

HB

235

<TARGET><BILL>HB 235</BILL><SUBJECT>HB
235</SUBJECT><COMM>HJUD28</COMM></TARGET>

ALASKA STATE LEGISLATURE

Session:
State Capitol Building,
Room 424
Juneau, Alaska 99801-2186
Phone (907) 465-4230
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REPRESENTATIVE PETE HIGGINS

March 27, 2014

CSHB235\Y Sectional Analysis

TITLE Change: Added: and establishing sanctions for persons who file false complaints and frivolous, vexatious, or other complaints made in bad faith with the commission.

Section 1. Adds a new paragraph to AS 15.13.045 (e) that proceedings relating to an investigation are confidential until it is determined that a violation of AS 15.13 or AS 39.50 occurred.

Section 2. Amends AS 15.13.380(b) by adding that except to the extent that the confidentiality provisions are waived by the subject the complainant shall keep confidential the fact that they have filed a complaint under this section as well as the contents of the complaint filed. If the complainant violates any provision of the confidentiality the Commission shall immediately dismiss the complaint. However, dismissal of a complaint does not affect the right of the commission or any other person to initiate a complaint based on the same factual information.

Section 3. Is amended adding new subsection (n)

Section 4. Adds a new paragraph to AS 15.380 (l) that the complaint and all documents relating to an investigation are confidential until it is determined that a violation has occurred. Adds a new paragraph (m) that within 30 days after accepting a complaint, the commission shall determine whether the facts substantiate an alleged violation and whether there is credible evidence that further investigation and proceedings are warranted. The commission may delegate the duty to make the determination to an employee of the commission.

Section 5. Amends AS 39.50.055 by Adding a new subsection (d) that all proceedings, all documents relating to an investigation are confidential and closed to the public until it is determined that a violation has occurred. The commission shall determine whether the facts substantiate an alleged violation. Adds a new subsection (e) that within 30 days after accepting a complaint, the commission shall determine whether the facts substantiate an alleged violation and whether there is credible evidence that further investigation and proceedings are warranted. The commission may delegate the duty to make the determination to an employee of the commission.

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REPRESENTATIVE PETE HIGGINS

March 27, 2014

Explanation of changes for CS HB 235\Y

TITLE Change: Added: establishing sanctions for persons who file false complaints and frivolous, vexatious, or other complaints made in bad faith with the commission.

Section 1. Adds a new paragraph to AS 15.13.045 (e) that proceedings relating to an investigation are confidential until it is determined that a violation of AS 15.13 or AS 39.50 occurred.

Section 2. Amends AS 15.13.380(b) by adding that except to the extent that the confidentiality provisions are waived by the subject the complainant shall keep confidential the fact that they have filed a complaint under this section as well as the contents of the complaint filed. If the complainant violates any provision of the confidentiality the Commission shall immediately dismiss the complaint. However, dismissal of a complaint does not affect the right of the commission or any other person to initiate a complaint based on the same factual information.

Section 3. AS 15.13.380(g) Is amended adding new subsection (n) the this section may be appealed to the superior court by either the complainant or respondent within 30 days.

Section 4. AS 15.380 (l) is amended by adding a new paragraph that the complaint and all documents relating to an investigation are confidential until it is determined that a violation has occurred. Adds a new paragraph (m) that within 30 days after accepting a complaint, the commission shall determine whether the facts substantiate an alleged violation and whether there is credible evidence that further investigation and proceedings are warranted. The commission may delegate the duty to make the determination to an employee of the commission.

Section 5. AS 39.50.055 Is amended by adding a new subsection (d) that all proceedings, all documents relating to an investigation are confidential and closed to the public until it is determined that a violation has occurred. The commission shall determine whether the facts substantiate an alleged violation. Adds a new subsection (e) that within 30 days after accepting a complaint, the commission shall determine whether the facts substantiate an alleged violation and whether there is credible evidence that further investigation and proceedings are warranted. The commission may delegate the duty to make the determination to an employee of the commission.

28-LS1130\Y
Bullard
3/27/14

CS FOR HOUSE BILL NO. 235()

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

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE HIGGINS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to complaints filed with the Alaska Public Offices Commission;**
2 **requiring employees of the commission and persons who file complaints with the**
3 **commission to maintain the confidentiality of certain proceedings, documents, and**
4 **information; and establishing sanctions for persons who file false complaints and**
5 **frivolous, vexatious, or other complaints made in bad faith with the commission."**

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

7 *** Section 1. AS 15.13.045 is amended by adding a new subsection to read:**

8 (e) Proceedings of the commission relating to an investigation conducted
9 under this section concerning a potential violation of AS 15.13 or AS 39.50 are
10 confidential until the commission determines that a violation has occurred. Hearings
11 of the commission relating to the investigation are closed to the public until the
12 commission determines that a violation has occurred. Except for documents released
13 by the commission under AS 15.13.380(m), all documents produced or disclosed as a

1 result of the commission's investigation are confidential and are not public records for
2 purposes of AS 40.25.110 - 40.25.140 until the commission determines that a violation
3 has occurred. A member or employee of the commission may not knowingly make an
4 unauthorized disclosure of information that is made confidential under this section and
5 that the member or employee acquired in the course of the member's or employee's
6 official duties. A person who violates this subsection may be subject to prosecution
7 under AS 11.56.860 or another law. The subject of the investigation may waive the
8 confidentiality provisions of this subsection.

9 * Sec. 2. AS 15.13.380(b) is amended to read:

10 (b) A person who believes a violation of this chapter or a regulation adopted
11 under this chapter has occurred or is occurring may file an administrative complaint
12 with the commission within five years after the date of the alleged violation. If a
13 member of the commission has filed the complaint, that member may not participate
14 as a commissioner in any proceeding of the commission with respect to the complaint.
15 The commission may consider a complaint on an expedited basis or a regular basis.
16 Except to the extent that the confidentiality provisions are waived by the subject
17 of the complaint under (l) of this section, the complainant shall keep confidential
18 the fact that the complainant has filed a complaint under this section as well as
19 the contents of the complaint filed until the commission has entered an
20 emergency order under (d)(1) or (2) of this section or the commission has
21 determined under (m) of this section whether the facts alleged in the complaint
22 constitute a violation. If the commission finds that a complainant has violated any
23 confidentiality provision before the commission enters an order under (d)(1) or
24 (2) of this section or makes its determination under (m) of this section, the
25 commission shall immediately dismiss the complaint. Dismissal of a complaint
26 under this subsection does not affect the right of the commission or any person
27 other than the complainant to initiate a complaint based on the same factual
28 allegations.

29 * Sec. 3. AS 15.13.380(g) is amended to read:

30 (g) A commission order under (d), ~~[OR] (e), or (n)~~ of this section may be
31 appealed to the superior court by either the complainant or respondent within 30 days

1 in accordance with the Alaska Rules of Appellate Procedure.

2 * **Sec. 4.** AS 15.13.380 is amended by adding new subsections to read:

3 (l) Proceedings of the commission relating to a complaint made under (b) of
4 this section are confidential until the commission determines that a violation of this
5 chapter has occurred. All meetings of the commission relating to a complaint are
6 closed to the public until the commission determines that a violation has occurred.
7 Except for documents released by the commission under (m) of this section, the
8 complaint and all documents produced or disclosed as a result of the commission's
9 investigation are confidential and are not public records for purposes of AS 40.25.110
10 - 40.25.140 until the commission determines that a violation has occurred. A member
11 or employee of the commission may not knowingly make an unauthorized disclosure
12 of information that is made confidential under this section and that the member or
13 employee acquired in the course of the member's or employee's official duties. A
14 person who violates this subsection may be subject to prosecution under AS 11.56.860
15 or another law. The subject of the complaint may waive the confidentiality provisions
16 of this subsection.

17 (m) Unless a complaint is expedited under (c) of this section, within 30 days
18 after accepting a complaint, the commission shall determine whether the facts
19 substantiate an alleged violation and whether there is credible evidence that further
20 investigation and proceedings are warranted. The commission may delegate the duty
21 to make this determination to an employee of the commission. The record of the
22 commission's or the employee's determination under this subsection is a public
23 document, and the commission shall provide it, with any supporting documentation, to
24 both the complainant and respondent.

25 (n) If the commission or the commission's employee determines by clear and
26 convincing evidence that a person has filed a complaint under this section knowing
27 that material statements in the complaint are false, filed a complaint with reckless
28 disregard for whether the statements in the complaint are true, or filed a complaint that
29 is frivolous, vexatious, or otherwise in bad faith, the commission shall dismiss the
30 complaint and

31 (1) shall order the complainant to reimburse the respondent for the

1 resulting reasonable costs, including attorney fees, incurred by the respondent;

2 (2) shall order the complainant to reimburse the commission for the
3 actual costs of its investigation; and

4 (3) may decline to consider further complaints filed by the
5 complainant.

6 (o) The sanctions authorized in this section are not exclusive and do not
7 preclude any other remedies or rights of action the respondent may have against the
8 complainant.

9 * **Sec. 5.** AS 39.50.055 is amended by adding new subsections to read:

10 (d) Proceedings of the commission relating to a complaint made under this
11 section are confidential until the commission determines that a violation of this
12 chapter has occurred. All meetings of the commission relating to a complaint are
13 closed to the public until the commission determines that a violation of this chapter
14 has occurred. Except as provided in (e) of this section, until the commission
15 determines that a violation has occurred, the complaint and all documents produced or
16 disclosed as a result of the commission's investigation are confidential and are not
17 public records for purposes of AS 40.25.110 - 40.25.140. A member or employee of
18 the commission may not knowingly make an unauthorized disclosure of information
19 that is made confidential under this section and that the member or employee acquired
20 in the course of the member's or employee's official duties. A person who violates this
21 subsection may be subject to prosecution under AS 11.56.860 or another law. The
22 person filing a complaint shall keep confidential the fact that the person has filed a
23 complaint under this section as well as the contents of the complaint filed until the
24 commission has determined under (e) of this section whether the facts alleged in the
25 complaint constitute a violation. If the commission finds that a complainant has
26 violated any confidentiality provision, the commission shall immediately dismiss the
27 complaint. Dismissal of a complaint under this subsection does not affect the right of
28 the commission or any person other than the complainant to initiate a complaint based
29 on the same factual allegations. The subject of the complaint may waive the
30 confidentiality provisions of this subsection.

31 (e) The commission shall determine within 30 days after accepting a

1 complaint under this section whether the facts substantiate an alleged violation and
2 whether there is credible evidence that further investigation and proceedings are
3 warranted. The commission may delegate the duty to make this determination to an
4 employee of the commission. The record of the commission's or the employee's
5 determination under this subsection is a public document and shall be provided to the
6 both the complainant and the subject of the complaint with any supporting
7 documentation.

8 (f) If the commission or the commission's employee determines by clear and
9 convincing evidence that a person has filed a complaint under this section knowing
10 that material statements in the complaint are false, filed a complaint with reckless
11 disregard for whether the statements in the complaint are true, or filed a complaint that
12 is frivolous, vexatious, or otherwise in bad faith, the commission shall dismiss the
13 complaint and

14 (1) shall order the complainant to reimburse the respondent for the
15 resulting reasonable costs, including attorney fees, incurred by the respondent;

16 (2) shall order the complainant to reimburse the commission for the
17 actual costs of its investigation; and

18 (3) may decline to consider further complaints filed by the
19 complainant.

20 (g) The sanctions authorized in this section are not exclusive and do not
21 preclude any other remedies or rights of action the subject of the complaint may have
22 against the complainant.

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REPRESENTATIVE PETE HIGGINS Memorandum

TO: Representative Wes Keller Judiciary Committee

FROM: Representative Pete Higgins 

DATE: 11 March 2014

SUBJECT: Hearing Request HB 235, *"An Act requiring the Alaska Public Offices Commission to maintain the confidentiality of certain proceedings, documents, and information."*

I respectfully request that the Judiciary Committee hear HB 235. Thomas Studler is my staff POC on this bill. His direct line is 465-6879

The following documents are provided and will be sent via email.

- CSHB 235 Explanation of Changes
- CSHB 235 Sectional Analysis
- CS for HB 235\N
- HB 235\U
- HB 235 Sponsors Statement
- HB 235 Sectional Analysis
- Fiscal Note 07 HB235-DOA-APOC-03-07-14

Thank you,

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REPRESENTATIVE PETE HIGGINS

SPONSOR STATEMENT

"An Act requiring the Alaska Public Offices Commission to maintain the confidentiality of certain proceedings, documents, and information."

Alaskans expect their elected officials to adhere to a strict set of laws and ethics codes, but, those same standards don't apply to all.

HB 235 would change that. It's unfortunate that the legislature did not include the Alaska Public Offices Commission (APOC) when it strengthened its ethics and disclosure laws in the past decade. If it had, we would not currently be in this hyper-politicized campaign era.

HB235 requires the Commission to maintain confidentiality of proceedings, documents, and information until the Commission establishes that a violation of Alaska Statutes has been determined. That is the same standard we as legislators are held to, the Executive Branch are held to, and ensures the process has been followed with no undue influence or unneeded rush to judgment.

The Commission performs a vital service to the people of the state. We recognize the need to have the findings open to the public, once the facts of the matter have been determined and there is a finding of a violation. This legislation does not detract from APOC's mission, duties, and responsibilities. The public will still be informed, and more importantly, have access to the record once the facts are known.

Unfortunately, this process has been misused by various entities on both sides of an issue, and even more so during the election cycle. These entities make allegations timed at influencing the election process and the often-times unfounded claims have real impacts to those involved. For all intents and practices, the APOC process has been high-jacked by these entities and the media influence that follows, turns the APOC into a campaign tool, which was never its intended purpose.

I urge your support on this timely and needed reform.

28-LS0392\A

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REPRESENTATIVE PETE HIGGINS

February 10, 2014

Explanation of changes for CS HB 235\N

Section 2. Amends AS 15.13.380(b) by adding that the complainant shall keep confidential the fact that a complaint and its contents. If the complainant violates any provision of the confidentiality the Commission shall immediately dismiss the complaint. However, dismissal of a complaint does not affect the right of the commission or any other person to initiate a complaint based on the same factual information.

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REPRESENTATIVE PETE HIGGINS

February 12, 2014

CSHB235 Sectional Analysis

Section 1. Adds a new paragraph to AS 15.13.045 (e) that proceedings relating to an investigation are confidential until it is determined that a violation of AS 15.13 or AS 39.50 occurred.

Section 2. Amends AS 15.13.380(b) by adding that the complainant shall keep confidential the fact that they have filed a complaint under this section as well as the contents of the complaint filed. If the complainant violates any provision of the confidentiality the Commission shall immediately dismiss the complaint. However, dismissal of a complaint does not affect the right of the commission or any other person to initiate a complaint based on the same factual information.

Section 3. Adds a new paragraph to AS 15.380 (l) that the complaint and all documents relating to an investigation are confidential until it is determined that a violation has occurred.

Section 4. Amends AS 39.50.055 by Adding a new subsection that all proceedings, all documents relating to an investigation are confidential and closed to the public until it is determined that a violation has occurred.

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REPRESENTATIVE PETE HIGGINS

February 5, 2014

HB235 Sectional Analysis

Section 1. Adds a new paragraph to AS 15.13.045 (e) that proceedings relating to an investigation are confidential until it is determined that a violation of AS 15.13 or AS 39.50 occurred.

Section 2. Adds a new paragraph to AS 15.380 (l) that the complaint and all documents relating to an investigation are confidential until it is determined that a violation has occurred.

Section 3. Amends AS 39.50.055 by Adding a new subsection that all proceedings, all documents relating to an investigation are confidential and closed to the public until it is determined that a violation has occurred.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSHB 235(STA)
Fiscal Note Number: 1
(H) Publish Date: 3/12/14

Identifier: HB235-DOA-APOC-03-07-14
Title: CONFIDENTIALITY OF APOC COMPLAINTS
Sponsor: HIGGINS
Requester: House State Affairs

Department: Department of Administration
Appropriation: Alaska Public Offices Commission
Allocation: Alaska Public Offices Commission
OMB Component Number: 70

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2014) cost: 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 01/01/16

Why this fiscal note differs from previous version:

Not applicable, initial version

Prepared By: Paul Dauphinais, Executive Director	Phone: (907)276-4176
Division: Alaska Public Offices Commission	Date: 01/22/2014 08:45 AM
Approved By: Curtis Thayer, Commissioner	Date: 03/07/14
Agency: Department of Administration	

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSHB 235(STA)

Analysis

This bill amends two portions of AS 15.13 and one section of AS 39.50. In each case the bill would require that proceedings and hearings of the commission relating to a complaint filed under AS 15.13 or AS 39.50 be kept confidential and that the complaint and all documents relating to the investigation be kept confidential until the commission determines that a violation has occurred. Commission hearings regarding complaints would be closed to the public until a violation is determined to have occurred. Until a violation is determined to have occurred the complaint and all documents would not be considered as public documents for the purposes of AS 40.25.110 – .140. The subject of a complaint may waive the confidentiality provision.

As written this bill has no fiscal impact on the Alaska Public Offices Commission. No new positions, equipment, space, or funding is required for the Alaska Public Offices Commission to execute its duties if this bill is passed as written. This bill has no impact on the agency's performance measures.