

HJR

44

HOUSE STATE AFFAIRS COMMITTEE

NEXT COMMITTEE: JUDICIARY

BILL: HJR 44

CURREN. VERSION:

SCHEDULED: 2/8/88

SPONSOR: BROWN

PHONE NO: 3784

CONTACT FILE: _____

BILL SUBJECT: PROPOSING AMENDMENT TO THE CONSTITUTION OF THE STATE OF ALASKA RELATING TO OPEN MEETINGS

SPONSOR BACKUP: IN FILE

AFFECTED AGENCIES:

<u>DEPARTMENT</u>	<u>CONTACT/PHONE</u>	<u>COMMENT</u>
LEGISLATIVE AFFAIRS		PAM STOOPS/3852
ELECTIONS		LINDA EDGEWORTH/4611

FISCAL NOTES

<u>AGENCY</u>	<u>REQUESTED</u>	<u>DATED</u>	<u>FY 88 AMT</u>	<u>FY 89 AMT</u>
ELECTIONS		1/26/88	-0-	2.2

ACTION

<u>DATE</u>	<u>COMMENT</u>
1/29	HEARING CANCELLED -- LACK OF QUORUM
2/8/88	PASSED FROM HOUSE STATE AFFAIRS

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

FOUCHY - STATE CAPITOL
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 State Affrs:

2/8/88

Alaska State Legislature

Committees:

Chair-State Affairs
V. Chair-Judiciary
Telecommunications
Special Ethics
Legislative Council
Finance Subcommittee
for the University of Alaska
Joint Committee
on Economic Recovery



P.O. Box V
Juneau, Alaska 99811
(907) 465-4947

REPRESENTATIVE FRAN ULMER

February 26, 1988

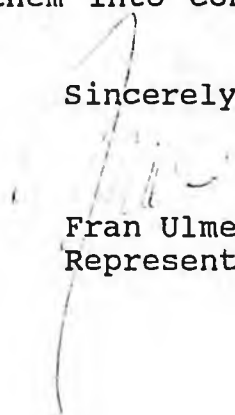
Chris D'Arcy
Executive Director
State Council on the Arts
619 Warehouse Avenue, #220
Anchorage, AK 99501

Dear Chris:

First of all, thank you for all the information you provided on Joanne Townsend for poet laureate. As you probably heard, it was enough to get the resolution out of House State Affairs Committee in near record time. HCR 44 is scheduled for floor action today.

Also, thanks for sending us the regulations on Arts Council grants. We took the liberty to pass them on to local groups. Some concerns have been expressed by Perseverance ^{the} about the Season Support regulations. These concerns are ^{quite} intimate and we hope you will take them into consideration before final adoption of the regulations.

Sincerely,


Fran Ulmer
Representative

Handwritten notes at the bottom of the page, including "District 4B - Juneau" and other illegible text.
District 4B — Juneau

HOUSE COMMITTEE REPORT

(7)

Date referred: 1/15/88

FURTHER REFERRALS: Judiciary

DATE: 2-8-88

The State Affairs Committee has considered HJR 44

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

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:

Scott Munnich
 Cliff Davidson

SIGNING OTHER RECOMMENDATIONS:

John Walker No Rec
Donna Jolley No Rec
Terry Martini No Rec

John Walker
 Chairman's signature

Cited in *Boehl v. Sabre Jet Room, Inc.*, 2710 (File Nos. 6833, 7080), P.2d
Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d (1983).
585 (1960); *Kuhn v. State*, Sup. Ct. Op. No.

Collateral references. — 2 Am. Jur.2d, Effect of court review of administrative
Administrative Law, §§ 553 to 775. decision, 79 ALR2d 1379.
73 C.J.S., Public Administrative Law
and Procedure, §§ 172 to 271.

Article 6. Agency Meetings Public.

Section

310. Agency meetings public
312. State policy regarding meetings

Sec. 44.62.310. Agency meetings public. (a) All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. This section does not apply to any votes required to be taken to organize the bodies specified in this subsection.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the body. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. No action may be taken at the executive session.

(c) The following excepted subjects may be discussed in an executive session:

- (1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;
- (2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;
- (3) matters which by law, municipal charter, or ordinance are required to be confidential.

- (d) This section does not apply to
- (1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;
 - (2) juries;
 - (3) parole or pardon boards;
 - (4) meetings of a hospital medical staff; or
 - (5) meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.
- (e) Reasonable public notice shall be given for all meetings required to be open under this section.
- (f) Action taken contrary to this section is void. (§ 1 art VI (ch 1) ch 143 SLA 1959; am § 1 ch 48 SLA 1966; am § 1 ch 78 SLA 1968; am § 1 ch 7 SLA 1969; am §§ 1, 2 ch 98 SLA 1972; am § 2 ch 100 SLA 1972; am § 1 ch 189 SLA 1976)

NOTES TO DECISIONS

The scope of subsection (a) of this section is not limited to decision-making bodies only. *University of Alaska v. Geistauts*, Sup. Ct. Op. No. 2691 (File Nos. 6749, 6771), 666 P.2d 424 (1983).

Section applies to local university tenure committee. — The local tenure committee of the University of Alaska comes within the ambit of the public meetings statute. *University of Alaska v. Geistauts*, Sup. Ct. Op. No. 2691 (File Nos. 6749, 6771), 666 P.2d 424 (1983).

Subsection (c)(2) of this section, which provides that closed executive sessions may be held to discuss "subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion," is applicable to tenure committee meetings. *University of Alaska v. Geistauts*, Sup. Ct. Op. No. 2691 (File Nos. 6749, 6771), 666 P.2d 424 (1983).

Tenure committee meetings are not "quasi-judicial" proceedings, and thus do not come within the exception to the public meeting requirements found in subsection (d)(1) of this section. *University of Alaska v. Geistauts*, Sup. Ct. Op. No. 2691 (File Nos. 6749, 6771), 666 P.2d 424 (1983).

Organizational meetings of legislature. — Public meetings law generally applies to votes on the floor of either house of the legislature, but exempts organizational votes taken there, such as removal of the speaker, from its coverage. *Malone v. Meekins*, Sup. Ct. Op. No. 2553 (File Nos. 6429, 6436), 650 P.2d 351 (1982).

Notice of reorganization of legislature. — There is no judicially enforceable requirement of subject matter notice with respect to a vote concerning the organization or reorganization of one house of the state legislature. *Malone v. Meekins*, Sup. Ct. Op. No. 2553 (File Nos. 6429, 6436), 650 P.2d 351 (1982).

Private caucuses. — The statute has no application to private caucuses and there is thus no reason to exempt from the statute organizational votes which take place in such caucuses. *Malone v. Meekins*, Sup. Ct. Op. No. 2553 (File Nos. 6429, 6436), 650 P.2d 351 (1982).

Discussing characteristics of city manager applicants. — A city council was authorized by subsection (c)(2) of this section to meet in executive session while discussing the personal characteristics of city manager applicants. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

A meeting of the board of governors of the Alaska Bar Association in Hawaii in 1978 was not subject to the requirements of this section. *Horowitz v. Alaska Bar Ass'n*, Sup. Ct. Op. No. 2059 (File Nos. 4310, 4311), 609 P.2d 39 (1980).

Implied notice requirement. — Since the sole purpose of a notice requirement under subsection (c)(2) of this section is to afford the employee with an opportunity to request a public discussion, the University of Alaska was under the implied statutory obligation to inform the faculty member of

the time and place of all meetings in which his application for tenure would be considered and to inform him that he had the right to request that the meetings be open to the public. *University of Alaska v. Geistauts*, Sup. Ct. Op. No. 2691 (File Nos. 6749, 6771), 666 P.2d 424 (1983).

Effect of university's failure to comply. — Since a violation of this section was found and the tenure committee recommendation was therefore void, the university had to begin anew its review of the faculty member's tenure application as if the flawed consideration had never taken place, the faculty member was entitled to all the benefits of ongoing employment up until the time of a new consideration, and

the faculty member should be entitled to update his tenure file with recent academic accomplishments. *University of Alaska v. Geistauts*, Sup. Ct. Op. No. 2691 (File Nos. 6749, 6771), 666 P.2d 424 (1983).

Applied in *Alaska Community Colleges' Fed'n of Teachers, Local 2404 v. University of Alaska*, Sup. Ct. Op. No. 2779 (File No. 6676), 677 P.2d 886 (1984).

Quoted in *Hammond v. North Slope Borough*, Sup. Ct. Op. No. 2499 (File Nos. 5550, 5558), 645 P.2d 750 (1982).

Cited in *Anchorage Independent Longshore Local 1 v. Municipality of Anchorage*, Sup. Ct. Op. No. 2752 (File No. 6717), 672 P.2d 891 (1983).

Collateral references. — 2 Am. Jur. 2d, Administrative Law, §§ 281, 282.
73 C.J.S., Public Administrative Law and Procedure, §§ 106, 107.

Validity, construction, and application of statutes making public proceedings open to the public, 38 ALR3d 1070.

Sec. 44.62.312. State policy regarding meetings. (a) It is the policy of the state that

(1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;

(2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;

(3) the people of this state do not yield their sovereignty to the agencies which serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created.

(b) AS 44.62.310(c)(1) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and avoid unnecessary executive sessions. (§ 3 ch 98 SLA 1972)

Cross references. — See note under AS 44.62.310.

Editor's notes. — AS 44.62.312(a) is based on Cal. Gov't C.A., sec. 54950.

NOTES TO DECISIONS

Public disclosure of applications. — Strong public interest in the disclosure of the affairs of government generally, and in an open selection process for high public officials in particular requires public disclosure and inspection of applications for

posts having substantial discretionary authority. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

Quoted in *Hammond v. North Slope Borough*, Sup. Ct. Op. No. 2499 (File Nos. 5550, 5558), 645 P.2d 750 (1982); *Alaska Community Colleges' Fed'n of Teachers*.

Local 2404 v. University of Alaska, Sup. Ct. Op. No. 2779 (File No. 6676), 677 P.2d 886 (1984).

January 29, 1988
House State Affairs Committee
The Alaska Legislature

Testimony of the League of Women Voters of Alaska

HJR 44: Proposing an Amendment to the Constitution of the State of Alaska relating to open meetings.

Madame Chair, Members of the Committee:

My name is Eve Reckley. I represent the League of Women Voters of Alaska. You have before you House Joint Resolution number 44 proposing to amend the Constitution of the State of Alaska to mandate that the business of the Legislature and thus, the business of the people of Alaska, be conducted in open meetings. The resolution is simple and straight forward. It requires the Legislature to abide by the open meetings law it enacted. And it provides the legal framework within the constitution for the courts to enforce it.

In short, the League, advocating in the public interest, is asking legislators to stand up and be counted on this issue. The League has done so, by taking its case for open meetings of all legislative bodies to the Supreme Court of the State of Alaska. Our belief is strong that the deliberations and the decision-making of the Legislature and its constituent groups must be done in full public view. Our resolve is strong that we will advocate for a guarantee that the public has access to the legislative process.

An amendment to the Constitution of the State of Alaska expressly mandating this right of public access, is the only way to secure this guarantee. It provides the courts the legal justification for enforcement. Without it, the Open Meetings Act has little meaning.

The League and its co-appellants claimed in Superior Court that closed meetings by members of the House and Senate Finance committees at various times in formulating the 1987 budget, violated the open meetings act. While that claim was upheld by the Superior Court, the Supreme Court reversed it on the grounds that there "is no implied right of public access to legislative committee or caucus meetings under the Alaska Constitution." Under the separation of powers doctrine in the Constitution, the Supreme Court held it had no legal basis to enforce the laws and procedures under which the Legislature governs itself.

The League now asks you to give the courts the power to enforce the Open Meetings Act and guarantee the right of public access to legislative deliberations. The League does not make this request lightly. We consider a constitutional amendment so important that we will continue to work with other interested groups to launch an initiative campaign, if the Legislature fails to act.

The proposed constitutional amendment before you does not broaden the open meetings act, nor change existing law permitting an executive session for matters requiring confidentiality. Nor is the amendment intended to prevent the free flow of ideas among legislators or their participation in public forums, community events, or social events.

Thomas Jefferson, framer of our national constitution, noted that as democratic institutions develop and mature, changes would occasionally be necessary to guarantee for all citizens the right of full participation. I am paraphrasing a quote inscribed in marble on the Jefferson Memorial in Washington, D.C.: As a man, I would not expect to wear the clothes that fitted as a boy, and so democratic institutions must grow and change as circumstances dictate.

We are a young state, under 30 years of age, and we are maturing in our democratic processes. The League believes that the Alaska legislative system should be "responsive, representative, accessible, efficient, and accountable."

Constitutionally mandating open meetings is vital to making the legislative process accessible and accountable to the people of Alaska.

As you know, this amendment requires a two thirds vote of both the House and the Senate and the signature of the Governor to place it on the ballot for a vote of the people in November.

This process will provide an opportunity for public date and then for voters to say whether they believe public access to legislative meetings should be quaranteed in the Constitu-tion of the State of Alaska.

The League asks you to give the people of Alaska the opportunity to make that decision. Thank you.

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

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

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the legislature and the deliberations of the committees and subcommit-

13

tees and of each committee of the whole shall be open to the public

14

unless the legislative body is meeting in executive session to con-

15

sider matters authorized by law. If a matter is appropriate to a

16

particular legislative body, private and substantive deliberation on

17

the matter by a quorum of that legislative body is a violation of this

18

section. Caucuses of the legislature may meet in private to consider

19

matters of procedure, organization, or strategy.

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* Sec. 2. (a) The purpose of the amendment to art. I, Constitution of

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the State of Alaska, proposed in sec. 1 of this resolution is to make

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openness in government the rule and secrecy the exception. The amendment

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ensures that the public is not excluded during the substantive deliberative

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

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

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complies with this constitutional amendment and the amendment provides a

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basis for judicial enforcement of that law, notwithstanding art. II,

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secs. 6 and 12, Constitution of the State of Alaska.

29

(c) The existing open meeting law requires that votes be conducted in

1 a manner that allows the public to know how members voted. For executive
2 sessions, it requires that meetings first be convened as public meetings
3 and the question of holding an executive session be determined by a ma-
4 jority vote of the body. Reasonable public notice is required for open
5 meetings. ?

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

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

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

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

14 (e) This amendment is not intended to prevent the free flow of ideas
15 among legislators or their participation in public forums, community
16 events, or social events. Meetings of less than a quorum of the
17 legislative body that have the purpose or effect of circumventing the open
18 meetings law would also be a violation of this section.

19 (f) In the preparation of its neutral summary under AS 15.58.-
20 020(6)(C), the Legislative Affairs Agency shall consider the statement of
21 legislative intent contained in (a) - (e) of this section.

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



February 8, 1988
House State Affairs Committee
The Alaska Legislature

Testimony on HJR 44: Proposing an
Amendment to the Constitution of the
of the State of Alaska relating to
open meetings.

Madame Chair, Members of the Committee:

My name is Eve Reckley. I represent the League of Women Voters of Alaska. You have before you House Joint Resolution number 44 proposing to amend the Constitution of the State of Alaska to mandate that the business of the Legislature and thus, the business of the people of Alaska, be conducted in open meetings. The resolution is simple and straight forward. It requires the Legislature to abide by the open meetings law it enacted. And it provides the legal framework within the constitution for the courts to enforce it.

In short, the League, advocating in the public interest, is asking legislators to stand up and be counted on this issue. The League has done so, by taking its case for open meetings of all legislative bodies to the Supreme Court of the State of Alaska. Our belief is strong that the deliberations and the decision-making of the Legislature and its constituent groups must be done in full public view. Our resolve is strong to advocate for a guarantee that the public has access to the legislative process.

An amendment to the Constitution of the State of Alaska expressly mandating this right of public access, is the only way to secure this guarantee. It provides the courts the legal justification for enforcement. Without it, the Open Meetings Act has little meaning.

The League and its co-appellants claimed in Superior Court that closed meetings by members of the House and Senate Finance committees at various times in formulating the 1986 budget, violated the open meetings act. While that claim was upheld by the Superior Court, the Supreme Court reversed it on the grounds that there "is no implied right of public access to legislative committee or caucus meetings under the Alaska Constitution." Under the separation of powers doctrine in the Constitution, the Supreme Court held that it had no legal basis to enforce the laws and procedures under which the Legislature governs itself.

The League now asks you to give the courts the power to enforce the Open Meetings Act and to guarantee the right of public access to legislative deliberations. The League does not make this request lightly. We consider a constitutional amendment so important that we will continue to work with other interested groups to launch a campaign for an advisory vote of the people if the Legislature fails to act on its own.

The proposed constitutional amendment before you does not broaden the open meetings act, nor change existing law permitting an executive session for matters requiring confidentiality. Nor is the amendment intended to prevent the free flow of ideas among legislators or their participation in public forums, community events, or social events.

Thomas Jefferson, framer of our national constitution, noted that as democratic institutions develop and mature, changes would occasionally be necessary to guarantee for all citizens the right of full participation in their government. I am paraphrasing a quote inscribed in marble on the Jefferson Memorial in Washington, D.C.: As a man, I would not expect to wear the clothes that fitted as a boy, and so democratic institutions must grow and change as circumstances dictate.

We are a young state, under 30 years of age, and we are maturing in our democratic processes. The League believes that the Alaska legislative system should be "responsive, representative, accessible, efficient, and accountable." Constitutionally mandating open meetings is vital to making the legislative process accessible and accountable, as well as more responsive to, and presentative of the people of Alaska.

As you know, this amendment requires a two thirds vote of both the House and Senate, and the signature of the Governor to place it on the ballot for a vote of the people in November. This process will provide an opportunity for public debate and then for voters to say 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.

Thank you.

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.)

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)

Mau

1/26/88

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

SECTIONAL ANALYSIS OF HJR 44
Proposing an amendment to the Constitution
of the State of Alaska relating to open meetings.

SECTION 1 amends Article 1, Declaration of Rights, of the Constitution of the State of Alaska, by adding a new Section 23:

The deliberations of each house of the Legislature, and its committees and subcommittees, shall be open to the public, unless the legislative body is meeting in executive session to consider matters authorized by law. ~~_____~~

If a matter is appropriate to a particular legislative body, private and substantive deliberation on the matter by a quorum of that body is prohibited.

Caucuses of the legislature may meet in private to consider matters of procedure, organization or strategy.

SECTION 2 Expresses legislative intent and summarizes provisions in the existing open meetings law.

Subsection (f) provides that the Legislative Affairs Agency will consider the statement of legislative intent expressed in (a) through (e) when preparing its neutral summary for the election pamphlet.

SECTION 3 Provides that the amendment will be placed before the voters at the next general election.

Prepared by:
Rep. Kay Brown
January 29, 1988

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

**HJR 44: 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 (committee, subcommittee, etc.) 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

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.

Prepared by:
Rep. Kay Brown
January 29, 1988

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.

MY TURN

Open Meetings: The need for a constitutional amendment.

By KAY BROWN and
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.

It is now clear that this flaw can only be corrected by an amendment to the state Constitution which expressly protects the public's right to openness in the legislative process.

No Dispute over Violations: In the League v. the Alaska Legislature case there was no argument over the charge that the legislature held secret budget meetings during the 1986 session in violation of the Open Meetings Act. Nor was there any argument that these meetings violated the legislature's own Uniform Rule 22, which also requires open meetings of legislative bodies.

Neither of these claims was contested by the lawyers defending the legislature. As noted by the court: "The facts of this case are not in dispute. ... The Legislators do not deny that these meetings occurred, or that they conducted the business and

made the decisions that the League alleges." So, if everyone agrees that the meetings were in violation of the Open Meetings Act and Rule 22, what happened?

Courts Powerless to Enforce Law: The Supreme Court based its ruling on interpretations of the state Constitution. Although no one disputed that open meeting violations had occurred, the court ruled that it lacked authority to force the legislature to obey the open meetings law it has enacted. Further, because the Alaska Constitution currently does not expressly provide for open meetings, and because the Constitution gives the legislature the authority to establish its own rules, the Supreme Court determined it could not enforce the Open Meetings Act.

The court did not find the legislature innocent of violating open meeting requirements. Rather, the court decision stated that "because the Constitution commits to the legislature the authority to provide for its own rules of procedure ... we regard the question of whether the legislators have violated the Open Meetings Act or Uniform Rule 22 to be nonjudicial." The court concluded it is not the function of the judicial system to require the legislature to follow its own rules.

The court also addressed the assertion that the public has an "im-

plied" constitutional right of access to the conduct of legislative business. Although it is noteworthy that Supreme Court Justice Compton dissented, and argued forcefully that the court did have jurisdiction in the case, the majority of justices disagreed.

The Need for an Amendment: The crucial issue in the open meetings lawsuit concerned the right of the press and the public to know 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. A constitutional amendment requiring open meetings of the legislature is the only way to remedy this deficiency.

Proposed Constitutional Amendment: 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 provide 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 legislators which is essential to a legislator's ability to represent his or her constitu-

ents. 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 of the matter by a quorum of the 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 discussion 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 Legislature.