ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5577 SSTA HJR 4 - HJR 44

1/49

BALLOT MEASURE #1: NUCLEAR FREEZE
(Election District Vote Breakdown)

	FOR	AGAINST
Statewide total:	80,326 (58.4%)	57,125 (41.5%)
District 1:	2,609 (56.6%)	2,001 (43.4%)
District 2:	1,748 (63.0%)	1,027 (37.0%)
District 3:	1,583 (62.5%)	947 (37.4%)
District 4:	6,671 (64.3%)	3,697 (35.7%)
District 5:	4,538 (55.6%)	3,616 (44.3%)
District 6:	1,803 (60.4%)	1,184 (39.6%)
District 7:	2,652 (58.4%)	1,887 (41.6%)
District 8:	5,148 (58.4%)	3,662 (41.6%)
District 9:	4,749 (60.7%)	3,073 (39.3%)
District 10:	4,305 (58.3%)	3,072 (41.6%)
District 11:	2,805 (61.2%)	1,776 (38.8%)
District 12:	3,799 (62.7%)	2,258 (37.2%)
District 13:	2,611 (56.1%)	2,045 (43.9%)
District 14:	3,808 (55.7%)	3,030 (44.3%)
District 15:	3,952 (55.1%)	3,215 (44.8%)
District 16:	5,273 (55.7%)	4,185 (44.2%)
District 17:	1,814 (54.0%)	1,540 (45.9%)
District 18:	2,022 (50.7%)	1,966 (49.3%)
District 19:	2,774 (63.5%)	1,595 (36.5%)
District 20:	3,869 (56.9%)	2,930 (43.1%)
District 21:	2,841 (66.7%)	1,420 (33.3%)
District 22:	1,380 (55.3%)	1,115 (44.7%)
District 23:	1,684 (57.2%)	1,261 (42.8%)
District 24:	1,608 (55.4%)	1,294 (44.6%)
District 25:	1,452 (52.2%)	1,327 (47.7%)
District 26:	1,472 (57.7%)	1,079 (42.3%)
District 27:	1,356 (59.5%)	923 (40.5%)

note: percentages have been rounded to the nearest tenth.

rs

tor

The Daily News-Miner welcomes letters to the editor, P.O. Box 710, Fairbanks, AK 99707. Each letter must carry the name and address of the writer, which will be published. Letters that are libelous or in poor taste will be rejected. Thank-you letters will be published in the "Applause" column. Because of space limitations, the following rules generally apply: A letter may not be longer than 350 words. Copies of letters from one person to another will not be published. No one may publish more than one letter per month. Political endorsement letters from outside our readership area will not be published. The Daily News-Miner reserves the right to edit or reject any letter submitted.

Write letters: McCaw Communications, P.O. Box 7397, Kirkland, WA 98033, (thanks for the address, Tony.)

Sincerely,
Ross A. Whited

Nuclear-free Alaska

April 22, 1987
P.O. Box 22
Fairbanks, AK 99707

To the editor:

We have the opportunity right now to express our commitment to a nuclear-free arctic and a missile-free Alaska.

The Alaska House of Representatives recently passed a resolution indicating that commitment, and the bill now resides in a Senate committee. Secretary of State Schultz was made aware of the resolution and he sent a letter to our Legislature asking such a message not be sent to President Reagan or Premier Gorbachev as it would be detrimental to U.S. negotiations with the Soviet Union for the removal of intermediate missiles from Europe. A legislative representative states he knows too little about negotiations and would prefer to leave such dealings to the "experts."

Many Europeans feel helpless and frustrated with the presence of nuclear missiles on their soil. Many Alaskans feel the same helplessness, being used as a bargaining chip in nuclear disarmament and the likely recipient of intermediate missiles as they are displaced from Europe.

For Alaskans who believe nations can coexist on levels beyond fear and nuclear threats, now is the time to speak up. Our children may also wish a say in the matter. The news reports indicate that the "nuclear-free arctic" bill will not likely leave the Senate because there is no interest or pressure from the constituency. But there is, and it needs only to be made known.

Respectfully,
Patricia Rawert

Dear Legislator,

The following Resolution was approved by the [illegible] William [illegible] Community College on [illegible] 14, 198[illegible]. I think it is important to realize that the majority of students at the college are over [illegible] years of age and many have children. This issue is [illegible]

[illegible]

Resolution Concerning Nuclear Weapons

In 1987 the world [illegible] by the proliferation of nuclear weapons. This build-up that has taken place over the last 25 years has brought the world [illegible] the brink of a nuclear confrontation. If [illegible] these weapons takes place, the [illegible] of a nuclear winter [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

RECEIVED MAR 0 9 1987

United States Department of State

Washington, D.C. 20520

MAR 4 1987

The Honorable Jan Faiks
Senator
Alaska State Legislature
Post Office Box V
Juneau, Alaska 99881

Dear Senator,

Thank you for the opportunity to comment on HJR 4, relating to a nuclear-free zone in the arctic, subarctic, and the state of Alaska

For over four decades, the policy of deterrence has successfully prevented the outbreak of global war or armed conflict between nuclear powers. The integrity of the Western alliance system has been a central element in maintaining the credibility of deterrence against both nuclear and conventional attack. The United States has played a central role in this effort by maintaining the capability to project its military forces thousands of miles from its shores in order to meet the security commitments that lie at the heart of deterrence.

In the past the US has supported, on a case-by-case basis, certain international regional nuclear free zone proposals which advanced non-proliferation interests while not undermining existing security arrangements or our deterrent capabilities. Thus the U.S. supported the Treaty of Tlatelolco, the Antartic Treaty and the Seabed Treaty, while opposing proposed Nordic and Central European nuclear free zones. With regard to the Treaty of Rarotonga, generally known as the South Pacific Nuclear Free Zone(SPNFZ), the U.S. decided recently that in view of its global security interests and responsibilities it is not, under current circumstances, in a position to sign the associated protocols to that treaty.

The US has a deep commitment to bringing about a safer strategic environment involving progressively less reliance on nuclear weapons. It shares the vision of a world freed from the incessant and pervasive fear of nuclear devastation. The US goal in arms control is to enhance stability and reduce the risk of war by reaching equitable and verifiable agreement on deep reductions in the nuclear arsenals of both sides.

The U.S. believes, however, that the growing number of proposals for regional nuclear free zones has the potential to undermine deterrence as the cornerstone of Western security. The proliferation of such zones, especially when unmatched by

disarmament in the Soviet bloc, clearly would be detrimental to Western security and could also limit our future ability to meet security commitments world-wide.

In view of your concerns regarding national defense, I have taken the liberty of sharing your letter with the Department of Defense.

Sincerely,

Jayne H. Plank
Director, Intergovernmental Affairs
Office of Legislative and
Intergovernmental Affairs

Alaska State Legislature
Representative Niilo Koponen

March 20, 1987

Ms. Jayne H. Plank
Director, Intergovernmental Affairs
Office of Legislative and
Intergovernmental Affairs
United States Department of State
Washington, D.C. 20520

Dear Ms. Plank:

Regarding your letter to Senator Jan Faiks dated March 4, 1987, and circulated by her, I would like to clarify elements of HJR 4 that have been, apparently, misunderstood.

The letter states that nuclear free zones, "...when unmatched by disarmament in the Soviet bloc, clearly would be detrimental to Western security and could also limit our future ability to meet security commitments world-wide." I agree in concept with this statement and that is why HJR 4 seeks, in its resolves, to encourage and/or obtain "... verifiable bilateral and multilateral agreements and treaties between the United States, the Soviet Union, and other nations...".

This resolution seeks to support the Department's stated policy by ensuring any actions taken by the United States <u>must</u> be met with a commensurate commitment by the Soviet Union and other nations.

After reading this letter I find few areas of disagreement between HJR 4 and the Department of State's expressed position. In fact, the two positions appear to be mutually supportive.

I do not dispute our nation's role in maintaining its security commitments. I understand America's treaties and agreements are an essential element of that policy. Finally, I agree with your statement:

> "The U.S. has a deep commitment to bringing about a safer strategic environment involving progressively less reliance on nuclear weapons. It shares the vision of a world freed from the incessant and pervasive fear of nuclear devastation. The U.S. goal in arms control is to enhance stability and reduce the risk of war by reaching equitable and verifiable agreement on deep reductions in the nuclear arsenals of both sides."

This is exactly what HJR 4 calls for. Thank you for your interest and for supporting the principles passed so overwhelmingly by Alaskan voters last year.

Sincerely,

Representative Niilo Koponen

cc: all legislators
cc: Senator Jan Faiks

"In These Times"
March 25-31, 1987 Vol 11 No.

An Eskimo dog team stands near the site of B-52 crash. The buildings housed recovery teams; string of lights marks the crash site.

UPI/Bettmann News Photos

Fallout from the radioactive crash of '68

By Robin Epstein

IN 1987, AS IN 1968, EVENTS IN DENMARK MAY ONCE again prod the nuclear conscience of the U.S. Then, an American B-52 armed with four thermonuclear weapons crashed in Danish Greenland, provoking then-Secretary of Defense Robert McNamara to cancel the airborne alert program that had maintained nuclear-armed bombers permanently in the air since 1961. Now, 19 years later, Danish Prime Minister Poul Schlueter must deal with the fallout from the crash. Under pressure, he has promised that the 1,000-some Danes who were at the crash site will be examined mation until 1989, when the bombs, which were B-28s, will no longer be in use.

Of particular interest to the Danes is whether the bombs contained beryllium. A highly toxic substance that causes acute and chronic illnesses of the lungs and skin, weight loss and exhaustion, beryllium les-

DENMARK

sens the amount of plutonium necessary for a nuclear explosion. With beryllium present, four rather than 12.5 kilos of plutonium would have sufficed per bomb. In 1968 a kilo of plutonium ran around $300,000; a kilo of beryllium $150.

tundra was flown to the Savannah River plant in Aiken, S.C. The dirt was buried in a low-level waste disposal trench. The water underwent an ion exchange process and then joined other liquid waste for eventual release to the environment.

Bombers grounded: The Danish left was infuriated by the crash. One hundred and fifty NATO protesters gathered in Copenhagen to accuse the U.S. of violating the 1949 agreement that granted it air base rights at Thule on the condition that no nuclear bombs be flown over Danish territory.

Within a day of the crash, then-Defense Secretary McNamara removed nuclear weapons from the bombers. Outcry from

Danish officialdom shielded him from ap pearing to acquiesce to Soviet condemna tion when he cancelled airborne alert a together in February.

Untrustworthy urinalysis: In 1968 th Wright-Patterson Air Force radiological lal oratory in Dayton, Ohio, analyzed fc plutonium more than 20,000 urine spec mens of the Americans who had been i Thule. Those test results influenced the 197 joint U.S.-Danish report that called the clear up "a classic example of international coop eration" in which no health dangers ha l bee posed from the radioactivity.

Dr. Elliot Abbey of the Veterans Adminis tration Hospital in St. Louis, Mo., told *I These Times* that the urine tests may nc have conclusively proved that the men wer not exposed to significant amounts c plutonium. It is possible that as the flamin plane skidded across the ice, the plutoniur was high-fired rather than air-oxidized. An if the plutonium dioxide particles were in high-fired state after the crash—and wer therefore less soluble—they may have re mained in the lungs. Consequently, excretioi of radioactivity from the workers' bodie would have been delayed and urinalysi would not have indicated exposure.

Abbey first became interested in the Thul crash six years ago when he diagnosed patient who had participated in the cleanu with a rare blood cancer called hairy cel leukemia. "If there's a single other persor with this type of leukemia that was at Thule then the chances are extraordinarily higl that it had to do with that exposure," Abbey said. He tried to locate other Americans in volved, but with no success. And at that time he found the Danish ministry of health unre sponsive to his suggestion that they conduct a study.

More recently, a Danish woman named

for radiation poisoning. It remains to be seen if the U.S. will follow suit and investigate the thousands of Americans involved in the crash cleanup for plutonium-related illnesses.

On Jan. 21, 1968, a B-52 carrying four 1.1 megaton hydrogen bombs took off from Plattsburgh, N.Y., to fly the "Chrome Dome," a 24-hour Arctic Circle airborne alert route. Near the U.S. Air Base in Thule, Greenland, the cockpit of the plane filled with smoke. After failing to make an emergency landing, the seven-member crew ejected at 8,000 feet. Six of them survived.

The B-52 crashed onto the ice of North Star Bay seven miles southwest of Thule. The conventional explosive detonators in the outer covering of the hydrogen bombs blew up, spewing radioactive plutonium across the ice.

Late last year Prime Minister Schleuter ordered that the Danes who were at Thule be systematically identified and medically examined. Six of the 130 who participated directly in the cleanup are dead. "But all the people on the base were in contact with poisonous radioactive materials," says Lars Melgaard of OOA, a Danish nuclear information group. Everyone ignored signs prohibiting entry to dangerous areas, participants told Melgaard.

This February the Danish minister for internal affairs asked U.S. authorities which radioactive substances were used in the bombs aboard the crashed B-52. But Danish environmentalists harbor little hope that the U.S. will release this classified military information.

More than 700 American soldiers were stationed at Thule when the plane went down. About 1,400 were flown in—some of them on their way home from Vietnam—to help mop up. But so far there are no U.S. plans to find out if they also are suffering due to radiation exposure.

The Broken Arrow Control Group mobilized immediately, sending Richard Hunziker, an Air Force major-general of inspection and safety, to Greenland to oversee the operation. Broken Arrow is a Pentagon euphemism for nuclear-weapons-related accidents, of which Thule was the 30th.

Hunziker was joined by U.S. Navy investigators who in 1966 had cleaned up a similar B-52 crash in Palomares, Spain, as well as the Air Force units flown to Greenland to share the grunt work with Danish civilians.

Missing–11 kilos: More than 2,000 Americans—90 percent of whom were military personnel—and hundreds of Danes spent four winter months of 1968 on dogsleds in the arctic darkness retrieving cigarette-pack-sized pieces of radioactive bomber debris along with 237,000 cubic feet of contaminated ice. It took 10 days to locate the scattered bomb shards, which were sent back to where they came from—the AEC's Pantex plant in Amarillo, Texas. The search for the rest of the wreckage and radioactive material continued through March 15. According to OOA and Greenpeace Denmark, each bomb contained four kilos of plutonium. Only five kilos, rather than the full 16, were recovered.

In September 1968 a combination of ice and

Flirting with disaster

Denmark's current health crisis and the history behind it should be a warning signal to Congress, which is scheduled to vote soon on President Reagan's proposed legislation sanctioning bi-weekly commercial flights of 500 pounds of plutonium between Europe and Japan. The administration officials who drafted the proposed 30-year agreement hope to render Japan independent from foreign oil, but at what expense? If passed, the nuclear accord will cede the U.S. right—which does not expire until the year 2003—to veto Japanese plutonium transactions on a case-by-case basis for safety or security reasons.

"The agreement in its present form is ill-conceived, lacks foresight and is actually reckless," says Alan Kuperman of the Washington, D.C.-based Nuclear Control Institute, a non-partisan group that has issued a special report on Japan's planned air shipments of U.S.-supplied spent nuclear fuel to Europe for reprocessing. None of the large casks needed to transport such quantities of plutonium have survived crash tests. France and England would reprocess 85 tons of plutonium—an amount equal to that of the U.S. nuclear arsenal—for use in Japanese reactors by the year 2000. It only takes 15 pounds for a terrorist to make a crude nuclear weapon.

Saily Markussen has had better luck. Her efforts, along with those of Danish environmental lobbyists and the subsequent press attention, forced the Danish government to act. Markussen's 49-year-old husband Ole, who was personnel manager at the Thule base in 1968, has trouble breathing. He vomits frequently, excretes blood and has lost 66 pounds. *The Guardian* of London reported that Markussen informally canvassed 800 Danish Thule workers. She found 500 share symptoms such as weight loss, exhaustion, loss of concentration and coordination, breathing problems and wounds on their limbs that won't heal. More than 90 of them have cancer.

But across the Atlantic sits the Pentagon, and it does not like to admit mistakes. Obtaining medical attention for the Americans who were at Thule might require a class-action suit similar to those filed by Vietnam veterans exposed to Agent Orange.

A Freedom of Information Act request may be the only way to find them. The Air Force's world-wide locator will forward letters to retired servicemen, but the Pentagon is not about to volunteer the names of the clean-up participants, let alone their whereabouts. ☐

Thule alumni with any kind of blood disease contact Dr. Elliot Abbey at the St. Louis VA Medical Center, 111-JC, St. Louis, MO 63125, or call (314) 652-4100. Those with knowledge of the crash and clean-up are requested to write Robin Epstein, c/o In These Times, *or call (718) 857-2950.*

Robin Epstein is an editorial assistant at *The Nation* in New York City.

Center for Defense Information

C HJR 4

Gene R. La Rocque
Rear Admiral, USN (Ret.)
Director

Eugene J. Carroll, Jr.
Rear Admiral, USN (Ret.)
Deputy Director

William T. Fairbourn
Major General, USMC (Ret.)
Associate Director

Kermit D. Johnson
Major General, USA (Ret.)
Associate Director

James A. Donovan
Colonel, USMC (Ret.)
Associate Director

James T. Bush
Captain, USN (Ret.)
Associate Director

March 31

RECEIVED
APR 10 1987

Today the United states and the Soviet Union are equipping, planning and training for nuclear war. Each is expanding its nuclear forces in a mindless competition which is increasing the certainty of a nuclear showdown. Although arms reduction talks continue, the spirit of confrontation which dominates the deliberations provides little hope for progress toward a better relationship.

What is needed is new, imaginative -- even bold -- initiatives to move away from confrontation toward cooperation with the Soviets in ways which reduce the risk of nuclear war. Everyone understands that there is no panacea, no magic wand, which would soon rid the world of 50,000 nuclear weapons. But there are first steps which can be taken in the right direction as opposed to continuing a dangerous expansion of nuclear forces on both sides.

One such useful step is embodied in the provisions of Alaska's HJR-4 which would promote a nuclear free zone in the Arctic and sub-Arctic regions of the world. This proposal is similar in spirit and effect to the Antarctic Treaty of 1961 which has been a great success in preventing military competition in a sensitive zone.

The immediate benefits of the HJR-4 concept are apparent if one realizes that consideration is being given today to relocating U.S. Pershing II missiles from Europe to Alaska. Such action would inevitably result in Soviet intermediate range

missiles in eastern Russia, only 10 minutes away from targets in Alaska. Although this is not much worse than 30 minutes away, the shortened time for warning and response clearly would increase the risk of war through accident or misunderstanding in time of military crisis. A nuclear free zone would preclude such missiles on both sides, could be verified with confidence and would increase the safety and security of Americans and Russians alike. Altogether, HJR-4 promotes a very useful, practical measure to take a first step away from nuclear war.

Adoption of HJR-4 by the Alaska Legislature would also reinforce the clear signal to Capitol Hill and the White House that the citizens of Alaska sent by their strong support of the Nuclear Freeze resolution last year. It would put Alaska in the vanguard of the states taking action to prevent nuclear war.

Eugene J. Carroll, Jr.

HJR

28

SENATE COMMITTEE REPORT

FURTHER: LABOR & COMMERCE

4/27/87

DATE TURNED INTO OFFICE 12 MAY 1987

Mr. President:

STATE AFFAIRS Committee considered HJR 28

Encouraging the development of a working relationship between Alaska and New Zealand.

and recommended:

[ ] replace with CS FOR ________) [] same title
[ ] or adopt ________ CS FOR ________) [] new title

[ ] attached amendment(s) and

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to ________

[ ] letter of intent adopted ________

Committee [✓] attached or [ ] adopted fiscal note(s)
[ ] new [ ] updated or [✓] previous
[✓] zero [ ] fiscal impact

MEMBERS SIGNING DO PASS | OTHER RECOMMENDATIONS

Jan P. Josephson — Jan Faiks No rec
Rick Uehling Do Pass
Willie Hensley
[signature]

Senator [signature] Do Pass
Chairman signature and recommendation

[ ] Committee Backup Attached

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HJR 28
Publish Date: HOUSE 4/17/87

REQUEST:

Revision Date:
Title: Establishing a working relationship-Alaska/New Zealand
Sponsor: House Labor & Commerce
Requestor:

Agency Affected:
BRU:
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

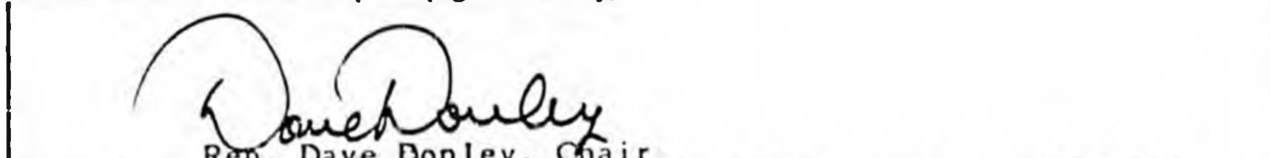
FUNDING: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
FULL-TIME						
PART-TIME						
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)



Rep. Dave Donley, Chair
Prepared by: House Labor & Commerce Committee
Phone: 465-3892
Division:
Date: April 14, 1987

Approved by Commissioner:
Date:
Agency:

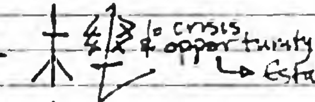
Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

START: Some ideas may not be popular but many will be our future: - open mind.

Goal: Brain storm → all mind map. N.Z. consular 477-8241

• DAVID FORD:
586-2330 h
586-6810 w.

Notes OK



危机 = crisis & opportunity
→ Established infrastructure ∴ <$

Film Centres Cannes of nth/sth

#6: Schools of international diplomacy of Economics in Already Established centres

#5 IMMEDIATE BRIDGING STEPS:
• SISTER CITY
• AK/NZ film/Cultural/food fair
• Native culture Exchanges
• Private Sector Business to Business Contacts
• Government to Government involvement.
• Govt marketing organisations Ak Seafood
• University Research Apu-dds-lincoln
• Shared information base.

#3
• PACIFIC RIM - 21st Century hub:
• SIMILARITY • language
• land •
• pioneers •
• TRUST •
• Native Cultures
• ideas •
• geographical isolation • can do Attitudes
• small populations.

ALASKA NEW ZEALAND POLITECONO ASSOC

#8 Enough interest in Ak
NZ Ambassador of consgen
up here - they want Results. Events.

#7 Transportation
links • Anc. lossing carriers • united → Hi/NZ
possible interest in Air N.Z. via Anc to Europe

#4 Opposite Seasons:
therefore no market.
Conflicts: N.Z. farm products
Ak fish produce.

#2A TOURISM: NZ eg
How? • yr. round-ski
• Animals + unique
• magazine + film advertising

→ to before others then can seed info.

#2B MOST people in state for bigger picture
• Reverence for land
→ Renewable Resources ← Fish, game, forestry, farming.
• film festival (D.H. nthern city)
• Entertaining culture
→ Recycling
└ Define - techno work that is play to us all

#2 OPPORTUNITY = a chance to become leading Edge countries and possible world leaders IF BOLD STEPS ARE TAKEN as Roll models of new 'clean' technologies with sustained growth & environmental integrity

HJR

30

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of ________________ 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER:

FISCAL NOTE(S) ATTACHED ________
IN ACCORDANCE WITH AS 24.08.035
(see below)

4/22/87

DATE TURNED INTO OFFICE 4/22/87

Mr. President:

STATE AFFAIRS Committee considered HJR 30

Urging the League of Women Voters to consider Anchorage as a site of a Presidential debate sponsored by the League.

and recommended:

[ ] replace with CS ________________ [] same title
[] new title

[ ] attached amendment(s) and

[X] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to ________________

[ ] letter of intent adopted and attached

** Committee [✓] attached or [ ] adopted fiscal note(s)
[✓] zero [ ] fiscal impact

MEMBERS SIGNING DO PASS

[signature]
Rick [signature]
Willie Hensley

OTHER RECOMMENDATIONS

Sen [signature] Do Pass
Chairman signature and recommendation

[X] Committee Backup Attached

[illegible] LEGISLATIVE SESSION

FISCAL NOTE

REQUEST:

Bill Version: [illegible]
Publish Date: [illegible]

Revision Date:
Title: Urging the League of Women Voters...Anchorage Presidential Debate
Sponsor: Collins, Gruenberg, etc.
Requestor: Rep. Collins

Agency Affected: Office of the Governor
BRU: Executive Office
Components: Executive Office

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
GENERAL FUND		0				
FEDERAL FUNDS						
OTHER						
TOTAL		0				

POSITIONS:

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill urges the League of Women Voters to consider Anchorage, Alaska as the site for one of the scheduled Presidential debates in 1988. This resolution cites no state government funding to be required for the debate and offers no financial support. No fiscal impact is anticipated by the Office of the Governor.

Prepared by: Michael A. Nizich, Director [signature]
Phone: [illegible]
Division: Division of Administrative Services
Date: [illegible]

Approved by Commissioner: Carol R. Kastelic [signature]
Date: [illegible]
Agency: Office of the Governor

Distribution (by preparer):
- Legislative Finance
- ✓Legislative Sponsor
- Requestor

Alaska State Legislature

P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-2828

DISTRICT 10
2600 Denali; Suite 501
ANCHORAGE, ALASKA 99503
(907) 276-7943

MEMBER
Community and Regional Affairs
Special Committee on Telecommunications
Finance Sub-Committee for Labor

Anchorage Caucus, House Chair

Representative Virginia M. Collins

April 22, 1987

The Honorable Mitch Abood, Chairman
Senate State Affairs Committee
P.O. Box V
Juneau, Alaska 99811

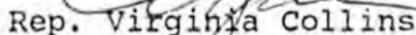
Re: HJR 30, Urging the consideration of Anchorage as a site for a 1988 Presidential debate.

Dear Senator Abood,

Just a quick note thanking you for the incredible speed in which you have scheduled HJR 30. I especially appreciate your taking the time to help me out on such short notice.

Your prompt action has greatly enhanced the chances of passing this resolution by May 1, 1987--the deadline for bid proposals. I am deeply grateful.

Cordially,



Rep. Virginia Collins

Alaska State Legislature

P. O. BOX V
JUNEAU, ALASKA 99811
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2600 Denali; Suite 501
ANCHORAGE, ALASKA 99503
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Representative Virginia M. Collins

MEMBER
Community and Regional Affairs
Special Committee on Telecommunications
Finance Sub-Committee for Labor

Anchorage Caucus, House Chair

April 21, 1987

The Honorable Mitch Abood, Chairman
Senate State Affairs Committee
P.O. Box V
Juneau, Alaska 99811

Re: HJR 30, Urging the consideration of Anchorage as a a site for a 1988 Presidential debate.

Dear Senator Abood,

HJR 30 passed unanimously in the House today. It supports Alaska's bid for holding one of the 1988 Presidential debates. It also fulfills the first requirement of the site selection criteria by demonstrating strong support from community leaders.

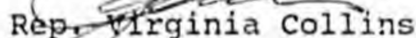
The resolution enjoys a zero fiscal note. The drafters of the bid, who include the Anchorage Convention and Visitors Bureau, have assured me that no state monies would be involved should Anchorage be chosen as one of the debate sites.

The deadline for submitting bids is May 1, 1987. Governor Steve Cowper, Congressman Don Young, Mayor Tony Knowles, the Anchorage Assembly, Republican Party Chairman Jim Crawford, and numerous organizations have already endorsed Alaska's bid. The Alaska State Legislature must act quickly to submit its endorsement before the deadline. Therefore, I respectfully request your help in passing this resolution as quickly as possible so that our endorsement can be submitted in time.

Specifically, I respectfully request waiving the five-day notice rule so HJR 30 can be heard by the Senate State Affairs Committee as soon as possible.

Enclosed is the fiscal note, back-up information, and endorsements. Thank you for your help.

Cordially,



Rep. Virginia Collins

[illegible] LEGISLATIVE SESSION

FISCAL NOTE

Bill Version : [illegible] 30
Publish Date : [illegible]

REQUEST:

Revision Date:
Title : Urging the League of Women Voters...Anchorage Presidential Debate
Sponsor : Collins, Gruenberg, etc.
Requestor : Rep. Collins

Agency Affected : Office of the Governor
BRU : Executive Office
Components : Executive Office

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
GENERAL FUND		0				
FEDERAL FUNDS						
OTHER						
TOTAL		0				

POSITIONS:

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This bill urges the League of Women Voters to consider Anchorage, Alaska as the site for one of the scheduled Presidential debates in 19[illegible]. This resolution cites no state government funding to be required for the debate and offers no financial support. No fiscal impact is anticipated by the Office of the Governor.

Prepared by : Michael A. Nizich, Director
Phone : 465-3616
Division : Division of Administrative Services
Date : 4/14/87

Approved by Commissioner : Carol P. Kastelic
Date : [illegible]/14/87
Agency : Office of the Governor

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor

DON YOUNG
CONGRESSMAN FOR ALL ALASKA

WASHINGTON OFFICE
[illegible] RAYBURN BUILDING
TELEPHONE 202 225-5765

COMMITTEES.
INTERIOR AND INSULAR AFFAIRS
MERCHANT MARINE AND FISHERIES
POST OFFICE AND CIVIL SERVICE

Congress of the United States
House of Representatives
Washington, D.C. 20515

DISTRICT OFFICES

701 C STREET [illegible]
ANCHORAGE, ALASKA [illegible]
TELEPHONE 907 271-5978

BOX 10, 101 12TH AVENUE
FAIRBANKS, ALASKA [illegible]
TELEPHONE 907 456-[illegible]

401 FEDERAL BUILDING
P.O. BOX 1247
JUNEAU, ALASKA [illegible]
TELEPHONE 907 586-7400

501 FEDERAL BUILDING
KETCHIKAN, ALASKA [illegible]
TELEPHONE 907 225-[illegible]

[illegible] 1, BOX 1605
KENAI, ALASKA [illegible]

BOX 177
KODIAK, ALASKA [illegible]

P.O. BOX 1660
NOME, ALASKA 99762

April 2, 1987

Charlotte Fox
President
League of Women Voters of Anchorage
P.O. Box 101345
Anchorage, Ak. 99510

Dear Ms. Fox,

I wholeheartedly endorse your commendable efforts to have the NationalLeague of Women Voters consider Anchorage as a site for presidential debates in 1988. I have looked at the site selection criteria you sent and for my part, feel that Anchorage would pass each one with flying colors.

Obviously, the debates would give Anchorage and all of Alaska an excellent opportunity to be spotlighted across the Nation. It is truly exciting to think that millions of Americans might see and judge the candidates while they were in our state. I wish you the best of luck in your endeavors. If there is anything I can do to help you, please let me know.

Best wishes,

Sincerely,

DON YOUNG
Congressman for all Alaska

DY:cjzv

The Republican Party of Alaska

750 E. Fireweed Lane, Suite 102
Anchorage, Alaska 99503
(907) 276-4467

Jim Crawford
Chairman

Marylin Paine
National Committeewoman

Eldon Ulmer
National Committeeman

Jack Wilbur
Vice Chairman

Gail Phillips
Secretary

Tim McKeever
Treasurer

Charlot Thickstun
Asst. Secretary

Lloyd Hames
Asst. Treasurer

Dave Harbour
Finance Chairman

Cliff Groh
Legal Counsel

April 6, 1987

Charlotte Fox
President, League of Women Voters - Anchorage
P.O. Box 101345
Anchorage, AK 99510

Dear Ms. Fox:

Thank you for your letter asking for comment from me about holding a Presidential candidates' debate in Anchorage during the 1988 campaign. I believe that having the national candidates here in Anchorage for a debate would be a superlative idea. I heartily endorse it.

As you know, both the national Democratic and Republican parties are considering jointly sponsoring the Presidential debates in 1988. If that does become the case, I truly hope that your organization will support the idea of having one of those debates here in Anchorage.

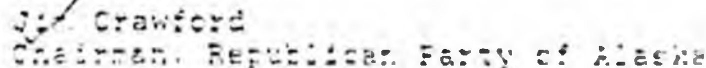
The Alaskan issues we face: revitalizing our economy, soundly accessing our natural resources, encouraging tourism and creating new jobs are very important. Given the importance of the federal government as the owner and landlord of much of Alaska, I know you will agree with me that Alaskan issues deserve support from all who run for President, whether they are Republican or Democratic.

I appreciate the opportunity to add my name to the list of those who support Anchorage as a site for a Presidential debate.

With best regards,

Jim

Jim Crawford
Chairman, Republican Party of Alaska



1988 PRESIDENTIAL DEBATES

LEAGUE OF WOMEN VOTERS

February 6, 1987

This is going on DPM

TO: Presidents of State and Local Leagues and ILO's

Fr: Nancy Neuman

RE: Site Selection for 1988 Presidential General Election Debates
Deadline: May 1, 1987

The League of Women Voters Education Fund is planning to sponsor up to four presidential debates in the fall of 1988. As we have done in past debate years, we are seeking Leagues and cities interested in hosting a 1988 debate and willing to assist the LWVEF with the multitude of tasks that go into staging the debate. If your League plans to submit a proposal, please send it by May 1, 1987 to the LWVEF's Presidential Debates Office. Guidelines for preparing and submitting proposals are as follows:

1. A cover letter from the local League president must be included with the proposal. If we receive proposals from non-LWV entities, we will immediately notify them that they must work through League channels in order to be considered. This is to ensure that each proposal has the full support and commitment of League leaders and volunteers who will be responsible for meeting LWVEF's requirements.

2. Site selection criteria are attached. Please be as specific as possible in addressing each point. All supportive materials will be reviewed. Beyond these criteria, there are other items the LWVEF must weigh in making the final decision: factors such as geographic distribution of sites and political considerations (for example, we try to avoid siting debates in the home states of the nominees).

3. Flexibility and adaptability are very important characteristics of Presidential Debates work. Please make sure everyone involved in developing the proposal is willing to shift gears at a moment's notice! For example, if your League is offering one site, and it's already booked for all but two days in September or October 1988, you'll need to look for some alternatives.

1988 PRESIDENTIAL DEBATES

LEAGUE OF WOMEN VOTERS

SITE SELECTION CRITERIA FOR 1988 PRESIDENTIAL DEBATES

1. Strong support from the local League(s) and community leaders in hosting a general election debate.

2. A minimum of 300 volunteers readily accessible to the host city is required to assist with the tasks related to the debate.

3. Commitment of the local League leadership to assist the LWVEF with fundraising for the Presidential Debates in their local/regional area. (In 1984, $250,000 was required at each site).

4. Adequate facilities for holding the debate. Facility should have:

    a. a theater with a minimum of 1000 seats (past debate theaters have ranged from 1000 to 4000) capacity, excellent acoustics, state of the art sound and lighting, space for at least 7 television cameras, adequate power for live broadcast needs, dressing room facilities.

    b. Adjacent (same building preferable) space for up to 1000 working press.

    c. Several rooms for use as debate offices.

5. Excellent transportation facilities, e.g., a large airport with major airline service and easy access from other parts of the country, especially Washington, DC.

6. Adequate hotel space to accommodate up to 1200 (LWVEF staff and board, traveling press, campaigns, secret service, debate guests, etc.)

4620 Southpark Bluff Dr.
Anchorage, Alaska 99516
April 9, 1987

Rep. Virginia M. Collins
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Rep. Collins:

The League of Women Voters of Anchorage is in the process of assembling information to demonstrate the ability to meet the site selection criteria for the 1988 Presidential Debates. Permit me to address those criteria.

1. <u>Strong support from the local League and community leaders.</u> The League has elicited expressions of support at several levels. I was informed today that the letter from Mayor Knowles will be signed yet today or tomorrow. The Municipal Assembly has already passed a resolution (AR 87-85), which will be availab[illegible] on Monday. The Chamber of Commerce will take up the item a[illegible] board meeting next week. Congressman Young has writte[illegible] [illegible]pport of the proposal. The Governor's Office is preparing a letter of support. The Anchorage Convention and Visitors Bureau (ACVB) is actively supporting the proposal and is assembling a proposal packet including letters of commitment from the hotels and the Egan Center. Other letters of support or resolutions are expected.

2. <u>A minimum of 300 volunteers.</u> The Anchorage League, itself, has 125 members upon which it can draw as well as some of the other 325 League members throughout the state. Other community groups are lining up in support. The ability of Fur Rendezvous and the Anchorage Olympic Organizing Committee to draw on large numbers of volunteers demonstrates that the League will have no difficulty meeting this criterion.

3. <u>Commitment to assist with fundraising.</u> Members of the private sector in Anchorage have assured us that we will have no difficulty raising $[illegible] for this [illegible]. The League is committe[illegible] to [illegible]

for debate offices. The ACVB is working on the response regarding these criteria. The Egan Center is now considered the primary site for the debate and work space for the press. If the Performing Arts Center is available at the time, we would probably switch the debate there and continue to use the Egan Center for the press corps and office space. Adequate seating for the debate will be available at either the Egan Center or the Performing Arts Center.

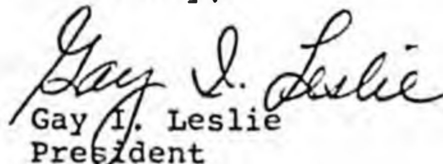
5. Excellent transportation facilities. Anchorage International Airport has major airline service from all parts of the country via Chicago, Minneapolis, Salt Lake City, and Seattle.

6. Adequate hotel space to accommodate up to 1,200. It is being proposed that a debate be scheduled in Anchorage within the window of September 23-26 or October 7-10, 1988. Both of those time frames are outside the peak tourist season. The positive response of the hotels to the ACVB indicates that we will be able to assure adequate hotel space.

Although not addressed directly in the criteria established by the League of Women Voters Education Fund, we consider our excellent broadcast capabilities and our time zone to be plusses in establishing our case for Anchorage as a host city. The same arguments that worked to the advantage of the Anchorage Olympic bid would work to the advantage of the Anchorage League's bid to host a Presidential Debate.

I hope this information answers some of the questions about the League's proposal. If I can provide further information, please call (345-2935 home; 261-4424 work).

Sincerely,



Gay I. Leslie
President

Municipality
of
Anchorage

OFFICE OF THE MAYOR

P O BOX 196650
ANCHORAGE ALASKA 99519-6650
(907) 264-4431

TONY KNOWLES
MAYOR

April 10, 1987

League of Women Voters of Anchorage
Presidential Debates
P. O. Box 101345
Anchorage, Alaska 99510-1345

Dear League Members:

As Mayor of Anchorage, Alaska, it's a pleasure for me to let you know of my wholehearted support of the League of Women Voters of Anchorage's proposal that Anchorage host one of the 1988 presidential debates to be sponsored by the National League's Education Fund. Anchorage has more than adequate facilities necessary to host one of the debates, and the hotel space to accommodate all those in attendance. We have excellent transportation facilities, and o[illegible] [illegible]me zone would make it possible for the event to be broad[illegible] live to the rest of the country.

Alaska, with its vast acres of federally-owned land, its vital military installations and proximity to the Soviet Union, is a logical place to stage a debate in which the presidential candidates certainly will be discussing national issues such as land management, the defense budget and foreign relations.

Hosting a debate of such historical significance would be an honor for Anchorage and its residents. There's no question that the Anchorage League could provide easily the volunteer assistance necessary to ensure that all tasks related to the debate would be accomplished with speed and competence. Please do not hesitate to contact my office if you have any questions, or if you need additional information to assist you in considering the proposal.

We hope to see you here in 1988, and we're looking forward to it.

Sincerely,

Tony Knowles
Mayor

Anchorage Education Association

1411 West 33rd Avenue • Anchorage, Alaska 99503 • (907) 274-0536

April 7, 1987

League of Women Voters of Anchorage
Attn: Charlotte Fox, President
P.O. Box 101345
Anchorage, Alaska 99510

Dear Ms. Fox:

The Anchorage Education Association supports the efforts of the League of Women Voters of Anchorage to have Anchorage considered as one of the sites for the 1988 presidential general election debate.

Anchorage has been characterized as an All-American City and has a unique and diverse population that is not found in many cities.

I strongly support Anchorage as one of the sites for the 1988 presidential general election debate.

Sincerely,

Shirley Abrams

Shirley Abrams
President

4620 Southpark Bluff Dr.
Anchorage, AK 99516
March 23, 1987

Nancy Neuman, Chair
LWV Education Fund
1730 M Street NW
Washington, DC 20036

Dear Nancy:

It gives me great pleasure to write to you on behalf of the League of Women Voters of Alaska (LWVAK) to express our support for the proposal of the League of Women Voters of Anchorage to host one of the 1988 Presidential General Election Debates. The Anchorage League's proposal was received enthusiastically by the LWVAK board at our February 28 meeting and has our strong support.

I am pleased to note that this proposal has also been received enthusiastically by individuals and groups in the Anchorage community and throughout Alaska. This response is typical of Alaska's can-do spirit - the same spirit that won the right to represent the United States in competing to host the 1992 and 1996 Winter Olympics.

Anchorage can offer modern hotel and convention facilities, an international airport, a sophisticated communications network, and a cadre of volunteers. In addition, the League has excellent working relations with the local government, the media, and the local business community.

Fall is off-season in Alaska - midway between the summer tourist season and winter sports festivals. Thus facilities and accommodations designed for peak-season use would be available for the debate and the entourage associated with it.

The state and local Leagues would welcome a site survey to enable us to show you what Anchorage has to offer as a potential debate site.

Sincerely,

[illegible]
President

Box 874589
Wasilla, AK 99687
April 6, 1986

Nancy Neuman, Chair
LWV Education Fund
1730 M Street NW
Washington, DC 20036

Dear Ms Neuman,

The members of the Matanuska-Susitna League of Women Voters endorse the proposal from the League of Women Voters of Anchorage to be one of the host sites for the 1988 Presidential general election debates.

We feel that Alaska affords unique opportunities in terms of its geopolitical location and its Pacific Rim oriented economy to focus national voter attention on issues relating to land-based defense systems and to foreign trade development.

More importantly, we believe that it is incumbant on the League of Women Voters to ensure regional variety in debate site location and to address the concerns and interests of voters in less densely populated states. As you are aware, there is no substitute for an up-close look at a candidate;the opportunity for an Alaskan voter to see and hear the candidate does not come often. We urge you in the strongest possible terms to consider Anchorage as one of the debate sites. Although there are those who would argue that our distance from the East Coast and the time zone changes militate against us, we submit to you that a politician can reach just as many voters from Anchorage via television as hecshe can from New York City via television. Anchorage offers all the amenities of a large city and of a smaller town.

We urge you to "Look West" for one of the debate sites and then to "Look North" for the best site !

Sincerely,

Mary Margaret Snyder

Mary Margaret Snyder
President, Matanuska Susitna League of Women Voters

AKPIRG

ALASKA PUBLIC INTEREST RESEARCH GROUP

Post Office Box 1093 / Anchorage, Alaska 99510 / (907) 278-3661

Charlotte Fox
League of Women Voters of Anchorage
Box 10-1345
Anchorge, AK 99510-1345

30 March 1987

Dear Ms. Fox,

AKPIRG is wholeheartedly supportive of your effort to host one of the presidential debates here in Anchorage. It is clear from the criteria that we have all the things needed to present a first-rate program to the public around the country and it would be a very meaningful place for the candidates themselves to be present. Alaska's long history of political activism and our current attention to campaign issues on a wide variety of fronts all demonstrate our respect for and interest in the political process.

As you know, AKPIRG is a leader in a wide range of consumer, government and public policy matters. I feel confident that we could assist in some of the logistic aspects of conducting the debate if that were necessary.

We applaud your effort and we stand ready to assist in whatever way we can.

Sincerely,

Jeffrey R. Bohman
Executive Director

Submitted by: Chairman Baker, Assembly Members Faulkner, Campbell and Farnell

AMENDED AND APPROVED

Date: 4-7-87

For Reading: April 7, 1987

ANCHORAGE, ALASKA
AR 87-85

A RESOLUTION OF THE ANCHORAGE ASSEMBLY URGING THE LEAGUE OF WOMEN VOTERS EDUCATION FUND TO CONSIDER ANCHORAGE AS THE SITE OF A 1988 PRESIDENTIAL DEBATE OR VICE PRESIDENTIAL DEBATE

THE ANCHORAGE ASSEMBLY RESOLVES:

WHEREAS, the League of Women Voters of the United States has a strong and consistent record of providing open and fair opportunities for the American voters to view prospective Presidential/and Vice Presidential candidates; and

WHEREAS, the League of Women Voters Education Fund has proposed a schedule of four presidential/and Vice Presidential debates for the 1988 Presidential election; and

WHEREAS, western states in general, and Alaska in particular have not benefitted directly from previous presidential/or Vice Presidential debates; and

WHEREAS, Anchorage has all of the facilities, volunteers, transportation networks and access to electronic media to host a successful presidential/or Vice Presidential debate; and

WHEREAS, hosting one of the 1988 Presidential/or Vice Presidential debates would be great benefit to the image of Alaska and Anchorage both at home and abroad;

NOW THEREFORE BE IT RESOLVED, that the Anchorage Assembly supports the League of Women Voters Education Fund schedule of 1988 Presidential/and Vice Presidential debates; and THEREFORE ALSO BE IT RESOLVED, that the Anchorage Assembly urges the League of Women Voters Education Fund to consider Anchorage as the site for one of the scheduled debates.

[signature]

[signature]
Municipal Clerk

(01)

April 9, 1987

Ms. Charlotte Fox
President
League of Women Voters of Anchorage
Presidential Debates
P.O. Box 101345
Anchorage, AK 99510-1345

Dear Charlotte,

I am pleased to hear of the League's plan to attempt to host one of the national presidential debates in Alaska. I heartily endorse your campaign and lend my personal support as well as that of my office to the effort.

Alaska is an excellent site for a presidential debate. As you know, our state is on the leading edge of several national issues certain to be raised during the up-coming presidential campaign including the use of new technologies, international trade and energy. In addition, other issues in which Alaska plays a direct role including development of new oil reserves on the North Slope and the national trade balance, will be a part of the presidential campaign.

Logistically, Alaska is perfectly situated for such an event. With our time four-hour difference, a late afternoon debate in Alaska could be broadcast live across the rest of the country in prime time.

Our largest city is well equipped to host such an event and has done so successfully in the past. In 1981, Anchorage was visited by the Pope and in 1985, the city won praise from the 1,200 participants in the U.S. Conference of Mayors convention. Downtown Anchorage alone boasts 2,200 hotel rooms, many fine restaurants and two brand new convention centers featuring state-of-the-art communications technology. For the weary participants afterwards, some of the world's best outdoor recreation is only minutes away.

Alaska also has something no other state can offer - the warm hospitality and great enthusiasm of those of us who live on the "Last Frontier." I believe that is the key [illegible] [illegible] history.

[illegible] 011507

I remain at your service to do what we can to have Alaska selected as the site of the one of the debates.

Sincerely,

S/S Steve Cowper

Steve Cowper
Governor

HJR

44

SENATE COMMITTEE REPORT

FURTHER

JUDICIARY
FINANCE

DATE TURNED INTO OFFICE 5-7-88

4/29/88
Mr. President:

STATE AFFAIRS Committee considered CSHJR 44 (RULES)

amendment to the Constitution of the State of Alaska relating to open meetings

and recommended

[X] replace with SCS CS HJR 44 (SA)) [X] same title
[ ] or adopt CS) [] new title

[ ] attached amendment(s) and

[X] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to

[ ] letter of intent adopted

Committee [X] attached or [ ] adopted fiscal note(s)
[ ] new [ ] updated or [X] previous
[ ] zero [X] fiscal impact

MEMBERS ~~SIGNING~~ DO PASS

OTHER RECOMMENDATIONS

Chairman signature and recommendation

[ ] Committee Backup attached

Alaska State Legislature

SENATOR
ARLISS STURGULEWSKI
Chairman, Senate Community and Regional Affairs Committee
Vice-Chairman, Senate Judiciary Committee
Member, Senate Resources Committee

2957 SHELDON JACKSON STREET
ANCHORAGE, ALASKA 99508

While in Juneau
P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3818

Senate

May 4, 1988

TO: Senator Abood,
Chairman, State Affairs Committee

FROM: Senator Sturgulewski

RE: SCS for CS HJR 44 (Rules)
Proposing an amendment to the Constitution of the State of Alaska relating to open meetings.

Thank you for scheduling a hearing on HJR 44. This is an important and balanced piece of legislation that will guarantee the public a reasonable right of access and openness in the legislative process.

I understand that you may be considering a proposed committee substitute. The proposed CS makes a number of changes to the resolution, two of which cause particular problems.

Both the House and Senate resolutions state that: "Private and substantive deliberation by a quorum of a legislative body on any subject under its jurisdiction is a violation of this section." The CS changes "Private and substantive deliberation..." to "Private decision making...".

The legislative process is a process of decisions. The most formal of these are recorded votes but a continual series of decisions lead up to these votes. The CS language on its face does not differentiate between those decisions which are substantive and those which are not. If this is read literally it presents a totally unworkable solution.

If on the other hand, the intent is to only require formal votes be public, as may be implied from the references to Mason's Rules number 42, 520, and 785 on the top of the rough draft that was distributed earlier, the language is a sham which does nothing to guarantee any real openness in the process.

The language prohibiting "Private and substantive deliberation by a quorum of a legislative body on any subject under its jurisdiction" was agreed to after extensive discussion and the active involvement of both legislative legal services and private counsel active and knowledgeable in this field.

There is no language possible which does not leave some room for interpretation, but I believe the existing language can be understood by any reasonable person. Most importantly, it guarantees the public a reasonable right of access to the legislative system. I urge you not to change the language.

The second problem is less serious but I would still urge your attention to it. The last sentence of the proposed amendment in the original resolution read; "The provisions of this section that permit executive sessions and caucuses shall be narrowly construed to achieve maximum public access and to avoid unnecessary executive sessions and caucuses."

The proposed CS would substitute; "The provisions of this section shall be narrowly construed to avoid trickery and deception in conducting executive sessions and caucuses." This new language appears to be based on Mason's Rule 43 (9) which says that in votes there must be no fraud, trickery or deception but does not appear to have any relation to this application.

The proposed language is objectionable on two counts. First the sentence now says that the entire section should be construed narrowly. It is not clear how narrowly construing the rest of the section relates to avoiding trickery and deception in executive sessions.

Second, I urge you to consider carefully whether you wish to insert the words "trickery and deception" in Alaska's constitution. I personally find them offensive and feel they infer that such practices are part of legislative life.

Thank you for your consideration of these matters.

attachments
Mason's Rules # 42, 43, 520, 785

CHAPTER 8

PRINCIPLES OF PARLIAMENTARY LAW

Sec. 42. There Are Indispensable Requirements for Making Valid Group Decisions.

Certain rules and fundamental principles govern decision making procedure. They apply without being adopted and without the consent or approval of the body. These are principally rules that by their very nature are so fundamental as to be required to give validity to the decisions of the group. These requirements can be stated in about ten principles.

Sec. 43. Indispensable Requirements for Making Valid Group Decisions.

1. *The group must be so constituted and endowed that it has the power and authority that it purports to exercise.* A purported action must be within the power of the organization or the vote is ineffective.

See Sec. 518. Action must be within power or vote is ineffective, and also cases cited therein.

2. *There must be a meeting of the group at which the decision is made.* A decision of a group results from a meeting of the minds of the group. To provide a proper opportunity for such an agreement there must be a meeting of the members. Decision making powers of a group can be exercised only at a meeting of the group. Any understanding or agreement made before, after or outside a legal meeting is not valid or binding.

See Chapter 74, Meetings of Legislative and Administrative Bodies. Particularly see Sec. 785, General Requirements Concerning Meetings.

Section 42—
State v. Lewis (1936), 181 S.C. 10, 186 S. E. 625.

3. *There must be a proper notice of the meeting so that all the members of the group have an opportunity to attend and participate.* The notice must be given to all of the persons entitled to attend the meeting, must advise the subject of the business to be transacted, state the time and place of the meeting and otherwise be such as to enable all members of the group to attend the meeting.

See Section 789, Notice of Meetings.

4. *There must be a quorum present at the meeting.* A quorum is a sufficient number that those present can act for the entire organization. Usually one half or more of the members of an organization with a definite membership are required to be present before the members present constitute a quorum and can act for the group. The power establishing an organization can require in certain cases, more than a majority to act for the group or permit less than a majority to act.

See Chapter 45, Quorum, Sections 500 to 507.

5. *There must be a clear question before the group for decision.* The members of the group must have a clear question before them upon which they can make their decision by voting to approve or reject it. Members are entitled to know precisely what the question is and what effect their votes will have before they vote. The question should be in such form that it can be answered in the affirmative or the negative.

See also, Sec. 140. Must Be a Definite Proposal for Consideration.

6. *Whenever a deliberative body is making decisions, the members must have an opportunity to debate the questions.* They have the right to express their opinions and hear the opinions of others to aid them to come to a meeting of the minds and reach valid joint decisions. The decisions of a deliberative body in exercising its responsibility must be the decisions of the membership of the body and not merely the opinions of individual members.

See Sec. 60, Right to Debate; Sec. 63, Debatability of Motions; Chapter 10, Secs. 80 to 85, What is Debatable; and Sec. 90, Right to Debate Questions.

7. *In order for a deliberative body to make a decision or take an action a vote must be taken.* An expression of opinion is not a vote and is of no effect. It cannot be assumed how or even if a member will vote and until a vote is cast nothing has happened.

See Sec. 520, A Vote Is Required to Decide a Question.

8. *To make a decision or carry a proposition there must be a vote in the affirmative of at least a majority of the legal votes cast.* The constitution or statutes sometimes require more than a majority vote for certain purposes. Parliamentary law requires only a majority vote but organizations may require by their rules more than a majority vote for certain purposes, as amendment or suspension of their rules.

See Sec. 50, Majority Control; Sec. 510, Majority of Legal Votes Is Required; Sec. 511, More Than a Majority of Legal Votes Cast May Be Required.

9. *There must be no fraud, trickery or deception causing injury.* As in other situations a person is liable for damage or injury he intentionally or negligently causes to another.

See Sec. 26, Fraud Will Invalidate Acts.

10. *Decisions must not be in violation of laws, rules or decisions of a higher authority.* Existing enactments or decisions of any rule making authority supersede enactments and decisions of authorities of a lower rank. Under our plan of government sovereign authority is vested in the states under the state constitutions. Certain powers were granted to the federal government by the federal constitution and other powers were denied to the states. In the other direction, powers have been granted to the local governments—counties, cities, districts and agencies by the state constitutions and by the legislatures. Whenever authority has been granted and exercised at any level any attempt to act contrary to it

by any organization not having higher authority is void.

Sec. 44. Parliamentary Law Is a Branch of the Common Law

See Chapter 7, Secs. 35–40, Parliamentary Law.

1. Parliamentary law is a part of the common law. It developed in the same manner and is subject generally to the same rules. Parliamentary law developed precedent by precedent as decisions were made in legislative bodies and in courts in the same manner as common law developed through judicial precedents. Both have been guided in their development by the power of legislative bodies to make rules and to enact laws.

2. Parliamentary law differs somewhat from the other branches of common law in that it is based in an important measure upon precedents of legislative and administrative bodies. But particularly in America, where the courts have the power to make final decisions on all constitutional questions, the law has been evolving upon the basis of court decisions, and a considerable volume of judicial precedents has accumulated. The application of parliamentary rules to new situations is subject to the same rules of reasoning as the application of established common law rules to new legal situations.

Sec. 45. Parliamentary Law Is Based on Principles

1. Parliamentary law is a system of principles not a group of haphazard rules. It is based upon reason and was developed over a long period of time as individual questions were determined upon the best reasoning of the legislative bodies, of their presiding officers, and of the courts.

2. Individual rules should be interpreted in the light of basic principles. It is only as a part of a field of law that the true meaning of individual rules becomes clear.

3. With the principles in mind, the detailed rules will

CHAPTER 74

MEETINGS OF LEGISLATIVE AND ADMINISTRATIVE BODIES

Sec. 785. General Requirements Concerning Meetings

1. A deliberative body can act only at a meeting.

2. The legislative and discretionary powers of a legislative body or administrative board can be exercised only at a meeting of the members who compose it, and no valid act can be taken except at a meeting duly convened. Any understandings or agreements made before or outside of a legal meeting individually or as a group, are not valid or binding. This rule applies to the commission form of government the same as to the council type.

Section 785—

Paragraph 1—

Mobile v. Kiernan (1910), 170 Ala. 449, 54 So. 102; Little Rock v. Board of Impr. (1883), 42 Ark. 152; Zottman v. San Francisco (1862), 20 Cal. 96, 81 Am. Dec. 96; Strong v. Dist. of Columbia (1885), 4 Mackey (15 D. C.) 242; Junction R. Co. v. Rieve (1860), 15 Ind. 236; Root v. Topeka (1901), 63 Kan. 129, 65 Pac. 233; Warren County Board v. Durham (1923), 198 Ky. 733, 249 S.W. 1028; Pierce v. New Orleans Building Co. (1836), 9 L. R. A. 397, 29 Am. Dec. 448; Baltimore v. Poultney (1866), 25 Md. 18; Glascow v. Morrison-Fuller (1910), 142 Mo. App. 303, 126 S.W. 236; Magneau v. City of Fremont (1890), 30 Neb. 843, 47 N.W. 280; Despatch Line etc. v. Bellamy Mfg. Co. (1841), 12 N. H. 205, 37 Am. Dec. 203; Schumm v. Seymour (1873), 24 N. J. Eq. 143; People v. Batchelor (1860), 22 N. Y. 128, 28 Barb. 310; Duke v. Markham (1890), 105 N. C. 131, 10 S.E. 1017; Williston v. Ludowese (1926), 53 N. D. 797, 208 N. W. 82; Murphy v. Albina (1892), 22 Ore. 106, 29 Pac. 353; Edsall v. Jersey Shore Burough (1908), 220 Pa. 591, 70 Atl. 429; Fitzgerald v. Pawtucket St. R. Co. (1902), 24 R. I. 201, 52 Atl. 887; Acord v. Booth (1908), 33 Utah 279, 93 Pac. 734; Holswade v. Huntington (1924), 96 W. Va. 124, 122 S.E. 449; Lisbon Ave. Land Co. v. Lake (1907), 134 Wis. 470, 113 N.W. 1099; D'Arcy v. Tamar, etc. R. Co. (1867), L. R. (Eng.) 2 Exch. 158.

Paragraph 2—

Mobile v. Kiernan (1910), 170 Ala. 449, 54 So. 102; Little Rock v. Board of Improvement (1883), 42 Ark. 152; San Luis Obispo County v. Hendricks (1886), 71 Cal. 242, 11 Pac. 682; Ex parte Mirande (1887), 73 Cal. 365, 14 Pac. 888; Alderman v. Town of West Haven (1938), 24 Conn. 391, 200 Atl. 330; Pollard v. Norwalk (1928), 108 Conn. 145, 142 Atl. 807; Commissioners v. King (1870), 13 Fla. 451; Bankin v. Jauman (18?5), 4

3. When a meeting is convened it may, in the absence of a contrary provision, be called to order by the presiding officer, someone acting for him, or by a member of the body, and in the absence of the regular presiding officer a presiding officer pro tempore may be selected.

Section 785—Continued

Paragraph 2—Continued

Idaho 394, 39 Pac. 1111; Conger v. Board of Commissioners (1896), 5 Idaho 347, 48 Pac. 1064; Centralia v. McKee (1932), 267 Ill. App. 585; Cass County Commissioners v. Ross (1874), 46 Ind. 404; Junction R. Co. v. Reeve (1860), 15 Ind. 236; Fayette County v. Chitwood (1856), 8 Ind. 504; English v. Smock (1870), 34 Ind. 115; Independent School District v. Wirtner (1892), 85 Iowa 387, 52 N.W. 243; Beers v. Lasher (1930), 209 Iowa 1158, 229 N.W. 821; Hardin County v. Louisville etc. R. R. Company (1891), 92 Ky. 412; Warren County Bd. of Education v. Durham (1923), 198 Ky. 733, 249 S.W. 1028; Johnson v. Natchitoches (1930), 14 La. App. 40, 129 So. 433; Lander v. School District (1851), 33 Maine 239; Shea v. Milford (1888), 145 Mass. 528, 14 N.E. 764; Reed v. Lancaster (1890), 152 Mass. 500, 25 N.E. 974; Field v. School District (1906), 114 Mo. App. 68, 91 S.W. 471; Belmore Investment Co. v. Lewis (1913), 180 Mo. App. 22, 162 S.W. 675; Scott v. Lincoln (1920), 104 Neb. 546, 178 N.W. 203; Giles v. School District (1855), 31 N. H. (Foster) 304; Laconia v. Belknap County (1934), 86 N. H. 565, 172 Atl. 245; Schumm v. Seymour (1873), 24 N. J. Eq. 143; State v. Van Buskirk (1878), 40 N. J. L. 463; Johnson v. Dodd (1874), 56 N. Y. 76; Pegram v. Cleveland County Commissioners (1870), 64 N. C. 557; Williston v. Ludowese (1926), 53 N. D. 797, 208 N.W. 82; McCortle v. Bates (1876), 29 Ohio St. 419; Murphy v. Albina (1892), 22 Ore. 106, 29 Pac. 353; Fisher v. Harrisburg Gas Co. (1857), 1 Pears. (Pa.) 118; Commonwealth v. Cullen (1850), 13 Pa. St. 133, 53 Am. Dec. 450; Appeal of Rittenhouse (1891), 140 Pa. St. 172, 21 Atl. 254; Edsall v. Jersey Shore Burough (1908), 220 Pa. 591, 70 Atl. 429; Gelinas v. Fugere (1935), 55 R. I. 225, 180 Atl. 346; Denison and P. S. Ry. v. James (1899), 20 Tex. Civ. App. 356, 49 S.W. 660; Hunneman v. Fire District (1864), 37 Vt. 40; Atlantic Bitulithic Co. v. Edgewood (1915), 76 W. Va. 630, 87 S.E. 183; Ray v. Huntington (1918), 81 W. Va. 607, 95 S.E. 23; Deichsel v. Maine (189?), 81 Wis. 553, 51 N.W. 880; Kleimenhagen v. Dixon (1904), 122 Wis. 526, 100 N.W. 826; Lisbon Ave. Land Co. v. Town of Lake (1907), 134 Wis. 470, 113 N.W. 1099; Holswade v. City of Huntington (1924), 96 W. V. 124, 122 S.E. 449; Bass v. Casper (1922), 28 Wyo. 387, 205 Pac. 1008; Strong v. District of Columbia (1885), 15 D. C. 242; Blacket v. Blizard (1829); Nash v. Richard (Fla. 1964), 166 So. 2d 624; Cloverdale Union High School District v. Peters (1928), 88 Cal. App. 731, 264 Pac. 373, 9 B. and C. 851; Milford v. Towner (1891), 126 Ind. 528, 26 N.E. 484; Jordan v. School District (1854), 38 Me. 164; Murphy v. Albina (1892), 22 Ore. 106, 29 Pac. 353.

Paragraph 3—

People v. Albany, etc., R. Co. (1869), 1 Lands. 308, 55 Barb. 344; Proctor Coal Co. v. Finley (1895), 98 Ky. 405, 33 S.W. 188; Billings v. Fielder (1882), 44 N. J. L. 381; Commonwealth v. Vandegrift (1911), 232 Pa. 53, 81 Atl. 153.

CHAPTER 47

RULES GOVERNING VOTING

Sec. 520. A Vote Is Required to Decide a Question

1. The decision of a deliberative body can be made only by the taking of a vote at a meeting. The fact that members have individually expressed opinions on a question is not a decision of the body and is of no effect.

2. The act of voting is a positive act whereby the person makes known an affirmative or negative position, and no presumption should be indulged that a voter who does not vote "yea" or "nay" is thereby to be counted among those who voted "yea", particularly where it is necessary to so count in order to support adoption of the matter under consideration.

Sec. 521. Members Must Vote Unless Excused

1. It is a general rule that a legislative body cannot only compel the attendance of its members but that it can also require them to vote unless excused by the body from voting.

2. The rule in the House of Commons was that every member was required to vote. This followed from the practice of division, no one being permitted to withdraw or enter after the question had been put.

Section 520—
Paragraph 1—
Landers v. Frank Street Methodist Episcopal Church (1889), 114 N.Y. 626, 21 N.E. 420; Mobile v. Kiernan (1910), 170 Ala. 449, 54 So. 102; Peirce v. New Orleans Building Co. (1836), 9 La. 397; Whitney v. City of New Haven (1890), 58 Conn. 450, 20 Atl. 666.
Paragraph 2—
Caffey v. Veale (1944), 193 Okla. 1444, 145 Pac. 2d 961.
Section 521—
Paragraph 1—
Cushing's Legislative Assemblies, Sec. 1795; Cushing, Sec. 244; N.Y. Manual, 1948–49, p. 371.
Paragraph 2—
Jefferson, Sec. XLI.

3. Each house under its power to make rules for its own government has power to excuse members from voting.

4. It is the practice in the state legislatures to excuse a member from voting when he has a personal interest in the matter voted upon or for other good cause. Ordinarily no question is raised when a member fails to vote, but, especially when a particular number of votes are required, or a certain proportion of the votes of members elected are required, one member may raise the question and insist that another member vote or state his reason for not voting and be excused.

Sec. 522. Members May Not Vote on Questions in Which They Have a Personal Interest

1. It is a general rule that no one can vote on a question in which he has a direct personal or pecuniary interest. The right of a member to represent his constituency, however, is of such major importance that a member should be barred from voting on matters of direct personal interest only in clear cases and when the matter is particularly personal. This rule is obviously not self-enforcing and unless the vote is challenged the member may vote as he chooses. A member may vote regarding a matter when other members are included with him in the motion, even though he has a personal or pecuniary interest in the result, as where charges are preferred against a group, or he may vote to increase salaries of all of the members.

Section 521—Continued
Paragraph 3—
Wise v. Bigger (1884), 79 Va. 269
Section 522—
Paragraph 1—
Hughes, Sec. 569; Cushing, Sec. 41; Cushing's Legislative Assemblies, Sec 1789; McQuillan on Municipal Corporations, Sec. 629; Mass. Manual, p. 652; Buffington etc. Co. v. Burnham (1883), 60 Iowa 493, 15 N.W. 282; Coles v. Williamsburgh (1833), 10 Wend. (N.Y.) 659; State v. Hoyt (1867), 2 Ore. 246; Aconts County v. Hall (also cited as Board of Supervisors v. Hall) (1879), 47 Wis. 207, 2 N.W. 291; People v. Kingston (1886), 101 N.Y. 82, 4 N.E. 348; Lonbat v. LeRoy (1884), 15 Alb. (N.Y.) 1.

Kay Brown

Alaska State Legislature
House of Representatives

MEMORANDUM

TO: Senator Mitch Abood, Chairman
Senate State Affairs Committee

FROM: Rep. Kay Brown

DATE: May 2, 1988

RE: CS HJR 44 (Rules)

CS HJR 44 (Rules), a proposed constitutional amendment relating to op[illegible] meetings of the Legislature, was recently referred to the Senate State Affairs Committee for consideration.

The proposed amendment was developed following the ruling of the Alaska Supreme Court last fall in League of Women Voters v. Adams et al. As you know, the Court ruled that it could not enforce the Open Meetings Act against the Legislature due to separation of powers, absent specific authorization in the Constitution. CS HJR 44 (Rules) would make the Open Meetings Act enforceable and provide additional guidelines regarding caucus meetings.

The proposal represents a workable solution to a contentious issue, and deserves your favorable consideration. I would appreciate the opportunity to discuss CS HJR 44 (Rules) with the Committee at the earliest opportunity.

Attached please find a copy of CS HJR 44 and material on the resolution. If you have any questions, please contact me or Roxanne Turner at 465-4998.

cc: State Affairs Members

Attachments: Summary Notes
CS HJR 44 (Rules)

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

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

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

Prepared by:
Rep. Kay Brown
April 26, 1988

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

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

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

HJR 44 proposes to amend the State Constitution by:

- mandating legislative adherence to the Open Meetings Act
- providing for court enforcement in the instance of a violation
- requiring that legislative deliberations be open unless the body is meeting in executive session to consider matters authorized by law
- prohibiting a quorum of a legislative body from engaging in private and substantive deliberation on any subject under its jurisdiction
- allowing legislative caucuses to meet in private to consider matters of procedure, organization or strategy
- providing for a civil fine for each instance of a wilful violation
- providing that the courts not prescribe rules or procedures for the conduct of legislative business
- providing that the language permitting executive sessions and caucuses be narrowly construed to avoid unnecessary closed meetings.

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

1 IN THE HOUSE BY THE RULES COMMITTEE

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

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

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

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

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

11 SECTION 23. MEETINGS OPEN. The deliberations of each house of
12 the legislature and its committees shall be open to the public unless
13 the legislative body is meeting in executive session to consider
14 matters authorized by law. Private and substantive deliberation by a
15 quorum of a legislative body on any subject under its jurisdiction is
16 a violation of this section. A member of the legislature who wilfully
17 violates this section is subject to a civil fine for each wilful
18 violation in an action brought in the superior court. A court may not
19 prescribe rules or procedures for the conduct of legislative business.
20 Caucuses of the legislature may meet in private to consider matters of
21 procedure, organization, or strategy. The provisions of this section
22 that permit executive sessions and caucuses shall be narrowly
23 construed to achieve maximum public access and to avoid unnecessary
24 executive sessions and caucuses.

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

CS HJR 44

The Rules Committee has made the following changes :

1) line 14, delete [If a matter is appropriate to a particular legisla-lative body, private and substantive deliberation on the matter by a quorum of that legislative body is a violation of this section.]

   line 14, add Private and substantive deliberation by a quorum of a legislative body on any subject under its jurisdiction is a violation of this section.

2) lines 19-20, add A court may not prescribe rules or procedures for the conduct of legislative business.

3) line 18, delete [penalty] and insert fine.

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

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

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

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

(2) subjects which tend to prejudice the reputation and character of any person, provided the person may request a public discussion; and

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

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

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

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

election laws of the state.

NO. 1

RECEIVED JAN 26 1988 DIRECTOR OF ELECTIONS

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HJR 44
PUBLISH DATE: HOUSE 2/10/88

FISCAL NOTE

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)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
GENERAL FUND	0	2.2*	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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]
Date: 1/26/88
Agency: Office of the Governor, Division of Elections

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

1/26/88

No. 1

HJR 44
HOUSE 2/10/88

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

HOUSE JOINT RESOLUTION NO. 44
Proposing an amendment to the Constitution of the State of Alaska relating to open meetings.

Representative Brown said that CS HJR 44 (Judiciary) proposes an amendment to the state constitution relating to open meetings. She said that the need for the amendment has arisen due to a Supreme Court decision last year which found that the court would not impose the open meetings act on the legislature. She said that the statute specifies that the open meetings act applies to the legislature, but in fact it does not according to the ruling. Section 1 of the resolution specifies that meetings shall be open to the public unless meeting in executive session to consider matters authorized by law. The resolution also distinguishes that any private or substantive deliberation on matters appropriate to the body or any quorum of that body is a violation of the section. Representative Brown said that following debate on the issue the participants agreed that a quorum was a reasonable place to draw the line, and still allow the free flow of information between the members.

She said that the Judiciary Committee added a provision concerning civil penalties. Presently the open meetings act has one penalty, that being that any action taken in violation of the section is void. She said that this is a difficult penalty to enforce because the nature of the legislative process is that subsequent actions are more likely to be finalized in other forums. Penalties in other states were used as a model for the revision for the penalty for violations, she said.

Representative Brown said that provisions encompass the recognition of caucuses and the bicameral system that this state has. The resolution also acknowledges the role that caucuses play in the legislative process in attempts to limit what takes place in the caucuses to matters of procedure, organization or strategy, she said.

Representative Rieger asked if there is a definition of "legislative body", Representative Brown responded that the open meetings statute defines who is covered. She indicated that subcommittees are included in the definition. Representative Rieger asked if two members of a three member subcommittee would be prohibited from discussing matters that are also the matter of their committee. Representative Brown indicated that there was some dispute about whether subcommittees are covered, and that she feels that a subordinate unit of a committee should not debate and discuss the substance of an issue, if not in an open meeting.

Representative Rieger expressed concern that placing these restrictions in the Constitution may tie-up the members of a

body to a point where they could not conduct business. Representative Brown responded that the resolution does address these concerns by helping to draw reasonable lines on the subject of open meetings. She said that it is clear that members of the legislature need to be able to talk to each other, and noted on page 2, line 18, "it is not intended to prevent the free flow of ideas. . ." She said that by taking the quorum approach, keeping in mind the flexibility of subcommittees, it would be possible for less than a quorum of a committee to informally discuss and debate issues.

Representative Rieger said that statutes override intent and the Constitution overrides statutes, and that there seems to be a gap between the stated intent and the proposed way it would be written in the constitution. He wondered why this approach was taken. Representative Brown said that the statutes are easier to amend and it is the statute that covers subcommittees.

EVE RECKLEY, REPRESENTING THE LEAGUE OF WOMEN VOTER'S OF ALASKA, told the members that the League supports the enactment of HJR 44. She said that the organization pressed the challenge of violations of the Open Meetings Act by legislative committee members to the Supreme Court of the state. The facts were undisputed; that closed meetings were held at various times during the formulation of the 1987 budget. The court held that "there is no implied right of public access to legislative committee or caucus meetings under the Alaska Constitution." She said that the League believes that when the legislature refuses to follow the laws it establishes, public confidence is undermined. Ms. Reckley said that if there is a question, of what is substantive deliberations, then the public should make that determination. She concluded that passage of the bill and putting it before the voters will give the people of the state a voice to determine whether open access to legislative meetings should be guaranteed in the state constitution.

Representative Rieger asked if the resolution was specific enough to trust that the courts will interpret the language as it was intended. He noted that a constitutional amendment was passed concerning a 120-day limit to the legislative session, which the courts have determined to mean 121-days. He asked if the courts would interpret the requirement to apply to subcommittees, and their quorums. Ms. Reckley said that she believed the court would be strict and narrow in its interpretation, and would probably only act on flagrant violations.

Representative Frank said that the term "strategy" was loosely defined and asked how the League feels about this area. Ms. Reckley said that they would feel more comfortable with the terminology if it was better defined. Representative Frank said that caucuses called for the purpose of strategy can be

very substantive, and that policy decisions concerning budget matters are often considered. He said that the term should be more clearly defined as to what is policy, and what is strategy.

Representative Larson asked for an explanation on the use of judicial enforcement. Ms. Reckley said that generally the remedy would be conjunctive relief asking for voiding of action taken. She noted that through the discussions on the resolution other possibilities of relief were discussed. Representative Larson asked if an illegal meeting took place what would the role of the judiciary be. Ms. Reckley said that one remedy would be a direction by the court for the legislature to redo an action in the open.

Representative Brown said that the resolution is meant to be consistent with other provisions of the constitution in its simplicity, and so lengthy definitions of terms were not considered. She said that there is the option of amending the statute to clarify definitions. She responded to the concern regarding caucuses and quorums, stating that a quorum of a committee, in a closed caucus, could not debate matters that are before the full committee. To the question of judicial enforcement, Representative Brown responded that it was a common belief that when a violation of the law occurred there would be action by the courts to prescribe penalties or remedies, which is that action taken contrary to the law is void. She said that the courts did not get into the merits of the issue regarding the case brought by the League, the court said that absent constitutional provisions, the legislature is not subject to the open meetings act.

Representative Rieger asked for an explanation of the meaning of the term 'civil penalty.' He asked if there is an understanding of how far the courts would go in an enforcement situation.

JIM BALDWIN, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, said that the section concerning civil penalties, refers to a provision in the criminal statute which provides a lower form of remedy; a civil rather than criminal penalty. Representative Rieger asked if there can be more to a penalty than a fine, such as instructions to the legislature as part of the court order to enforce the penalty. Mr. Baldwin said that the court is given direction to narrowly construe the provisions, and they could take broad power to determine the meaning of the words. Representative Rieger asked if the courts could get extremely narrow in its power and provide for meetings to be held at certain times and places to accommodate greater public participation. Mr. Baldwin said that no Supreme Court has gone to that length, and that the Courts show a great deal of respect to the legislature. He believed the court would be obligated to determine what the legislative words mean, and are guided by general legal principles.

Representative Rieger indicated that his concern was with the unexpected judicial interpretation.

Representative Brown said that the Judiciary Committee specifically considered and rejected an amendment that would have added an additional remedy concerning declaratory relief. She said that the Judiciary Committee felt that the intent is a civil fine to discourage individuals from participating in closed meetings, and did not envision any far reaching power by the court to interfere with the scheduling of meetings and other access questions. She said that they could change the term from civil "penalty" to "fine." She indicated that it was her understanding that the court would consider the stated intent and that is why it is written into the resolution.

Representative Goll asked if Representative Brown believed there is an appropriate reason for the caucus to exist. Representative Brown said that the word caucus is a generic term that may encompass anything from the majority caucus, to other subgroupings of people and that she believes there is a place in the legislative process for legislators with similar interests.

There was discussion concerning random selections of people that do not constitute the quorum of any committee discussing matters of concern to other committees. Representative Goll asked if the Majority Caucus would be allowed to meet in private to identify their interests. Representative Brown said that the subject matter involved, such as a priority determinations, should be done in public, and if there is any question, it should be done in the open.

Representative Goll asked if it was an understanding among the majority that any bill lacking 21 votes should not come to the floor, then would it be appropriate to have those votes revealed. Representative Brown said that it would depend on the circumstances and the substance of the conversation, and that any substantive business should be conducted in public.

Representative Larson asked if the "chit sheets" that get passed in the legislature, to see if there are enough votes to get a bill passed would be legal. Representative Brown responded to Representative Larson's question stating that she did not see any way that written communication's or chit sheets could be construed as being a meeting.

Mr. Baldwin explained how the open meetings act would be enforceable against the legislature notwithstanding the sections on immunity.

Representative Larson asked if the process whereby the organizational structure is determined, would be considered subject to the amendment. Mr. Baldwin said that the court would interpret the function under the existing open meetings

law which does have an exclusion for organizational meetings of caucuses. He said that he does not see the court taking an active role in attempting to legislate any rules on behalf of the legislature.

There was discussion related to changing the term on page 2, line 2 from "judicial enforcement" to "judicial review" or "interpretation." Mr. Baldwin said that in his view, the words would have the same meaning. The statement of intent is designed to cause an interpretation, that the court will not rely on the nonjudiciability doctrine again, in this area.

Representative Brown MOVED to report CS HJR (Judiciary) with individual recommendations.

Representative Rieger OBJECTED, to state that his concern focuses on narrowly construed judicial review to achieve maximum access, but that his problem was with the courts coming in to tell the legislature how to achieve maximum public access. Representative Rieger REMOVED HIS OBJECTION. There being NO FURTHER OBJECTION, it was so ordered.

CS HJR (Judiciary) was reported out of Committee with a "do pass" recommendation and zero fiscal note dated 1/26/88 by the Division of Elections, Office of the Governor.

HOUSE JUDICIARY COMMITTEE MEETING - MARCH 24, 1988 — HJR 44

Representative Brown, sponsor of the bill, joined the committee. She noted that the Judiciary Committee had heard HJR 44 once previously, and in the meantime, a subcommittee had drafted a CS. She briefly discussed the changes and proposed amendments to the original bill. Lines 11-12 on page 1 contained a more brief description of the entities covered by the bill. She noted that the open meetings statute already describes these in a comprehensive manner. Amendment 1 would, on page 1, line 19, after "court" insert "and the court may enjoin violations of this section." Amendment 2 would, on page 1, lines 17-18, delete "may be fined" and insert "is subject to a civil penalty." This would make it very clear that a civil and not a criminal fine was being levied. Amendment 3 would, on page 1, line 20, after "strategy." insert "The provisions of this section that permit executive sessions and caucuses shall be narrowly construed to achieve maximum public access and to avoid unnecessary executive sessions and caucuses."

Representative Cotten indicated support of Amendments 2 and 3, but requested clarification of Amendment 1.

Mr. Richard Bradley, Legislative Counsel, stated that an injunction is the power of the court to order someone to do something. If a committee went into an unauthorized executive session and took action there, the court could be

asked to enjoin that kind of action in the future.

Representative Cotten asked if that meant saying "don't do that any more."

Mr. Bradley replied yes and added that, should further violations occur, the offenders could be held in contempt of court, fined, and possibly even jailed.

Representative Cotten expressed concern regarding intrusion of the judicial branch into the legislative branch. Mr. Bradley stated he would assume there would only be one violation. Representative Cotten stated he opposed Amendment 1.

Representative Taylor asked what were the definitions for "procedure, organization, or strategy" on line 20. Mr. Bradley stated they were non-substantive. He said lines 14 and 15 would help clarify the issue -- "If a matter is appropriate to a particular legislative body, private and substantive deliberation on the matter by a quorum of that legislative body is a violation of this section."

Representative Taylor said, "Let's assume that the marijuana bill is pending and a caucus is held to decide the strategy question of whether to hold a hearing, whether the bill will move and how, what effect the bill would have on the group and what procedures might be used to accomplish that strategy." He asked if that would be non-procedural.

Mr. Bradley said that would be procedural because the caucus hadn't been bound to a vote on the bill itself.

Representative Cotten moved for the adoption of the CS. Vice-Chair Ulmer asked if there were any objections. There were none and the CS was adopted.

Representative Cotten moved for the adoption of the amendment relating to civil penalty. It was adopted by unanimous consent.

Representative Cotten moved for the adoption of the amendment, which would insert on page 1, line 20, after "strategy.": "The provisions of this section that permit executive session and caucuses shall be narrowly construed to achieve maximum public access and to avoid unnecessary executive session and caucuses."

Representative Gruenberg objected, saying that the language "narrowly construed" might make it difficult for the legislature to conduct its business. He expressed concern regarding the dangers of judges with no experience in the legislature. Representative Gruenberg felt the language

Legislature's Uniform Rules. He noted that HJR 44 was also before the committee for discussion. Chairman Sund explained that HJR 44 is an amendment to the constitution regarding open meetings. He added that both bills are prime sponsored by Rep. Brown, who was present at the meeting today.

Rep. Brown stated that she would discuss the bills together, because HCR 11 would make a companion rule change to the same section such as proposed in the constitutional amendment.

Rep. Brown explained that HJR 44 proposes a constitutional amendment that would provide that the legislature is covered by the Open Meetings Act.

The following is the verbatim testimony of Rep. Brown:

"The need for this arises from the Supreme Court decision last fall in the case brought against the legislature by the League of Women Voters, and other organizations, challenging activities that took place in the 1986 legislative session. Although there was not a dispute in the records about whether violations of the Open Meetings Act had occurred, the court found that it could not enforce the Open Meetings Act against the legislature because the court could not reach into the internal workings of another branch of government, the legislature, which is provided the freedom and ability to make its own rules governing how it will conduct business under the constitution. So the court found that it had no authority even though it felt that - the record indicated that there might have been violations of the Open Meetings statute, the court could not enforce that. There was an argument brought up about, well, there was an implied right of access by the public to the legislature. The court found that there is no implied right in our constitution. So, for that reason, I feel that you need to amend the constitution and assure that the public does have the right of access to the deliberations of their elected officials.

I'd like to briefly explain the proposed amendment, Mr. Chairman. It has three sentences that would go into the constitution. This would be under Article 1, the Bill of Rights. It would provide that the deliberations of each house of the legislature and its committees and subcommittees and each committee as a whole, shall be open to the public unless the body is meeting in executive session to consider matters authorized by law. Those can be authorized under the opening statutes. It further provides that, if a matter is appropriate to a particular legislative body, private and substantive deliberation on the matter by quorum of the body is a violation. Further, that caucuses of the legislature may meet in private to

would result in law suits.

Vice-Chair Ulmer put the amendment to a vote. Representatives Ulmer, Cotten, and Navarre voted yes. Representatives Gruenberg and Taylor voted no. The amendment was adopted.

Representative Gruenberg indicated support of the amendment which would insert "and the court may enjoin violations of this section."

Representative Gruenberg suggested the addition "and grant declaratory relief." Discussion followed.

Representative Gruenberg moved to amend the amendment by adding, "and grant declaratory relief" to "and the court may enjoin violations of this section."

Representative Cotten objected. Vice-Chair Ulmer maintained the objection.

Representative Taylor asked if the amendment granted jurisdiction to the courts for the purpose of supervising the legislature.

Mr. Bradley said the intent of the amendment was to give the courts jurisdiction over violations of the open meetings law.

Vice-Chair Ulmer put the amendment to a vote. There were 3 opposed, 1 in favor and the amendment failed.

Representative Taylor stated that he had prepared and distributed an amendment. He said it would place the open meetings act into the law and make it applicable to the legislature. He moved for the adoption of the amendment.

Vice-Chair Ulmer asked if there were any objections. Representative Cotten objected. Vice-Chair Ulmer noted the objection and put the amendment to a vote. There were 3 opposed, 1 in favor, and the amendment failed.

Representative Cotten moved that CSHJR 44 (Jud), as amended, pass from the committee. Representative Taylor objected. Vice-Chair Ulmer noted objection and put the motion to a vote. There were 4 in favor and 1 opposed. CSHJR 44 (Jud) as amended passed from committee.

Vice-Chair Ulmer adjourned the meeting at 3:15 p.m.

Chairman Sund announced that the next item to come before the committee was House Concurrent Resolution 11, an amendment proposing an amendment to Rule 22 of the

consider matters of procedure, organization or strategy. Section 2 of the bill makes some legislative findings and says that, essentially, some of the material in summary form that is not contained in the opening is that. Finally, Section 3 of the bill provides that the proposed amendment would be placed before the voters at the next general election.

So, essentially what this is doing is making the Open Meetings Act enforceable, allowing the court to enforce the Open Meetings Act should there be violation in the future by the legislature. I think it is important to do this, because I think openness in government is fundamental to having it operate in the interest of the citizens and that the rules that we make should be enforceable and not subject to the rules of the majority. We're talking about something, in my view, and my views come from my background as a journalist, that it is very important that the public and the press have a right of access to the deliberations of elected officials.

Why a quorum? Why draw the line there? I think that it is clear that the Open Meetings Act was not intended to apply to two people talking, two legislators talking on an ad-hoc basis, and yet, Juneau attorney Lee Sharp told a group of municipal officials recently that that is how he interprets it. So it is, I think, appropriate to draw the line at some reasonable place so that business can carry on and function and so that the representatives can lobby their colleagues on issues that are important to them on a one-on-one basis. The quorum is a reasonable place to draw the line.

On this amendment as it is proposed: any group of legislators, assuming they don't constitute a quorum of the committee with jurisdiction over an issue, can get together and talk about the substance of an issue and debate and try to reach agreement. But what we are saying here is that a quorum of a committee that would be appropriate to consider that issue should not be meeting privately to resolve it or debate it. So, that would end the fears that some people might have, that two people talking would be considered a meeting.

Further, the amendment provides for caucuses to take place and for caucuses to consider matters of procedure, organization, and strategy. I read these two sentences in conjunction with each other, so that if you had a quorum of the body, for example, a quorum of the Finance Committee that was contained within a large group of people, would not be appropriate for those people to debate a budget item. It would not be appropriate to debate the substance of it.

We had some discussion in the par (?) committee that heard this bill, on what strategy is, how to define how/why is that a part of this proposal. The dictionary definition of strategy is that it is a careful plan or method, or the art of devising or using plans or stratagems toward a goal. Strategy may be like pornography, in the sense that, when you see it, you know it. It is hard to define what it is. But I think it is not substitive deliberation on the merits given of the measure or a bill or a budget item. Where we can't define it precisely, we have to look to our own sense of propriety in policing our activities and assuring that we are erring on the side of public access and openness.

I wanted to briefly advice you of the process that went on in coming up with this proposal. Shortly after the court ruled last year, a group of journalists and people who had been involved in the lawsuit, including people from the League of Women Voters, had been in meeting in Anchorage and invited me to attend their meetings. I attended several of their meetings, as did Senator Sturgulewski. We went through about a dozen drafts to try to get agreement on a proposal that that group was considering putting forward as an initiative to try to force the legislature to act on it. In the process of that, we considered a lot of different alternatives, then eventually came up with the language that is proposed in HJR 44 as something that the people in that group felt that they could support as a reasonable, workable, realistic way to draw the line there and bring some definitive to what is now a confused situation that leaves us in limbo because we really don't have any sideboards on what a legislature can do. One senator described the principle action as giving the legislature a blank check to do and act as whatever 21 people felt was appropriate. I think that is correct, because the law cannot be enforced.

Finally, Mr. Chairman, there is a fiscal note that is very small, $2,200, unless the cost of putting this on the ballot forces them to have another ballot card, in which case the cost would be $53,400. I'm not sure at this time which of those two would be the case.

So in summary, I think HJR 44 provides realistic, workable standards that will allow the legislature to conduct its business, both efficiently and in the open and it would discourage abuse and it would ensure that the public's rights of access is protected to the deliberations of the legislature.

The other measure that is scheduled for consideration today, CS for Sponsor Substitute for HCR 11: we proposed a Judiciary Committee Substitute that incorporates the same concepts that are proposed in HJR 44. There should be a title change that would more precisely specify what this

version of the proposal addresses, proposing that we make Rule 22 of the Alaska State Legislature relate to open meetings. The par versions of this resolution dealt with caucus meetings and that was some efforts that we had worked on prior to the Supreme Court's decision. So, I will stop there. Thank you very much for hearing the resolutions."

Rep. Cotten, a co-sponsor also of HCR 11 and HJR 44, remarked that he supports the concept and a question had arisen in his mind. He asked Rep. Brown how many subcommittees she sits on in the Finance Committee and do any of them have three members. Rep. Brown responded that she sits on four subcommittees and they each have three members. Rep. Cotten proposed that she could conceivably make a phone call to somebody and talk about something that was in front of the subcommittee and be in violation of the constitution. Rep. Brown [illegible]ied that, yes, under the way that this is proposed, he w[illegible] correct. She added further comment that she has tried very hard to run the subcommittees in the open and they do not discuss substitive matters that are pending before the committee until they are in open committee meeting.

Rep. Gruenberg stated that the second sentence of the proposed Judiciary CS didn't make sense. It reads, "a quorum of the legislative body may not engage in private and substitive deliberation on a matter within the jurisdiction of the body." He wanted to know if a quorum of the legislative body may only engage in public?

Rep. Brown replied that this was correct.

Rep. Gruenberg then commented that on line 15 of HJR 44 it states, "may consider matters authorized by law." He wanted to know if Rep. Brown's intent was for "by law" to mean by uniform rule. Rep. Brown explained that she had assumed "by law" meant as authorized by the Open Meetings Act itself in the statutes.

Rep. Gruenberg suggested that the phrase "by law" should be clearly intended to mean including the uniform rules or any formal rules, or that it say "by law or the uniform rules" because the legislature is also governed by the uniform rules.

Chairman Sund remarked that he thought it was pretty clear the the uniform rules are not law.

Rep. Gruenberg reiterated that his suggestion should be considered. He added that his staff had suggested adding another sentence on line 19 that states that the legislature shall have the power to enforce, by appropriate legislation, the provisions of this article.

Rep. Brown commented that she wasn't sure what that would add. Rep. Gruenberg remarked that he wasn't certain it was necessary, but if it does make a difference, it should be included. He referred to the 120 day session limitation amendment, that it contained the same type of language and it indicates that the legislature shall pass a uniform rule to implement the constitutional provision if necessary.

Rep. Cotten asked if a fair summary of the uniform rules was that the court was saying they are something the legislature uses to police or govern itself, and the court is not going to interfere in the enforcement or applicability of the rules; it is up to the legislature to do so. He added that Concurrent Resolution 11 is a proposal to change the legislature's own rule, but if the legislature chooses to not abide by them, the court is not going to enforce the rules.

Rep. Brown acknowledged that he was correct and the effect that Rep. Gruenberg proposes would be to give the court the authority to enforce the rules.

Rep. Cotten mentioned two questions he had: Why would the legislature want to give the court the ability to enforce rules in the legislature, which is a separate body/branch of government? Why is the court going to do a better job than the legislature could do itself?

Rep. Gruenberg responded by saying that, obviously, the intent of this amendment is to give the courts the power to enforce it and any rules or legislation under it and it is clearly the sponsor's intent to let the court act as the enforcing mechanism, otherwise, there is no method of enforcement and the legislature is left to its own devices. Whether it is called a statute or a uniform rule, the intent is that the court can enforce it. He restated his feeling is that these things are better put into the uniform rules than they are into statute, because the legislature is governed by uniform rules and also that the court should be given the power to enforce it.

Chairman Sund stated that if it is put in law, then the executive branch is also given the authority to have something to say about it, because the Governor either has to sign it or not sign it.

Rep. Gruenberg remarked that this is probably another reason to ask why should the executive branch be getting into something that is strictly legislative.

Chairman Sund asked for any other discussion as another person was waiting to testify.

Rep Taylor asked if substitive deliberation was defined in

the amendment and what the definition was.

Rep. Brown replied that it was not defined in the resolution and the definition that she had come with is: formal or informal discussion that leads to agreement, consensus, commitment, decision or vote on a matter pending before the legislature. In response to comments made by Rep. Taylor, she stated that it is not necessary to define every single word in every law in order for the law to have meaning and be valid.

Rep. Taylor then asked Rep. Brown if she had the definitions of procedure, organization and strategy, and if they were offered in the amendment?

Rep. Brown emphasized that she had already discussed the definition of strategy. She then stated that the definition of procedural items as differentiated from substitive debate was pretty clear. She offered that organization would refer to how the caucuses organize and the election of officers. Rep. Brown then made note that it is already exempt in the Open Meetings statute.

Rep. Taylor stated that his real question was why was it being readmitted that the legislature is so limited to different things.

Rep. Brown responded by saying that the Open Meetings Act right now applies to everyone, every public body, and unless the legislature takes action to make it enforceable against the legislature, it is putting the legislature in a different category than everyone else. She felt that the constitutional amendment puts the legislature on the same footing with the other bodies, and with the executive branch, in making the act have meaning.

Rep. Taylor commented that he didn't think it does and that it is a different set of rules for the legislature than for most people out there. He asked, wouldn't one line that states that the legislature shall be bound by the Open Meetings Act put everyone on the same level playing field, or does the legislature have to have special exceptions for procedure, strategy and substitive deliberation.

Rep. Brown replied that you could stop with the first sentence, but if you did that, the only thing in effect then would be the substance in the Open Meetings Act. She pointed out that the issue addressed in the second sentence is, at what point do you have a meeting. She added that this is becoming a real issue among municipal officials. She went on to explain her participation as a panel member at the conference she had attended last fall of the municipal league and what transpired at that meeting and some of the comments that had been made by several

individuals, including an attorney's extreme interpretation, in their attempt to understand and interpret what this meant to them and how they could function under it.

Rep. Brown added to her earlier explanation on how the proposed amendment came into being, stating they had considered an amendment that would be broad in scope and would cover everyone, local, state and executive branch and everyone else, but it was decided that in order to get something passed, it would be easier to address the whole in one single package, including the specific provision regarding caucuses, instead of taking on the broad issues of how the Open Meetings Act affects every local official.

Rep. Taylor commented further on his perception regarding the legislature as being some sort of special, privileged group that supposedly has special rules that don't apply to others.

Rep. Brown pointed out that the legislature was the only bicameral body in the state. Chairman Sund added a comment that it was also the only legislature.

Chairman Sund interrupted the discussion at this point in order to let those present testify and invited Rep. Brown to sit at the table with the committee.

Rep. Ulmer commented on the differences between trying to get something passed on an assembly or local government versus the process involved in the state legislature.

Eve Reckley, representing the League of Women Voters, read written testimony stating the League's support of HJR 44. They urged approval of the resolution to constitutionally guarantee the right of public access to deliberations of the legislature. She stated that they believe that the better informed the public is, the better our government will be because it will be reflective of the will of the people. She further stated that the League believes that constitutionally mandating open meetings is vital to making the legislative process accessible and accountable, as well as responsive to and representative of the people of Alaska.

Chairman Sund tossed out an idea to be discussed. What would become of the issue and all subsequent related actions if a meeting is found to be in violation. Are there any remedies, can anything be made right or rectified? Discussion followed on this subject with Mrs. Reckley stating that the original lawsuit requested a temporary restraining order, which would have voided the action taken in a meeting that was closed that violated the action. Rep. Brown remarked that the Open Meetings Act

provides the interpretation as that action taken contrary to this section is void, but she didn't know what the remedy would be if there was a violation of the sentence affecting caucuses. Chairman Sund asked, what about substitive deliberation of a quorum of the committee meeting somewhere? The discussion continued briefly.

Rep. Cotten led in a discussion about the role subcommittees play in the committee process and whether they should be addressed in the constitution. Rep. Brown stated that she didn't want to imply that not putting it in the constitution would lessen the obligation of the subcommittee to meet in public. She always thought that subcommittees were covered under Subsection A because it is an official subordinate unit.

Rep. Taylor again brought up his argument that everyone should be on the same level playing field. Rep. Navarre reiterated comments made by Rep. Ulmer earlier in regards to the legislature being bicameral and that there are significant differences from state governments.

Rep. Ulmer asked Rep. Brown if, during the interim, they had looked at any other states that might have a similar constitution or similar laws that address this issue.

Rep. Brown replied that they had, and that 35 states have an open meetings provision in their constitution, but they are generally quite broad and didn't seem to draw concrete lines with respect as to when things had to be open or not.

Chairman Sund expressed his concern that at what point in time can a lawsuit be brought to void an act of the legislature based upon the fact that there was a violation of the Open Meetings law. He added that he perceives this as an open release act for the lawyers and it would give an open invitation to attack every law and every move the legislature makes and that every law that comes out is going to be challenged on some factual basis that there was a violation in its instrumentation or its deliberation.

McKie Campbell, Legislative Aide to Senator Sturgulewski, testified that he had been involved in some of the work during the interim on this measure. He added to Rep. Brown's comments regarding the various states that had been investigated and remarked that the provision that was drafted most closely resembled the state of Oregon's.

More discussion took place by the committee and those present with regard to remedies.

Mr. Campbell explained that when they drafted this, they realized that there are myriad questions that no constitutional language can answer. He stated that they

did try to observe the difference between constitutional language and statutory language, which nails down all the details. He expressed that there is no doubt in his mind that if this passed it would require some statutory changes to implement it and make it effective and to work. The second point he said he wanted to make is that these points can be resolved because there are a number of other states, California as an example, that operate under far more stringent guidelines than these.

Rep. Cotten made a move, for purposes of discussion only, to make a deletion on HJR 44, lines 12 and 13, that the words "and subcommittees and of each committee as a whole" be changed to read "the deliberations of each house of the legislature and the deliberations of the committees shall be open to the public."

Chairman Sund stated there was a motion on the floor and asked for any comments.

A brief discussion centered around what "committee as a whole" meant. Rep. Brown commented that the attorney, Mr. Bradley, was quite insistent that "each committee of the whole" be in there.

Rep. Cotten withdrew his motion.

Chairman Sund asked for volunteers to work on this piece of legislation. He admonished them to make sure they announced all their meetings and hold them in public. He suggested that they may want to look at the first sentence, lines 15 and 16, of HCR 11 and that maybe the same thing could be said in a different manor that would make it read a little better.

Rep. Gruenberg commented that he would like to delete it. He suggested that there be an amendment made to Article 2 because it deals with the legislature, whereas Article 1 deals with something else.

Rep. Brown explained that they specifically put it as an amendment to the Bill of Rights because they felt it is a fundamental right that people have to maintain control over the organizations that they have created and to be able to know what the legislature is up to. She emphasized that it was a deliberate decision.

Rep. Gruenberg suggested that it be reconsidered, because when people look in the constitution for things dealing with the legislature, they look in Article 2, not in Article 1.

Chairman Sund asked if there were any other comments or directions for the subcommittee, or if there were any other

items to come before the committee today? There being none, he adjourned the meeting at 2:41 p.m.

HOUSE STATE AFFAIRS COMMITTEE MEETING - FEBRUARY 0, 1988 — HJR 44

Representative Brown, prime sponsor of HJR 44, provided the committee with background information on the resolution, which would place on the ballot a constitutional amendment to be approved by the voters. Section 1 of HJR 44 would require meetings of the legislature, all committees and subcommittees to be open to the public, except when an executive session was required by law. Representative Brown told the committee that caucuses could continue to meet in private for purposes of procedure, organization and strategy. Section 2 would make the legislature subject to the Open Meetings Act. Section 3 would place the question on the ballot.

Representative Menard was noted as present at 3:10 p.m.

Representative Brown stated that it was not her intent to cut off all discussion between legislators, so the resolution limited the application to a quorum of a body. She went on to give examples of what strategy, private and substantive deliberation would be.

In discussing the fiscal note, Representative Brown told the committee that the cost of the resolution would be $2,200 unless an additional card were required to put the question on the ballot.

Representative Martin suggested that some definition should be given to "procedures, organization and strategy." Representative Brown responded by saying she thinks organization and procedures are clear; organization referring to the initial organization of the legislature.

Representative Martin asked about "reasonable time of public notice," and whether one day would be reasonable. Representative Brown responded that reasonable notice would depend on the circumstances and could consist of posting a notice on the board outside the Speaker's office.

Representative Davidson asked Representative Martin if he meant by his comments that HJR 44 was not accomplishing anything in terms of open meetings. Representative Martin responded that he has found no reason for closed door meetings and that the current majority, among itself, does not agree on the need for closed meetings.

Eve Reckley, representing the League of Women Voters, spoke in support of HJR 44 and the guarantee of public access to the legislative process. (Complete copy of testimony attached.)

Representative Martin asked Ms. Reckley about meetings of "less than a quorum" and what would be acceptable. Ms. Reckley answered that it is the spirit of open government that is important, and that if there is any question, a meeting should be open to the public.

Representative Brown remarked that any private discussion of a topic should be limited to less than a quorum of the legislature, a committee or subcommittee which is dealing with that topic.

Representative Menard asked about the meaning of the word "strategy." Representative Brown replied that it would be limited to items on which a caucus has taken a position. Representative Martin asked if bill trading would be defined as strategy. Representative Brown answered that relations with the other body of the legislature would fall under the meaning of strategy.

Representative Donley moved to pass HJR 44 from State Affairs with individual recommendations. There was no objection.

STATE OF ALASKA
THE LEGISLATURE

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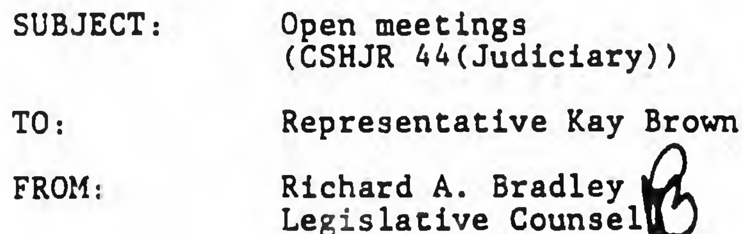
LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M   March 18, 1988



SUBJECT: Open meetings
(CSHJR 44(Judiciary))

TO: Representative Kay Brown

FROM: Richard A. Bradley
Legislative Counsel

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Louisiana. RS 42.5 is the law; a 1981 amendment deleted the language that exempted the legislature in those words but the words now used do not include the legislature. Sec. 42.4.2(2). A specific section authorizes closed or executive sessions of legislative houses and committees. Sec. 42.6.2. The law also exempts "chance meetings, social gatherings, or other gatherings at which only presentations are made to members of the legislature or members of either house thereof or of any committee or subcommittee if no vote or other action, including formal or informal polling of members, is taken." Sec. 42.6.2(C). The legislature is exempted from requirement applicable to executive agency that meetings for the year be announced at the beginning of the year. Sec. 42.7. Suits to void action must be filed within 60 days of the action.

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

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

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

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

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

Mississippi. Not reviewed.

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

If I may be of further assistance, please advise.

RAB:bb
b4/020

STATE OF ALASKA
THE LEGISLATURE

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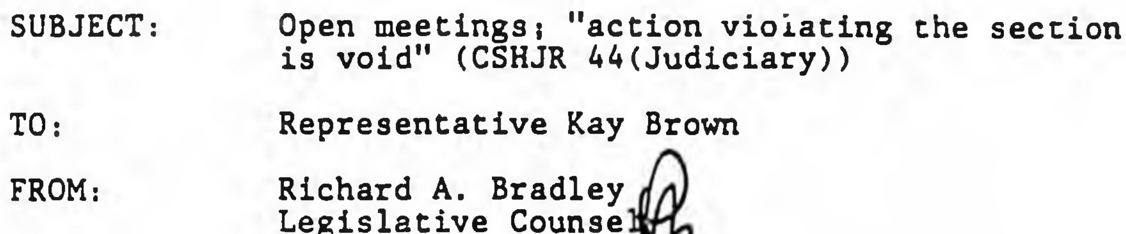
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM March 15, 1988



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

TO: Representative Kay Brown

FROM: Richard A. Bradley
Legislative Counsel

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

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

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

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

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

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

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

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

The Oregon laws are consistent.

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

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

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

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

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

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

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

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

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

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

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

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

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

If I may be of further assistance, please advise.

Enclosures

RAB:bb
b4/013

Kay Brown
Alaska State Legislature
House of Representatives

Mattie

MEMORANDUM

TO: All Members of the House

FROM: Rep. Kay Brown Kay

DATE: March 28, 1988

RE: Open Meetings Constitutional Amendment

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

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

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

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

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

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

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

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

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