

HJR

44

HOUSE COMMITTEE REPORT

(11)

Date referred: 3/28/88
(Finance added 3/28)

FURTHER REFERRALS:

DATE: 4/6/88

The Finance Committee has considered HJR 44

Proposing an amendment to the Constitution of the State of Alaska relating to open meetings.

RECOMMENDS:

- replace with CS HJR 44 (Jud.) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published 2/10/88
- zero with analysis

SIGNING DO PASS:

POURCHOT Pat Pourchot

SWACK-HAMMER Ed Swack-Hammer

BOYER Mark Boyer

FRANK Frank

BROWN Tay Brown

DAVIS Mike Davis

SIGNING OTHER RECOMMENDATIONS:

ADAMS Al Adams - DO NOT PASS

RIEGER Steve Rieger - DO NOT PASS

WALLIS Kay Wallis

CARSON Ronald J. Carson - No Rec

GOLL Pete Goll - No Rec

Al Adams
Chairman's signature

Original sponsors: Brown, Ellis,
Frank, et al.

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE JOINT RESOLUTION NO. 44 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 Proposing an amendment to the Constitu-
6 tion of the State of Alaska relating to
7 open meetings.

8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. Article I, Constitution of the State of Alaska, is amended
10 by adding a new section to read:

11 SECTION 23. MEETINGS OPEN. The deliberations of each house of
12 the legislature and its committees shall be open to the public unless
13 the legislative body is meeting in executive session to consider
14 matters authorized by law. If a matter is appropriate to a particular
15 legislative body, private and substantive deliberation on the matter
16 by a quorum of that legislative body is a violation of this section.
17 A member of the legislature who wilfully violates this section is
18 subject to a civil penalty for each wilful violation in an action
19 brought in the superior court. Caucuses of the legislature may meet
20 in private to consider matters of procedure, organization, or strate-
21 gy. The provisions of this section that permit executive sessions and
22 caucuses shall be narrowly construed to achieve maximum public access
23 and to avoid unnecessary executive sessions and caucuses.

24 * Sec. 2. (a) The purpose of the amendment to art. I, Constitution of
25 the State of Alaska, proposed in sec. 1 of this resolution is to make
26 openness in government the rule and secrecy the exception. The amendment
27 ensures that the public is not excluded during the substantive deliberative
28 and decision-making stages of the budgetary and lawmaking process.

29 (b) The existing open meetings law, AS 44.62.310 and 44.62.312,

1 complies with this constitutional amendment and the amendment provides a
2 basis for judicial enforcement of that law, notwithstanding art. II,
3 secs. 6 and 12, Constitution of the State of Alaska.

4 (c) The existing open meetings law requires that votes be conducted
5 in a manner that allows the public to know how members voted. For execu-
6 tive sessions, it requires that meetings first be convened as public meet-
7 ings and the question of holding an executive session be determined by a
8 majority vote of the body. Reasonable public notice is required for open
9 meetings.

10 (d) Under existing law, a legislative body may use an executive
11 session only to discuss

12 (1) matters, the immediate knowledge of which would clearly have
13 an adverse effect on the finances of the government;

14 (2) subjects which tend to prejudice the reputation and charac-
15 ter of any person, provided the person may request a public discussion; and

16 (3) matters which by law, municipal charter, or ordinance are
17 required to be confidential.

18 (e) This amendment is not intended to prevent the free flow of ideas
19 among legislators or their participation in public forums, community
20 events, or social events. Meetings of less than a quorum of the legisla-
21 tive body that have the purpose or effect of circumventing the open meet-
22 ings law would also be a violation of this section.

23 (f) In the preparation of its neutral summary under AS 15.58.020(6)-
24 (C), the Legislative Affairs Agency shall consider the statement of legis-
25 lative intent contained in (a) - (e) of this section.

26 * Sec. 3. The amendment proposed by this resolution shall be placed
27 before the voters of the state at the next general election in conformity
28 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
29 tion laws of the state.

RECEIVED
 JAN 26 1988
 DIRECTOR OF ELECTIONS
 FISCAL NOTIONS

**STATE OF ALASKA
 1988 LEGISLATIVE SESSION**

BILL VERSION: HJR 44
 PUBLISH DATE: 1/15/88

REQUEST:

Revision Date: 1/22/88
 Title: Constitutional Amendment
relating to open meetings.
 Sponsor: BROWN
 Requestor: State Affairs

Agency Affected: Office of the Governor
 BRU: Division of Elections
 Components: II - Primary & General
Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0	2.2*	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	2.2*	0	0	0	0

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	2.2*	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

* Costs included cover 2 to 3 additional pages in each Official Election Pamphlet, for printing and typesetting, and costs estimated to cover computer programming requirements for vote (cont.)

Maw

Prepared by: Linda Edgeworth Phone: 465-4611
 Division: Elections Date: 1/22/88

Approved by Commissioner: [Signature] Date: 1/26/88
 Agency: Office of the Governor, Division of Elections

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget

JAN 26 1988

RECEIVED
JAN 26 1988
DIRECTOR OF ELECTIONS

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HJR 44

counting purposes. However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per ballot x approximately 320,000 voters. The total cost of printing the additional ballot card would be \$51.2.

Under these circumstances the fiscal note would be:

53.4

STATE OF ALASKA
1988 LEGISLATIVE SESSION

RECEIVED
JAN 26 1988
DIRECTOR OF ELECTIONS
FISCAL NOTIONS

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PUBLISH DATE: 1/15/88

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OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0	2.2*	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	2.2*	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	2.2*	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

* Costs included cover 2 to 3 additional pages in each Official Election Pamphlet, for printing and typesetting, and costs estimated to cover computer programming requirements for vote (cont.)

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Division: Elections

Phone: 465-4611
Date: 1/22/88

Approved by Commissioner: [Signature]
Agency: Office of the Governor, Division of Elections

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Distribution (by preparer):

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CONTINUATION of FISCAL NOTE ANALYSIS

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Under these circumstances the fiscal note would be:

53.4

Kay Brown

Alaska State Legislature
House of Representatives

Memo

MEMORANDUM

TO: All Members of the House

FROM: Rep. Kay Brown *Kay*

DATE: March 28, 1988

RE: Open Meetings Constitutional
Amendment

Attached for your review is CS HJR 44 (Judiciary), "Proposing an amendment to the Constitution of the State of Alaska relating to open meetings," and a news article.

I introduced the constitutional amendment to ensure the right of public access to the deliberations of legislative bodies. The legislative process must be accountable, accessible, and responsive to the press and the people of Alaska.

A summary of the legal proceedings leading up to the introduction of HJR 44 is relevant. As you will recall, the League of Women Voters v. Adams et al lawsuit was brought over the closed budget discussions in caucus meetings during the 1986 session. The Superior Court found an implied right of access to the proceedings of the legislature under the Alaska Constitution. The Superior Court appeared to hold that discussion and binding decisions on substantive legislation cannot be made in a private caucus. However, the open meetings law specifically does not apply to "...any votes required to be taken to organize a public body..." (AS 44.62.310(a)). It had been noted earlier by the Supreme Court that the statute has no application to private caucuses, so there is no reason to exempt from the statute organizational votes which take place in those caucuses. (Tamara Cook memo, Dec. 11, 1986).

P. O. Box 20-2661
Anchorage, AK 99520-2661
(907) 272-0207

During Session:
P. O. Box V
Juneau, AK 99811
(907) 465-4998



The case was appealed to the Alaska Supreme Court. The higher court had earlier demonstrated an unwillingness to interfere in matters of procedure involving the legislature (Malone v. Meekins, 650 P.2d 351 (Alaska 1982)). The legislature is constitutionally required to determine rules for its own proceedings and it may not do so by statute because this would bind itself in the future (the legislature would be subject to the Governor's veto of the repeal of the statute, or would need a supermajority vote to override a veto.) The task before the Supreme Court in League of Women Voters was to determine whether the public has an unenumerated right of access to legislative meetings at which substantive budget decisions are made.

The Supreme Court reversed the lower court's ruling and held that there is no implied right of public access to legislative committees or caucuses under the Alaska Constitution. The Court's decision was based on the separation of powers doctrine; that is, the Court had no constitutional authority to enforce the law governing the operating procedures of the legislature. The Court concluded that it is not the function of the judicial branch to require the legislature to follow its own rules.

HJR 44 would amend the constitution to mandate legislative adherence to the Open Meetings Act and to provide for judicial enforcement in the instance of a violation. It provides the legal framework to protect the public's right to openness in the legislative process.

The resolution requires that deliberations be open unless the body is meeting in executive session to consider matters authorized by law. It prohibits a quorum of each house and its committees from engaging in private and substantive deliberation on a matter appropriate to that body. It allows private caucuses for matters relating to procedure, organization and strategy.

HJR 44 was amended in House Judiciary to provide for a civil penalty in Superior Court for a wilful violation of the open meetings requirement. It also was amended to provide that the language permitting executive sessions and caucuses shall be narrowly construed to avoid unnecessary closed meetings.

The intent language included in the constitutional amendment makes clear that it is not intended to prevent the free flow of ideas among legislators, or their participation in public forums, community meetings, or social events.

CS HJR 44 (Judiciary)
Page 3

HJR 44 requires a two-thirds vote of both the House and the Senate, and the signature of the Governor to place it before the voters in November. I would appreciate your careful review and consideration of this measure. Please call me at -4998 if you have any questions or concerns. Thank you.

Attachments

Original sponsors: Brown, Ellis,
Frank, et al.

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE JOINT RESOLUTION NO. 44 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 Proposing an amendment to the Constitu-
6 tion of the State of Alaska relating to
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8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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15 legislative body, private and substantive deliberation on the matter
16 by a quorum of that legislative body is a violation of this section.
17 A member of the legislature who wilfully violates this section is
18 subject to a civil penalty for each wilful violation in an action
19 brought in the superior court. Caucuses of the legislature may meet
20 in private to consider matters of procedure, organization, or strate-
21 gy. The provisions of this section that permit executive sessions and
22 caucuses shall be narrowly construed to achieve maximum public access
23 and to avoid unnecessary executive sessions and caucuses.

24 * Sec. 2. (a) The purpose of the amendment to art. I, Constitution of
25 the State of Alaska, proposed in sec. 1 of this resolution is to make
26 openness in government the rule and secrecy the exception. The amendment
27 ensures that the public is not excluded during the substantive deliberative
28 and decision-making stages of the budgetary and lawmaking process.

29 (b) The existing open meetings law, AS 44.62.310 and 44.62.312,

1 complies with this constitutional amendment and the amendment provides a
2 basis for judicial enforcement of that law, notwithstanding art. II,
3 secs. 6 and 12, Constitution of the State of Alaska.

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5 in a manner that allows the public to know how members voted. For execu-
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11 session only to discuss

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24 (C), the Legislative Affairs Agency shall consider the statement of legis-
25 lative intent contained in (a) - (e) of this section.

26 * Sec. 3. The amendment proposed by this resolution shall be placed
27 before the voters of the state at the next general election in conformity
28 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
29 tion laws of the state.

January, 1988

Opinion

Open meetings: A critical issue

By Rep. Kay Brown and Sen. Arliss Sturgulewski

When the Alaska Supreme Court issued its opinion on the open meetings lawsuit brought against the Alaska legislature by the League of Women Voters and two Alaska newspapers, the ruling brought to light a crucial flaw in our state constitution. The court ruled that it had no jurisdiction in the open meetings dispute and accordingly could not force the legislature to comply with the state Open Meetings Act.

The crucial issue in the open meetings lawsuit concerned the right of the press and the public to know about and understand the deliberations of their elected representatives. The need for access to legislative deliberations has never been more critical than at present. Decisions made in Juneau are of vital interest to all Alaskans as the state comes to terms with declining oil revenues.

In response to the Supreme Court's decision, one legislative leader characterized the ruling as giving legislators "a blank check." In essence, the Alaska Supreme Court found that the legislature's conduct is above the law that requires other state and local officials to conduct the public's business in the open.

Before the Supreme Court ruling, it had been our belief that the public was entitled to open legislative meetings; we now know that a constitutional amendment is needed. With that goal in mind, we have introduced an identical Joint Resolution in both the House and the Senate that would amend the Alaska Constitution and specifically provided for open meetings by the legislature.

The proposed amendment language is the work product of a number of individuals who began meeting shortly after the Supreme Court issued its ruling, including representatives of the League of Women Voters and several news organizations. In trying to draft suitable language with the help of this ad hoc group, we knew that it was essential to develop both realistic and workable standards. Such standards must fundamentally ensure openness by the legislature but also not prevent the free exchange of ideas among le-

gislators, which is essential to a legislator's ability to represent his or her constituents. At the same time, we felt that the legislature, as the state's only bicameral legislative body, elected along partisan lines, must have the flexibility to exercise that partisanship.

With these standards in mind, our proposed amendment requires that legislative deliberations be open unless, as presently provided by the Open Meetings Act, the body is meeting in a properly convened executive session to consider matters expressly authorized by law. The amendment also states that if a matter is appropriate to a particular body (which includes committees and subcommittees), then "private and substantive deliberation on the matter by a quorum of that legislative body" is prohibited. The proposed amendment also recognizes the unique role of legislative caucuses and specifically allows caucuses to meet in private, but only to consider "matters of procedure, organization, or strategy."

We recognize, of course, that our amendment draws a fine line of distinction between a discus-

sion that would be prohibited as "private and substantive" and a discussion that would be permissible as a matter of caucus "strategy." In the final analysis, however, it is our feeling that it will be incumbent upon all legislators to police themselves as a group and for individual members to insist when appropriate, as we have, that the public's right-to-know must be protected and that the public's substantive business be conducted openly.

Finally, we believe that the proposed amendment provides both a realistic and workable set of standards by which the legislature can conduct legislative business in an open manner while still providing legislators an opportunity to participate in confidential partisan activities. Without a constitutional amendment to provide for the public's right of access, the legislature will continue to be free to meet at will behind closed doors in clear violation of the Open Meetings Act, but beyond the reach of the courts.

Rep. Kay Brown and Sen. Arliss Sturgulewski both represent Anchorage in the Alaska State Legislature.

Important Things



By Brown, Ellis, Frank, Davis, Cotten,
Navarre, Pourchot, Boyer, Koponen,
Boucher, Davidson, Menard and Donley

Prepared by:
Rep. Kay Brown
March 30, 1988

**CS HJR 44 (Judiciary): Proposing an amendment
to the Constitution of the State of Alaska
relating to open meetings**

HJR 44 proposes to amend the State Constitution by:

- mandating legislative adherence to the Open Meetings Act
- providing for court enforcement in the instance of a violation
- requiring that legislative deliberations be open unless the body is meeting in executive session to consider matters authorized by law
- prohibiting a quorum of a legislative body from engaging in private and substantive deliberation on a matter appropriate to that body
- allowing legislative caucuses to meet in private to consider matters of procedure, organization or strategy
- providing for a civil penalty for each instance of a wilful violation
- providing that the language permitting executive sessions and caucuses be narrowly construed to avoid unnecessary closed meetings.

HJR 44 includes intent language making it clear that this amendment is not intended to prevent the free flow of ideas among legislators or their participation in public forums, community meetings, or social events.

The proposed language is the work of a number of individuals who began meeting together shortly after the Supreme Court issued its ruling last September.

Opinion

The question of the public conduct of the public's business is one of the questions before the Alaska Legislature in its new session. A resolution proposed by Sen. Arliss Sturgulewski and Rep. Kay Brown would put before the state's voters a constitutional amendment to require that all legislative meetings be public except certain exemptions.

The proposal grows out of last year's lawsuit against the Legislature by the League of Women Voters and The Daily News. It transpired that the Legislature never argued about breaking the rules. However, the court ruled that it had no jurisdiction or constitutional basis for requiring the Legislature to follow its own rules.

By
the
rules

That decision essentially told the Legislature it could do whatever it pleases, and the public be damned. The proposal by Sturgulewski and Brown, two among a minority of legislators who have actually resisted the Legislature's general secretive inclinations, is an attempt to make the Legislature live by its rules. That's all.

The proposed amendment would leave legislators the same exemptions as the Legislature provided when it adopted the state's Open Meetings Act. It would also allow party caucuses to meet privately "to consider matters of procedure, organization, or strategy."

That's plenty of leeway for any responsible legislator. The public should call on its legislators to support the Sturgulewski-Brown proposal.

Elements of the Alaska Legislature have gone out of their way in recent years to make important budget decisions in secret — in ad hoc sessions, in caucuses, in, well, who knows?

If legislators balk at the Sturgulewski-Brown proposal, they invite a question: Have you stopped doing the public's business in secret? It's a fair question, and it requires the admission they cannot avoid.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 18, 1988

SUBJECT: Open meetings
(CSHJR 44(Judiciary))

TO: Representative Kay Brown

FROM: Richard A. Bradley 
Legislative Counsel

I have reviewed the citations from the House Research Agency report that Roxanne provided to me on the avoiding of action for a violation of open meeting laws. I have reviewed about half of the laws of the other states and will, if you wish, review the remainder. But it seems that some kind of pattern appears in the laws of the states that I did review. Let me make some observations about the laws and then offer the individual analyses of the states from Alabama through Missouri.

First, and I think this is significant, I found no case where an Act of a legislature was avoided. It appears that no action was avoided (or challenged until Abood) where the violation was based only on the actions of a committee or subcommittee of the legislative body.

There is some logic to this point. While committee recommendations are useful, a member may vote for or against final passage based on or in spite of recommendations of a committee. What one committee does may be disregarded by a subsequent committee or used for entirely different reasons. It should not follow that the action by a committee vitiates the final legislative action.

In probably every state, state constitutions will require votes on final enactment to be public. Whether a disregard of committee action that violates open meeting concepts (if final action is open) is a serious loophole or a reasonable expectation may be debatable but it appears to explain why the application of open meeting concepts to legislative

Representative Kay Brown

Page 2

March 18, 1988

action does not result in the avoidance of the final legislative action. The legislature should have the power to cure the defects in legislation caused by a committee of the legislature.

While the senate and the house each seem to have their own different ideas about the amount of debate required for adoption, it is quite different for a court to order the legislature to engage in "substantial, de novo, independent and public reconsideration of those substantive matters previously discussed in private." That remedy was requested in Aboud v. League of Women Voters of Alaska, 743 P.2d 333, 334 (Alaska 1987).

The amount of debate required to cure a violation is the kind of question that the courts would be required to address if a violation by a committee is permitted to taint the final legislative action fatally. If I am correct that only violations by the enacting body will cause action to be void, the cure for violations is not a problem since no violation by the legislature itself will (or can) occur.

During our discussion, I noted frustration with effective remedies. John Hartle suggested an analogy to the exclusionary rule (on evidence in criminal trial obtained in violation of civil rights, etc); the only remedy is the exclusion of the evidence; the only solution here is the avoidance of the law.

I disagree. A number of the states permit citizen complaints for mandatory or other injunctions against the violations. A number permit the citizen plaintiff to obtain fines for violations. One would permit the court to terminate the term of a member who violated open meetings requirements and was sanctioned twice during a term; that would not work as to a legislator since expulsion of members is also constitutionally regulated but it could work on other levels of government. The Maryland provision says that the action of a public body may not be voided because of the violation by another public body; perhaps that addresses the legislature vs. its committees question.

At that point, the proper sanction is not an avoidance of the legislation but the proper sanctions against individuals involved at the committee level. And as I suggest, the cases that do appear address violations by school boards, municipalities, and other public bodies. I found no case

where the defect in committee action voided the action by the final adopting body that itself complied with open meeting requirements.

Finally, an analysis of state laws. While it has been suggested (by the House Research Agency report) that each state has an open meeting law, it is far from true that the citations offered prove that the legislatures have uniformly subjected themselves to such laws.

Alabama. I could find no laws at the citation suggested in the HR report. Title 13 has been repealed. No entries in the index for the topic.

Arizona. Sec. 38.431. Applies to the legislature. No case in annotation appears to have challenged legislative violations. Only applies when a quorum is present according to AG opinion. Court may impose a fine of not to exceed \$500. Sec. 431.07. Public body may not expend public money to defend action under certain circumstances. Sec. 431.07. Either house of legislature may exempt itself by adoption of rule or procedure. Sec. 431.08(B). Does not apply to conference committees of legislature or any caucus. Sec. 431.08(A); conference committees shall nonetheless be open.

Arkansas. Citation incorrect: see A.C.A. 25.19.101 et seq. Open meetings section does not apply to the legislature. Sec. 25.19.106. Misdemeanor penalty for violations of \$200 or 30 days (sec. 25.29.104). Action taken not void unless adopted at a public meeting. Sec. 25.19.106.

California. Citation given (sec. 11120 et seq., Cal. Gov't Code) applies only to executive branch agencies. See earlier memorandum for comments on sections applicable to the legislature.

Colorado. C.R.S. sec. 24.6.401 et seq. Applies to the legislature. Sec. 24.6.402. Does not apply to "chance meeting or social gathering at which discussion of public business is not the central purpose." Sec. 24.6.402(2.1). Provisions on invalidity may not apply to the legislature: "(4) No resolution, rule, regulation, ordinance, or formal action of a board, committee, commission, or other policy-making or rule-making body shall be valid unless taken or made at a meeting that meets the requirements . . ." Note

that while it applies to a committee in the legislature, a committee is not a policy making body.

Connecticut. G.S.C. sec. 1.21. Appears to apply to the legislature. Sec. 1.21(a). Establishes notice; has no provision explicitly establishing application to the legislature or providing for the implications of violations (even as to executive branch agencies).

Delaware. 29 D.C.A. sec. 10001 et seq. Includes legislature. Sec. 10002. "Any action taken at a meeting in violation of this chapter may be voided by the Court of Chancery" within 60 days of notice of the action but not more than 6 months from the action. Sec. 10005(a). No annotations regarding violations by the legislature.

Florida. Ch. 286, F.S. at 011. Does not apply to the legislature. Sec. 286.011(1). Did not determine whether other law applies to the legislature.

Georgia. O.C.G. sec 50-14-1 et seq. Not applicable to the legislature.

Hawaii. H.R.S. sec. 92.3. Does not apply to the legislature. Sec. 92.10; rather, will be subject to rules adopted by the legislature (I have not found such rules). Executive action voidable on "proof of willful violation." Sec. 92.-11.

Idaho. I.C. sec. 67-2340 et seq. General sections do not apply to the legislature. Sec. 2341. Open legislative meetings required. Sec. 2346. Curiously, there is no statutory authorization for any executive session by legislative committees: "All meeting . . . shall be open at all times"; I suggest the section cannot be taken seriously. Action taken at a meeting that violates the sections is null and void. No cases construing statute in context of suit against legislature for its violation.

Illinois. 102 Ill. A.S. sec. 41 et seq. Includes "legislative . . . bodies of the state . . . except the General Assembly and committees or commissions thereof." Sec. 41.02. Did not find any specific sections applying to the legislature.

Indiana. B.I.S.A. sec. 5-15-1.5-1. Appears to apply to the legislature. Sec. 5-14-1.5-2(a). Notice requirement do not

apply to the legislature. Sec. 5-14-1.5-5(g). Citizen may enjoin action taken at an executive session or to declare void action in violation of notice requirements (not applicable to legislature). Sec. 5-14-1.5-7(a). Court may award costs and attorney fees if action was knowing and intentional. Sec. 5-14 - 1.5-7(f).

Iowa. The correct citation is chapter 21 in the 1987 code. The chapter does not apply to the legislature. Remedies include assessment of fines of \$100 to \$500 for participants; no fines for a person who voted against the violating meeting or acted in good faith or in reliance of legal advice. Sec. 21.6(3). Costs and attorney fees for prevailing party who establishes the violation. Sec. 21.6(3). Voids the action taken in violation if the case is brought within six months of the action on a determination that the public interest in the enforcement of the open meeting policy outweighs the public interest in sustaining the validity of the action taken; doesn't apply to an action regarding the issuance of bonds or other indebtedness of a governmental body if a public hearing, election, or public sale has been held. The court may remove an individual who has engaged in two prior violations in which damages were assessed during the member's term. May issue a mandatory injunction punishable by civil contempt. Ignorance is no defense.

Kansas. 75 K.S.A. sec. 4317 et seq. Appears to apply to the legislature. Sec. 4318. Violators subject to a \$500 civil penalty. Any binding action taken in violation is voidable in an action brought by the attorney general or county attorney. Sec. 4320. Court may award costs and attorney fees. Exceptions for impeachment are made. Sec. 4318. One annotation says that there was no "authority for private individual to bring action to void acts performed in violation of open meetings law. Soldt v. City of Toronto, 678 P.2d 153 (Kansas 1984). Unannounced gathering prior to official meeting violates the law. Coggins v. Public Employee Relations Board, 581 P.2d 817.

Kentucky. KRS 61.805. Appears to apply to the legislature. Sec. 61.805(2), but with some "exceptions" "committees of the general assembly other than standing committees". Sec. 61.810(9). Courts may enforce by injunction. Sec. 61.845. Curiously, though there are pages of annotations of opinions of the attorney general as well as court decisions, no case involves the legislature.

Louisiana. RS 42.5 is the law; a 1981 amendment deleted the language that exempted the legislature in those words but the words now used do not include the legislature.

Sec. 42.4.2(2). A specific section authorizes closed or executive sessions of legislative houses and committees.

Sec. 42.6.2. The law also exempts "chance meetings, social gatherings, or other gatherings at which only presentations are made to members of the legislature or members of either house thereof or of any committee or subcommittee if no vote or other action, including formal or informal polling of members, is taken." Sec. 42.6.2(C). The legislature is exempted from requirement applicable to executive agency that meetings for the year be announced at the beginning of the year. Sec. 42.7. Suits to void action must be filed within 60 days of the action.

Maine. 1 MRSA sec. 401 et seq. Applies to the legislature. Sec. 402.2. For violations of the policy: "If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action shall be illegal and the officials responsible shall be subject to the penalties hereinafter provided". I note that "Acts" are not included. The penalty is a class E crime, probably a misdemeanor. No case examines a challenge to a legislative enactment.

Maryland. 76A A.C.M., sec. 7 et seq., reorganized as 10 A.C.M., 501 et seq. in the 1984 edition. Regarding enforcement, the law says: . . . the court may declare void any final action taken at a meeting held in wilful violation of [the law] if the court finds no other remedy would be adequate under the circumstances. However, the action of a public body may not be voided because of the violation . . . by any other public body." Sec. 10-510(a)(2); sec. 10-510(e) authorizes injunctions or other appropriate relief. The section specifically excludes actions appropriating public funds, levying taxes, or providing for the issuance of bonds, notes, or evidences of public obligation from the authority of the court to void actions. Sec. 10-510(a). No case examines a challenge to a legislative enactment.

Massachusetts. 30A M.G.L.A. sec. 11A. Does not apply to the general court (legislature) or the committees or recess committees of the general court. Sec. 11A.

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Michigan. Michigan has a constitutional provision requiring open meeting unless the public welfare requires otherwise. Art. 4, sec. 20. The current citation to the general law is 15 M.C.L.A. sec 261 et seq. "Public body" is defined as "any state . . . legislative . . . body, including a . . . committee, subcommittee . . . empowered by the state constitution . . . to exercise governmental . . . authority" Sec. 15.262(a); under 15.262(d), "decision" includes a "vote . . . upon a . . . bill . . ." Attorney General opinions are consistent that committee action is covered. A reenactment complying with the act cures a prior enactment that was deficient; the effective date is on the reenactment. Sec. 15.270. No case addresses a challenge to a legislative enactment.

Minnesota. M.S. 471.705. Does not apply to the legislature.

Mississippi. Not reviewed.

Missouri. M.R.S., sec. 610.010 et seq. Applies to the legislature. Sec. 610.010(2). Violations include injunctive relief. Sec. 610.027(1). Civil fines of not more than \$100 are authorized. Sec. 610.027(3). Actions may void the action on evidence that the governmental body violated the section "if the court finds under the facts of the particular case that the public interest in the enforcement of the policy . . . outweighs the public interest in sustaining the validity of the action taken at the closed meeting, record, or vote." Sec. 610.027(4). Injunctive relief is authorized. Sec. 610.030. No annotation applies a challenge to a legislative enactment.

If I may be of further assistance, please advise.

RAB:bb
b4/020

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 15, 1988

SUBJECT: Open meetings; "action violating the section
is void" (CSHJR 44(Judiciary))

TO: Representative Kay Brown

FROM: Richard A. Bradley
Legislative Counsel 

I have reviewed the citations that Roxanne Turner provided to me regarding the constitutions and laws of California and Oregon regarding open meetings.

A brief summary of the provisions would be that neither state has any provision voiding laws for violations of the open meetings laws of those states.

Nor do the constitutions of those states lead to that result.

The California Constitution provides that the "proceedings of each house and the committees thereof shall be public except as provided by statute or concurrent resolution, when such resolution is adopted by two-thirds vote of the members of each house, . . ." Art. IV, sec. 7(c), California Constitution.

Contrary to the information Roxanne gave me, the enabling legislation at Secs. 11120 - 11131 of the California (Government) Code does not apply to the legislature but rather only to state executive branch agencies. And I believe that no provision of that law provides that action taken in violation of it is void. The only remedies offered in those sections of the California law is the authorization of litigation seeking mandamus or injunctive relief (Sec. 11130), costs and attorney fees (Sec. 11130.5), and a provision making the conduct a misdemeanor (Sec. 11130.7). A copy of these sections is enclosed.

Representative Kay Brown
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California does, however, have an open meetings law specifically concerned with the legislature. See Secs. 9027 - 9031, California (Government) Code, copies enclosed.

The legislative formulation of art. IV, sec. 7(c), quoted above, provides that all "meetings of the Assembly and Senate and the committees and subcommittees thereof, and any conference committee, shall be open and public and all the proceedings shall be conducted openly so that the public may remain informed, except as otherwise provided in this article. All meetings of any conference committee shall be open to press representatives accredited by the Joint Rules Committee." Sec. 9027.

Two sanctions are stated: (1) a knowing violation is a misdemeanor. Sec. 9030; and (2) a mandamus or injunctive action for declaratory relief may be filed. Sec. 9031.

The Oregon laws are consistent.

The Oregon Constitution provides that the "deliberations of each house, of committees of each house or joint committees and of committees of the whole, shall be open." Art. IV, sec. 14, Oregon Constitution. The section also directs each house to adopt rules to implement the section and both houses are directed to adopt joint rules relating to joint legislative activity.

I have included copies of ORS Secs. 192.610 - 192.690. They are ambiguous as to whether they apply to legislative Acts or legislative proceedings. I can find no provision within these sections that uses terms to be expected in laws applying to the legislature. But I can find no specific provisions that do apply to the legislature; since we do not have access to the legislative rules, that may well be the location of those provisions.

Sec. 192.680 establishes the policy that the court may order equitable relief as it considers appropriate. The law also provides that

A decision shall not be voided if other equitable relief is available. The court may order payment to a successful plaintiff in a suit brought under this section of reasonable attorney fees at trial and on appeal, by the governing body, or public body of which it

Representative Kay Brown
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is a part or to which it reports. ORS, sec. 192.-
680(1).

This remedy may be offered because it would be very unlikely that a plaintiff could prove "actual damages" for a violation of the law.

The law also provides that if the violation was a "result of wilful misconduct by any member or members of the governing body, that member or members shall be jointly and severally liable to the governing body . . . for the amount paid under subsection (1)."

Finally, the Oregon law provides that "the provisions of this section shall be the exclusive remedy for an alleged violation of ORS 192.610 - 192.690."

I believe it is accurate to note that neither California nor Oregon will void a legislative Act for a violation of their open meetings laws. The laws also suggest that sanctions against members whose conduct is wilful is a proper recourse.

During the meeting yesterday, I heard the suggestion several times that voiding the law was required because no other remedy was available. It seems that there may be some others.

You may wish to consider the alternatives that seems to flow from the California and Oregon experience.

(1) Amend the open meeting law to permit injunctive and mandatory actions for violations of the law, with the sanction available from the funding of the agency sued but with the court given the option, as in Oregon, of assessing the fine against the acting members if the violation was wilful.

(2) Make violations of the open meeting law by legislators a violation of legislative ethics, AS 24.60.

If I may be of further assistance, please advise.

Enclosures

RAB:bb
b4/013



April 6, 1988
House Finance Committee
The Alaska Legislature
Testimony On HJR 44 proposing an
amendment to the Constitution of the
State of Alaska relating to open
meetings

Mister Chairman, Members of the Committee:

I am Eve Reckley. I represent the League of Women Voters of Alaska. The League supports enactment of House Joint Resolution No. 44 to amend the Constitution of the State of Alaska to require that deliberations of the legislature and its constituent groups be open to the public. We appreciate the opportunity to present testimony on this legislation which is one of the League's highest priorities for action in this legislative session.

The League believes strongly in the right of public access to deliberations of legislative bodies. So much so, that our organization pressed its challenge of violations of the Open Meetings Act by legislative committee members to the Supreme Court of the State of Alaska. The facts were undisputed, that closed meetings were held at various times during the formulation of the 1987 Alaska state budget.

The League submitted affidavits attesting to "a pattern of meetings by legislative committee and caucus majority members which were closed to the public, the press, and sometimes minority members of the legislature." The legislators did not deny the meetings occurred, or that they conducted the business and made the decisions that the League alleged. Still the high court held "there is no implied right of public access to legislative committee or caucus meetings under the Alaska Constitution."

The League of Women Voters of Alaska believes that when the Legislature refuses to follow the laws it establishes, public confidence is undermined. You have an opportunity now to act to restore that public confidence.

Page 2/ House Finance Committee Testimony/ Open Meetings/4/6/88

The resolution before you is simple and straight forward. It would amend the constitution to provide the legal framework for the courts to enforce the Open Meetings Act. Such an amendment to the Constitution of the State of Alaska expressly mandating the right of public access, is the only way to secure this guarantee. Without it, the Open Meetings Act, insofar as it relates to the Legislature, is meaningless.

The proposed amendment, developed with the League's participation and support, is not intended to prevent the free flow of ideas among legislators or their participation in public forums, community events, or social events.

The question has been raised, what is substantive deliberations? We think you know. And if there is ever a question, trust the public to make that determination. Hold the discussions in open meetings. The League believes that the better informed the public is, the better our government will be because it will be reflective of the will of the people.

The League believes that constitutionally mandating open meetings is vital to making the legislative process accessible and accountable, as well as more responsive to, and representative of the people of Alaska. As you know, the resolution requires a two-thirds vote of both the House and Senate and the signature of the governor to place it before voters in November. This process will give voters a say in whether they believe public access to legislative meetings should be guaranteed in the Constitution of the State of Alaska.

The League of Women Voters of Alaska asks you to give the people of Alaska the opportunity to make that decision. We urge your approval of HJR 44.

Thank you.

Original sponsors: Brown, Ellis,
Frank, et al.

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE JOINT RESOLUTION NO. 44 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 Proposing an amendment to the Constitu-
6 tion of the State of Alaska relating to
7 open meetings.

8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. Article I, Constitution of the State of Alaska, is amended
10 by adding a new section to read:

11 SECTION 23. MEETINGS OPEN. The deliberations of each house of
12 the legislature and its committees shall be open to the public unless
13 the legislative body is meeting in executive session to consider
14 matters authorized by law. If a matter is appropriate to a particular
15 legislative body, private and substantive deliberation on the matter
16 by a quorum of that legislative body is a violation of this section.
17 A member of the legislature who wilfully violates this section is
18 subject to a civil penalty for each wilful violation in an action
19 brought in the superior court. Caucuses of the legislature may meet
20 in private to consider matters of procedure, organization, or strate-
21 gy. The provisions of this section that permit executive sessions and
22 caucuses shall be narrowly construed to achieve maximum public access
23 and to avoid unnecessary executive sessions and caucuses.

24 * Sec. 2. (a) The purpose of the amendment to art. I, Constitution of
25 the State of Alaska, proposed in sec. 1 of this resolution is to make
26 openness in government the rule and secrecy the exception. The amendment
27 ensures that the public is not excluded during the substantive deliberative
28 and decision-making stages of the budgetary and lawmaking process.

29 (b) The existing open meetings law, AS 44.62.310 and 44.62.312,

1 complies with this constitutional amendment and the amendment provides a
2 basis for judicial enforcement of that law, notwithstanding art. II,
3 secs. 6 and 12, Constitution of the State of Alaska.

4 (c) The existing open meetings law requires that votes be conducted
5 in a manner that allows the public to know how members voted. For execu-
6 tive sessions, it requires that meetings first be convened as public meet-
7 ings and the question of holding an executive session be determined by a
8 majority vote of the body. Reasonable public notice is required for open
9 meetings.

10 (d) Under existing law, a legislative body may use an executive
11 session only to discuss

12 (1) matters, the immediate knowledge of which would clearly have
13 an adverse effect on the finances of the government;

14 (2) subjects which tend to prejudice the reputation and charac-
15 ter of any person, provided the person may request a public discussion; and

16 (3) matters which by law, municipal charter, or ordinance are
17 required to be confidential.

18 (e) This amendment is not intended to prevent the free flow of ideas
19 among legislators or their participation in public forums, community
20 events, or social events. Meetings of less than a quorum of the legisla-
21 tive body that have the purpose or effect of circumventing the open meet-
22 ings law would also be a violation of this section.

23 (f) In the preparation of its neutral summary under AS 15.5^a.020(6)-
24 (C), the Legislative Affairs Agency shall consider the statement of legis-
25 lative intent contained in (a) - (e) of this section.

26 * Sec. 3. The amendment proposed by this resolution shall be placed
27 before the voters of the state at the next general election in conformity
28 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
29 tion laws of the state.

BY BROWN, ELLIS, FRANK,
DAVIS, COTTEN, NAVARRE,
POURCHOT AND BOYER

1 IN THE HOUSE

2

HOUSE JOINT RESOLUTION NO. 44

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

Proposing an amendment to the Constitu-

6

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7

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