of Open Meetings Guidelines for the legislature: since 1994. Prepared by Joyce Anderson, Staff, Select Committee on Legislative Ethics.
6. August 28, 2003 proposed Open Meetings Guidelines (from Select Committee on Legislative Ethics)
7. February 12, 2004 letter from Marston & Cole, P.C., to Skip Cook, Chair, Select Committee on Legislative Ethics
8. March 8, 2004, "Open meetings principles and political strategy discussions" opinion from Tamara Cook to Rep. Rokeberg.
9. March 4, 2004, "Open meetings guidelines applicable to the legislature" opinion from Tamara Cook to Rep. Rokeberg.
10. March 3, 2004 "Actions against legislators for violations of open meetings requires" opinion from Tamara Cook to Rep. Rokeberg.
11. November 25, 2003 letter from Rep. Croft to Herman G. Walker
12. November 21, 2003 Legal Opinion from Tamara Cook to Rep. Croft
13. August 11, 2000 letter to Senator President and Speaker of the House from Select Committee on Ethics (recommendations in first paragraph).

Alaska State Legislature

House of Representatives



State Capitol, Rm. 214
Juneau, Ak 99801-1182
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Official Business

COMMITTEE ON RULES Representative Norman Rokeberg, Chairman

SPONSOR STATEMENT HOUSE BILL HB 563 Open Meetings Guidelines

Current state law requires the Select Committee on Legislative Ethics to prepare Open Meetings Guidelines for submission and approval by the legislature. The Select Committee has been attempting, since 1994, to develop the guidelines for approval by the Legislature. This year, a subcommittee has again been convened to propose guidelines. But that subcommittee, despite months of meetings and debate, has been unable to reach agreement on the definition of the most basic terms relating to open meetings, including the terms "meetings" and "political strategy."

Despite the absence of any guidelines, the Select Committee has awkwardly asserted jurisdiction over Open Meetings complaints. Without applicable guidelines, Legislators and legislative staff who remain subject to the Legislative Standards of Conduct are left with nothing upon which to rely when deciding whether a meeting or caucus adheres to the "open meetings principles".

It is unreasonable to subject legislators and staff to rules of conduct that have never been established. HB 563 defines and sets out the Open Meetings Guidelines in statute. Additionally, the legislation defines terms such as "legislative body," "meeting," and describes what is included in "political strategy."

The bill also addresses some concerns about the Ethics Committee process:

1. In a public hearing, the Ethics Committee retains counsel to provide legal advice to the Committee, and then utilizes that same attorney as the "prosecutor" in the full Ethics hearing. The untenable situation presents a clear conflict of interest, which is awkward and unfair to the subject of the complaint.
2. Unless a subject of the complaint wants to waive confidentiality, the subject of the complaint is bound to keep quiet. The person filing the complaint is not. HB 563 addresses this situation by stating that if confidentiality provisions are not waived by the subject of the complaint and the person filing the complaint reveals information about the complaint, the complaint is to be dismissed. This is intended to avoid use of a complaint as a political attack.
3. Each body has two members and two alternates assigned to serve on the Ethics Committee. If a group complaint is filed against a number of legislators, HB 563 requires that both Majority and Minority have representation on any subcommittee considering a complaint.

Alaska State Legislature

House of Representatives



Official Business

COMMITTEE ON RULES Representative Norman Rokeberg, Chairman

State Capitol, Rm. 214
Juneau, Ak 99801-1182
(907) 465-3764

SECTIONAL ANALYSIS HOUSE BILL 563

Section 1: Repeals the current statutory language indicating that the Select Committee on Legislative Ethics will propose Open Meetings Guidelines and send the Legislature the initial Guidelines for approval.

Places in statute Open Meetings Guidelines that describe when a meeting takes place (p. 1, lines 11-14) and what is not a "meeting" (p. 3, lines 15-19).

Places in statute that legislators may meet in a closed caucus or in private informal meetings to discuss and deliberate on political strategy. Describes what "political strategy" includes. States that these meetings are exempt from the Open Meetings Guidelines. (p. 2, line 1-9).

Places in statute that each subcommittee considering a case must have a Majority and Minority member permitted to attend the subcommittee hearings. Currently, each body has a Majority and Minority member and alternate. If a group complaint were filed, it is felt that the complaints should be divided so that the subcommittee considering that group would consist of the Majority or Minority member or alternate and that this representation would continue to be available at all times. (Page 2, lines 10-16).

Places in statute the fact that the Open Meetings Guidelines, which could be changed by a majority vote, are subservient to the Uniform Rules adopted by the Alaska State Legislature. Uniform Rules may be changed only upon the approval of 2/3 membership of each body – a much higher standard. The Uniform Rules covers items such as meeting notices, committee meetings, and executive sessions. (p. 2, lines 17-19).

Places in statute that the Open Meetings Guidelines set forth in statute are the ones to be used by the Committee when considering complaints filed regarding open meetings (page 2, lines 20-21).

Defines: "legislative body" (p. 2, line 22, page 3, line 14). Establishes that certain committees or groups are not a "legislative body" and thus not subject to the Open Meetings Guidelines.

Section 2: Amends current statutes to provide that a person hired by the Committee to provide legal advice about a case may not be the same person who prosecutes the case on behalf of the committee.

Section 3: Amends current law to require immediate dismissal of any case where the subject of the complaint has not waived confidentiality and the filer of the complaint makes the complaint and its contents public.

Section 4: Repeals the Guidelines section of the law adopted in 1994 (see attached).

Section 10, Chapter 69, SLA 1994

* Sec. 10. OPEN MEETINGS GUIDELINES. (a) Notwithstanding AS 24.60.037 , adoption of initial guidelines applying the open meetings principles to the legislature are subject to approval by the legislature as provided under this subsection. By January 16, 1995, the Select Committee on Legislative Ethics shall submit proposed initial guidelines to the legislature. The legislature shall vote on a concurrent resolution approving the guidelines by the 45th day of the legislative session. If the guidelines are voted on but not approved, the committee shall submit new proposed guidelines within 60 days after the resolution was voted on by the legislature. If the new guidelines are voted on but not approved, the Select Committee on Legislative Ethics shall continue to submit proposed guidelines in accordance with the procedure set out in this subsection until the initial guidelines are approved.

(b) There is established an Open Meetings Advisory Committee consisting of two senators appointed by the president of the senate, two representatives appointed by the speaker of the house of representatives, and two public members appointed from the Select Committee on Legislative Ethics by its chair. The advisory committee shall consider application of open meetings principles to the legislature and submit a report of its recommended guidelines to the Select Committee on Legislative Ethics by December 1, 1994. The advisory committee is terminated upon adoption of the guidelines by the legislature.

Sec. 24.60.037. Open meetings principles and guidelines.

Legislators shall abide by open meetings principles. The committee shall develop guidelines for the application of principles of open meetings of governmental bodies to the legislature. The guidelines must permit closed caucuses and private, informal meetings or conversations between legislators in which political strategy is discussed. In a proceeding under AS 24.60.170 in which a violation of this section is alleged, if the committee finds that a person acted within the adopted guidelines, the committee shall dismiss the complaint as to that violation.

(§ 4 ch 127 SLA 1992; am § 1 ch 69 SLA 1994)

Cross references. For provisions related to initial guidelines and legislative approval, see § 10, ch. 69, SLA 1994 in the Temporary and Special Acts.

January 13, 2004

History of Open Meetings Guidelines for the legislature: Since 1994

The history of action on the guidelines during the 19th Legislature is as follows:

Based on the requirements set out in the Open Meeting Law (AS 44.62, amended 1994) the committee adopted proposed open meetings guidelines and submitted them to the legislature on January 15, 1995. The guidelines were published in the Joint Journal January 20, 1995. The committee later adopted and submitted Revised Proposed Guidelines, published in the Joint Journal February 21, 1995. The committee requested Senate Rules to introduce a resolution approving the revised guidelines. Senate Rules introduced SCR 8.

On February 28, 1995 the Senate passed a version of the resolution (See CSSCR 8(RLS)) that approved the revised guidelines, in part, but placed these specific limitations on its approval; the presiding officer of each body would be the final arbiter on any point of order and the terms "Go Between or Serial Meetings" must be defined before affirmation. Further, CSSCR 8(RLS) did not affirm the parts of the guidelines that address "Meetings Not Otherwise Described", political strategy sessions and non-legislative organizations.

On March 1, 1995 the House amended the resolution and approved the revised guidelines without limitation (CSSCR 8(RLS) am H). The Senate declined to concur in the House-passed version of the resolution.

A Conference Committee was established in 1996, comprised of Senators Rieger, Frank, Donley and Representatives Davis, Porter and Mackie. The Conference Committee issued a report, which passed the Senate 18 to 1 on May 4, 1996. The House read over the report and placed it under Unfinished Business. The House did not bring the report to the floor prior to the close of the regular session.

The Ethics Committee has proposed substantially the same guidelines to each legislature from 1995 through 2000. The committee then met several times in 2000 and 2001 to draft new proposed Open Meetings guidelines. The Ethics Committee adopted the guidelines, by a 6-3 vote on March 12, 2001. The committee then forwarded a request to the Senate and House Rules committees to introduce a concurrent resolution and to spread the Proposed Open Meetings Guidelines in the legislative journal. SCR 9 was introduced on April 11, 2001 and HCR 16 was introduced on April 6, 2001. SCR 9 was referred to the State Affairs and Judiciary committees but never heard. HCR 16 was referred to State Affairs, Judiciary and Finance committees. HCR 9 was heard in State Affairs on April 16, 2002. Ethics Committee Member Shirley McCoy gave testimony. No action was taken.

The Ethics Committee adopted the same guidelines on August 28, 2003 and forwarded a request to the Senate President and Speaker of the House in January 2004 to refer the guidelines to the appropriate committee for introduction.

OPEN MEETINGS LAW

AS 24.60.037

In 1993, the legislature enacted AS 24.60.037, requiring legislators to abide by Open Meeting Principles. It reads:

Sec. 1. AS 24.60.037 OPEN MEETINGS LAW. Legislators shall abide by open meetings principles. The committee shall develop guidelines for the application of principles of open meetings of governmental bodies to the legislature. The guidelines must permit closed caucuses and private, informal meetings or conversations between legislators in which political strategy is discussed. In a proceeding under AS 24.60.170 in which a violation of this section is alleged, if the committee finds that a person acted within the adopted guidelines, the committee shall dismiss the complaint as to that violation.

In the same Act, the legislature gave additional directions as to the adoption of the initial Open Meetings Guidelines. Section 10, chapter 679, SLA 1994 reads as follows:

Sec. 10. OPEN MEETINGS GUIDELINES. (a) Notwithstanding AS 24.60.037, adoption of initial guidelines applying the open meetings principles to the legislature are subject to approval by the legislature as provided under this subsection. By January 16, 1995, the Select Committee on Legislative Ethics shall submit proposed initial guidelines to the legislature. The Legislature shall vote on a concurrent resolution approving the guidelines by the 45th day of the legislative session. If the guidelines are voted on but not approved, the committee shall submit new proposed guidelines within 60 days after the resolution was voted on by the legislature. If the new guidelines are voted on but not approved, the Select Committee on Legislative Ethics shall continue to submit proposed guidelines in accordance with the procedure set out in this subsection until the initial guidelines are approved.

(b) There is established an Open Meetings Advisory Committee consisting of two senators appointed by the president of the senate, two representatives appointed by the speaker of the house of representative, and two public members appointed from the Select Committee on Legislative Ethics by its chair. The advisory committee shall consider application of open meetings principles to the legislature and submit a report of its recommended guidelines to the Select Committee on Legislative Ethics by December 1, 1994. The advisory committee is terminated upon adoption of the guidelines by the legislature.

The statute requires legislators to abide by Open Meeting Principles, whether or not guidelines have been approved under sec. 10. The committee submitted proposed guidelines to the 19th, 20th, 21st and 22nd legislatures for review but thus far, the guidelines have not received legislative approval. The law appears to require the committee to continue to submit proposed guidelines until guidelines are approved.

Open Meetings Guidelines for the Alaska State Legislature
as proposed by the
Select Committee on Legislative Ethics

August 28, 2003

Sec. 1. General Rule. Meetings of a legislative body shall be open to the public.

Sec. 2. Meetings. (a) For purposes of this guideline, a meeting occurs when a majority of the members of the legislative body is present and action is taken. A legislative body takes action when members of the body vote on or agree upon a course of action on a motion, bill, resolution, rule, or regulation.

(b) In this guideline, a legislative body

(1) includes

(A) the Senate;

(B) the House of Representatives;

(C) the Senate and the House of Representatives meeting in joint session;

(D) a committee of the legislature other than the Committee on Committees, including a standing committee, special committee, joint committee, conference or free conference committee, committee of the whole, or permanent interim committee;

(E) a delegation or caucus of legislators representing a geographic area or political subdivision;

(F) a legislative commission, task force, or other group; or

(G) a caucus of members of one or more of the bodies set out in

(A) - (F) of this paragraph; but

(2) does not include a Committee on Committees.

Sec. 3. Executive sessions. (a) A legislative body may call an executive session at which members of the public may be excluded.

(b) If permitted subjects are to be discussed at a meeting in executive session, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that are listed in (c) of this section shall be determined by a majority vote of the legislative body. The motion to convene in executive session must clearly and with specificity describe the subject of the proposed executive session without defeating the purpose of addressing the subject in private. Subjects may not be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. Except as otherwise provided in this section, a legislative body may not make a decision in executive session.

(c) An executive session may be held for discussion of a matter

(1) the immediate knowledge of which would adversely affect the finances of a government unit;

(2) that tends to prejudice the reputation and character of a person;

(3) that is, by law, required to be confidential;

(4) involving consideration of government records that by law are not subject to public disclosure;

(5) that is confidential as a privileged communication between an attorney and client under rules adopted by the supreme court; a legislative body may, in executive session, decide on and give instructions to an attorney representing the legislative body or the state on issues arising out of or related to the representation.

Sec. 4. Closed meetings for political strategy. Legislators may meet in closed caucus or in a private, informal meeting to discuss political strategy but those meetings are exempt from the requirements adopted under sec. 5(b) of these Guidelines. This section does not permit a joint meeting of the House and Senate majority caucuses or of the House and Senate minority caucuses to be conducted in a closed session.

Sec. 5. Uniform Rules. (a) The legislature shall adopt Uniform Rules to implement this guideline.

(b) The Uniform Rules of the Legislature shall provide for posting notices of meetings, recording proceedings, and making the recordings and votes available to the public. The Uniform Rules may set different notice requirements for meetings of

- (1) permanent interim committees of the legislature;
- (2) standing, special, or joint committees held during
 - (A) a regular legislative session, including different notice requirements for meetings held in the first week of the session or after the date a conference committee has been chosen to consider the operating budget;
 - (B) a special legislative session; and
 - (C) the interim between legislative sessions.

Note: These are the same guidelines as proposed by the Committee on March 12, 2001.

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ERIN B. MARSTON
BRENT R. COLE
COLLEEN J. MOORE

February 12, 2004

Skip Cook, Chair
Select Committee on Legislative Ethics
P.O. Box 101468
Anchorage, Alaska 99510-1468

Re: AS 24.60.037 Open Meetings Law
Our File No. 656.005

Dear Mr. Cook:

The Select Committee on Legislative Ethics ("Committee") has asked for a legal opinion concerning how to proceed if and when it receives a complaint based on an alleged violation of open meetings principles and guidelines as set forth in AS 24.60.037. In your memo dated January 13, 2004, you asked four specific questions, each of which will be addressed in detail below.

In summary, however, it is our opinion that the Committee certainly has jurisdiction to hear any complaint alleging a violation of AS 24.60.037. In the absence of legislative approval of the Committee's proposed guidelines for compliance with open meetings principles, the Committee has the responsibility to determine what criteria to apply in order to determine whether there has been a violation, including consideration of the proposed guidelines, open meetings statutes that apply to other governmental entities, and any other treatises or materials that help the Committee define appropriate legislative conduct regarding open meetings. In other words, there are no definitive rules or statutes that guide the Committee in this area, and the Committee must determine the scope of the open meetings principles that apply to the Legislature and whether any specific conduct violates those principles.

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1. **What Is The Legal Status Of The Guidelines That The Committee Has Developed Pursuant To AS 24.60.037 If They Have Not Been Adopted By The Legislature?**

The short answer to this question is that the guidelines that have been developed and submitted to the Legislature for approval have no legal status. As you know, AS 24.60.037 provides that “[t]he committee shall develop guidelines for the application of principles of open meetings of governmental bodies to the legislature.” This statute goes on to require that “[i]n a proceeding under AS 24.60.170 in which a violation of this section is alleged, if the committee finds that a person acted within the adopted guidelines, the committee shall dismiss the complaint as to that violation.” (Emphasis added.) However, there is also a provision of law that states, in pertinent part:

Notwithstanding AS 24.60.037, adoption of initial guidelines applying the open meetings principles to the legislature are [sic] subject to approval by the legislature as provided under this subsection.

1994 Temporary and Special Acts, Ch. 69, Sec. 10 (herein referred to as “Section 10”) (emphasis added). Although this provision is found in the Temporary and Special Acts, it is nevertheless a recognized statute that has the authority of law and must be followed like any other statute. See AS 01.05.026 and .031.¹

Section 10 is generally clear in its scope. It requires that the Legislature approve the guidelines proposed by the Committee before they are officially adopted (become effective). It also sets forth the general procedure for such approval. Although there has been some question in the past about how to proceed when the Legislature failed to vote on a concurrent resolution concerning proposed guidelines (see Memorandum from Teresa B. Cramer to Joe Donahue, Chair, dated 8.23.95), it appears that the Committee has taken the position that anything short of a concurrently passed resolution is a “failure to approve” the guidelines, requiring continued submission of proposed guidelines for approval. Accordingly, the Committee submitted proposed guidelines to the 19th, 20th, 21st, and 22nd Legislatures for approval, each without success.

¹ It is simply a matter of procedure that any section of the session laws that is temporary in nature is not included in the general statutory compilation and is placed, instead, into the Temporary and Special Acts. Because Section 10 applies only until the guidelines developed by the Committee are approved by the Legislature, it was not given a statutory number, but simply included in the Temporary and Special Acts section of the law.

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Given that the Legislature has failed to approve the guidelines proposed by the Committee, the guidelines have no legal effect. However, that does not mean that the guidelines are useless. As will be discussed more fully in response to Questions 3 and 4, below, they may be used by the committee in its determination of any complaint that may be brought alleging a violation of AS 24.60.037, but they cannot be used as a basis to dismiss a complaint as contemplated in AS 24.60.037. }

2. What Is The Committee's Jurisdiction, If Any, Over A Complaint Filed Under AS 24.60.037?

The Committee clearly has statutory jurisdiction to hear and decide a complaint alleging a violation of AS 24.60.037. Alaska Statute 24.60.010(8) provides that "the purpose of this chapter is to . . . establish the Select Committee on Legislative Ethics to consider alleged violations of this chapter and to render advisory opinions to persons affected by this chapter." (Emphasis added.) Further, AS 24.60.170 provides that the "committee shall consider a complaint alleging a violation of this chapter if the alleged violation occurred within two years . . ." (Emphasis added.) The Committee has the jurisdiction to hear an alleged violation of any provision contained in Chapter 60, including 24.60.037, so long as it meets the time requirements of the statute.

3. The Legislature Is Under A Legal Obligation Pursuant To AS 24.60.037 To Comply With Open Meetings Principles. What Are These "Principles?"

Although this was the last question asked by the Committee, we address it here because it requires a review of the purposes of open meeting laws, which is a preliminary step towards consideration of what criteria should be used to decide the merits of any complaint alleging a violation of those laws.

It is generally accepted that the purposes of open meeting laws are to allow the general public to hear and observe the process by which government decides how to act, in order to ensure a fair and unbiased process.

Open decision-making is regarded as an essential aspect of the democratic process. It is believed that public exposure deters official misconduct, makes government more responsive to its constituency, allows for greater public provision of information to the decision-maker, creates greater public

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acceptance of government action, and promotes accurate reporting of governmental processes.

Alaska Community Colleges' Federation of Teachers v. University of Alaska, 677 P.2d 886, 891 (Alaska 1984). Among other things, the open meetings laws further the policy that the government should not dictate what the people should know, and they protect the peoples' right to remain informed in order to retain control over their government. See AS 44.62.312(a)(4) and (5). The Legislature has specifically stated Alaska's policy regarding open meetings in AS 44.62.312, which provides:

- (a) it is the policy of the state that
 - (1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;
 - (2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;
 - (3) the people of this state do not yield their sovereignty to the agencies that serve them;
 - (4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;
 - (5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created;
 - (6) the use of teleconferencing under this chapter is for the convenience of the parties, the public, and the governmental units conducting the meetings.

- (b) AS 44.62.310(c) and (d) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and to avoid exemptions from open meeting requirements and unnecessary executive sessions.

The Committee can be guided by the Legislature's own statement of policy contained in AS 44.62.312 in determining by analogy what the "principles of open meetings" are by which the Legislature must abide. In fact, it should be noted that subsections .312(a)(3), (4), and (5) are general statements of policy, which are not limited in their application only to the entities covered by AS 44.62.310 (which entities do not include the Legislature). Further, through its pronouncement in AS 24.60.037, the Legislature has indicated that it has a self-

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imposed duty to abide by "the principles of open meetings." which it certainly was aware are enumerated in statutes such as AS 44.62.310 and .312.

4. **If The Committee Has Jurisdiction To Hear A Complaint, What Criteria Does The Committee Rely Upon To Determine The Merits Of A Complaint Alleging A Violation Of The Open Meetings Law?**

It is the ultimate responsibility and duty of the Committee to interpret the provisions of the Legislative Ethics Act, and this office cannot provide a specific interpretation upon which the Committee can rely. However, there are certain matters that the Committee should consider in hearing any complaint alleging a violation of the open meetings provisions of AS 24.60.037, including the policies discussed above.

As mentioned earlier, the Committee has already developed/certain guidelines for applying the principles of open meetings to the Legislature, which have not been approved by the Legislature. Nevertheless, those guidelines embody the Committee's interpretation of how open meetings principles should apply to the Legislature, and provide guidelines to the Committee (if not the Legislature) as to how to determine whether there has been a violation of AS 24.60.037.

If the guidelines are ever approved by the Legislature, then the statute provides that the Committee may dismiss any complaint that alleges conduct that falls within the guidelines. However, since the Legislature has not approved them, the Committee may not simply dismiss any complaint alleging conduct that falls within the guidelines, but instead must follow its normal procedure and make an initial determination as to whether the allegations, if true, constitute a violation of the ethics laws. In making this determination, the Committee may consider its own previous interpretation of the law that is embodied in the guidelines. However, the Committee may not give the guidelines the effect of law and must recognize that neither it nor the legislators are bound by the guidelines. In other words, the Committee's decision in any particular case may actually conflict with the guidelines, which is a permissible result since the guidelines do not have the effect of law. If the Committee finds that the allegations, if true, would constitute a violation, then the Committee must investigate the complaint. AS 24.60.170. If the allegations, if true, would not constitute a violation, or if there is another basis for dismissal, then the Committee may dismiss the complaint upon the appropriate findings. Id.

As it undoubtedly did in developing the guidelines themselves, the Committee should also consider the provisions of the open meetings statute that apply to general governmental

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bodies. See AS 44.62.310. While that statute itself may not be constitutionally or judicially applied to the Legislature, (see Abood v. League of Women Voters, 743 P.2d 333 (Alaska 1987) and AS 44.62.310(h)(3)), the principles of that statute may be applied by the Committee if it finds that they are appropriate to a particular case. Similarly, the Committee is free to modify, change, or disregard the principles found in AS 44.62.310 if it finds that it is appropriate in determining what principles govern the Legislature's conduct with respect to open meetings. As with the Committee guidelines, the Committee's decision in any particular case may actually conflict with AS 44.62.310, which is a permissible result because the Committee may find that those provisions are not appropriately applied to the Legislature. -?


The Committee should also consider the statement of AS 24.60.010(2), that "a fair and open government requires that legislators and legislative employees conduct the public's business in a manner that preserves the integrity of the legislative process . . ." It may also consider any other law or treatise on open meetings in determining what principles and criteria to apply to Alaska legislators in order to determine whether a legislator has failed to "abide by open meetings principles."

In short, it is within the Committee's sole discretion to determine what the "open meeting principles" are that apply to the Alaska Legislature, and whether, based upon the individual facts of any particular case, alleged conduct violates those principles. Obviously, the Committee may not act arbitrarily or capriciously, or in a discriminatory manner. Barring such extreme conduct, and until the Legislature approves the guidelines proposed by the Committee, it is our opinion that the Committee may develop and rely on any criteria that it determines appropriate to decide the merits of a complaint alleging a violation of the open meetings law.

If you have any questions, please feel free to call to discuss them. I hope this answers your questions.

Very truly yours,

MARSTON & COLE, PC



Brent R. Cole

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MEMORANDUM

March 8, 2004

SUBJECT: Open meetings principles and political strategy discussions
(Work Order No. 23-LS1823)

TO: Representative Norman Rokeberg, Chair, House Rules Committee
Attn: Janet S. Seitz

FROM: Tamara Brandt Cook
Director *TBC*

(1) For purposes of AS 24.60.037 what are "open meetings principles"?
The term "open meetings principles" is not defined. Therefore, it is up to the Select Committee on Legislative Ethics to determine the scope of open meetings requirements that apply to the legislature, probably in the context of specific fact situations that come up in requests for advisory opinions (AS 24.60.160) or as proceedings before the Committee involving alleged violations of those principles (AS 24.60.170).

AS 24.60.037 as enacted in 1992 required legislators to "abide by AS 44.62.310 - 44.62.312 (open meetings law)." In 1994, in HB 254, which substantially revised the open meetings law (AS 44.62.310), the language in AS 24.60.037 was also amended to delete the reference to the open meetings law and substitute general language requiring legislators to "abide by open meetings principles." The versions of HB 254 that were adopted by House Committees and the version that passed the House did not include any amendment to AS 24.60.037. It was not until the Second Senate Judiciary Committee Substitute that the first two sentences of AS 24.60.037 were proposed for amendment as follows, leaving the rest of the language untouched:

Legislators shall conduct meetings that are open to the public [ABIDE BY AS 44.62.310 - 44.62.312 (OPEN MEETINGS LAW)]. The committee shall develop guidelines for the conduct of open meetings adapted to the special needs of [APPLICATION OF THIS SECTION TO] the legislature.

However, the bill was amended on the floor of the Senate to remove the change to AS 24.60.037. The existing language, with the "open meetings principles" was added as compromise language by the Conference Committee. I have checked the committee file on CCS HB 254, and it is sparse. However, the notes indicate that at least some of the conferees wanted "the legislature brought into the open meetings Act" while others were

Representative Norman Rokeberg
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apparently concerned that AS 44.62.310 might be too rigid in its details to sensibly apply to the legislature.

(2) How are legislators involved in closed caucuses and conversations involving political strategy to be protected from ethics complaints?

AS 24.60.037 already offers protection in those situations: "The guidelines must permit closed caucuses and private, informal meetings or conversations between legislators in which political strategy is discussed." Again, there is no definition of "political strategy" so it will be up to the Select Committee on Legislative Ethics to determine in any fact situation whether the matters discussed in a closed situation amount to "political strategy." Here are the four possible ways to provide for additional protection that occur to me:

(1) Simply refrain from attending any closed caucus or other meeting and, thereby, avoid even a frivolous complaint to the ethics committee;

(2) Request an Advisory Opinion as to each precise issue that is proposed to be discussed in a closed meeting before the discussion is held. Note that AS 24.60.160(b) provides: "An opinion issued under this section is binding on the committee in any subsequent proceedings concerning the facts and circumstances of the particular case unless material facts were omitted or misstated in the request for the advisory opinion."

(3) Amend AS 24.60.037 to define "political strategy" or, better yet, to specifically list those subjects that may be discussed and actions that may be taken at a closed meeting. If the list gets too long, list the subjects that may not be discussed and actions that may not be taken.

(4) Amend AS 24.60.037 to exempt caucuses from application of that section on the ground that a caucus, like a political party, is a private rather than a public organization. This conforms to the holding of the Alaska Supreme Court decided under the open meetings law which, at that time, applied to "all meetings of a legislative body...of the state." The court took the position that caucuses are private, not public, organizations and stated that the "statute has no application to private caucuses..." (Malone v. Meekins, 650 P.2d 351 (1982))

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MEMORANDUM

March 4, 2004

SUBJECT: Open meetings guidelines applicable to the legislature
(Work Order No. 23-LS1825)

TO: Representative Norman Rokeberg, Chair, House Rules Committee
Attn: Janet S. Seitz

FROM: Tamara Brandt Cook
Director TBC

You have some questions regarding the open meetings guidelines required under AS 24.60.037. I think the answers to those questions will be more comprehensible if I first set out the statutory history of AS 24.60.037.

AS 24.60.037 was first enacted in 1992 as part of a bill revising laws relating to legislative ethics. It originally read:

OPEN MEETINGS LAW. Legislators shall abide by AS 44.62.310 - 44.62.312 (open meetings law). The committee shall develop guidelines for the application of this section to the legislature. The guidelines must permit closed caucuses and private, informal meetings or conversations between legislators in which political strategy is discussed. In a proceeding under AS 24.60.170 in which a violation of this section is alleged, if the committee finds that a person acted within the adopted guidelines, the committee shall dismiss the complaint as to that violation.

In 1992, when AS 24.60.037 was enacted, the open meetings law (AS 44.62.310) applied to the legislative branch. However, the Alaska Supreme Court held on separation of powers grounds that alleged violations of that statute on the part of the legislature are nonjusticiable. (Abood v. League of Women Voters of Alaska, 743 P.2d 333 (1987), copy previously provided to you) AS 24.60.037, essentially, retained application of the open meetings law to the legislature, but, since the court had refused to do so, made enforcement of that law the responsibility of a legislative entity, the Select Committee on Legislative Ethics. Note that the Select Committee was charged with developing guidelines for applying AS 44.62.310 to the legislature. These guidelines were not subject to legislative review or approval.

In chapter 69, SLA 1994 the open meetings law was substantially amended. Application of that law to the legislative branch was deleted. In the same legislation AS 24.60.037

Representative Norman Rokeberg
Chair, House Rules Committee
March 4, 2004
Page 2

was amended to delete reference to AS 44.62.310 - 44.62.312 and to substitute an undefined reference to "open meetings principles." The language in AS 24.60.037 regarding guidelines was not changed, except that the second sentence was altered as follows: "The committee shall develop guidelines for the application of principles of open meetings of governmental bodies [THIS SECTION] to the legislature." In addition, a new temporary law section was included as bill sec. 10:

Sec. 10. OPEN MEETINGS GUIDELINES. (a) Notwithstanding AS 24.60.037, adoption of initial guidelines applying the open meetings principles to the legislature are subject to approval by the legislature as provided under this subsection. By January 16, 1995, the Select Committee on Legislative Ethics shall submit proposed initial guidelines to the legislature. The legislature shall vote on a concurrent resolution approving the guidelines by the 45th day of the legislative session. If the guidelines are voted on but not approved, the committee shall submit new proposed guidelines within 60 days after the resolution was voted on by the legislature. If the new guidelines are voted on but not approved, the Select Committee on Legislative Ethics shall continue to submit proposed guidelines in accordance with the procedure set out in this subsection until the initial guidelines are approved.

(b) There is established an Open Meetings Advisory Committee consisting of two senators appointed by the president of the senate, two representatives appointed by the speaker of the house of representatives, and two public members appointed from the Select Committee of Legislative Ethics by its chair. The advisory committee shall consider application of open meetings principles to the legislature and submit a report of its recommended guidelines to the Select Committee on Legislative Ethics by December 1, 1994. The advisory committee is terminated upon adoption of the guidelines by the legislature.

Proposed guidelines were duly submitted to the legislature by the Select Committee, presumably based on the advice from the legislative advisory committee. The proposed guidelines were published in Senate and House Joint Journal Supplement No. 4 on January 20, 1995. The Select Committee later submitted revised proposed guidelines which were published in Joint Journal Supplement No. 9 on February 21, 1995. Eventually the House adopted a concurrent resolution approving the initial guidelines as revised, but the Senate never did. As you know, initial guidelines have never been approved by the legislature.

Now for your questions.

(1) What are the procedures for ratifying open meetings guidelines? Under section 10, chapter 69, SLA 1994 approval of initial guidelines is accomplished by adoption of a concurrent resolution.

Representative Norman Rokeberg
Chair, House Rules Committee
March 4, 2004
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(2) May the legislature amend the guidelines? There is no provision for amendment of the guidelines submitted by the Select Committee, nor is there any provision for partial approval of those guidelines. Instead, section 10 requires the Select Committee to submit new guidelines "until the initial guidelines are approved." Nonetheless, on February 29, 1995, when the first (revised) guidelines were under consideration, the Senate passed a resolution that approved the revised guidelines in part, but placed specific limitations on its approval. (CSSCR 8(RLS)) That version of the resolution was not adopted by the House.

(3) After initial guidelines are approved by the legislature, are changes to those guidelines also subject to legislative approval? No. Only "initial" guidelines are subject to legislative approval and the Select Committee is only required to submit proposed guidelines "until the initial guidelines are approved." After that point, AS 24.60.037 authorizes the Select Committee to "develop guidelines" and there is no limitation under that statute to the development process, so, presumably, those guidelines may be revised by the Select Committee from time to time without legislative involvement. This is not an odd result in view of the fact that the duty of the Select Committee to develop open meetings guidelines predates the temporary law provision requiring legislative approval of initial guidelines. If the legislature had wanted to retain permanent oversight of the guidelines, AS 24.60.037 could have been amended to provide for that. Instead the legislature chose to confine its review to "initial" guidelines and used a temporary law to accomplish that.

(4) The current proposed initial open meetings guidelines prohibit closed meetings of joint House and Senate caucuses. What is the basis for this? I have no idea. AS 24.60.037 states: "The guidelines must permit closed caucuses and private, informal meetings or conversations between legislators in which political strategy is discussed." The statute does not address the question of joint meetings by two caucuses, so it cannot be said that the Select Committee is precluded from prohibiting closed joint caucus meetings in its proposed guidelines so long as the opportunity for closed meetings to discuss political strategy is otherwise provided to caucuses under the guidelines.

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MEMORANDUM

March 3, 2004

SUBJECT: Actions against legislators for violations of open meetings requirements (Work Order No. 23-LS1824)

TO: Representative Norman Rokeberg, Chair, House Rules Committee
Attn: Janet S. Seitz

FROM: Tamara Brandt Cook
Director *TBC*

Legislators are directed to "abide by open meetings principles" under AS 24.60.037. You ask whether failure by a legislator to do so will give rise to a private cause of action against that legislator. The Select Committee on Legislative Ethics, senate subcommittee or house subcommittee as appropriate, has jurisdiction to consider alleged violations of AS 24.60.037. (AS 24.60.140) Any person may initiate a complaint with the Select Committee alleging a violation. (AS 24.60.170) However, except for this process before the Select Committee, failure by a legislator to abide by open meetings principles does not give rise to a private cause of action that can be addressed by a court.

The Supreme Court of Alaska has considered application of the open meetings statute (AS 44.62.310) to legislators in two cases, Malone v. Meekins, 650 P.2d 351 (1982) involving the removal and replacement of the Speaker of the House, and Abood v. League of Women Voters of Alaska, 743 P.2d 333 (1987) involving closed meetings of the House and Senate Finance Committees engaged in budget deliberations. In the Malone case the court held questions relating to the internal organization of one of the houses to be nonjusticiable. Furthermore, the court noted, the open meetings statute itself had an express exemption to its applicability for organizational votes. In the Abood case the League asserted that legislators violated both the open meetings statute and the Uniform Rules in holding closed Finance Committee sessions. Again, the court held those claims to be nonjusticiable on the basis of separation of powers between the three branches of government. The court concluded that, because the state constitution grants to the legislature the power to adopt its own rules of proceedings, it is not a function of the court to interpret or enforce those rules, except to the extent that those rules violate constitutional rights. The court further held that there is no constitutional right of public access to a legislative meeting, reversing the Superior Court on that point. A copy of the Abood case is attached for your information. AS 44.62.310, the open meetings statute, has since been amended and no longer applies to the legislature.

Representative Norman Rokeberg
March 3, 2004
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In conclusion, it appears highly unlikely that a court would agree to hear and decide an allegation against a legislator involving an open meetings violation. Furthermore, even if an extraordinary circumstance should arise under which the court is willing to act, the legislator would most likely incur no personal liability for the open meetings violation because of legislative immunity for official acts accorded under common law and the state constitution. (Art. II, sec. 6, Constitution of the State of Alaska)

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Enclosure



REPRESENTATIVE ERIC CROFT

November 25, 2003

Mr. Herman G. Walker
C/O Select Committee on Legislative Ethics
P.O. Box 101468
Anchorage AK 99510-1468

Dr. Mr. Walker,

Belated congratulations on your appointment and particularly your confirmation to the Select Committee on Legislative Ethics.

Your Committee has a vital role. For many years, the Alaska Legislature ignored laws on governmental ethics and open meetings. Courts, asked to enforce the law against the Legislature, held that the doctrine of separation of powers made the question non-justiciable. Abood v. League of Women Voters, 743 P.2d 333 (Alaska 1987). While the legislative action in question could be held illegal, there was no effective remedy. Your Committee was created to provide a venue for holding the legislature accountable for violations of the laws on governmental ethics and open meetings. Because the Select Committee on Legislative Ethics is within the legislative branch, the separation of powers argument is not available to those that seek to avoid the law. The Committee has done an excellent job of making the legislature accountable for violations of the ethics laws. Unfortunately, due to a misconception of the Committee's jurisdiction, it has not done as well policing the violations of the open meetings laws.

For your convenience, I have attached an opinion from the Legislative Legal Department recognizing the Committee's jurisdiction over open meetings violations, copies of the relevant statutory and temporary law provisions, and a copy of the latest proposed open meetings guidelines from the Committee.

The Committee is required to consider allegations of open meetings violations. The enabling statutes provide that the Committee "shall consider a complaint alleging a violation of [Chapter 60]." AS 24.60.170(a). The open meetings requirements are clearly part of Chapter 60.

"Legislators shall abide by open meetings principles. The committee shall develop guidelines for the application of principles of open meetings of governmental bodies to the legislature. The guidelines must permit closed caucuses and private, informal meetings or conversations between legislators in which political strategy is discussed." AS 24.60.037

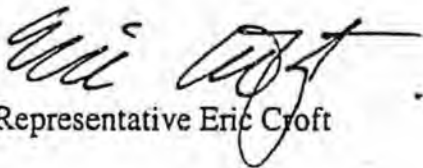
The statute makes a distinction between abiding by open meetings principles, which the Legislature is required to do without qualification, and the adoption of the guidelines, which may happen at a later date. In fact, the temporary law passed as part of the overall ethics package contemplates that the Legislature would be slow to adopt guidelines and establishes a process of repeated submittals of guidelines to keep the issue before the Legislature.

The law could have read that the Legislature would be governed by the guidelines when adopted. But it didn't. It placed the Legislature under the jurisdiction of the Committee and required that the Legislature abide by open meetings principles. The guidelines are treated in the statute as a separate issue. While it would certainly be helpful for the Legislature to adopt guidelines, and they should have done this long ago, it is not necessary for the Committee to fulfill its statutory mandate to consider open meetings violations and hold the Legislature to open meetings principles. Open meetings principles have been well-established in other jurisdictions and in scholarly publications.

In summary, the Legislature's inaction does not divest the Committee of its mandate or its jurisdiction over open meetings. I would like to know whether the Committee agrees with this position and will determine open meetings complaints on the merits.

Thank you for your time. Please feel free to contact me with any questions or for further information.

Sincerely,



Representative Eric Croft

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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MEMORANDUM

November 21, 2003

SUBJECT: Application of open meetings requirements to the legislature in absence of guidelines (Work Order No. 23-LS1413)

TO: Representative Eric Croft
Attn: Peggy Wilcox

FROM: Tamara Brandt Cook
Director TBC

You have asked for an explanation of the application of the open meetings requirement to the legislature. This is a subject with a history. The open meetings statute (AS 44.62.310) applied to the legislature as well as other governmental bodies. The court, however, held that alleged violations of the open meetings statute by the legislature were nonjusticiable. Like a Uniform Rule, the statute was deemed by the court to establish a rule of procedure concerning how the legislature conducted its business; and failure to follow a rule of procedure is not a subject for judicial inquiry under the separation of powers doctrine. (Aboud v. League of Women Voters, 743 P.2d 333 (Alaska 1987)) In 1994 the open meetings statute was amended so that it no longer applies to the court system or the legislative branch of government. (AS 44.62.310(h)(3)) At the same time AS 24.60.037 was amended to read:

Sec. 24.60.037. OPEN MEETINGS LAW. Legislators shall abide by open meetings principles. The committee shall develop guidelines for the application of principles of open meetings of governmental bodies to the legislature. The guidelines must permit closed caucuses and private, informal meetings or conversations between legislators in which political strategy is discussed. In a proceeding under AS 24.60.170 in which a violation of this section is alleged, if the committee finds that a person acted within the adopted guidelines, the committee shall dismiss the complaint as to that violation.

Under AS 24.60.170(a) the Select Committee on Legislative Ethics is charged with hearing a complaint alleging a violation of AS 24.60, including, presumably, a violation of AS 24.60.037. So, a legislator could face an ethics complaint alleging failure to "abide by open meetings principles." The Select Committee is required under AS 24.60.037 to adopt guidelines regarding open meetings. If a complaint alleging an open meetings violation is filed and if the committee finds that a legislator acted within the guidelines, the complaint is to be dismissed. Note that the guidelines act as a shield to a claim of an

Representative Eric Croft
November 21, 2003
Page 2

open meetings violation. That is to say, if the guidelines are literally followed, the complaint is dismissed regardless of whether the facts of the case otherwise suggest that "open meetings principles" have been offended.

However, the obligation to adopt guidelines is modified under chapter 69, SLA 1994, sec. 10(a) which states in part: "Notwithstanding AS 24.60.037, adoption of initial guidelines applying the open meetings principles to the legislature are subject to approval by the legislature under this subsection." Initial guidelines have never been approved by the legislature. I am not aware that the Select Committee has taken the position that guidelines are in effect. This does not mean that a complaint may not be filed with the Select Committee alleging a violation of AS 24.60.037, but only that there are no guidelines for the committee to rely upon in deciding whether to dismiss the complaint. The committee must decide, based upon the facts of the particular case, whether "open meetings principles" have been violated, as I read the statute, even in the absence of guidelines. This is, after all, what the committee will have to do even when guidelines are in effect if those guidelines do not happen to address a particular situation that comes before the committee.

I base my conclusion upon the fact that AS 24.60.037 directs the Select Committee to prepare guidelines with no requirement for legislative approval of them. It is this aspect of the statute only that is being set aside with respect to the initial guidelines through use of the "Notwithstanding AS 24.60.037" phrase. Nothing in sec. 10(a) specifically sets aside or supercedes the command in the first sentence of AS 24.60.037: "Legislators shall abide by open meetings principles." This brings up the point that the legislature has retained for itself only a small amount of oversight in the implementation of AS 24.60.037. It is "initial guidelines" that are subject to legislative approval under chapter 69, SLA 1994, sec. 10. Subsequent amendments to those guidelines are not specifically subject to legislative approval, though use of the word "initial" strongly suggests that changes to the guidelines are contemplated. Presumably, these changes will be made by the Select Committee under its sole authority to "develop guidelines" contained in AS 24.60.037. Given the fact that the legislature plays a relatively small role in implementing AS 24.60.037, it seems to me to be a stretch to assume that the Select Committee has no jurisdiction at all over open meetings questions until after initial guidelines are adopted.

Despite the foregoing, it is ultimately up to the Select Committee to interpret the requirements of the Legislative Ethics Act and I cannot presume to know how the committee views its responsibilities under AS 24.06.037, if any, in the absence of open meeting guidelines. (See AS 24.60.158)

TBC:med
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Alaska State Legislature

Select Committee on Legislative Ethics

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99510 - 1468

August 11, 2000

Senator Drue Pearce
Senate President
Anch. Legislative Building
Anchorage, AK 99501

Representative Brian Porter
Speaker of the House
Anch. Legislative Building
Anchorage, AK 99501

Dear Senate President Pearce and Speaker of the House Porter;

At the June 22, 2000 meeting of the Ethics Committee, the committee adopted a motion to recommend the Legislature remove the Ethics Committee from its statutory obligation to develop and submit Open Meetings Guidelines. Further, the committee recommends the Legislature establish guidelines in statute, similar to action other states have taken.

The history of action on the Open Meetings guidelines is as follows:

Based on the requirements set out in the Open Meeting Law (AS 44.62, amended 1994) the committee adopted proposed open meetings guidelines and submitted them to the legislature on January 15, 1995. The guidelines were published in the Joint Journal January 20, 1995. After receiving legislative input, the committee later adopted and submitted Revised Proposed Guidelines, published in the Joint Journal February 21, 1995. The committee requested Senate Rules to introduce a resolution approving the revised guidelines. Senate Rules introduced SCR 8.

On February 28, 1995 the Senate passed a version of the resolution (See CSSCR 8(RLS)) that approved the revised guidelines, in part, but placed these specific limitations on its approval; the presiding officer of each body would be the final arbiter on any point of order and the terms "Go Between or Serial Meetings" must be defined before affirmation. Further, CSSCR 8(RLS) did not affirm the parts of the guidelines that address "Meetings Not Otherwise Described", political strategy sessions and non-legislative organizations.

On March 1, 1995 the House amended the resolution and approved the revised guidelines without limitation (CSSCR 8(RLS) am H). The Senate declined to concur in the House-passed version of the resolution.

A Conference Committee was established in 1996, comprised of Senators Rieger, Frank, Donley and Representatives Davis, Porter and Mackie. The Conference Committee issued a report, which passed the Senate 18 to 1 on May 4, 1996. The House read over the report and placed it under Unfinished Business. The House did not bring the report to the floor prior to the close of the regular session.

Since that time, the committee has fulfilled its obligation to resubmit guidelines to each legislature and has annually requested introduction and/or passage of a resolution to adopt the guidelines. Though resolutions have been introduced at the request of the committee, the legislature has not taken action on any resolution since May 1996.

This important issue needs to be resolved. Without resolution, members of the legislature remain under a legal obligation to comply with the general "principles of open meetings" and we, as a committee, are under the burden of interpreting what those principles may be, in the event of a complaint.

I am enclosing a copy of the Minnesota Open Meetings Law for the Legislature, as one example of a state that adopted statutory guidelines for the legislature. I found it to be a straightforward approach to setting open meetings goals.

The committee stands ready to assist the legislature, whether it is hosting a forum on the topic or enforcing laws the legislature establishes. Please do not hesitate to contact me at (907) 452-1855 or Susie Barnett at the Ethics Office, 269-0150.

Thank you for any attention you and your staff give to this issue

Sincerely,

A handwritten signature in cursive script, appearing to read "D. Cook".

Dennis "Skip" Cook, Chair
Select Committee on Legislative Ethics

cc: Members of the Alaska Legislature