

HJR

I

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 27, 1989

FURTHER REFERRALS:

Date of Committee Action: APRIL 7, 1989

The JUDICIARY Committee recommends that:

HOUSE JOINT RESOLUTION NO. 1

[LEGISLATIVE MEETINGS OPEN TO PUBLIC]

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

be replaced with CSHJR 1 (JUD) the same title a new title

have attached amendment(s)

- 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~~ zero fiscal note
- zero with analysis

APPROVES PREVIOUS:

- fiscal note(s) published: _____
- zero fiscal notes(s) published: _____

SIGNING DO PASS:

Peter J. See

Mr. Greenberg

Alvin Davis

Ed Ellis

Fleury Martin

Michael Miller

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

Peter J. See

 Chairman's signature

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

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE JOINT RESOLUTION NO. 1 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 Proposing an amendment to the Constitu-
6 tion of the State of Alaska requiring
7 that the meetings of each house of the
8 legislature and its committees be open
9 to the public unless meeting in execu-
10 tive session to consider matters author-
11 ized by law.

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

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

15 SECTION 24. MEETINGS OPEN. The meetings of each house of the
16 legislature and its committees shall be open to the public unless
17 meeting in executive session to consider matters authorized by law.
18 The legislature may implement this section.

19 * Sec. 2. The amendment proposed by this resolution shall be placed
20 before the voters of the state at the next general election in conformity
21 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
22 tion laws of the state.

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STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITAL
JUNEAU ALASKA 99801
907 465 3800

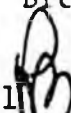
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 22, 1989

SUBJECT: Open meetings
(CSHJR 1(State Affairs))

TO: Representative Kay Brown

FROM: Richard A. Bradley
Legislative Counsel 

You have advised me that there has been a proposal to delete Section 24(b) and (c) from the proposed constitutional amendment in HJR 1. The existing provisions of Section 24(a) and (d) would then presumably be combined into a single section.

You have asked that I comment on the ability at that time, if the amendment is adopted, of the Supreme Court to enforce the open meetings requirements against the legislature and its members.

My understanding of the enforcement is that the judiciary would be authorized to fashion orders directing that meetings be open and fining members for violations of the constitutional provision or orders of the court.

I believe that the enactment of a version of HJR 1 that essentially established the right [as under Section 24(a) of CSHJR 1(State Affairs)] responds to the language of the Supreme Court's opinion in Abood v. League of Women Voters, 743 P.2d 333 (Alaska 1987).

The superior court held that these claims were nonjusticiable because "[j]usticiability in this case depends upon a determination that there is a constitutional right alleged to have been infringed." (Emphasis by court.) As a general proposition, we agree.

* * *

Representative Kay Brown
Page 2
March 22, 1989

The League asserts that the Legislators have violated both the Uniform Rule and the Open Meetings Act. If they have, to hold that these claims are justiciable places the judiciary in direct conflict with the legislature's constitutionally authorized rulemaking prerogative. We agree with the Florida Supreme Court that it is the legislature's prerogative to make, interpret and enforce its own procedural rules and the judiciary cannot compel the legislature to exercise a purely legislative prerogative. [Citation omitted.] As we stated in Malone, "except in extraordinary circumstances, as where the rights of persons who are not members of the legislature are involved, it is not the function of the judiciary to require the legislature to follow its own rules." 650 P.2d at 359. In support of this proposition, we cited United States v. Smith, 286 U.S. 6, 33 (1932), where the Court discussed the rule that the only justiciable limitations on a legislative body's power to adopt rules of its proceedings are that the body

may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rules and the result which is sought to be obtained. But within these limitations all matters of method are open to the determination of the house

* * *

If there were allegations that the legislature, acting pursuant to or in violation of one of its rules of procedure, had infringed on the rights of a third person not a member of the legislature as in Smith, or had ignored constitutional restraints or violated fundamental rights, then the "exceptional circumstances" exception to the rule of nonjusticiability would come into play. None of these factors are involved in this case, however, and there is no basis for employing the "exceptional circumstances" exception. 743 P.2d at 336, 338, and 339.

Since the goal of HJR 1 is to create constitutional rights, the court should enforce those provisions if they are violated once they are made constitutional.

If I may be of further assistance, please advise.

RAB:gc:kb
WKG8/065

HOUSE COMMITTEE REPORT

(5)

Date Referred: January 9, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: _____

The STATE AFFAIRS Committee recommends that:

HOUSE JOINT RESOLUTION NO. 1 [LEGISLATIVE MEETINGS OPEN TO PUBLIC]
Proposing an amendment to the Constitution of the State of Alaska relating to open meetings.

be replaced with Committee Substitute HJR1 the same title
 a new title

have attached amendment(s)

- 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

APPROVES PREVIOUS:

fiscal note(s) published:

zero fiscal notes(s) published:

1/9/89 Gov. Office

SIGNING DO PASS:

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

[Signature]

Chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Office of the Governor
 Title: Const. Amend.- Open Meetings BRU: Division of Elections
 Sponsor: Brown Components: I Elections
 Requestor: Brown

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	-0-	-0-	2.2*	-0-	-0-	-0-
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	2.2*	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

* Costs included cover 2 to 3 pages in each Official Elections Pamphlet, for printing and typesetting, and costs estimated to cover computer program-ing requirements for vote (Continued)

Prepared by: Linda Edgeworth Phone: 455-4611
 Division: Elections Date: 1/17/89
 Approved by Commissioner: *Sandra Stout* Date: 1/17/89
 Agency: Division of Elections

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HJR 1

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

3125-11-11-1989 Item 3
Aug

By Brown, Ellis, Boucher, Cotten
Donley, Ulmer, M. Davis, Koponen
and Navarre

Prepared by:
Rep. Kay Brown
January 19, 1989

HJR 1: Proposing an amendment to the Constitution of the State of Alaska relating to open meetings.

HJR 1 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 the discussions and debates of the legislature or a committee of the legislature be open unless the house of the legislature or a committee is meeting in executive session to consider matters authorized by law
- prohibiting a quorum of a house of the legislature or a committee of the legislature from engaging in private and substantive discussions and debates on legislation under its jurisdiction
- providing for a civil fine for a wilful violation, and other sanctions authorized by law.

HJR 1 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 events, site visitations, or social events. It intends to make openness in government the rule and secrecy the exception, and ensures that the public is not excluded during the substantive deliberative and decision-making stages of the budgetary and lawmaking process.

Item 4
my

2 lawmakers argue case for open meetings amendment

Amendment would protect the public's right to know

By SEN. ARLISS STURGULEWSKI

Alaska's Open Meeting Act states "All meetings of a legislative body ... are open to the public ..." If members of the Anchorage Assembly, the Bristol Bay Borough Assembly, or the Ketchikan City Council meet to discuss legislative matters the meeting has to be public.

The law clearly applies to the legislature also, but the way Alaska's Constitution is constructed there can be no enforcement against the legislature. The legislature says, "Do as we say, not as we do." Hypocritical? You bet, but also very comfortable for some.

The legislation which Rep. Brown introduced in the House and I introduced in the Senate last year would amend the Constitution to prohibit private and substantive debate on legislation by a quorum of either house or a committee of the legislature. Legislators could be personally subject to civil fine for violations, but legislation could not be invalidated.

The amendment makes a proper exception for executive sessions for consideration of confidential material. It also specifies that

the courts may not prescribe rules or procedures for the conduct of legislative business.

Certainly any change to a Constitution should be made with great thought and care, yet one of the beauties and strengths of our form of government is that our constitutions are living, growing documents. Since statehood, the Alaska Constitution has been amended 18 times to clarify and protect our rights. The public should be guaranteed the right to know what their representatives and senators are doing when a quorum of them meet to work on legislation.

I have no problem with making my stands in public. This is the least that people deserve from their legislators.

For next session I have already prefilled Senate Joint Resolution No. 1 - "Proposing an amendment to the Constitution of the State of Alaska relating to open meetings."

This is an issue of fundamental importance to Alaska, and with your support we can amend our state Constitution and enure the public's right to participate in their own government.

Sen. Arliss Sturgulewski represents midtown and South Anchorage in the state Senate.

Public need for access has never been more critical

By REP. KAY BROWN

When the Alaska Supreme Court ruled last year on the open meetings lawsuit brought against the legislature by the League of Women Voters and two newspapers, the court decision highlighted a crucial flaw in our state Constitution. While there was no dispute that violations had occurred, the Supreme Court ruled that it was powerless under the Constitution to enforce the state's Open Meetings Act against the legislature.

In the *League vs. the Alaska Legislature* case, there was no argument that secret closed-door meetings were held during the 1986 legislative session in violation of the Open Meetings Act. However, because the Alaska Constitution currently does not expressly provide the court jurisdiction to enforce the law with regard to the legislature, the court ruled that it could not require the legislature to obey the law.

Openness is the foundation of effective democratic representation - without access to legislative meetings there can be no accountability. It is essential for the public

and press to be able to follow and understand the issues debated and decided by the legislature - not only to know what happens, but also how and why specific decisions are made.

That's why Sen. Arliss Sturgulewski and I sponsored constitutional amendments last legislative session that would guarantee the public's right of access to the legislative deliberations. House Joint Resolution 44 passed the House with overwhelming support. Although HJR 44 cleared three of its Senate committee referrals, the resolution died in the Senate Rules Committee without a vote of the full Senate.

Decisions made in Juneau are of vital interest to all Alaskans as the state comes to terms with declining revenues. I will continue working to secure passage of an amendment to guarantee the public's right of access to legislative debate. Until such an amendment is adopted, the legislature will be free to meet at will behind closed doors in violation of the Open Meetings Act, but beyond the reach of the courts.

Rep. Kay Brown represents downtown Anchorage in the state House.

Item 5
Orig



January 19, 1989

Representative Kay Brown
Alaska State Legislature
P.O. Box 1
Juneau, Alaska 99811

Dear Representative Brown:

The Alaska League of Women Voters strongly support HJR 1, proposing an amendment to the Constitution of the State of Alaska relating to open meetings. As you must know, 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. We believe in it so strongly that we are working with other interested groups to launch an initiative campaign. The process of placing the initiative on the ballot for a vote of the people will be a healthy one. It 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 asks you to give the people of Alaska the opportunity to make that decision. Thank you.

Sincerely,

Charlotte Fox (by 213)

Charlotte Fox
President

Item 6



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Representative Kay Brown

FROM: Representative Eileen P. MacLean, Chairman *for EPRM*
House Community and Regional Affairs

DATE: January 23, 1989

RE: HJR 1

I would like to offer the attached as a friendly amendment to HJR 1. I feel this change would clarify language for purpose of interpretation. The amendment was developed based on the definition of "private and substantive discussions and debates," you provided in testimony to the State Affairs Committee. I would welcome your comments on the proposed amendment.

A M E N D M E N T

OFFERED IN THE HOUSE

BY MACLEAN

TO: HJR 1

Page 1, lines 16 - 17:

Delete "private and substantive discussions and debates"

Insert "formal or informal discussions that lead to agreements, promises, or votes"

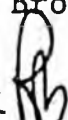
STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 28, 1989

SUBJECT: Open meetings: CSHJR 1()
TO: Representative Kay Brown
FROM: Richard A. Bradley
Legislative Counsel 

Roxanne Turner has requested a committee substitute, sponsor blank, that does two things:

(1) It deletes subsections (b) and (c) from earlier versions and combines (a) and (d).

(2) It adds into (a) all the entities described in AS 44.62.310.

The enclosed draft achieves these goals.

Note the general revision of the amendment and its accompanying language. While I have not used the laundry list located within AS 44.62.310(a), I consider that unnecessary. What has been included is each "administrative body of the executive or of a municipality." With the authorization to "implement" the constitutional provision, the legislature would proceed to define those covered by the amendment as necessary.

I consider the term "administrative body" to describe a "plural executive", that is, a board or commission but not, for example, the head of each principal department.

But let me suggest that with the addition of executive branch agencies or municipal agencies to the amendment, the thrust of the amendment is slightly weakened.

The Supreme Court has never doubted that AS 44.62.310 applied to executive agencies or to municipalities. The leg-

Representative Kay Brown
Page 2
March 28, 1989

islature now possesses full legislative power to achieve this result.

While the amendment as rewritten articulates a uniform public policy, the application of the amendment to the legislature proceeds from different premises than its application to the executive.

The application of the amendment equally to the legislature and the executive may weaken this distinction.

If I may be of further assistance, please advise.

RAB:gc
WKG8/081

Enclosure

6-0050H
Bradley
3/28/89

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

1 IN THE HOUSE

2 CS FOR HOUSE JOINT RESOLUTION NO. 1 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST 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 24. MEETINGS OPEN. Unless the legislature or a commit-
12 tee of the legislature or a governing or an administrative body of the
13 state or of a municipality is meeting in executive session to consider
14 matters authorized by law, the discussions and debates of each house
15 of the legislature and its committees and of each governing and
16 administrative body of the state and a municipality shall be open to
17 the public. The legislature may implement this section.

18 * Sec. 2. INTENT. (a) The purpose of the amendment to art. I, Consti-
19 tution of the State of Alaska, proposed in sec. 1 of this resolution is to
20 make openness in government the rule and secrecy the exception.

21 (b) This amendment provides a basis for judicial enforcement of the
22 existing open meetings law (AS 44.62.310 - 44.62.312) or an amendment to it
23 against a member of the legislature to the extent that the provisions are
24 consistent with the amendment proposed in sec. 1 of this resolution, not-
25 withstanding art. II, secs. 6 and '2, Constitution of the State of Alaska.

26 (c) The amendment also establishes a policy to govern the meetings of
27 governing and administrative bodies of the executive branch of state
28 government and of municipal government.

29 (d) In the preparation of its neutral summary under AS 15.58.-

1 020(6)(C), the Legislative Affairs Agency shall consider the statement of
2 legislative intent contained in (a) - (c) of this section.

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

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By Brown, Ellis, Bruchner, Lotte,
Donley, Ulmer, M. Davis, Koponin
and Navarre

Prepared by:
Rep. Kay Brown
March 1, 1989

**CS HJR 1 (State Affairs) 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 the discussions and debates of the legislature or a committee of the legislature be open unless the house or the legislature or a committee is meeting in executive session to consider matters authorized by law;
- prohibiting a quorum of a house of the legislature or a committee of the legislature from engaging in private formal or informal discussions that lead to promises, agreements, or votes on legislation under its jurisdiction;
- providing that a court may not prescribe rules or procedures for the conduct of legislative business, or invalidate legislation because of an open meetings violation;
- providing for a civil fine for a wilful violation; and
- exempting from the open meetings requirement subcommittees of a committee of the legislature

CS HJR 1(S.A.) 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 events, site visitations, or social events. It intends to make openness in government the rule and secrecy the exception, and ensures that the public is not excluded during the substantive or deliberative and decision-making stages of the budgetary and lawmaking process.

A M E N D M E N T

#1

OFFERED IN THE HOUSE

BY BROWN

TO: HB 140

Page 1, line 6:

Delete "relating to violations of"

Insert "implementing"

Page 1, lines 8 - 9:

Delete "and amending Alaska Rule of Civil Procedure 82 and Alaska Rule of Appellate Procedure 508;"

Page 1, lines 19 - 25:

Delete all material.

Page 1, line 26:

Delete "Sec. 24.40.070"

Insert "Sec. 24.40.060"

Page 2, line 7:

Delete "Sec. 24.40.080"

Insert "Sec. 24.40.070"

Page 2, line 11:

Delete "Sec. 24.40.090"

Insert "Sec. 24.40.080"

Page 2, lines 16 - 19:

Delete all material.

Insert a new bill section to read:

"* Sec. 2. AS 44.62.310 is amended by adding a new subsection to read:

(g) This section does not apply to subcommittees of the legislature."

A M E N D M E N T

#2

OFFERED IN THE HOUSE

BY BROWN

TO: CSHJR 1(State Affairs)

Page 1, lines 24 - 25:

Delete all material.

Reletter the following subsection accordingly.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

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 Affairs

January 19, 1989 8:30 AM

January 24, 1989 8:30 AM

HJR 1

Prepared by: Rep. Kay Brown
March 14, 1989

PROPOSED AMENDMENTS TO HJR 1, HB 140, and UNIFORM RULE 23

INTRODUCTION: THE NEED FOR AN AMENDMENT TO THE CONSTITUTION

- **Openness is fundamental to good government.**
- **In the League of Women Voters lawsuit over the closed budget discussions in caucus meetings during the 1986 session; the crucial issue concerned the right of the press and public to know and understand the deliberations of their elected representatives. Defense lawyers for the legislature did not contest the charges that the legislature held secret budget meetings or that these meetings violated the legislature's Uniform Rule 22.**
- **The SUPERIOR COURT found an implied right of access to proceedings of the legislature under the Constitution, and appeared to hold that discussion and binding decisions on substantive legislation cannot be made in a private caucus.**
- **The SUPREME COURT ruled that it had no jurisdiction in the open meetings dispute and accordingly could not force the legislature to comply with the Open Meetings Act.**
- **One legislator characterized the Supreme Court ruling as giving legislators a "blank check" in view of the Court's finding that the legislature's conduct was above the law that requires other state and local officials to conduct public business openly.**
- **The only way to remedy this deficiency is a constitutional amendment that would mandate legislative adherence to the Open Meetings Act and**

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.

ISSUES THAT HAVE ARISEN DURING CONSIDERATION OF HJR 1:

1. **Subcommittees**

- Does "**committee**" imply subcommittee as well? (Under the current statute, subcommittee meetings must be open and noticed.) Is a **quorum** just two people, in the case of a three-person subcommittee?
- There is a need for flexibility by subcommittees appointed to work on legislation. The need for quick resolution of concerns on bills in order to speed action by the full committee requires the flexibility to meet and talk informally, at times, without the notice requirement.
- Budget subcommittees seem to be the area of most concern. The budget process must be open; decisions made in Juneau are of vital interest to all Alaskans as the state comes to terms with declining revenues.
- The appropriate place to address subcommittees is in the Uniform Rules. The current Rule 23 applies to notice requirements of standing, special and joint committees.

Proposed amendment to the Open Meetings statute would exempt all legislative subcommittees except budget subcommittees, and would not affect the existing law regarding subcommittees of all other public bodies.

Proposed amendment to Uniform Rules would require budget subcommittees to meet openly, give notice.

2. Legislative immunity

- A legislator, if sued, might be required to leave Juneau during a legislative session to appear in court.
- Proposed amendment would strengthen the existing immunity in Article 2, Section 6 of the Constitution and make it clear that the open meetings provision does not invalidate legislative immunity during a session.

3. Frivolous or malicious lawsuits

- Only one lawsuit has been brought over closed legislative meetings since statehood, and it wasn't frivolous (League of Women Voters: closed budget meetings in 1986).
- This section is unnecessary and will discourage the public from bringing legitimate complaints.
- Proposed amendment deletes this provision.

Prepared by: Rep. Kay Brown
March 14, 1989

PROPOSED AMENDMENTS TO HJR 1, HB 140 AND UNIFORM RULE 23

AMENDMENTS TO HJR 1:

- **silent on subcommittees of a committee of the legislature;**
(Page 1, Lines 24-25: delete all material)
- **would defer judicial proceedings against a legislator for an open meetings violation until ten days after that session adjourns.**
(Page 1, after line 25: insert a new subsection (d))

AMENDMENTS TO HB 140:

- **would delete the section relating to frivolous or malicious complaints, and the assessment of attorney fees and costs and a civil fine of \$1000 on the plaintiff;**
(Page 1, lines 19-25: delete all material)
- **would amend the Open Meetings Statute, AS 44.62.310, to exempt subcommittees of the legislature except budget subcommittees from the open meetings requirement;**
(Page 2, after line 15: insert a new bill section; Sec. 2.(d)(6))
- **would change bill title to reflect first amendment above, and renumber the bill sections.**

AMENDMENT TO UNIFORM RULE 23:

- **draft legislation that would create a new Rule 23A that does not affect the existing Rule 23a regarding standing, special and joint committees.**

this new rule would require budget subcommittees of the finance committees of the legislature to post written notice and give 24-hour notice of scheduled meetings to the chief clerk or secretary; and would require budget subcommittees to provide written notice to the chief clerk or secretary of a delay, cancellation, or change in a scheduled meeting.

provides for an immediate effective date.

(Section 1 amends Uniform Rules by adding a new rule, Rule 23A BUDGET SUBCOMMITTEES; Section 2 adds effective date)

A M E N D M E N T

OFFERED IN THE HOUSE

BY BROWN

TO: CSHJR 1(State Affairs)

Page 1, lines 24 - 25:

Delete all material.

Reletter the following subsection accordingly.

A M E N D M E N T

OFFERED IN THE HOUSE

BY BROWN

TO: CSHJR 1(State Affairs)

Page 1, after line 25:

Insert a new subsection to read:

"(d) A judicial proceeding brought during a session of the legislature against a member of the legislature for a violation of this section shall be deferred until ten days after the adjournment of that session of the legislature."

Reletter the following subsection accordingly.

A M E N D M E N T

OFFERED IN THE HOUSE

BY BROWN

TO: HB 140

Page 1, line 6:

Delete "relating to violations of"

Insert "implementing"

Page 2, after line 15:

Insert a new bill section to read:

"* Sec. 2. AS 44.62.310(d) is amended to read:

(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; or

(6) subcommittees of the legislature except for the budget subcommittees of the finance committees."

Renumber following bill sections accordingly.

6-1008A

Cook
3/9/89

1 IN THE HOUSE

BY BROWN

2 HOUSE CONCURRENT RESOLUTION NO.
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 Proposing an amendment to the Uniform
6 Rules of the Alaska State Legislature
7 relating to budget subcommittees; and
8 providing for an effective date.

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

10 * Section 1. The Uniform Rules of the Alaska State Legislature are
11 amended by adding a new rule to read:

12 RULE 23A. BUDGET SUBCOMMITTEES. Written notice of the time,
13 place, and subject matter of a meeting of a subcommittee of a finance
14 committee charged with working on the state budget shall be posted and
15 provided by the person who chairs the subcommittee to the chief clerk
16 or secretary at least 24 hours before the meeting. A scheduled meet-
17 ing of a budget subcommittee of a finance committee may be delayed or
18 cancelled, or a change in the place or subject matter may be made at
19 any time. Written notice of a delay, cancellation, or change shall be
20 posted and provided to the chief clerk or secretary. If possible,
21 notice of a meeting, delay, cancellation, or change shall be announced
22 by the chief clerk or secretary and published as a notice in the
23 journal of the house.

24 * Sec. 2. The amendment proposed by this resolution takes effect imme-
25 diately.

A M E N D M E N T

OFFERED IN THE HOUSE

BY BROWN

TO: HB 140

Page 1, lines 8 - 9:

Delete "and amending Alaska Rule of Civil Procedure 82 and Alaska Rule of Appellate Procedure 508;"

Page 1, lines 19 - 25:

Delete all material.

Page 1, line 26:

Delete "Sec. 24.40.070"

Insert "Sec. 24.40.060"

Page 2, line 7:

Delete "Sec. 24.40.080"

Insert "Sec. 24.40.070"

Page 2, line 11:

Delete "Sec. 24.40.090"

Insert "Sec. 24.40.080"

Page 2, lines 16 - 19:

Delete all material.

Renumber following bill section accordingly.

6-0050J
Bradley
4/6/89

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

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE JOINT RESOLUTION NO. 1 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 Proposing an amendment to the Constitu-
6 tion of the State of Alaska requiring
7 that the meetings of each house of the
8 legislature and its committees be open
9 to the public unless meeting in execu-
10 tive session to consider matters author-
11 ized by law.

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

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

5 SECTION 24. MEETINGS OPEN. The meetings of each house of the
6 legislature and its committees shall be open to the public unless
7 meeting in executive session to consider matters authorized by law.
8 The legislature may implement this section.

9 * Sec. 2. The amendment proposed by this resolution shall be placed
0 before the voters of the state at the next general election in conformity
1 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
2 tion laws of the state.

6-0050H

Bradley

3/30/89

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

RECEIVED 3.30.89

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE JOINT RESOLUTION NO. 1 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST 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 24. MEETINGS OPEN. Unless the legislature or a commit-
12 tee of the legislature or a governing or an administrative body of the
13 state or of a municipality is meeting in executive session to consider
14 matters authorized by law, the meetings of each house of the legisla-
15 ture and its committees and of each governing and administrative body
16 of the state and a municipality shall be open to the public. The
17 legislature may implement this section.

18 * Sec. 2. INTENT. (a) The purpose of the amendment to art. I, Consti-
19 tution of the State of Alaska, proposed in sec. 1 of this resolution is to
20 make openness in government the rule and secrecy the exception.

21 (b) This amendment provides a basis for judicial enforcement of the
22 existing open meetings law (AS 44.62.310 - 44.62.312) or an amendment to it
23 against a member of the legislature to the extent that the provisions are
24 consistent with the amendment proposed in sec. 1 of this resolution, not-
25 withstanding art. II, secs. 6 and 12, Constitution of the State of Alaska.

26 (c) The amendment also establishes a policy to govern the meetings of
27 governing and administrative bodies of the executive branch of state gov-
28 ernment and of municipal government.

29 (d) In the preparation of its neutral summary under

1 AS 15.58.020(6)(C), the Legislative Affairs Agency shall consider the
2 statement of legislative intent contained in (a) - (c) of this section.

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

COMMITTEE FOR AN OPEN LEGISLATURE

c/o League of Women Voters of Alaska, 3605 Arctic Blvd., Suite 797, Anchorage, Ak. 99503

March 13, 1989

Sen. Tim Kelly
Senate President
Rep. Sam Cotter
Speaker of the House
Members, 16th Alaska Legislature
Box V
Juneau, AK 99811

Dear Sen. Kelly, Rep. Cotter, Legislators:

As you know, the Committee for an Open Legislature has been aggressively pursuing an amendment to the state constitution that would require all substantive business of the legislature to be conducted publicly. The Committee, which includes the Alaska Public Interest Research Group; the League of Women Voters of Alaska; the Alaska Press Club and the Anchorage Daily News is far more broadly representative than some have asserted. Not only do we want to correct any false impressions you may have about the participants in this effort, but we also want to clarify our escalating problems with HJR 1 and SJR 1.

As we expressed during our testimony to the House and Senate State Affairs committees, we have extreme reservations about anything that does not make a good faith attempt to embrace the substantive activities of sub-committees and, if somehow possible, of "ad hoc" groups of influential leaders (such as the leadership of either body).

We are also extremely concerned at the move to eliminate the public interest provisions for attorneys' fees contained in the companion legislation. And finally, we believe that the most meaningful enforcement mechanism is to maintain the option of judicial voidability. Otherwise, the public, even when found to have been truly wronged by a violation, will have no recourse to undo the damage. We believe that the court is the appropriate place to determine whether or not voiding the relevant action is the proper remedy.

Hayden/ANTHONY
Bill file

We have taken no position on the feature of ensuring government representation for legislators. However, the notion that legislators should be financially shielded from costs of representation while at the same time taking away the public interest provisions for attorneys' fees in meritorious public interest suits is unacceptable. Further, it tips the balance unfairly against the citizens whose rights these measures are designed to protect. The idea that lawsuit upon lawsuit will be filed is just not supported by the historical facts. Few lawsuits have been filed against any governing bodies since the Open Meetings Act was adopted and further, there is already provision for the dismissal of frivolous suits.

We are generally sympathetic to your concerns about how the amendment would apply to sub-committees (especially those with four or fewer members where two members meeting randomly would constitute a quorum). But first and foremost we are defending the public's right of access. We maintain that it is appropriate to explicitly provide, within the resolution, for meaningful one-on-one discussions while still clearly including sub-committees otherwise. Remember, we are not seeking major changes in notice requirements. We are only expecting that the meetings be adequately noticed locally (within the capitol) and that they be open to anyone who wants to attend. That seems neither onerous nor unreasonable.

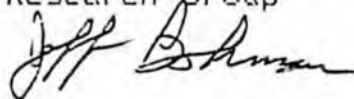
It is important to remember a fundamental point. Until the question was raised through the League of Women Voters of Alaska/Anchorage Daily News lawsuit, there was universal assumption by the public that the current Open Meetings statute applied fully to the legislature. The fact that the law proved not to be enforceable against the legislature does not change the long-standing public perception that you should be conducting the public's business in public. The public expects you to be providing a constitutional equivalent of the statute that will eliminate the problem of its non-justiciability. We do not expect you to be offering anything less.

The resolutions in their current form are a far cry from the clear treatment found in the statute. They appear to provide constitutional protection for the abuses which have lead to the visibility of this issue. The Committee will continue its efforts to achieve a meaningful amendment and to respond to the separate actions of the legislature. However, we view legislative "progress" at this point as negative, not positive. Current language retreats substantially from the strong and positive effort undertaken by Rep. Kay Brown and Sen. Arliss Sturgulewski during the 1988 session.

We sincerely hope that HJR 1 and SJR 1 can be revamped to include the important provisions cited above. To that end and to the principle of keeping "the public's business public," we pledge to work cooperatively with you.

Sincerely,

Jeff Bohman, Exec. Director
Alaska Public Interest
Research Group



Cheryl D. Anderson
League of Women Voters
of Alaska



Carol Murkowski Sturgulewski
Pres., Alaska Press Club



Rosemary Shinohara
Anchorage Daily News

