

SB

397

23-LS1989\D
Cook
5/6/04

CS FOR SENATE BILL NO. 397()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION**

BY

**Offered:
Referred:**

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to legislative branch ethics, to open meetings guidelines applicable to
2 legislators, to the confidentiality of complaints and proceedings involving alleged
3 violations of AS 24.60, and to hearings on formal charges by the Select Committee on
4 Legislative Ethics or its subcommittees."

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * Section 1. AS 24.60.037 is repealed and reenacted to read:

7 **Sec. 24.60.037. Open meetings guidelines.** (a) A meeting of a legislative
8 body is open to the public in accordance with the open meetings guidelines established
9 in this section. A legislator may not participate in a meeting held in violation of these
10 open meeting guidelines.

11 (b) For purposes of the legislative open meetings guidelines, a meeting occurs
12 when a majority of the members of a legislative body is present and action, including
13 voting, is taken or could be taken, or if a primary purpose of the meeting is the
14 discussion of legislative or state policy. The Uniform Rules of the Alaska State

1 Legislature control the procedure for conducting open and executive sessions of a
2 legislative body.

3 (c) Legislators may meet in a closed caucus or in a private, informal meeting
4 to discuss and deliberate on political strategy. Those meetings are exempt from the
5 legislative open meetings guidelines. For purposes of this subsection, "political
6 strategy" includes organization of the houses, assignment of committee membership,
7 scheduling of bills, vehicles for adoptions, House-Senate relations, other procedural
8 matters, caucus operations, meetings between majority and minority caucus leaders,
9 meetings between majority and minority caucus leaders of both houses, meetings with
10 the governor, deliberations with regard to political strategy, and discussions of issues
11 in the context of political strategy.

12 (d) Notwithstanding AS 24.60.130(h) and (n), if a complaint alleges a
13 violation of this section by a group of legislators that includes a legislative member of
14 the committee and that member's alternate, the complaint shall be treated as two
15 separate complaints with members of the group apportioned between them so that the
16 legislative member is not disqualified from participating in a proceeding involving one
17 of the complaints and the alternate is not disqualified from serving in a proceeding
18 involving the other.

19 (e) The legislative open meetings guidelines are subservient to the Uniform
20 Rules adopted by the Alaska State Legislature. In cases where there are conflicts
21 between these guidelines and the Uniform Rules, the Uniform Rules prevail.

22 (f) The legislative open meetings guidelines are the guidelines that shall be
23 used by the committee when considering complaints filed regarding open meetings.

24 (g) In the legislative open meetings guidelines,

25 (1) "caucus" means a group of legislators who share a political
26 philosophy or who organize as a group with a common goal;

27 (2) "legislative body"

28 (A) includes

29 (i) the Senate;

30 (ii) the House of Representatives;

31 (iii) the Senate and the House of Representatives

1 meeting in joint session;

2 (iv) a committee of the legislature, other than the
3 Committee on Committees, but including a standing committee, special
4 committee, joint committee, conference or free conference committee,
5 committee of the whole, and permanent interim committee;

6 (v) a legislative commission, task force, or other group
7 established by statute or resolution; or

8 (vi) a caucus of members of one or more of the bodies
9 set out in (i) - (v) of this subparagraph;

10 (B) does not include

11 (i) any committee or group of legislators considering
12 only matters involving the organization of a committee or a house of
13 the legislature, including selection of legislative officers;

14 (ii) any committee or group of legislators and the
15 governor or staff of the Office of the Governor;

16 (iii) legislative leadership;

17 (iv) officers of a caucus;

18 (3) "meeting" does not include

19 (A) a gathering of members of a legislative body for primarily
20 ministerial or social purposes; or

21 (B) forums where members of a legislative body have been
22 invited to address a group on legislative issues or concerns.

23 * Sec. 2. AS 24.60.170(j) is amended to read:

24 (j) If the committee has issued a formal charge under (h) of this section, and if
25 the person charged has not admitted the allegations of the charge, the committee shall
26 schedule a hearing on the charge. The committee may appoint an individual to
27 present the case against the person charged if that individual does not provide
28 and has not provided legal advice to the committee except in the course of
29 presenting cases under this subsection. The hearing shall be scheduled for a date
30 more than 20 days after service of the charge on the person charged, unless the person
31 agrees to an earlier hearing date. At the hearing, the person charged shall have the

1 right to appear personally before the committee, to subpoena witnesses and require the
2 production of books or papers relating to the proceedings, to be represented by
3 counsel, and to cross-examine witnesses. A witness shall testify under oath. The
4 committee is not bound by the rules of evidence, but the committee's findings must be
5 based upon clear and convincing evidence. Testimony taken at the hearing shall be
6 recorded, and evidence shall be maintained.

7 * Sec. 3. AS 24.60.170(D) is amended to read:

8 (D) Proceedings of the committee relating to complaints before it are
9 confidential until the committee determines that there is probable cause to believe that
10 a violation of this chapter has occurred. The complaint and all documents produced or
11 disclosed as a result of the committee investigation are confidential and not subject to
12 inspection by the public. If in the course of an investigation or probable cause
13 determination the committee finds evidence of probable criminal activity, the
14 committee shall transmit a statement and factual findings limited to that activity to the
15 appropriate law enforcement agency. If the committee finds evidence of a probable
16 violation of AS 15.13, the committee shall transmit a statement to that effect and
17 factual findings limited to the probable violation to the Alaska Public Offices
18 Commission. All meetings of the committee before the determination of probable
19 cause are closed to the public and to legislators who are not members of the
20 committee. However, the committee may permit the subject of the complaint to attend
21 a meeting other than the deliberations on probable cause. The confidentiality
22 provisions of this subsection may be waived by the subject of the complaint. Except
23 to the extent that the confidentiality provisions are waived by the subject of the
24 complaint, if the committee finds that a complainant has violated any
25 confidentiality provision, the committee shall immediately dismiss the complaint.

26 * Sec. 4. Section 10, ch. 69, SLA 1994, is repealed.



Alaska State Legislature

Please enter into the record my testimony to the STUD
committee name

committee on SB 397, dated 5-7-04
bill/subject

THIS IS THE COVER SHEET
 FOR THE TESTIMONY
 WRITTEN BY ROGER GAY
 FROM THE MATSU.

1 of 2

Signed: _____
Testifier

_____ Representing (Optional)

_____ Mailing Address

_____ Phone Number

I don't see anything in this bill worthy of passage.

Under our system of checks and balances it is important to give the illusion of fairness and impartiality. Having the legislature in total control of its own ethics is like having the fox in charge of the hen house. We have an Ethics Committee that proposes guidelines but the legislature fails to adopt them, and now you want to remove the Committee's ability to even make proposals.

As to Section 3 dealing with confidentiality this bill states that the Proceedings of the committee are confidential and closed to the public. If the proceedings are closed how would a complainant have access to documents produced as a result of the investigation.

If the goal of this bill is to suppress the information contained in the complaint it needs to be more specific because there is a difference between ~~the~~ a copy of the actual complaint and a disclosure of the subject of the complaint.

Finally if you want to stop violations of confidentiality you need to penalize the violator not reward the unethical "subject" of the complaint.

If an actual, serious, breach of ethics has occurred you cannot force yourself to ignore it by immediately dismissing the complaint. You just don't excuse one person's behavior because of the unrelated actions of another. The exercise of one right cannot be used to deny or disparage others retained by the people. Filing a complaint cannot result in a loss of the Freedom of Speech or the Press.

Roger K. Fujita