

**S B**

**3**

SENATE STATE AFFAIRS COMMITTEE

BILL NUMBER SB 3

SPONSOR Rodey

BILL TITLE Legislature's meetings

DATE REFERRED 1-9-89

HEARING SCHEDULED 1-25-89

FISCAL NOTE PREPARED

SPONSOR CONTACTED ✓ Katie 3793

INTERESTED PARTIES CONTACTED

(see SJR 1)

OTHER

Patrick M. Rodey  
Senator

# Alaska State Legislature



## Senate

3111 C. St., Suite 510  
Anchorage, Alaska 99503  
(907) 561-7618

During Session:  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3793

DATE: January 23, 1989

TO : Senator Pat Pourchot, Chairman  
Senate State Affairs Committee

FROM: Senator Patrick Rodey, Sponsor

RE : Senate Bill 3 - An Act relating to meetings held by the legislature  
or a committee of the legislature

Senate Bill 3 is similar in some respects to last session's proposed open meetings constitutional amendment. However, I have taken a fundamentally different approach by introducing statutory changes rather than a proposed constitutional amendment. Because of this, more specifics are required due to the fact that implementing legislation requires that some decisions be made which were merely authorized by constitutional amendment. The legislation provides that:

- \* Private, substantive discussion and debate is prohibited;
- \* Caucuses may meet in private only to consider matters of procedure, strategy, and organization;
- \* Interested parties may commence an action for mandamus, injunctive or declaratory relief for the purpose of stopping or preventing a violation of this law;
- \* Courts may not prescribe rules or procedures for the conduct of legislative business, or invalidate constitutionally enacted legislation because of a violation of this law;
- \* Courts may impose a civil fine up to \$500 for wilful violation of this law; and
- \* Violation of this law is also a violation of the legislative ethics code.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

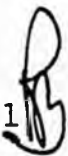
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

July 14, 1988

SUBJECT: Open meetings  
(Work Order No. 6-0022)

TO: Senator Pat Rodey

FROM: Richard A. Bradley  
Legislative Counsel 

You have requested that a bill be prepared incorporating the elements of SCS CSHJR 44(SA) (Fifteenth Legislature) into law, rather than as a constitutional amendment.

The enclosed bill responds to the request.

It seemed better to deal specially with the legislative matters in a separate section, still within AS 44.62, rather than trying to amend existing AS 44.62.310.

But let me observe that it would be even better to deal with the legislative matters in this area specially, say with a new section in AS 24 (the legislature) rather than trying to deal with separate issues within the existing framework of AS 44.62.310 - 44.62.312. The logic of this suggestion is that I would delete from AS 44.62.310 - 44.62.312 all those matters dealing only with legislative matters.

The reason for this, in my view, is that the legislature is different from any municipal governing body in the state. Because of the constitution, I doubt the ability of the courts to declare void an enactment of the legislature where the requirements of art. II of the Alaska Constitution have been met, even assuming that some committee of the legislature egregiously violated open meeting requirements. As I suggest below, I believe that AS 44.62.310(f) is unconstitutional as applied to acts of the legislature. On the other hand, the ability of the courts to declare void the adoption of a municipal ordinance or the regulation of an executive

Senator Pat Rodey  
Page 2  
July 14, 1988

agency for a similar violation is undoubted.

I have not, however, followed the logic of this suggestion because I am aware that this area is highly charged politically and I do not wish to add to your problems, even if the result seemed substantially an improvement, without your approval. Some matters may be noted. The difference between a constitutional amendment and implementing legislation requires that some decisions be made that were merely authorized in HJR 44. Thus, the bill states that the fine may not exceed \$500; in my review of the laws of other states, I noted that several states set the penalty at \$500, some set it lower; no one sets it higher (that I found). The amount could, nonetheless, be higher or lower and you will wish to consider the amount.

And while HJR 44 would authorize the legislature to establish "other sanctions", I have not provided any. But, for your information, some of those ideas may be noted.

Several states authorize an injunctive or mandamus order so long as the court order does not "prescribe rules or procedures for the conduct of legislative business." As you may recall, the litigation that generated this legislation had a request by the plaintiffs that the court specify the amount of debate that should occur on the bill; they asked that the court order "substantial, de novo, independent and public reconsideration of those substantive matters previously discussed in private." Abood v. League of Women Voters of Alaska, 743 P.2d 333, 334 (Alaska 1987).

California provides for misdemeanor penalties. Sec. 9030, Cal. Gov't Code.

Oregon authorizes the assessment of attorney fees at trial and on appeal from the body violating these provisions.

It would also be possible, I believe, to make a violation of the open meeting requirements a violation of legislative ethics,  
AS 24.60.

Iowa provides explicitly that a member who votes against the violating meeting may not be fined. Ch. 21, Iowa Code, sec. 21.6(3).

Senator Pat Rodey  
Page 3  
July 14, 1988

Some states establish short fuses for litigation; in Idaho, the case must be brought within six months of the offending action and in Louisiana it must be brought within 60 days.

Finally, as I have suggested, in my view AS 44.62.310(f) is void as applied to the legislature; the section provides that action taken in violation of AS 44.62.310 is "void."

As applied to the actions of municipal government or of executive agencies, the provision is appropriate and there are many cases, including a few in Alaska, clearly voiding municipal or executive action for a violation. But the question whether an act of the legislature has taken effect is determined under the provisions of article II of the Alaska Constitution and I am quite uncomfortable with a suggestion that the legislature can, by legislation, authorize the voiding of an act that under the Alaska Constitution has been validly enacted.

It is interesting that the recent Abood decision does not address the question; I have wondered whether the court concluded that it was without the authority to void an act and for that reason concluded that the matter was nonjusticiable.

Thus I suggest that this matter be clarified and that sec. 44.62.310(f) be limited in its application to municipal and executive action.

If I may be of further assistance, please advise.

RAB:mi  
wkmi2/071

Enclosure

SB 3, RELATING TO MEETINGS HELD BY THE LEGISLATURE OR A COMMITTEE  
OF THE LEGISLATURE

TO TESTIFY:

SENATOR RODEY, BILL SPONSOR (KATIE)

SEE SJR 1 (IT PROBABLY MAKES SENSE TO DISCUSS SJR 1 AND SB 3  
SIMULTANEOUSLY. MANY OF THE PROVISIONS ARE THE SAME, THE  
BASIC DIFFERENCE BEING THAT SJR 1 AMENDS THE STATE  
CONSTITUTION AND SB 3 AMENDS STATUTE. SJR 1 IS PREFERABLE  
BECAUSE IT CAN BE JUDICIALLY ENFORCED, WHEREAS SB 3 CANNOT  
BE.)

FYI:

OTHER DIFFERENCES FROM SJR 1:

SB 3 SPECIFICALLY ALLOWS DISCUSSION OF STRATEGY,  
ORGANIZATION, PROCEDURE IN PRIVATE CAUCUS (PAGE 1, LINES  
24-25)

SB 3 ELABORATES ON PENALTIES (WHICH COULD BE PART OF  
STATUTORY IMPLEMENTATION THAT FOLLOWS PASSAGE OF  
CONSTITUTIONAL AMENDMENT) -- CIVIL FINE MAXIMUM \$500 (PAGE  
2, LINE 5), INJUNCTION TO STOP ACTION (PAGE 1, LINE 26),  
VIOLATION OF ETHICS CODE (PAGE 2, LINE 8)

See also SJR 1 - applies only to quorums  
of a house or committee. No mention of  
caucuses.

1 IN THE SENATE

BY RODEY AND KERTTULA

2

SENATE BILL NO. 3

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to meetings held by the legislature  
or a committee of the legislature."

7

8

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

9

\* Section 1. PURPOSE. The purpose of this Act is to ensure that the  
public is not excluded during the substantive deliberative and decision-  
making stages of the budgetary and lawmaking process.

12

\* Sec. 2. AS 24.60 is amended by adding a new section to read:

*Legislative standards of Conduct* *Explicit*  
Sec. 24.60.065. OPEN MEETINGS VIOLATION. A violation of AS 44.-  
62.311(a) or (b) is also a violation of this chapter.

14

*Administrative Procedures Act*  
Sec. 3. (AS 44.62) is amended by adding a new section to read:  
Sec. 44.62.311. MEETINGS OF THE LEGISLATURE AND ITS COMMITTEES.

17

(a) Unless the legislature or a committee of the legislature is  
meeting in executive session authorized under AS 44.62.310(b), the  
discussions and debates of each house of the legislature and its  
committees shall be open to the public.

21

(b) Except as provided in (a) of this section, private substan-  
tive discussion and debate on legislation under its jurisdiction by a  
quorum of a house of the legislature or a committee is prohibited.

24

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

26

(d) An interested person may commence an action for mandamus,  
injunction, or declaratory relief for the purpose of stopping or  
preventing a violation or threatened violation of (a) of (b) of this  
section, or to determine the applicability of this section to an

29

Existing AS 44.62.312: "Intent of law  
that actions of legislative body (etc.)  
be taken openly & that their  
deliberations be conducted openly."

1 action or threatened future action of the legislature.

2 (e) A court may not prescribe rules or procedures for the con-  
3 duct of legislative business or invalidate legislation enacted by the  
4 legislature because of a violation of this section or AS 44.62.310.

(f) A court may impose a civil fine not in excess of \$500 upon a  
member of the legislature for a wilful violation of this section or  
AS 44.62.310.

(g) A violation of (a) or (b) of this section is also a viola-  
9 tion of AS 24.60.

In SJR 1

SJR 1 says  
court may  
impose fine  
but doesn't  
specify amount

COMPARISON OF OPEN MEETING LAWS AND PROPOSALS

	Uniform Rule 22	AS 44.62.310	SJR 1	SB 3
<u>Premise</u>	All meetings of a legislative body are open to ...the general public.	Same as Rule 22	Private and substantive discussions and debates on legislation under its jurisdiction by a quorum of a house of the legislature or a committee is prohibited.	Same as SJR 1
<u>Ex-ception</u>	Same as AS 44.62.310	To discuss matters that may (1) adversely impact state finances if immediately known (2) prejudice a person's reputation (3) be required by law to be kept confidential	Same as AS 44.62.310	Same as AS 44.62.310
<u>Penalties</u>	Bill involved is returned to house of origin without further action. (Rule 54)	Actions taken in violation of law are void.	Court may impose civil fine as specified in law; may not invalidate legislation.	Court may impose civil fine (maximum \$500); may not invalidate legislation; injunction to stop action may be sought; is violation of ethics code.
<u>Other</u>			Prohibition applies only to quorum of body or committee.	Same as SJR 1.  Specifies that caucuses may meet in private to consider procedure, strategy, organization.
			Requires vote of public to enact.	



Official Business

# Alaska State Legislature

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

## MEMORANDUM

TO: Senate State Affairs Committee Members  
FROM: Senator Pat Pourchot, Chairman  
RE: January 25 Committee Hearing  
DATE: January 24, 1989

On Wednesday, January 25 at 1:30 p.m. in the Beltz Room the Senate State Affairs Committee will hear the following bills:

SJR 1, Proposing an amendment to the Constitution of the State of Alaska relating to open meetings.

SJR 1 would place before the voters at the next general election a Constitutional amendment regarding open meetings. If the amendment were to pass, all private and substantive discussions and debates on legislation under its jurisdiction by a quorum of a house of the legislature or a committee would be prohibited. The exception to this would be executive sessions as authorized by statute. If the amendment were violated, the court could impose civil fines and other sanctions authorized by statute, but could not invalidate legislation.

In 1986 the League of Women Voters sued after a series of closed meetings by the legislature. The Supreme Court ruled that although the legislature had violated existing statute and its own Uniform Rules governing open meetings, the court could not enforce compliance because the statute and rule fall within the legislature's rule making authority. Adoption of a constitutional amendment would provide a basis for judicial enforcement.

A fiscal note, indicating a cost of \$2,200 to put the amendment on the ballot, is attached. Also attached is a summary sheet comparing SJR 1 to existing law and to SB 3.

SB 3, Relating to meetings held by the legislature or a committee of the legislature.

SB 3 proposes statutory amendments, rather than a Constitutional amendment, regarding open meetings. Other than this basic

Committee Memo  
January 24, 1989

difference, many of its provisions are similar to those of SJR 1 (see attached chart).

SB 127, Relating to the private manufacture of and the definition of an alcoholic beverage.

SB 127 would exempt privately produced alcoholic beverages ("homebrew") from most statutes governing alcohol, mainly those related to licensing. Homebrewing would still be prohibited in both "damp" and "dry" local option areas; municipalities would continue to have the authority to regulate homebrewing; sale to and possession or consumption by a person under age 21 would still be prohibited.

The current definition of alcoholic beverage was rewritten in 1986 to encompass privately produced alcoholic beverages to eliminate a perceived loophole in the local option statutes. Although it is within the ABC Board's authority to issue a license for homebrewing, the Board has declined to do so.

The Great Northern Brewers Club has requested the statute changes contained in SB 127 in time for this year's annual Fur Rendezvous wine and beer judging competition. The competition has been temporarily cancelled awaiting statutory clarification.

As introduced, SB 127 included a change in the definition of alcoholic beverage to exclude from state regulation beverages that contain less than one-half percent of alcohol by volume. This section has been dropped from the committee substitute due to concerns that it would allow the manufacture and possession of beverages such as "near beer" in local option areas.

Patrick M. Rodey  
Senator

# Alaska State Legislature

3111 C. St., Suite 510  
Anchorage, Alaska 99503  
(907) 561-7618



During Session:  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3793

DATE: January 23, 1989

TO : Senator Pat Pourchot, Chairman  
Senate State Affairs Committee

FROM: Senator Patrick Rodey, Sponsor

RE : Senate Bill 3 - An Act relating to meetings held by the legislature  
or a committee of the legislature

Senate Bill 3 is similar in some respects to last session's proposed open meetings constitutional amendment. However, I have taken a fundamentally different approach by introducing statutory changes rather than a proposed constitutional amendment. Because of this, more specifics are required due to the fact that implementing legislation requires that some decisions be made which were merely authorized by constitutional amendment. The legislation provides that:

- \* Private, substantive discussion and debate is prohibited;
- \* Caucuses may meet in private only to consider matters of procedure, strategy, and organization;
- \* Interested parties may commence an action for mandamus, injunctive or declaratory relief for the purpose of stopping or preventing a violation of this law;
- \* Courts may not prescribe rules or procedures for the conduct of legislative business, or invalidate constitutionally enacted legislation because of a violation of this law;
- \* Courts may impose a civil fine up to \$500 for wilful violation of this law; and
- \* Violation of this law is also a violation of the legislative ethics code.