

HJR

44

STATE OF ALASKA
THE LEGISLATURE

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JUNEAU, ALASKA 99811
907.465.3800

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House Rules:

April 26, 1988

HOUSE COMMITTEE REPORT

(7)

Date referred: 2/15/88

FURTHER REFERRALS:

DATE: 4-26-88

The Rules Committee has considered HCR 47

Proposing an amendment to Rule 37(a) of the Uniform Rules of the Alaska State Legislature relating to introduction and sponsorship of measures.

RECOMMENDS:

- replace with _____ 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 _____
- zero with analysis

SIGNING DO PASS:

Mike Gavone

Bob [unclear]

[unclear]

[unclear]

[unclear]

SIGNING OTHER RECOMMENDATIONS:

Mike Gavone

 Chairman's signature

HOUSE COMMITTEE REPORT

referred: 4/22/88

FURTHER REFERRALS:

4/26
Rule

DATE: 4-26-88

The Rules 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 (Rule) 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
- zero fiscal note
- zero with analysis
- same as previous fiscal note published 2-10-88
- same as previous zero fiscal note published _____

SIGNING DO PASS:

Mike Savane

[Signature]

[Signature]

[Signature]

[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature] No Rec

Terry [Signature] No Rec

Mike Savane
Chairman's signature



Official Business

Alaska State Legislature

House of Representatives

Committee on Rules

P. O. Box V
Juneau, Alaska 99811

Phone:
(907) 465-3764
465-3765

AGENDA - HOUSE RULES COMMITTEE MEETING

TUE DAY, APRIL 26, 1988

INDEX

- I. MEMO DATED APRIL 22, 1988 TO ALL HOUSE MEMBERS FROM REP. BROWN RE: PROPOSED VERSION CS HJR 44 (RULES)
- II. PROPOSED VERSION CS HJR 44 (RULES)
- III. ANALYSIS/HJR 44 (RULES)
- IV. CS HJR(44) JUDICIARY)
- V. ANALYSIS CS HJR(44) JUDICIARY - DATED 4/18/88 - FROM RICHARD A. BRADLEY, LEG. COUNSEL
- VI. HJR 44
- VII. MEMO/DATED MARCH 28, 1988 FROM REP. KAY BROWN TO ALL MEMBERS OF THE HOUSE RE: OPEN MEETINGS CONSTITUTIONAL AMENDMENT
- VIII. FISCAL NOTE HJR 44

Kay Brown

Alaska State Legislature
House of Representatives

MEMORANDUM

TO: All House Members
FROM: Rep. Kay Brown
DATE: April 22, 1988
RE: HJR 44 - Proposed Rules CS

Attached for your review is a work draft for a proposed Rules Committee Substitute for CS HJR 44(Judiciary) that I requested in response to concerns voiced by some House members.

The changes are:

- 1) lines 19-20, add "A court may not prescribe rules or procedures for the conduct of legislative business."
- 2) line 18, delete "penalty" and insert "fine".

These changes are intended to make clear the legislature's intent that the court not prescribe operating procedures such as defining the circumstances under which teleconferences should be held, room size, adequate public notice, and other operational matters.

A civil "fine" rather than a "penalty," would provide a deterrent for wilful violations and define the extent of court enforcement. This change further indicates the legislature's intent that the court not enjoin violations.

In response to these concerns, the House Rules Committee will be meeting at 8:00 a.m. Tuesday, April 26, in the Speaker's Chambers to consider adoption of the proposed Committee Substitute. I welcome your questions and comments.

Attachment



any ~~not~~ under
Private and substantive deliberation on ~~subject~~ ~~under~~ its
jurisdiction by a quorum of a legislative body is a violation
of this section.

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

Prepared by:
Rep. Kay Brown
April 25, 1988

**Proposed CS HJR 44 (Rules): Proposing an amendment
to the Constitution of the State of Alaska
relating to open 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.

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 fine for each instance of a wilful violation
- providing that the courts not prescribe rules or procedures for the conduct of legislative business.
- providing that the language permitting executive sessions and caucuses be narrowly construed to avoid unnecessary closed meetings

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM

March 18, 1988

SUBJECT: Open meetings
(CSHJR 44(Judiciary))

TO: Representative Kay Brown

FROM: Richard A. Bradley
Legislative Counsel RB

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

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 Abood 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. Stoldt 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.

Representative Kay Brown
Page 7
March 18, 1988

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

Kay Brown

Alaska State Legislature
House of Representatives

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).



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

RECEIVED
 JAN 26 1988
 DIRECTOR OF ELECTIONS
 FISCAL NOTIONS

VIII.

**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
 Division: Elections

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

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

Date: 1/26/88

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

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

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

1 IN THE HOUSE

BY THE RULES COMMITTEE

2 CS FOR HOUSE JOINT RESOLUTION NO. 44 (Rules)

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~~ ^{relevant}
15 legislative body, ^{has jurisdiction over a procedural matter} 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] fine for each wilful violation in an action brought
19 in the superior court. A court may not prescribe rules or procedures
20 for the conduct of legislative business. Caucuses of the legislature
21 may meet in private to consider matters of procedure, organization, or
22 strategy. The provisions of this section that permit executive ses-
23 sions and caucuses shall be narrowly construed to achieve maximum
24 public access and to avoid unnecessary executive sessions and
25 caucuses.

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

1 and decision-making stages of the budgetary and lawmaking process.

2 (b) The existing open meetings law, AS 44.62.310 and 44.62.312,
3 complies with this constitutional amendment and the amendment provides a
4 basis for judicial enforcement of that law, notwithstanding art. II,
5 secs. 6 and 12, Constitution of the State of Alaska.

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

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

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

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

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

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

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

28 * Sec. 3. The amendment proposed by this resolution shall be placed
29 before the voters of the state at the next general election in conformity
CSHJR 44(R1s)

1 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
2 tion laws of the state.
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