ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6682 SENATE STATE AFFAIRS

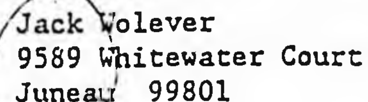
The capital lease process is also a poor investment for the agency itself. These facilities are typically not of institutional quality, are more expensive to operate and maintain, and have a relatively short life span. They offer few of the amenities that an institutional facility is expected to provide. The only arguments in favor of capital lease facilities are that they avoid getting mired in political arguments over location, which would surely occur if the facilities were in the high profile capital budget, and they are good investments for those few developers in Juneau who can cash in on the leases.

I believe that a joint CBJ/State task force should be formed of our city planners and state planners who can speak to and coordinate the planning for all state agencies in Juneau. The charge to that task force would be defining the near and long term facility and land needs of the state, and integrating permanent facilities into the community within the framework of a Master Plan for State Capital Facilities. An oversight organization, perhaps the local planning commission, would be responsible for ensuring that the plan is implemented by developing appropriate controls.

Treading lightly around these issues will not make them go away. Juneau must begin aggressively promoting, and planning to accommodate, permanent state facilities. An enormous amount of money was expended planning for a fictional capital city in Wasilla. Since the capital move vote, the only effort toward masterplanning - a state building at the Juneau Motors site - was scuttled. Should the state acquire the old Capital School site? How can we consolidate space leases spread throughout the community when they begin to run out? Who in state government is addressing these issues?

Until a comprehensive state/city planning process is implemented, this community will continue to be victimized by make-shift solutions to critical agency space shortages. If Juneau does not take steps to physically accommodate state government, and does not actively promote permanent facilities for state agencies, we will eventually become the capital in name only, if that.

Sincerely,



Jack Wolever
9589 Whitewater Court
Juneau 99801

Y TURN

The municipal Design Review Board

JL VOELCKERS

several years, the economic and general confidence in Ju- improving. With this im- ent will come new construc- cluding possibilities for new . mining construction, and State facilities.

potential for significant new ction suggests that as a com- we review the design and g regulations currently in insure they will satisfy our n expectations for how this occurs.

nt debate by the municipal Review Board concerning the d state Department of Envi- tal Conservation administra- cility on Willoughby Avenue sed the profile of the Board, ovides a good opportunity to nt on its role and effective-

Design Review Board was l in 1984, principally in reac- the state's Department of La- uilding along Egan Drive, dubbed the "Plywood Pal- offended residents.

rdinance, the Design Review Board represents the community at large, revising or improving building projects which are unattractive, oppressive, or generally not in the public interest. This task, however, has proven difficult to perform, as the subsequent "Plywood Palace Two" and other less-than-satisfactory buildings added in the last few years show.

This lack of effectiveness has been due to three general conditions:

1. Aesthetics are hard to quantify and legislate. Though regulations are promulgated setting out the Board's objectives in general terms (i.e., prevent large monolithic boxes, etc.), specific and easily enforceable criteria were not possible. Instead, an overall aesthetic judgment remained necessary. Developers have argued that many people may find a particular project attractive, even though the Board does not.

2. Juneau, with the rest of the State, has been in an economic downturn. In such a period, the very difficult trade-off between aesthetics and the cost of construction is altered. Many projects which normally would not be tolerated by the community are seen as unfortunate but necessary for economic self-interest.

3. Large state projects have been developed by an indirect process called a design-build lease-back procedure which conspicuously ignores planning and design issues. Both Plywood Palaces, the DEC Lab Building underway in the Valley, and the currently proposed DEC Administrative Building along Willoughby Avenue are obvious examples. Low price is the only criteria for State selection of proposals, virtually guaranteeing banal design, cheap construction, and awkward, crowded sites. The resulting inferior buildings are then presented to the community as the State's prerogative or choice.

Until recently, the practical effect of these difficulties reduced the effectiveness of the fledgling Design Review Board. Many major buildings brought to the Board for review were large boxes based on two principles only – the raw efficiency of people-packing in a given space, and the cheapest construction methods available. The Design Review Board then chose the depressing (and fundamentally flawed) role of making minor detailing changes to obviously bad buildings.

However, the Willoughby Avenue project suggests that an internal reappraisal of the Design Review Board's role and authority may be happening. A fresh reading of the Board's by-laws makes clear that it was created for one purpose: to insure the public receives aesthetically desirable, humane buildings in Juneau.

Though judgments about design quality are difficult, nonetheless they can and must be made. The Board, in fact, has been selected for its ability to do so. Though developers would like the aesthetic requirement reduced to specific regulations, the visual and artistic attributes of a good building will always remain an overall subjective determination. The board must have the courage (and public support) to insist that its judgment is both meaningful and binding.

Significantly, the Board is now debating whether an entire building design, including its proposed site, can be rejected due to general failings which cannot be corrected by minor surface changes. This willingness to potentially reject an entire project is a necessary step. A Plywood Palace with a green canopy instead of red will remain a bad building. If a building is a failure in general, it should be rejected as a whole, and a more responsive design demanded.

The Design Review Board cannot operate without a general community consensus about its role. Recent support by the Empire, the CBJ Community Development Department, the CBJ Engineering Department, Planning Commission members, and the general public all indicate that a strong sentiment to require better building exists in this community.

The people of Juneau can and should demand design quality as a fundamental right. Otherwise, the fabric of Juneau will need to absorb inferior buildings for decades, long after developer's profits have been realized and forgotten. Hopefully, the new strength of the Design Review Board will indicate to the State and developer that quality design must be an initial goal, rather than a painful consequence of rejected projects.

•••••

Paul Voelckers is vice president of the Alaska Chapter of the American Institute of Architects and a local architect.

Original sponsor(s): REP. ULMER

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 CS FOR HOUSE CONCURRENT RESOLUTION NO. 52 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 Relating to the leasing of space by the
6 state and establishing the State Lease
7 Task Force.

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

9 WHEREAS the state leases office space in over 60 communities through-
10 out the state, and the purpose of these offices is to provide services to
11 the public; and

12 WHEREAS the state's presence in these offices affects the business
13 environment in the communities, and the design of these offices affects
14 employee efficiency and morale as well as the cost of the leases; and

15 WHEREAS the state should be a responsible citizen in the communities
16 and not cause the construction of buildings that are below the prevailing
17 standard for commercial structures in the communities; and

18 WHEREAS the competitive sealed proposal process makes it possible to
19 consider several appropriate attributes in addition to the cost of a lease,
20 including the total life-cycle costs for maintenance and operations,
21 functionality, public convenience, design, appearance, and location of the
22 leased building; and

23 WHEREAS a comprehensive review is needed of the issues raised in this
24 resolution relating to the leasing of space by the state in order to deter-
25 mine how the state may achieve the goals proposed by resolves one through
26 four of this resolution;

27 BE IT RESOLVED that the Alaska State Legislature respectfully requests
28 the governor to direct the Department of Administration to seek lease space
29 that not only accommodates the state's mission but is also compatible with

the communities' concerns, including planning, zoning, and design regulations where they exist; and be it

FURTHER RESOLVED that the Alaska State Legislature encourages state agencies to avoid leasing practices that would cause the construction of substandard commercial structures or structures that will be substandard in appearance and features when compared to prevailing building practices and design, but nothing in this resolution shall be construed as encouraging new construction or favoring new construction over the leasing of existing space; and be it

FURTHER RESOLVED that the Alaska State Legislature encourages state agencies to utilize the competitive sealed proposal process for the acquisition of leased space when the lease exceeds 10,000 square feet or a term of five years; and be it

FURTHER RESOLVED that the competitive sealed proposal process used to lease office space for the state should consider the total life-cycle cost to the state of the building to be leased as calculated over the term of the lease using a discounted present value analysis, and including maintenance and operations, functionality, public convenience, design, and appearance; and be it

FURTHER RESOLVED that a State Lease Task Force is established to study the issues raised by the goals set out in the previous resolves in order to determine the best methods for achieving these goals; and be it

FURTHER RESOLVED that the task force shall consist of nine persons appointed by the governor, two representatives appointed by the speaker of the state house of representatives, and two senators appointed by the president of the state senate; and be it

FURTHER RESOLVED that the members of the task force appointed by the governor shall include two engineers licensed under AS 08.48, two architects licensed under AS 08.48, two representatives of local government, one

representative from the Department of Transportation and Public Facilities one representative from the Department of Administration, and one representative from the University of Alaska; and be it

FURTHER RESOLVED that the terms of the task force members shall beg: July 1, 1990, and that the task force shall terminate January 22, 1991; ar be it

FURTHER RESOLVED that the task force shall submit a report of i findings and recommendations to the governor and the legislature l January 21, 1991; and be it

FURTHER RESOLVED that the administrative and legal services of tl Legislative Affairs Agency shall be made available to the task force.

COPIES of this resolution shall be sent to the Honorable Frank Baxte: commissioner of administration; the Honorable Mark S. Hickey, commission of transportation and public facilities; to the Honorable Donald O'Dowc President of the University of Alaska; and to Ray Price, Executive Directc of the Alaska State Housing Authority.

Patrick M. Rodey
Senator

Alaska State Legislature

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

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

Senate

DATE: March 21, 1990

TO : Senator Pat Pourchot, Chair
Senate State Affairs Committee

FROM: Senator Patrick Rodey

RE : SCR 52- relating to the leasing of space by the state

I respectfully request that the above-referenced bill be scheduled for consideration by the State Affairs Committee as soon as possible.

Attached is a copy of the Committee Substitute which recently passed out of the House Finance Committee relating to the companion - House Concurrent Resolution 52.

I would appreciate the Committee's consideration of revising SCR 52 so it is identical to the current version of CS HCR 52 (Finance).

SCR

54

SENATE STATE AFFAIRS COMMITTEE

BILL NUMBER SCR 54

SPONSOR Rules

BILL TITLE Lucas to Brigadier General

DATE REFERRED 4.4.90

HEARING SCHEDULED 4.9.90

FISCAL NOTE PREPARED

SPONSOR CONTACTED

INTERESTED PARTIES CONTACTED

SCR 54, relating to the promotion of Assistant Adjutant General Louis Lee Lucas to brigadier general in the Alaska National Guard. Sponsored by the Rules Committee, this resolution contains the military history of Asst. Adjutant General Louis Lee Lucas and requests the Governor to appoint him to brigadier general in the AK. National Guard.

OTHER

6-2405A
Bannister
4/3/90

BY THE RULES COMMITTEE

IN THE SENATE

SENATE CONCURRENT RESOLUTION NO. 54

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

Relating to the promotion of Assistant Adjutant General Louis Lee Lucas to brigadier general in the Alaska National Guard.

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

WHEREAS Assistant Adjutant General Louis Lee Lucas was born and raised in Juneau, Alaska, attended the University of California at Los Angeles in 1941, and enlisted in the Army Air Corps shortly after the attack on Pearl Harbor; and

WHEREAS during World War II Assistant Adjutant General Louis Lee Lucas served as first sergeant of the Juneau Army Air Field for 18 months before being sent to the Aleutian Islands and western Alaska; and

WHEREAS when General Larry Lars Johnson was appointed as the state's first Adjutant General in the Alaska National Guard, Assistant Adjutant General Louis Lee Lucas became his administrative assistant; and

WHEREAS, together with General Larry Lars Johnson, Assistant Adjutant General Louis Lee Lucas convinced the Air Force and the National Guard Bureau that an air guard unit was needed by the territory; and

WHEREAS Assistant Adjutant General Louis Lee Lucas attended countless meetings in Washington, D.C. and did much of the administrative work that was necessary to form the state's first air guard unit; and

WHEREAS Assistant Adjutant General Louis Lee Lucas was the first person to be assigned to the Alaska Air National Guard and in the early 1950s served as the Chief of Staff and Assistant Adjutant General for the Alaska Air National Guard for the Territory of Alaska; and

1 WHEREAS Assistant Adjutant General Louis Lee Lucas still actively
2 supports the Alaska National Guard and willingly serves in any capacity
3 that will promote its interest; and
4 WHEREAS Assistant Adjutant General Louis Lee Lucas is a true pioneer
5 of the state and serves as an admirable model for the youth of the state
6 who may have an interest in a career with the Alaska National Guard; and
7 WHEREAS Assistant Adjutant General Louis Lee Lucas is qualified to be
8 promoted to the rank of brigadier general; and
9 WHEREAS it is fitting for the state to recognize the contributions of
10 Assistant Adjutant General Louis Lee Lucas to the Alaska Air National Guard
11 by appointing him to the state rank of brigadier general;
12 BE IT RESOLVED that the Alaska State Legislature respectfully requests
13 the Governor to appoint Assistant Adjutant General Louis Lee Lucas to
14 brigadier general in the Alaska National Guard.
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SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 4/4/90 FURTHER:

Date of 5-Day Notice: ____________
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: ____________

State Affairs Committee considered SCR 54

Promotion of Assistant Adjutant General Louis Lee Lucas to brigadier general in the AK National Guard.

and recommended:

[ ] replace with ______ CS ____________________ [ ] same title [ ] new title

[ ] attached amendment(s)

[ ] ____________________ letter of intent adopted

[ ] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to ____________________

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date: Department(s)/Date:

[ ] fiscal note(s) ____________ [ ] zero fiscal note(s) ____________

[ ] appropriation-no fiscal note [ ] Governor's bill w/fiscal note

SIGNING DO PASS:

Tim Kelly

OTHER RECOMMENDATIONS:

Jan Faiks No Rec

Pat Pourchot no rec

Chair: Signature and Recommendation

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

OFFICE OF THE ADJUTANT GENERAL

DIMOND CENTER TOWER
800 EAST DIMOND BLVD.
SUITE 3-450
ANCHORAGE, ALASKA 99515-2097
PHONE: (907) 249-1523
AUTOVON 626-1523

ASSD DIR | ASSD ANCH | SUP ANCH | FMO | KULIS | TAG
SEC | ACCT | PERS | DEP | ADES | VETS
Department of Military and Veterans Affairs
MAR 28 1990
Administrative & Support Services Division (ASSD)
NOTE:

27 March 199

The Honorable Tim Kelly
Alaska State Senator
P.O. Box V
Juneau, AK 99811

Dear Senator Kelly:

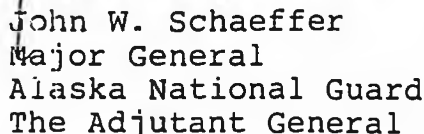
Some time ago you were contacted by the State Command Historian, SMS Clifford Salisbury concerning the introduction of a resolution promoting Lee Lucas of Juneau to the state rank of Brigadier General. I feel this would be an appropriate way of rewarding Lee for his contributions to the Air National Guard (ANG) and the State of Alaska.

I have attached a short biography for your consideration. Lee was the first man to ever be assigned to the Alaska ANG, served as Chief of Staff and Assistant Adjutant General for ANG during the early 1950's. It was through the efforts of these early pioneers the Territory of Alaska was able to bring the ANG unit to Anchorage.

He and his close friend, General Lars Johnson are still active supporters of the Guard and are willing to serve the interest in any capacity. They both serve as admirable models for the youth of Alaska who may have an interest in a career with the Guard. Should you need additional information feel free to call Cliff at 249-1239 or write him at the above address.

Thank you for your assistance.

Sincerely,



John W. Schaeffer
Major General
Alaska National Guard
The Adjutant General

Enclosure

cc: SMS Clifford Salisbury

LOUIS LEE LUCAS

Louis Lee Lucas was born and raised in Juneau, Alaska. He graduated from Juneau High School and attended the University of California at Los Angeles in 1941 before enlisting in the Army Air Corps shortly after the attack on Pearl Harbor in Hawaii. He served as First Sergeant of the Juneau Army Air Field for 18 months before being sent to the Aleutian Islands and Western Alaska.

Following World War Two, he spent several years trying to convince the Air Force it should establish an Air Guard unit in Alaska, without success. When Colonel Larry Lars Johnson was appointed as Alaska's first Adjutant General, Lee Lucas became Administrative Assistant to the AG.

Lee Lucas helped to set up the early Eskimo Scout encampments at Fort Richardson and never gave up his dream of an Air Guard unit for Alaska. Lars Johnson made him an equal partner and the two men fought the Air Force's reluctance to form an Air Guard unit for the Territory of Alaska. Together, they convinced the Air Force and the National Guard Bureau that an Air National Guard unit was a necessity for the Territory of Alaska. Lee Lucas attended countless meetings in Washington D.C. and did much of the administrative work necessary in forming Alaska's first Air Guard unit. He was the first person ever assigned to the new Air National Guard unit. He became Chief of Staff for the Alaska Air National Guard and Assistant Adjutant General for Air for the Territory of Alaska.

He resides today in Juneau, has retained his interest in the National Guard and is a true pioneer of Alaska. It is only fitting that the State of Alaska recognize his contributions to the Alaska Air National Guard by appointing him to the State Rank of Brigadier General.

SCR

57

SENATE STATE AFFAIRS COMMITTEE

BILL NUMBER SCR 57

SPONSOR Pearce by request/Rules

BILL TITLE Pt. Worovzof

DATE REFERRED 4.25.90

HEARING SCHEDULED 5.2.90

FISCAL NOTE PREPARED SA ✓

SPONSOR CONTACTED ✓

INTERESTED PARTIES CONTACTED

✓ Begich, Mark

✓ AWWU

✓ Loren Leman

✓ Sen. Pearce

OTHER

Alaska State Legislature

Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman
Sen. Al Adams
Sen. Tim Kelly
Sen. Rick Uehling

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

907-465-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senate State Affairs Committee Members

FROM: Senator Pat Pourchot

RE: Wednesday, May 2 Committee Hearing

DATE: May 1, 1990

On Wednesday, May 2 at 1:30 p.m. in the Beltz Room the Senate State Affairs Committee will hear the following bills:

SB 552, An Act relating to intrastate long distance telephone competition; permitting deregulation of a class of utilities or a utility service by the Alaska Public Utilities Commission; and providing for an effective date. Introduced as a State Affairs CS, this bill requires the APUC to adopt regulations authorizing and establishing intrastate long distance telephone competition by February 14, 1991. The legislation is intended to be substantially similar to both ballot initiatives on intrastate competition which have been certified for the November 1990 ballot, thereby removing both initiatives from the ballot. If the legislation is found by the Lieutenant Governor to be substantially similar to only one or neither of the initiatives the legislation would be repealed.

SB 206, An Act relating to intrastate competition in telecommunications; continuing the existence of the APuC and providing for an effective date. Sponsored by Senator Frank, this bill requires intrastate long distance competition. All long distance telephone companies, except Alascom, would be exempt from regulation under AS 42.05. Alascom could be deregulated by the APUC if it no longer has market power.

SB 384, An Act relating to election campaigns. I have requested this bill in State Affairs Committee again, for the purpose of proposing amendments which would bring the campaign finance provisions into conformity with the proposed Ethics Act. The major provisions of the bill, unanimously passed by our committee, are: prohibition of state and local governments from using public funds to support a candidate or initiative, prohibition of post-elections contributions for a set period, prohibition of use of campaign funds as personal income, limitation on use of surplus campaign funds and closure of the pre-election reporting gap for contributions.

CSHJR 56 (SA), Relating to the promotion of a nuclear weapons-free treaty for the arctic and subarctic. Introduced by Representative Kopononen, this resolution calls for efforts towards agreements between the United States, the Soviet Union and other nations establishing the arctic and subarctic regions as nuclear weapons-free zone and to ban nuclear weapons and weapons

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

DATE: 4/25/90 FURTHER:

Date of 5-Day Notice: ____________
(in accordance with Uniform Rule 23)

DATE TURNED
INTO OFFICE: ____________

State Affairs Committee considered SCR 57

Endorsing renewal of the Point Woronzof NPDES permit with a variance from secondary wastewater treatment requirements.

and recommended:

[ ] replace with ______ CS ____________________ [ ] same title [ ] new title

[ ] attached amendment(s)

[ ] __________________ letter of intent adopted

[ ] do pass

[ ] do not pass

[ ] no recommendation

[X] individual recommendations

[ ] further referral to ______________________

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date: Department(s)/Date:

[ ] fiscal note(s) ____________ [ ] zero fiscal note(s) ____________

[ ] appropriation-no fiscal note [ ] Governor's bill w/fiscal note

SIGNING DO PASS:

Jan Faiks

OTHER RECOMMENDATIONS:

Al Adams - No Rec

Pat Pourchot do pass

Chair: Signature and Recommendation

INTRODUCTION

The Municipality of Anchorage (MOA) has successfully operated the John M. Asplund Water Pollution Control Facility under its existing 1985 NPDES permit and 301(h) variance. NPDES permit number AK-002255-1 expires at midnight, October 15, 1990.

MOA is applying for a renewal of its NPDES permit and 301(h) variance from secondary treatment. This renewal application is the culmination of a very extensive monitoring program and 3 years of work to comply with the Clean Water Act and its 1987 amendments, the Water Quality Act of 1987. MOA staff and our consultants, CH2M HILL, have met six times in Seattle with EPA Region X staff and two times in Washington, D.C. with EPA Headquarters staff. These very productive meetings have helped MOA direct its renewal efforts in the proper direction to meet all the federal requirements for primary effluent discharge to marine waters.

The State of Alaska adopted revisions to the water quality standards for fresh and marine waters in 1987. We met numerous times with Alaska Department of Environmental Conservation (ADEC) staff in Anchorage, Juneau, and Seattle to be able to comply with all of ADEC's requirements for discharge to marine waters.

Continuation of the 301(h) variance to the secondary treatment requirements of the federal regulations is of utmost importance to the MOA. A secondary treatment plant would cost MOA over $100 million to build and would be very expensive to operate and maintain, with virtually no measurable benefit to the receiving water, the Knik Arm of Cook Inlet.

The receiving water and environs of the Knik Arm are atypical of estuaries. Knik Arm's extreme tidal range (average of 30 feet), current ranges of 3 to 5 knots, and typical sediment loads of 1,000 mg/l result in a capacity to easily assimilate MOA's treated wastewater effluent. No impacts have been measurable from the existing discharge to the very sparse biological community or to the minimal recreational uses of the area. The Knik Arm of upper Cook Inlet provides an ideal situation for discharge of nonindustrial primary effluent without harm to the environment.

MOA proposes to make a minor improvement to its discharge by adding reducers to the three existing discharge ports. This improvement is required because the effluent flow rate increase predicted in the 1984 permit application has not occurred. The reducers will provide increased discharge velocity into Knik Arm.

This permit renewal application demonstrates that the treatment plant discharge will comply with all federal and state requirements for discharge of primary effluent to the Knik Arm of Cook Inlet.

RENEWAL OF THE NDPES PERMIT AND
301(h) VARIANCE FROM SECONDARY
TREATMENT BY CH2M HILL APRIL 1990

submitted for the ANCHORAGE WATER
AND WASTEWATER UTILITY

AWWU

INTRODUCTION

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This permit renewal application demonstrates that the treatment plant discharge will comply with all federal and state requirements for discharge of primary effluent to the Knik Arm of Cook Inlet.

SJR

1

SENATE STATE AFFAIRS COMMITTEE

BILL NUMBER SJR 1

SPONSOR Sturgulewski

BILL TITLE Open Meetings

SJR1B.TXT – other Constitutions

SJR1C.TXT – ~~compare~~ [illegible]

SJR1COM.TXT – compare bill versions

DATE REFERRED 1/9/89

HEARING SCHEDULED 1-25-89

FISCAL NOTE PREPARED ✓ req. of McKai 1-20-89

SPONSOR CONTACTED McKai 3818

INTERESTED PARTIES CONTACTED

yes ✓ League Women Voters, Vicki Borego work UAS Public Admin H 789-1764 W 789-4402

yes ✓ Dick Bradley, Legal Services X2450

yes ✓ Mr. Gene Storm, Open Mtngs. Coalition Anch 274-4853 { campaign mgr for petition initiative will notify others.

Jeff Bowman, AKPIRG Box 101093 Anch 99510 278-3661

Linda Edgeworth 4611

OTHER See also SB 3

ALASKA STATE LEGISLATURE

Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman
Sen. Al Adams
Sen. Tim Kelly
Sen. Rick Uehling

P.O. Box V
Juneau, AK 99811

907-465-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senate State Affairs Committee Members

FROM: Senator Pat Pourchot, Chairman

RE: February 3 Committee Meeting

DATE: February 2, 1989

On Friday, February 3 the Senate State Affairs Committee will hold a work session on SJR 1, Proposing an amendment to the Constitution of the State of Alaska relating to open meetings. The session will be held at 1:30 p.m. in the Beltz Room.

The following information is attached for your review:
- A copy of SJR 1
- A comparison of various open meetings proposals
- A summary of constitutional provisions in other states
- A memo from Dick Bradley, legislative counsel, on laws of other states and court challenges of those laws
- A copy of the ballot initiative
- The steps involved in amending the Constitution through the initiative process
- Uniform Rule 22, Open and Executive Sessions
- Alaska's existing open meetings law

Also on Friday SB 59, Relating to mandatory use of safety devices in motor vehicles will be back before the committee.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

March 23, 1987

MEMORANDUM

TO: Representative Fran Ulmer

FROM: Ginny Fay [signature: G. Fay]
Legislative Analyst

RE: Alaska State Open Meetings Act
Research Request 87.162

You requested information regarding enforcement and penalty provisions of state open meeting laws and public meeting notification requirements. You had a number of specific questions on open meeting laws. This memorandum lists each question with the pertinent information immediately following.

1. Do some states penalize violators in addition to voiding the action taken? Which states have penalties and are penalties mandatory or discretionary? Who has standing to enforce the law? What are the legal mechanisms for enforcement of these laws? Are court costs and attorney fees available to the prevailing party?

Tables 1 and 2 provide information regarding action voidableness, penalties for violations, citizen standing, and attorney fees. Action taken in illegal meetings are voided or considered invalid or not binding in 43 (86 percent) states and the District of Columbia. Also, in 43 states and the District of Columbia, citizens have standing to sue and enforce the law (Table 1). The states of Iowa, Kansas, Missouri and Oregon explicitly place the burden of proof on the alleged violators; Maryland explicitly places the burden on the plaintiff. In 37 states, legal recourse to halt secrecy is available through injunctions or writs of mandamus (Table 2).

Note: This data does not distinguish between legislative open meetings, and open meetings of the executive branch, municipal government, etc.

TABLE 2

Summary of Open-Meeting Laws--Part I This Study

State	Includes statement of public policy 1	Provides for open legislature 2	Provides for open legislative committees 3	Opens state agencies 4	Opens county local agencies 5	Opens county board 6	Opens city councils 7	Forbids closed executive sessions 8	Exceptions* and/or reasons for executive session	Legal recourse to halt secrecy 9	Actions in meetings in violation void 10	Provides penalties for violation 11	Score
Alabama				y	y	y	y		+[a]			y	5
Alaska	y	y	y	y	y	y	y		x		y		8
Arizona	y	y	y	y	y	y	y		x	y	y	y	10
Arkansas	y			y	y	y	y		+		y	y	6
California	y	y	y	y	y	y	y		-	y		y	9
Colorado	y	y	y	y	y	y	y		+[a]	y	y		9
Connecticut		y	y	y	y	y	y		+	y	y	y	6
Delaware		y	y	y	y	y	y		-	y	y	y	9
Florida		y	y	y	y	y	y	y	+	y	y	y	9
Georgia				y	y	y	y		x		y	y	6
Hawaii	y			y	y	y	y		-	y	y	y	8
Idaho	y		y	y	y	y	y		x		y		7
Illinois	y			y	y	y	y		-	y	y	y	8
Indiana	y			y	y	y	y		-	y	y		7
Iowa	y			y	y	y	y		-	y	y	y	8
Kansas	y	y	y	y	y	y	y		x	y	y	y	10
Kentucky			y	y	y	y	y		-	y	y	y[b]	8
Louisiana	y	y	y	y	y	y	y		x[a]	y	y	y	9
Maine	y	y	y	y	y	y	y		x		y	y	9
Maryland	y	y	y	y	y	y	y		-	y	y	y	10
Massachusetts				y	y	y	y		x	y	y		6
Michigan		y	y	y	y	y	y		-	y	y	y	9
Minnesota				y	y	y	y		+			y	5
Mississippi	y		y	y	y	y	y		-	y			7
Missouri		y	y	y	y	y	y		x	y	y	y	9
Montana	y	y	y	y	y	y	y		+		y		8
Nebraska	y			y	y	y	y		x	y	y	y	8
Nevada	y			y	y	y	y		+	y	y	y	8
New Hampshire	y	y	y	y	y	y	y		x	y	y		8
New Jersey	y	y	y	y	y	y	y		x	y	y	y	10
New Mexico		y	y	y	y	y	y		x	y	y	y	9
New York	y	y	y	y	y	y	y		x	y	y		9
North Carolina	y	y	y	y	y	y	y		-	y	y	y	9
North Dakota		y	y	y	y	y	y	†	+[a]		y	y	7
Ohio				y	y	y	y		-	y	y	y	7
Oklahoma	y			y	y	y	y		+		y	y	7
Oregon	y	y	y	y	y	y	y		-	y	y	y[c]	10
Pennsylvania		y	y	y	y	y	y		+	y	y	y	9
Rhode Island	y		y	y	y	y	y		x	y	y	y[b]	8
South Carolina		y	y	y	y	y	y		x[a]	y		y[b]	8
South Dakota				y	y	y	y		+			y	5
Tennessee	y	y	y	y	y	y	y	y	+	y	y	y	11
Texas		y	y	y	y	y	y		-	y		y	8
Utah	y	y	y	y	y	y	y		+	y	y		9
Vermont	y			y	y	y	y		x		y	y	7
Virginia	y	y	y	y	y	y	y		-	y	y	y	10
Washington	y			y	y	y	y		x	y	y	y	8
West Virginia	y	y	y	y	y	y	y		-	y	y	y	10
Wisconsin	y	y	y	y	y	y	y		x	y	y	y[b]	10
Wyoming	y			y	y	y	y		-		y		6
Totals	33	29	33	50	50	50	50	2	+=14 x=19 -=17	37	43	40	417
Percent	66%	58%	66%	100%	100%	100%	100%	4%	+=28% x=38% -=34%	74%	86%	80%	75.8%

Total average percent for all categories: 75.8%. Total average percent for categories 1-8: 74.3%. Total average percent for categories 9-11: 80.0%.

†North Dakota statute forbids executive session "unless otherwise prohibited by law." Florida and Tennessee statutes prohibit executive session "except as otherwise provided in the Constitution."

*This adjunct category indicates stated exceptions and/or reasons allowed for closed session. + indicates five or fewer; x, six to ten; -, more than ten.

[a]Denotes an encompassing phrase. For example, Alabama's law provides for executive session "When the character or good name of a woman or man is involved." (Ala. Code tit. 13-1-14-2). Phrases such as this one could be used to allow any number of subjects to be discussed in executive session.

[b]Indicates laws which permit the court to grant equitable relief.

[c]Indicates the only penalty is for smoking in open meeting.

Source: Sharon Hartin Iorio, "How State Open Meeting Laws Now Compare with Those of 1974," Journalism Quarterly, Winter 1985, Vol. 62 #4, pp. 741-749 and state open meeting statutes.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

02–576(2/77)

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

March 23, 1987

MEMORANDUM

TO: Representative Fran Ulmer

FROM: Ginny Fay
Legislative Analyst

RE: **Alaska State Open Meetings Act**
Research Request 87.162

You requested information regarding enforcement and penalty provisions of state open meeting laws and public meeting notification requirements. You had a number of specific questions on open meeting laws. This memorandum lists each question with the pertinent information immediately following.

1. Do some states penalize violators in addition to voiding the action taken? Which states have penalties and are penalties mandatory or discretionary? Who has standing to enforce the law? What are the legal mechanisms for enforcement of these laws? Are court costs and attorney fees available to the prevailing party?

Tables 1 and 2 provide information regarding action voidableness, penalties for violations, citizen standing, and attorney fees. Action taken in illegal meetings are voided or considered invalid or not binding in 43 (86 percent) states and the District of Columbia. Also, in 43 states and the District of Columbia, citizens have standing to sue and enforce the law (Table 1). The states of Iowa, Kansas, Missouri and Oregon explicitly place the burden of proof on the alleged violators; Maryland explicitly places the burden on the plaintiff. In 37 states, legal recourse to halt secrecy is available through injunctions or writs of mandamus (Table 2).

Note: This data does not distinguish between legislative open meetings, and open meetings of the executive branch, municipal government, etc.

Representative Ulmer
March 23, 1987
Page 2

TABLE 1
VIOLATION AND PENALTY PROVISIONS OF STATE OPEN MEETING LAWS

STATE	VOIDABLE*	CITIZEN STANDING	ATTORNEY FEES	SANCTIONS
ALABAMA		Y		Misdemeanor, not more than $500
ALASKA	Y	Y		None
ARIZONA	Y	Y	Y	Misdemeanor, not more than $100 and/or 30 days
ARKANSAS	I	Y		Misdemeanor, not more than $200 and/or 30 days
CALIFORNIA		Y	Y	Misdemeanor, for Section 54950
COLORADO	I	Y		None
CONNECTICUT	Y	Y	Y	Civil fine, not less than $20 or more than $1,000
DELAWARE	NB	Y		None
DIST. COLUMBIA	Y	Y		None
FLORIDA	NB	Y	Y	Misdemeanor, not more than $500 and/or 6 months
GEORGIA	NB	Y		Misdemeanor, not more than $100
HAWAII	Y		Y	Misdemeanor, remove from office
IDAHO	Y			None
ILLINOIS	Y	Y	Y	Misdemeanor, fine for judicial relief
INDIANA	Y	Y	Y	Misdemeanor, not more than $500 plus 30 days
IOWA	Y	Y	Y	Civil fine, not less than $100 or more than $500
KANSAS	NB	a		Misdemeanor, not more than $500
KENTUCKY	NB	Y		Misdemeanor, not more than $100 or imprisonment
LOUISIANA	NB	Y		Misdemeanor, not more than $1,000 or 7 days
MAINE	Y	Y		Not more than $500 or one year
MARYLAND	Y	Y	Y	Misdemeanor, not more than $1,000
MASSACHUSETTS	Y	b		None
MICHIGAN	Y	Y	Y	Misdemeanor, up to $1,000 1st off., $2,000 or 1 yr. 2nd off.
MINNESOTA		Y		Civil penalty not more than $100
MISSISSIPPI		Y		None
MISSOURI	Y	Y		Civil fine, $100
MONTANA	Y		Y	Offense of civil misconduct
NEBRASKA	Y	Y	Y	Misdemeanor, not more than $50
NEVADA	Y	Y		Misdemeanor
NEW HAMPSHIRE	Y	Y	Y	None
NEW JERSEY	Y	Y		Fine, $100-$500
NEW MEXICO	I	c		Misdemeanor, not more than $100
NEW YORK	Y	Y	Y	Pay legal fees and costs
NORTH CAROLINA	Y	Y	Y	None
NORTH DAKOTA	Y	Y		"Guilty of infraction on first offense"
OHIO	I	Y		Remove from office
OKLAHOMA	I			Misdemeanor, not more than $500 or one year
OREGON	Y	Y	Y	Liable for attorney fees
PENNSYLVANIA	Y	Y	Y	Fine up to $100
RHODE ISLAND	Y	Y		Civil fine up to $1,000
SOUTH CAROLINA		Y	Y	Misdemeanor, $100-$300 or 30 to 90 days
SOUTH DAKOTA				Misdemeanor
TENNESSEE	Y	Y		Court may "impose penalties"
TEXAS		Y		Misdemeanor, not more than $500 and/or 6 months
UTAH	Y	Y		Misdemeanor
VERMONT	Y			Misdemeanor, not more than $500
VIRGINIA	NB	Y	Y	Civil penalty, $25-$500
WASHINGTON	Y	Y		Civil penalty of $100
WEST VIRGINIA	Y	Y		Misdemeanor, $100-$500 and/or up to 10 days
WISCONSIN	Y	\	Y	Fine up to $300
WYOMING	Y			None
TOTAL	44	44	20	39

* Y=yes, I=invalid, NB=not binding
a=must petition district court, b=three or more voters, c=five citizens

Source: Council of State Governments 1983, Freedom of Information Center, and state open meeting statutes.

Prepared by the House Research Agency, March 1987 (OPLAW; 861217-10).

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State	Includes statement of public policy 1	Provides for open legislature 2	Provides for open legislative committees 3	Opens state agencies 4	Opens county local agencies 5	Opens county board 6	Opens city councils 7	Forbids closed executive sessions 8	Exceptions* and/or reasons for executive session	Legal recourse to halt secrecy 9	Actions in meetings in violation void 10	Provides penalties for violation 11	Score
Alabama				y	y	y	y		+[a]			y	5
Alaska	y	y	y	y	y	y	y		x		y		8
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Arkansas	y			y	y	y	y		+		y	y	6
California	y	y	y	y	y	y	y		-	y		y	9
Colorado	y	y	y	y	y	y	y		+[a]	y	y		9
Connecticut		y	y	y	y	y	y		+	y	y	y	6
Delaware		y	y	y	y	y	y		-	y	y	y	9
Florida		y	y	y	y	y	y	y	+	y	y	y	9
Georgia				y	y	y	y		x		y	y	6
Hawaii	y			y	y	y	y		-	y	y	y	8
Idaho	y		y	y	y	y	y		x		y		7
Illinois	y			y	y	y	y		-	y	y	y	8
Indiana	y			y	y	y	y		-	y	y		7
Iowa	y			y	y	y	y		-	y	y	y	8
Kansas	y	y	y	y	y	y	y		x	y	y	y	10
Kentucky			y	y	y	y	y		-	y	y	y[b]	8
Louisiana	y	y	y	y	y	y	y		x[a]	y	y	y	9
Maine	y	y	y	y	y	y	y		x		y	y	9
Maryland	y	y	y	y	y	y	y		-	y	y	y	10
Massachusetts				y	y	y	y		x	y	y		6
Michigan		y	y	y	y	y	y		-	y	y	y	9
Minnesota				y	y	y	y		+			y	5
Mississippi	y		y	y	y	y	y		-	y			7
Missouri		y	y	y	y	y	y		x	y	y	y	9
Montana	y	y	y	y	y	y	y		+		y		8
Nebraska	y			y	y	y	y		x	y	y	y	8
Nevada	y			y	y	y	y		+	y	y	y	8
New Hampshire	y	y	y	y	y	y	y		x	y	y		8
New Jersey	y	y	y	y	y	y	y		x	y	y	y	10
New Mexico		y	y	y	y	y	y		x	y	y	y	9
New York	y	y	y	y	y	y	y		x	y	y		9
North Carolina	y	y	y	y	y	y	y		-	y	y	y	9
North Dakota		y	y	y	y	y	y	†	+[a]		y	y	7
Ohio				y	y	y	y		-	y	y	y	7
Oklahoma	y			y	y	y	y		+		y	y	7
Oregon	y	y	y	y	y	y	y		-	y	y	y[c]	10
Pennsylvania		y	y	y	y	y	y		+	y	y	y	9
Rhode Island	y		y	y	y	y	y		x	y	y	y	8
South Carolina		y	y	y	y	y	y		x[a]	y		y[b]	8
South Dakota				y	y	y	y		+			y	5
Tennessee	y	y	y	y	y	y	y	y	+	y	y	y	11
Texas		y	y	y	y	y	y		-	y		y	8
Utah	y	y	y	y	y	y	y		+	y	y		9
Vermont	y			y	y	y	y		x		y	y	7
Virginia	y	y	y	y	y	y	y		-	y	y	y	10
Washington	y			y	y	y	y		x	y	y	y	8
West Virginia	y	y	y	y	y	y	y		-	y	y	y	10
Wisconsin	y	y	y	y	y	y	y		x	y	y	y[b]	10
Wyoming	y			y	y	y	y		-		y		6
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Thirty-nine states penalize violators in addition to voiding actions taken. Eight of these are civil penalties, 24 are criminal misdemeanors, four define the penalties as fines, Ohio removes violators from office, and two states penalize violators through the payment of attorney and court fees. In total, 20 state statutes explicitly contain provisions for the payment of attorney fees and costs to the prevailing party (Table 1). Most of these provisions provide for the payment of attorney fees to the plaintiff if indeed a violation of an open meeting law occurred; some require payment of legal fees by the plaintiff if the accusation was "frivolous" (see North Carolina, Attachment A). In addition to Ohio, the states of Arizona, Iowa, and Minnesota provide for the removal of violators from office. Penalties in most of the 39 states are discretionary though some states do set mandatory penalties (see for example, Alabama's statute in Attachment A). A number of state statutes specifically identify legal procedures in response to alleged violations (see Rhode Island and Tennessee statutes, Attachment A). Attachment A contains penalty and enforcement provisions of 33 state statutes.

2. Have any states developed "manuals" summarizing their Open Meetings Act which includes a summary of case law, applicability, and what constitutes a violation?

The states of Arizona, Florida, Minnesota, Missouri, Nevada, New York, Utah, and Washington have manuals (Attachment B).[1] Washington's manual is actually an extensive attorney general's opinion. The manuals in most states are developed by the state's attorney general's office unless the state has a special open meetings commission (such as New York). Conversations with Susan Cox, of the Alaska Attoney General's Office, and attorney general offices in other states indicate that the writing of a manual for a broad law, such as Alaska's, is difficult because it requires the subjective judgment of how a court is likely to interpret the law.

3. Have Open Meeting Acts been applied differently to local legislative bodies acting in a quasi-judicial or administrative capacity as opposed to its usual legislative manner?

None of the three branches of government (executive, legislative, and judicial) is granted a blanket exemption from state open meeting laws. The judiciary is generally excluded, but not when it acts in an administrative or rule-making capacity. Quasi-judicial bodies have become a subject of contention in most states; the issue is whether they are judicial or administrative bodies. Application of open meeting laws to any one of the three

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[1]This, however, is not an exhaustive list but the numbers are examples from geographically and legally varying states.

branches of government often depends on how the separation of powers doctrine is interpreted. Consequently, there are a variety of interpretations concerning the relationship between open meeting laws and quasi-judicial bodies.[2]

Open meeting laws are applicable to local legislative bodies in all 50 states (Table 2). Administrative bodies and actions are the most consistently covered by open meeting laws throughout the states. In addition, the Alaska Open Meeting Act explicitly applies to administrative bodies (AS 44.62.310, Attachment C). This suggests that a local legislative body performing an administrative function would be covered by the Alaska Open Meeting Act.

In contrast, applicability of a local legislative body acting in a quasi-judicial manner is not quite as clear. The Alaska Open Meeting Act states that it does not apply to "judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding." This indicates that these bodies are not given a blanket exemption from the law, but instead their **deliberative process** is not covered. It appears that it is much less common for local legislative bodies to act in quasi-judicial capacities in other states; there is very little case law directly applicable to Alaska. Conversations with attorneys at the National Association of Attorneys General indicate that appeals of executive branch decisions such as zoning commissions and planning boards are generally elevated to the judiciary rather than having the local legislative body act as an intermediate quasi-judicial body. Because open meeting laws apply to local legislative bodies, the question is whether an exception should be made when the local body is acting in a quasi-judicial manner.

The Alaska Open Meeting Act does not explicitly define a "public body" or give any indication that the act should apply differently to the different branches of government. In general, a court does not fit the definition of a "public body" as defined by other states' statutes, but quasi-judicial bodies often do. Therefore, the coverage of quasi-judicial bodies and functions differ from state to state, because some states view their function as more administrative than judicial.[3] Case law in Arizona, Florida, and Utah sets a precedent for not excluding quasi-judicial bodies or functions. In Canney v. Board of Public Instruction of Alachua County, the Supreme Court of Florida ruled that while judicial proceedings were clearly outside the reach of the Sunshine Law, a board exercising quasi-judicial functions was not part of the judicial branch. The court emphasized the fact that the characterization by a school board of a decision-making process as "quasi-judicial" did not make the body a judicial body.

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[2]The National Association of Attorneys General, 1979, "Open Meetings: Types of Bodies Covered, North Carolina," June, p. 47.

[3]Ibid., p. 58.

The Utah Open and Public Meeting Act Manual (see Attachment B) covers the applicability of the act to courts and administrative agencies acting in a quasi-judicial capacity. The Utah manual states that inasmuch as the judiciary is not included within the definition of "public body" in the Utah statute, and the Utah Constitution precludes legislative interference in judicial functions, the Utah Attorney General concluded that the act did not apply in the deliberation of cases before the Public Service Commission. The deliberation phase of any hearing takes place when the hearing officers retire privately to weigh the evidence and credibility of witnesses and issue a decision similar to a jury deciding a case. All other portions of the hearing are open to the public, except the deliberative phase.[4]

This Attorney General opinion was challenged in the Salt Lake County District Court (Civil Case No. 245616) where the plaintiffs sought a judgment declaring that the deliberation process should also be subject to the Open Meeting Act. The district court entered judgment that the act applies to and governs meetings of the Utah Public Utilities Commission when that public body deliberates, votes upon, establishes or otherwise evaluates existing or proposed public utility rates, tolls, charges, rentals or classifications. This decision was appealed to the Supreme Court of Utah, which reversed the lower court decision and held that the public service commission meeting should be open to the public during its "information obtaining" activities, but not during its "decision making" or judicial phase of those activities, thus sustaining the attorney general's foregoing opinion.[5]

Arizona amended its Freedom of Information Act to limit its exception for "any judicial proceeding" to exempt only "judicial proceedings of any court." This was done after the Arizona Supreme Court's decision in Arizona Press Club, Inc. v. Arizona Board of Tax Appeals, which allowed a public body acting in a quasi-judicial manner to be exempt from the law. The Arizona law now explicitly includes any quasi-judicial body of the state.

In addition, the state of Minnesota open meeting law does not apply to any state agency, board, or commission when exercising quasi-judicial functions involving disciplinary proceedings. This exemption is part of a fairly common exclusion of meetings involving the character and personal reputation of individuals. The New York statute exempts judicial and quasi-judicial proceedings, except proceedings of the public service commission and zoning board of appeals because these are public interest proceedings.

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[4]Utah Attorney General Opinion No. 77-020, August 15, 1977.

[5]Common Cause of Utah v. Utah Public Service Commission, 598 P. 2d 1312 (Utah, 1979).

4. Do municipal code of ethics address open meeting laws and if so how do these codes and open meeting acts interrelate?

The book Codes of Professional Responsibility (edited by Rena A. Gorlin, Washington: BNA, 1986) contains codes of ethics for federal officials, including members of Congress. There is no mention of open meetings. Conversations with the Freedom of Information Center and other information agencies indicate that open meeting laws are not covered in codes of ethics because these laws are more of a legal than ethical consideration.

You also asked generally about open meeting case law. Attached (Attachment D) is the most recent compilation and discussion of open meeting case law.[6]

In regard to public meeting notice requirements, Attachment E is a memorandum done by this agency in November 1986 on this topic.

I hope this information is useful; please do not hesitate to contact this agency if you have additional questions.

Attachments

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[6] If you would like more recent or additional case law, Legal Services can compile this information using the West Law computer which costs $100 per hour of computer time.

Alaska State Legislature

Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman
Sen. Al Adams
Sen. Tim Kelly
Sen. Rick Uehling

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

907-465-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senate State Affairs Committee Members

FROM: Senator Pat Pourchot, Chairman

RE: February 10 Committee Hearing on SJR 1

DATE: February 9, 1989

On Friday, February 10 at 1:30 p.m. in the Beltz Room the Senate State Affairs Committee will take up SJR 1, Proposing an amendment to the Constitution of the State of Alaska relating to open meetings.

In response to questions raised at our last meeting on SJR 1, please find attached a general discussion of other states' open meeting laws, a comparison of penalty provisions in other states, and a legal opinion on the ability of the court to impose sanctions absent any implementing legislation.

Questions regarding separation of powers, legislative immunity, and enforcement also were raised. These, of course, are the very heart of the proposed constitutional amendment and I am of the opinion that they cannot be addressed without defeating the purpose of the bill.

The purpose of the constitutional amendment, as stated in the accompanying intent language and reiterated by the bill sponsor, is to provide a basis for judicial enforcement of the state's open meetings law. It seems clear that judicial enforcement must, by definition, sacrifice some degree of separation of powers and legislative immunity.

It is my understanding after discussions with legal counsel that the reference to legislative immunity in the intent section of SJR 1 is not what establishes the waiver of immunity. It is the language of the constitutional amendment itself authorizing the court to issue fines. If we were to delete the authorization language in the amendment we would likely protect our right to immunity, but we may well defeat the purpose of SJR 1.

Opinions on the ability or willingness of the court to enforce the constitutional provision absent specific authorization to do so vary. One opinion is that the court would give great deference to legislative immunity and leave it to the legislature to sanction its members. Another opinion is that the court would get involved, and absent language limiting their ability to sanction, would proscribe very strict and far reaching rules. This has been the outcome in several states with broad open meeting definitions.

1 IN THE SENATE

2 CS FOR SENATE JOINT RESOLUTION NO. 1 (St Aff) adopted 2-3-89

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

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

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

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

11 SECTION 24. MEETINGS OPEN. (a) Except as provided in (b) of
12 this section, private and substantive discussions or debates on legis-
13 lation under its jurisdiction by a quorum of a house of the legisla-
14 ture or of a committee are prohibited.

15 (b) The legislature or a committee of the legislature may meet
16 in executive sessions authorized by law.

17 (c) A court may not prescribe rules or procedures for the con-
18 duct of legislative business or invalidate legislation because of a
19 violation of this section.

20 (d) A court may impose a civil fine upon a member of the legis-
21 lature for a wilful violation of this section and may impose other
22 sanctions authorized by law.

23 (e) The legislature may implement this section.

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

29 (b) This amendment provides a basis for judicial enforcement of the

1 existing open meetings law (AS 44.62.310 - 44.62.312) or an amendment to
2 the extent that the provisions are consistent with the amendment proposed
3 in sec. 1 of this resolution, notwithstanding art. II, secs. 6 and 12,
4 Constitution of the State of Alaska. The amount of civil fines authorized
5 by this amendment may be established by law.
6 (c) This amendment is not intended to prevent the free flow of ideas
7 among legislators or their participation in public forums, community
8 events, site visitations, or social events.
9 (d) In the preparation of its neutral summary under AS 15.58.020(6)-
10 (C), the Legislative Affairs Agency shall consider the statement of legis-
11 lative intent contained in (a) - (c) of this section.
12 * Sec. 3. The amendment proposed by this resolution shall be placed
13 before the voters of the state at the next general election in conformity
14 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
15 tion laws of the state.
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ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

November 26, 1986

MEMORANDUM

TO: Representative John Sund

ATTN: John Hartle

FROM: Ginny Fay
Legislative Analyst

RE: Provisions of State Open Meeting Laws
Research Request 87-045

You requested that we identify states with open meeting laws and discuss the provisions of these laws. All states have open meeting or "sunshine" laws, however, the provisions vary considerably among states. A 1984 study of state sunshine laws identified 23 separate provisions that can be contained in these laws and found that states varied considerably in their definition of sunshine (as measured by the combinations of these provisions).[1] Tennessee and Florida led the states; their laws contain 21 and 20 of these provisions, respectively. In contrast, laws in Pennsylvania, Wisconsin and Wyoming contained only eight provisions each. Table 1 (attached) presents the 11 most common provisions of state open meeting laws and indicates the number of states' laws that contain these provisions.

Table 2 (attached) provides the citation of the open meeting and freedom of information laws in each state; Table 3 specifically identifies and contrasts eight major provisions of open meeting laws. The majority of states have had their open meeting law interpreted by the state's attorney general. Somewhat fewer than half of the states have had their laws reviewed by the courts; have laws that do not exempt informal meetings; and/or have laws which include specific criminal penalties for violations. Approximately one-third of the states' laws do not explicitly exempt any government bodies and/or require that personnel matters be discussed in open meetings. Relatively few state laws require open committee meetings or that meetings be open even if there is no quorum.

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[1] Council of State Governments, The Book of the States, 1984-1985. (Lexington, Kentucky), 1984, p. 49.

Table 4 (attached) provides summary information regarding public notice requirements and identifies states where actions are void if open meeting law requirements are not followed.

The basic tenet of open meeting laws is that people should be informed about the government that represents them in order for a democracy to function.[2] While special provisions may vary among states, almost every state's open meetings law has four basic components:

- definition of a meeting or record;
- provisions for executive sessions;
- notice requirements; and
- provisions for enforcement.

Statutes on this subject are necessary because common law has not set precedents for access to information. In 1980, the U.S. Supreme Court ruled that the First Amendment did provide a right to access to criminal trials by all citizens (Richmond Newspapers v. Virginia 100 S. Ct. 2814, 1980) but the courts have generally been unwilling to read into the First Amendment a right of access to information. Most states have opted to write laws declaring that all meetings and records are open and then write exceptions into the laws.[3]

The trend during the 1980s has continued toward more open government in the states. In recent years, many states have made open meeting laws more stringent and made penalties for violations harsher. As late as 1979, most open meeting laws did not apply to legislatures.[4] In Kentucky,

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[2]Council of State Governments, Backgrounder "Government in the Sunshine," (Lexington, Kentucky), June 1986, p.1.

[3]According to Don R. Pember [in Mass Media Law, Second Edition (Dubuque, Iowa: Wm. C. Brown Co. Publishers), 1981, p.130] many legal experts believe that the most important component of an access law is the legislative intent. "A strong legislative declaration in favor of open access can be used to persuade a judge that if a section of the law is vague it should be interpreted to grant access, rather than to restrict access, since that is what the legislature wants," wrote William R. Wright II in the Mississippi Law Review. He points to the Washington intent section as a model: "The legislature finds and declares that all public agencies of this state and subdivisions thereof exist to aid in the conduct of public business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly."

[4]National Association of Attorney Generals, Open Meetings: Exceptions to State Laws (Raleigh, N.C.:NAAG), March 1979, p.14.

General Assembly meetings other than those of the standing committees are closed. Legislative subcommittee and conference meetings are closed in Mississippi. Meetings of the Wisconsin legislature may be closed when the state's sunshine law conflicts with legislative rules. In Alaska, organizational meetings of the legislature are closed. A committee meeting in the New Hampshire legislature may be closed by a vote of three-fifths of the members. The North Carolina open meetings law does not apply to the Advisory Budget Commission of the Legislative Services Commission. The Georgia and Oklahoma sunshine laws do not apply to the legislature.[5]

Many states allow caucus meetings in the legislature to be closed. Those states are: Alaska, California, Delaware, Hawaii, Idaho, Illinois, Indiana, Kentucky, Montana, Nevada, New Jersey, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Utah, Virginia, Washington, West Virginia, and Wyoming.

Nearly all states' open meeting laws provide for remedial action if the law is violated. In 36 states, actions are voided if the open meetings law is not followed (see Table 3). Georgia legislation (1982) made it a misdemeanor for officials to willfully obstruct release of public records or information and required 24-hour notice of any public hearing. The laws in 21 states include specific criminal penalties for the violation of open meeting laws (see Table 2).

Complications with the enforcement of open meeting statutes have led several states to form independent commissions to review complaints. In New York, the Committee on Open Government was established to handle citizen appeals on denial of open meeting and information requests. The New York committee is composed of seven members, three from government and four from the public. At least two of the public members are news media representatives. The committee has the authority to provide written and oral advice and mediate controversies. Between 1974 and 1979, the committee issued 1,500 written advisory opinions.[6]

I hope this information is of use to you. If you have any questions, or would like additional information, please call.

GF

Attachments

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[5] Freedom of Information Center, "Executive Sessions: Reasons to Close." 1984.

[6] New York Department of State, "Freedom of Information and Open Meetings Opening the Door," January 1981, Pamphlet, p.1.

Table 1

Open Meetings Laws in the States: Major Provisions

Provision	Number of States
Injunctive relief or other remedial action is provided if law violated	47
Committee meetings must be open	46
Meetings of local entities must be open	46
Discussions, in addition to actual decision making, must be held in open meeting	42
No exemptions to open-meeting provisions are allowed unless specified in law	40
A policy statement says the open-meeting law should be liberally construed	37
Where closed (executive) sessions are allowed, all final actions must be taken in open meetings	37
Quasi-judicial meetings must be open	34
When the law permits closed meetings, the parties involved may request that they be open	29
There is no provision for discussing investments, donations or other financial matters in executive session	25
Labor negotiations must be open	25

Source: Council of State Governments, The Book of the States, 1985-1986, (Lexington, Kentucky), 1985, p. 49.

TABLE 2
OPEN MEETING AND RECORDS STATUTES

STATES	OPEN MEETING LAW STATUTE CITATION	OPEN RECORDS LAW STATUTE CITATION
Alabama	Code 13-14-2	Section 36-12-40, 41
Alaska	Section 44.62.310-312	Section 09.25.110 to 09.25.125
Arizona	Section 38-431	Section 39-121,41-135
Arkansas	Section 12-2801 to 2807	Section 12-2801 to 2807
California	Section 11120 to 11131	Section 6250 to 6265
Colorado	Section 24-6-401-02	Section 24-72-201
Connecticut	Section 1-15 to 1-2 K	Section 1-15 to 1-21K
Delaware	Title 29, Section 10001-05	Title 29, Sect. 10001-05
Florida	Section 286.0105 to 286.26	Section 119.01 to 119.12
Georgia	Section 50-14-1 to 50-14-4	Section 50-14-1 to 50-14-4
Hawaii	Section 92-1 to 92-13	Section 92-1 to 92-13
Idaho	Section 67-2340 to 67-2347	Section 9-301 to 9-302
Illinois	Chapter 102, Section 41-46	Ch. 116, Sect. 201 to 211
Indiana	Section 5-14-1.5-5 to 1.5-7	Section 5-14-3-1 to 5-14-3-9
Iowa	Section 28A.1 to 28A.9	Section 68A to 68A.9
Kansas	Section 75-4317 to 75-4320a	Section 45-205 to 45-213
Kentucky	Section 61.805 to 61.845	Section 61.870 to 61.884
Louisiana	Section 42:4.1 to 42:4.12	Section 44:1 to 44:37
Maine	Title 1, Sect. 401 to 410	Title 1, Sect. 401 to 410
Maryland	Art. 76A, Sect. 1-6	Art. 76A, Sect. 7-15
Massachusetts	C 30A, Sect. 11A-11A1/2	C.66, Sect. 10-18
Michigan	Section 4.1800(11) to (23)	Subsection 4.1801(1) to (13a)
Minnesota	Section 471.705	Section13.01 to 13.87
Mississippi	Section 25-41-1 to 25-41-7	Section 25-61-1 to 25-61-17
Missouri	Section 610.010 to 610.120	Section 610.010 to 610.120
Montana	Section 2-3-201 *	Section2-6-103 *
Nebraska	Section 84-1409 to 1414	Section 84-712 to 84-712-09
Nevada	Section 241.010 to 241.040	Section 239.005 to 239.330
New Hampshire	Section 91-A:1 to 91-A:8	Section 91-A:1 to 91-A:8
New Jersey	Section 10:4-6 to 10:4-21	Section 47:1A-1 to 47:1A-4
New Mexico	Section 10-15-1 to 10-15-4	Section 14-2-1 to 14-2-3
New York	Section 95 to 106 **	Section 84 to 90 **
North Carolina	Section 143-318.9 to .16	Section 132-1 to 132-9
North Dakota	Section 44-04-19 to 44-04-21	Section 44-04-18 ***
Ohio	Section 121.22 (p. 1982)	Section 149.43 to 149.43.1
Oklahoma	Title 25, Sect. 301 to 314	Title 51, Sect. 24
Oregon	Section 192.610 to 192.690	Section 192-410
Pennsylvania	Title 65, Sect. 261 to 269	Title 65, Sect. 66.1 to 66.4
Rhode Island	Section 42-46-1 to 42-46-10	Section 38-2-1 to 38-2-12
South Carolina	Section 30-4-10 to 30-4-110	Section 30-4-10 to 30-4-110

TABLE 2
OPEN MEETING AND RECORDS STATUTES

STATES	OPEN MEETING LAW STATUTE CITATION	OPEN RECORDS LAW STATUTE CITATION
South Dakota	Section 1-25-4	Section 1-27-1 to 1-27-19
Tennessee	Code 8-44-101 to 8-44-106	Section 10-7-501 to 10-7-509
Texas	Art. 6252-17	Art. 6252-17a
Utah	Section 52-4-10 to 52-4-9	Section 63-2-66
Vermont	Title 1, Sect. 311 to 315	Title 1, Sect. 315 to 320
Virginia	Section 2.1-341 to 2.1-346.1	Section 2.1-341 to 2.1-346.1
Washington	Section 42.30.010 to .920	Section 42.17.250 to .340
West Virginia	Section 6-9A-1	Section 29B-1-1 to 29B-1-6
Wisconsin	Section 19.81 to 19.98	Section 19.31 to 19.39
Wyoming	Section 16-4-401 to 16-4-407	Section 16-4-201 to 16-4-205

All citations are for general state codes unless otherwise noted.

* Also Article 2, Section 9 of the 1972 State Constitution.
** New York Public Officers Code.
*** Also Article XI, Section 6 of the State Constitution.

SOURCE: Council of State Governments, Backgrounder "Government in the Sunshine," (Lexington, Kentucky), June 1986.

TABLE 3
OPEN MEETING AND RECORDS STATUTES

STATES	NO EXPLICIT EXEMPTIONS	OPEN COMMITTEE MEETINGS	SPECIFIC CRIMINAL PENALTIES	INCLUDES INFORMAL MEETINGS	OPEN MEETING WITH OR WITHOUT QUORUM	REQUIRED FOR PERSONNEL MATTERS	ATTORNEY GENERAL INTERPRETATION	REVIEWED BY STATE COURT
Alabama	x		x	x				
Alaska						x	a	a
Arizona			x			x		
Arkansas	x		x	x			x	x
California			x				x	x
Colorado	x	x	x	x	x		x	
Connecticut			x				x	
Delaware								
Florida			x	x	x	x	x	x
Georgia		x					x	x
Hawaii							x	
Idaho			x					x
Illinois				x	x			
Indiana	x							
Iowa	x			x			x	x
Kansas			x	x	x		x	
Kentucky				x				
Louisiana			x			x	x	
Maine	x						x	x
Maryland				x				
Massachusetts						x	x	x
Michigan			x	x	x	x		x
Minnesota				x		x	x	x
Mississippi								
Missouri	x			x				x
Montana	x					x	x	x
Nebraska			x	x		x		
Nevada			x			x	x	
New Hampshire							x	x
New Jersey							x	x

TABLE 3
OPEN MEETING AND RECORDS STATUTES

STATES	NO EXPLICIT EXEMPTIONS	OPEN COMMITTEE MEETINGS	SPECIFIC CRIMINAL PENALTIES	INCLUDES INFORMAL MEETINGS	OPEN MEETING WITH OR WITHOUT QUORUM	REQUIRED FOR PERSONNEL MATTERS	ATTORNEY GENERAL INTERPRETATION	REVIEWED BY STATE COURT
New Mexico	x		x				x	x
New York				x				
North Carolina				x				
North Dakota			x	x			x	
Ohio	x				x		x	x
Oklahoma			x	x				
Oregon				x			x	
Pennsylvania	x						x	x
Rhode Island						x		
South Carolina	x	x	x	x			x	x
South Dakota	x	x	x				x	
Tennessee	x			x	x	x	x	x
Texas			x				x	x
Utah	x					x	x	x
Vermont			x				x	x
Virginia	x			x	x			
Washington								
West Virginia			x					x
Wisconsin							x	x
Wyoming								x

a--occurring at this time

SOURCE: Council of State Governments, Backgrounder "Government in the Sunshine," (Lexington, Kentucky), June 1986.

Table 4
Summary of Provisions of State Open Meeting and Information Access Laws

States Which Have no Public Meeting Requirement

Alabama	Mississippi	South Dakota

States Where Actions are Void if Open Meeting Law is not Followed

Alaska	Illinois	Michigan	Oklahoma
Arizona	Indiana	Montana	Oregon
Arkansas	Iowa	Nebraska	Pennsylvania
Colorado	Kansas	New Hamshire	Tennessee
Connecticut	Kentucky	New Jersey	Utah
Hawaii	Louisiana	New Mexico	Virginia
Florida	Maine	New York	West Virginia
Georgia	Maryland	North Dakota	Wisconsin
Idaho	Masschusetts	Ohio	Wyoming

States Where Working Papers and Records are not Open to the Public

Arkansas	Maine	Texas
California	Massachusetts	Vermont
Connecticut	Michigan	Virginia
Illinois	Oregon	Washington
Indiana	Rhode Island	West Virginia
Kansas	South Carolina	Wyoming
Kentucky		

States Where Correspondence of State Officials is not Open

Arkansas:	governor, legislators, supreme court justices, and attorney general
California:	governor and staff
Louisiana:	records in custody of governor
Minnesota:	correspondence between individual and elected official
Nebraska:	legislators
Rhode Island:	all elected officials
South Carolina:	general assembly and staff
Virginia:	legislators, governors, lieutenant governors, attorney general and chief executive officer of any political subdivision

States Where Preliminary Drafts of Audit Reports are Closed

Arizona	Texas

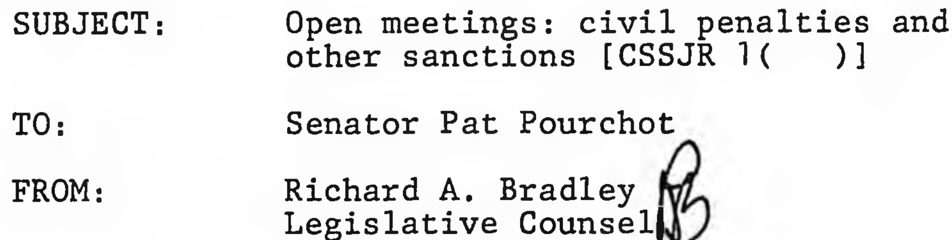
Source: Council of State Governments, Backgrounder "Government in the Sunshine", (Lexington, Kentucky) June 1986, p.7.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M February 8, 1989



SUBJECT: Open meetings: civil penalties and other sanctions [CSSJR 1( )]

TO: Senator Pat Pourchot

FROM: Richard A. Bradley
Legislative Counsel

McKie Campbell has asked that I comment to you on an aspect of the draft committee substitute that has been prepared (though the question was equally present in SJR 1 as introduced).

In the draft committee substitute, Sec. 24(d) provides:

> (d) A court may impose a civil fine upon a member of the legislature for a wilful violation of this section and may impose other sanctions imposed by law.

The question has arisen whether a court may impose a civil fine even if the legislature fails to enact any authorizing legislation.

In my opinion, the wording of the subsection leads to that conclusion. The court may impose a civil fine without any implementing legislation. Any other remedy could be imposed on a member of the legislature only if the remedy were authorized by the legislature.

If the legislature wished to limit all sanctions to those authorized by law, I would suggest:

> (d) A court may impose sanctions authorized by law upon a member of the legislature for a wilful violation of this section.

If I may be of further assistance, please advise.

RAB:gc
WKG6/111

Alaska State Legislature

SENATOR
ARLISS STURGULEWSKI
Senate President Pro Tempore
Chairman, Senate Rules Committee

2957 SHELDON JACKSON STREET
ANCHORAGE, ALASKA 99508

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

Senate

M E M O R A N D U M — February 9, 1989

TO: Senator Pat Pourchot, Chairman
Senate State Affairs Committee

FROM: Senator Arliss Sturgulewski, Chairman
Senate Rules Committee

RE: CSSJR 1 (State Affairs) Proposing an amendment to the Constitution of State of Alaska relating to open meetings.

SJR 1 is an important and balanced piece of legislation that will guarantee the public a reasonable right of access and openness in the legislative process.

The first words of the existing open meeting act (OMA) are; "All meetings of a legislative body . . . shall be open." In 1986 the League of Women voters sued after a series of closed meetings by the legislature. In that suit, the Superior Court found the legislature had violated the OMA and Uniform Rule 22, a fact the defense did not dispute, and that the OMA applied to the legislature.

When the Supreme Court reviewed the case, it held that though both the OMA and Uniform Rule 22 had been violated and were intended to apply to the legislature, this statute and rule fall within the legislature's rule making authority, and court could not enforce compliance. The matter was nonjusticiable.

The legislature is left in the position of requiring very stringent open meetings standards of other governmental bodies throughout the state, but being exempt from enforcement of any such requirements for the legislature. It can only be remedied by adoption of constitutional amendment which will provide a basis for judicial enforcement.

The standard for openness set in SJR 1 is reasonable and workable. It is the practice currently followed by the legislature in less ambiguous wording. Its presence in the constitution will establish a basis for enforcement of that standard.

SJR 1 is substantially the same as last year's Senate State Affairs committee substitute which was developed after a great deal of work. This year's State Affairs CS restructures Section 1 to further reduce any ambiguity of language.

The resolution is divided into three sections. Section 1 is the actual language that will be added to the constitution. Section 2 is legislative intent. Section 3 places the amendment before the voters at the next general election.

SECTION 1

Section 1(a) states that except for the executive sessions authorized in 1(b), private and substantive discussions and debates on legislation under its jurisdiction by a quorum of a house of the legislature or a committee is prohibited. This is the heart of the amendment.

Private and substantive discussions and debates on legislation under its jurisdiction by a quorum of a house or its committee is prohibited under all circumstances other than executive sessions, but this is the only thing that is prohibited.

The treatment of a caucuses has been a difficult issue in the drafting of this amendment. SJR 1 handles this problem successfully by making clear that a quorum of a committee or of a house is prohibited from holding substantive debate on a legislation under its jurisdiction in any private setting, whether that private setting is a caucus, an informal meeting in the chairman's office, or on the bench during a legislative softball game.

Any grouping of legislators that is not a quorum, however, may discuss anything they wish in private and a quorum of legislators may discuss anything in private except substantive discussion and debate on legislation under the jurisdiction of their particular committee or house.

Section 1 (b) allows the legislature or its committees to hold executive sessions to consider matters authorized by law.

Section 1 (c) specifies that a court may not prescribe rules or procedures for the conduct of the legislature nor may it invalidate legislation because of a violation of open meeting requirements.

Section 1(d) allows the court to impose civil fines (not civil damages) and other sanctions authorized by the legislature upon individual legislators for wilful violations. This section is a limited grant of authority to the courts. It grants them the authority to impose the sanctions authorized by law (civil fines), but prevents the imposition of any other sanctions.

The imposition of a civil fine on an individual legislator, the amount of which can be set by the legislature, is the only

intrusion by the court into the legislative process this amendment allows. This is less draconian than invalidation of legislation which is the penalty prescribed in the OMA and which this amendment prohibits.

Section 1(e) specifies that the legislature may implement this section. Implementing legislation would be the appropriate place if the legislature wished to define "legislation," "under its jurisdiction," or other terms, establish a specific fine amount, or require courts to delay consideration of any open meeting law suit filed during the legislative session until the end of the session.

SECTION 2

This section is legislative intent. It does not go into the constitution nor on the ballot but will be considered by the Legislative Affairs Agency in its preparation of the neutral summary which will be placed in the voter's pamphlet.

Section 2(a) states the purpose of the amendment is to make openness in government the rule and secrecy the exception and to ensure the public is not excluded during substantive deliberative and decision making stages of the budgetary and lawmaking process.

Section 2(b) states that the amendment provides a basis for judicial enforcement of the existing open meeting law to the extent it is consistent with this amendment, notwithstanding article II, section 6 (legislative immunity) or section 12 (rule making authority). The last sentence makes clear that if the legislature adopts a fine amount or schedule, the court must follow that schedule.

Section 2(c) states that the amendment is not intended to prevent the free flow of ideas among legislators or their participation in public forums, community events, site visitations, or social events.

Section 2(d) is instructions to the Legislative Affairs Agency.

Section 3 puts the amendment on the ballot at the next general election.

The constitutional amendment proposed in SJR 1 is balanced, workable, and needed. Thank you for your support.

Alaska State Legislature

Official Business

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

MEMORANDUM

TO: Senate State Affairs Committee Members

FROM: Senator Pat Pourchot, Chairman

RE: January 25 Committee Hearing

DATE: January 24, 1989

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

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

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

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

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

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

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

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

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

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

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

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

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

RECEIVED MAR 1 6 1989

sjr 1

COMMITTEE FOR AN OPEN LEGISLATURE

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

March 13, 1989

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

Dear Sen. Kelly, Rep. Cotten, Legislators:

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

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

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

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

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

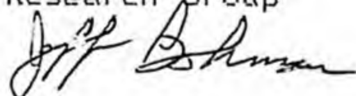
It is important to remember a fundamental point. Until the question was raised through the League of Women Voters of Alaska/Anchorage Daily News lawsuit, there was universal assumption by the public that the current Open Meetings statute applied fully to the legislature. The fact that the law proved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

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

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

Sincerely,

Jeff Bohman, Exec. Director
Alaska Public Interest
Research Group



Carol Murkowski Sturgulewski
Pres., Alaska Press Club

Cheryl D. Anderson
League of Women Voters
of Alaska

Rosemary Shinohara
Anchorage Daily News

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

November 19, 1987

MEMORANDUM

TO: Representative Kay Brown

FROM: Karla Hart KH
Legislative Analyst

RE: **Other States' Constitutional Provisions for Open Meetings**
Research Request 88.061

You requested this agency to gather language from other state constitutions which provides for open meetings. You expressed a particular interest in provisions for the closure of certain types of meetings, while providing that, in general, meetings are to be open.

Following is a list of the open meeting provisions in the constitutions of 37 states; I was unable to locate provisions in those of the remaining 13 states.[1] I have copied the statutory language verbatim, emphasizing in bold the provisions for closed meetings. Of the 37 states, only six do not make any such provisions for closed meetings under certain circumstances.

ALABAMA. Article 4, Section 57.
The doors of each house shall be opened **except on such occasions as, in the opinion of the house, may require secrecy**, but no person shall be admitted to the floor of either house while the same is in session, except members of the legislature, the officers and employes of the two houses, the governor and his secretary, representatives of the press, and other persons to whom either house, by unanimous vote, may extend the privileges of its floor.

ARKANSAS. Article 5, Section 13.
Sessions to be open.--The sessions of each house and of committees of the whole shall be open, **unless when the business is such as ought to be kept secret.**

----

[1]The states without constitutional provisions for open meetings are: Alaska, Arizona, Kansas, Kentucky, Louisiana, Maine, Massachusetts, New Jersey, North Carolina, Oklahoma, Rhode Island, Virginia and West Virginia.

CALIFORNIA. Article 4, Section 7(c).

The proceedings of each house and the committees thereof shall be public except as provided by statute or by concurrent resolution, when such resolution is adopted by a two-thirds vote of the members of each house, provided, that if there is a conflict between such a statute and concurrent resolution, the last adopted shall prevail.

COLORADO. Article 5, Section 14.

Open Sessions. The sessions of each house, and of the committees of the whole, shall be open, unless when the business is such as ought to be kept secret.

CONNECTICUT. Article 3, Section 16.

Debates to be public. The debates of each house shall be public, except on such occasions as in the opinion of the house may require secrecy.

DELAWARE. Article 2, Section 11.

Accessibility to each House and Committees of the Whole. The doors of each House, and Committees of the Whole, shall be open unless when the business is such as ought to be kept secret.

FLORIDA. Article 3, Section 4(b).

Sessions of each house shall be public; except sessions of the senate when considering appointment to or removal from public office may be closed.

GEORGIA. Article 3, Section 4, Paragraph 11.

Open Meetings. The sessions of the General Assembly and all standing committee meetings thereof shall be open to the public. Either house may by rule provide for exceptions to this requirement.

HAWAII. Article 3, Section 12, Paragraph 4.

Every meeting of a committee in either house or of a committee comprised of a member or members from both houses held for the purpose of making decision on matters referred to the committee shall be open to the public.

IDAHO. Article 3, Section 12.

Secret sessions prohibited.--The business of each house, and of the committee of the whole shall be transacted openly and not in secret session.

ILLINOIS. Article 4, Section 5(c).
Sessions of each house of the General Assembly and meetings of committees, joint committees and legislative commissions shall be open to the public. Sessions and committee meetings of a house may be closed to the public if two-thirds of the members elected to that house determine that the public interest so requires; and meetings of joint committees and legislative commissions may be so closed if two-thirds of the members elected to each house so determine.

INDIANA. Article 4, Section 13.
Doors to be open.--The doors of each House, and of Committees of the Whole, shall be kept open, except in such cases, as, in the opinion of either House, may require secrecy.

IOWA. Article 3, Section 13.
Doors open. The doors of each house shall be open, except on such occasions, as, in the opinion of the house, may require secrecy.

MARYLAND. Article 3, Section 21.
Doors to be kept open. The doors of each House, and of the Committee of the Whole, shall be open, except when the business is such as ought to be kept secret.

MICHIGAN. Article 4, Section 20.
Open meetings. The doors of each house shall be open unless the public security otherwise requires.
Convention Comment: This is a revision...declaring that meetings of the legislature shall be open unless public "security" otherwise requires. The new word replaces "welfare" and is more descriptive of a situation which might require secrecy.

MINNESOTA. Article 4, Section 14.
Open sessions. Each house shall be open to the public during its sessions except in cases which in its opinion require secrecy.

MISSISSIPPI. Article 4, Section 58.
The doors of each house, when in session, or in committee of the whole, shall be kept open, except in cases which may require secrecy; and each house may punish, by fine and imprisonment, any person not a member who shall be guilty of disrespect to the house by any disorderly or contemptuous behavior in its presence, or who shall in any way disturb its deliberations during the session; but such imprisonment shall not extend beyond the final adjournment of that session.

MISSOURI. Article 3, Section 20.
Regular sessions of assembly--quorum--compulsary attendance--public sessions--limitation on power to adjourn. ...The sessions of each house shall be held with open doors, except in cases which may require secrecy but not including the final vote on bills, resolutions and confirmations...

MONTANA. Article 5, Section 11, Paragraph 3.

The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

NEBRASKA. Article 3, Section 11.

The Legislature shall keep a journal of its proceedings and publish them (except such parts as may require secrecy) and the yeas and nays of the members on any question, shall at the desire of any one of them be entered on the journal. All votes shall be viva voce. The doors of the Legislature and of the Committees of the Whole, shall be open, unless when the business shall be such as ought to be kept secret.

NEVADA. Article 4, Section 15.

Open sessions: adjournment for more than 3 days. The doors of each House shall be kept open during its session, except the Senate while sitting in executive session, and neither shall, without the consent of the other, adjourn for more than three days nor to any other place than that in which they may be holding their sessions.

NEW HAMPSHIRE. Part 2, Article 8.

Open Sessions of Legislature. The doors of the galleries, of each house of the legislature, shall be kept open to all persons who behave decently, except when the welfare of the state, in the opinion of either branch, shall require secrecy.

NEW MEXICO. Article 4, Section 12.

Public sessions; journals. All sessions of each house shall be public. Each house shall keep a journal...

NEW YORK. Article 3, Section 10.

Journals; open sessions; adjournments. Each house of the legislature shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

NORTH DAKOTA. Article 4, Section 14.

All sessions of the legislative assembly, including the committee of the whole and meetings of legislative committees, must be open and public.

OHIO. Article 2, Section 13.

When session to be public. The proceedings of both houses shall be public, except in cases which, in the opinion of two-thirds of those present, require secrecy.

OREGON. Article 4, Section 14.
Deliberations to be open; rules to implement requirement. The deliberations of each house, of committees of each house or joint committees and of committees of the whole, shall be open. Each house shall adopt rules to implement the requirement of this section and the houses jointly shall adopt rules to implement the requirements of this section in any joint activity that the two houses may undertake.

PENNSYLVANIA. Article 2, Section 13.
Open sessions. The sessions of each House and of committees of the whole shall be open, unless when the business is such as ought to be kept secret.

SOUTH CAROLINA. Article 3, Section 23.
Doors open. The doors of each house shall be open, except on such occasions as in the opinion of the House may require secrecy.

SOUTH DAKOTA. Article 3, Section 15.
Open legislative sessions--Exception. The sessions of each house and of the committee of the whole shall be open, unless when the business is such as ought to be kept secret.

TENNESSEE. Article 2, Section 22.
Open sessions and meetings--Exception.--The doors of each House and of committees of the whole shall be kept open, unless when the business shall be such as ought to be kept secret.

TEXAS. Article 3, Section 16.
Open sessions. The sessions of each House shall be open, except the Senate when in Executive session.

Interpretative Commentary: Executive sessions are those where the Senate considers matters not discreet to reveal to the public. At such times there is also considered the gubernatorial appointments which must be confirmed or rejected by the Senate.

UTAH. Article 6, Section 15.
Sessions to be public--Adjournments. All sessions of the Legislature, except those of the Senate while sitting in executive session, shall be public; and neither house, without the consent of the other, shall adjourn for more than three days, nor to any other place than that in which it may be holding session.

VERMONT. Chapter 2, Section 8.
Doors of General Assembly to be open. The doors of the House in which the General Assembly of this Commonwealth shall sit, shall be open for the admission of all persons who behave decently, except only when the welfare of the State may require them to be shut.

WASHINGTON. Article 2, Section 11.
Journal, Publicity of Meetings--Adjournments. Each house shall keep a journal of its proceedings and publish the same, except such parts as require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy...

WISCONSIN. Article 4, Section 10.
Journals; open doors; adjournments. Each house shall keep a journal of its proceedings and publish the same, except such parts as require secrecy. The doors of each house shall be kept open except when the public welfare shall require secrecy...

WYOMING. Article 3, Section 14.
Sessions to be open. The sessions of each house and of the committee of the whole shall be open unless the business is such as requires secrecy.

* * *

I hope this compilation is helpful. If you need additional information, please call.

Bradley Memo Sandra

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM January 26, 1989

SUBJECT: Open meetings: the laws from other states (SJR 1)

TO: Senator Arliss Sturgulewski

Const - OR & CAL only

FROM: Richard A. Bradley
Legislative Counsel

McKie Campbell asked me to provide you with a study that I did last year on the laws of the other states that have open meetings. I used in my review a listing of such laws that was initially prepared by the House Research Agency (that I regretfully seem unable to find a copy of; I assume one is available from them).

citations only

Initially, I reviewed the constitutions and laws of Oregon and California in some detail in the context of the question whether either state would void a law for a violation of open meeting requirements.

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.

Cal Const

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.

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.

Dick Bradley has Const. of the States Annotated

Cal penalties

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).

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

Cal statute

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.

Or const

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.

ORS Secs. 192.610 - 192.690 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 remedy 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.

In addition, I have reviewed about half of the laws of the other states. Since some kind of pattern appears in the laws of the states that I did review, I discontinued the 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 voided. 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 an unfortunate 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.

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. And let me note also that this study was done 10 months ago; it might be a little dated.

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.

AZ

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 above 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.

none

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

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

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

Indiana. B.I.S.A. sec. 5-15-1.5-1. Appears to apply to the legislature. Sec. 5-14-1.5-2(a). Notice requirement do not apply to the legislature. Sec. 5-14-1.5-5(g). Citizen may enjoin action taken at an executive session or to declare void action in violation of notice requirements (not applicable to legislature). Sec. 5-14-1.5-7(a). Court may award costs and attorney fees if action was knowing and intentional. Sec. 5-14 - 1.5-7(f).

Iowa. The correct citation is chapter 21 in the 1987 code. The chapter does not apply to the legislature. Remedies include assessment of fines of $100 to $500 for participants; no fines for a person who voted against the violating meeting or acted in good faith or in reliance of legal advice. Sec. 21.6(3). Costs and attorney fees for prevailing party who establishes the violation. Sec. 21.6(3). Voids the action taken in violation if the case is brought within six months of the action on a determination that the public interest in the enforcement of the open meeting policy outweighs the public interest in sustaining the validity of the action taken; doesn't apply to an action regarding the issuance of bonds or other indebtedness of a governmental body

if a public hearing, election, or public sale has been held. The court may remove an individual who has engaged in two prior violations in which damages were assessed during the member's term. May issue a mandatory injunction punishable by civil contempt. Ignorance is no defense.

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

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

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

Maine. 1 MRSA sec. 401 et seq. Applies to the legislature. Sec. 402.2. For violations of the policy: "If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official

action in an executive session, this action shall be illegal and the officials responsible shall be subject to the penalties hereinafter provided". I note that "Acts" are not included. The penalty is a class E crime, probably a misdemeanor. No case examines a challenge to a legislative enactment.

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

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

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:gc
C6/049

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

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

FURTHER JUDICIARY
FINANCE

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE 2-10-89

1/9/89
Mr. President:

STATE AFFAIRS Committee considered SJR 1

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

and recommended:

[X] replace with CS SJR 1 (St Aff) [X] same title
[ ] new title

[ ] attached amendment(s) and

[ ] ____________ letter of intent adopted

[ ] do pass

[ ] do not pass

[ ] no recommendation

[X] individual recommendations

[ ] further referral to ____________

FISCAL NOTE(S) attached [ ] zero [ ] fiscal impact
[ ] appropriation no FN attached [ ] Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

Tim Kelly
Rick Uehling (do pass)

OTHER RECOMMENDATIONS

Jan Faiks No Rec

Pat Pourchot do pass
Chairman signature and recommendation

[ ] Committee backup attached

adopted St Aff
2-3-89

6-0013E
Bradley
2/2/89

Original sponsors: Sturgulewski, Fischer, Kerttula, et al.

1 IN THE SENATE

2 CS FOR SENATE JOINT RESOLUTION NO. 1 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

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

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

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

11 SECTION 24. MEETINGS OPEN. (a) Except as provided in (b) of
12 this section, private and substantive discussions or debates on legis-
13 lation under its jurisdiction by a quorum of a house of the legisla-
14 ture or of a committee are prohibited.

15 (b) The legislature or a committee of the legislature may meet
16 in executive sessions authorized by law.

17 (c) A court may not prescribe rules or procedures for the con-
18 duct of legislative business or invalidate legislation because of a
19 violation of this section.

20 (d) A court may impose a civil fine upon a member of the legis-
21 lature for a wilful violation of this section and may impose other
22 sanctions authorized by law.

23 (e) The legislature may implement this section.

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

29 (b) This amendment provides a basis for judicial enforcement of the

1 existing open meetings law (AS 44.62.310 - 44.62.312) or an amendment to
2 the extent that the provisions are consistent with the amendment proposed
3 in sec. 1 of this resolution, notwithstanding art. II, secs. 6 and 12,
4 Constitution of the State of Alaska. The amount of civil fines authorized
5 by this amendment may be established by law.
6 (c) This amendment is not intended to prevent the free flow of ideas
7 among legislators or their participation in public forums, community
8 events, site visitations, or social events.
9 (d) In the preparation of its neutral summary under AS 15.58.020(6)-
10 (C), the Legislative Affairs Agency shall consider the statement of legis-
11 lative intent contained in (a) - (c) of this section.
12 * Sec. 3. The amendment proposed by this resolution shall be placed
13 before the voters of the state at the next general election in conformity
14 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
15 tion laws of the state.
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Introduced: 1/9/89
Referred: State Affairs, Judiciary
and Finance

6-0013A

This bill result of last year's State Affairs work.

Sandra

BY STURGULEWSKI, FISCHER,
KERTTULA, PEARCE, SZYMANSKI,
KELLY, RODEY, DUNCAN

IN THE SENATE

SENATE JOINT RESOLUTION NO. 1

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

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

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

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

SECTION 24. MEETINGS OPEN. (a) Unless the legislature or a committee of the legislature is meeting in executive session to consider matters authorized by law, the discussions and debates of each house of the legislature and its committees shall be open to the public.

(b) Except as provided in (a) of this section, private and substantive discussions and debates on legislation under its jurisdiction by a quorum of a house of the legislature or a committee is prohibited. A court may not prescribe rules or procedures for the conduct of legislative business or invalidate legislation because of a violation of this section. A court may impose a civil fine upon a member of the legislature for a wilful violation of this section and may impose other sanctions authorized by law.

(c) The legislature may implement this section.

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

1 (b) This amendment provides a basis for judicial enforcement of the
2 existing open meetings law (AS 44.62.310 - 44.62.312) or an amendment to
3 the extent that the provisions are consistent with the amendment proposed
4 in sec. 1 of this resolution, notwithstanding art. II, secs. 6 and 12,
5 Constitution of the State of Alaska. The amount of civil fines authorized
6 by this amendment may be established by law.
7 (c) This amendment is not intended to prevent the free flow of ideas
8 among legislators or their participation in public forums, community
9 events, site visitations, or social events.
10 (d) In the preparation of its neutral summary under AS 15.58.020(6)-
11 (C), the Legislative Affairs Agency shall consider the statement of legis-
12 lative intent contained in (a) - (c) of this section.
13 * Sec. 3. The amendment proposed by this resolution shall be placed
14 before the voters of the state at the next general election in conformity
15 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
16 tion laws of the state.

Alaska State Legislature

Senate

Official Business

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

M E M O R A N D U M January 19, 1989

TO: Senator Pourchot
Chairman, State Affairs Committee

FROM: Senator Arliss Sturgulewski

RE: Senate Joint Resolution 1
Proposing an amendment to the Constitution of State of Alaska relating to open meetings.

Thank you for scheduling a hearing on SJR1. 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.

The first words of the existing open meeting act (OMA) are; "All meetings of a legislative body...shall be open." In 1986 the League of Women voters sued after a series of closed meetings by the legislature. In that suit the Superior Court found the legislature had violated the OMA and Uniform Rule 22, a fact the defense did not dispute, and that the OMA applied to the legislature.

no - implied Const right

When the Supreme Court reviewed the case it held that though both the OMA and Uniform Rule 22 had been violated, and were intended to apply to the legislature, this statute and rule fall within the legislature's rule making authority, and the court could not enforce compliance. The matter was nonjusticiable.

The legislature is left in the position of requiring very stringent open meetings standards of other governmental bodies throughout the state, but being exempt from enforcement of any such requirements itself. I believe this position erodes the respect of the people for the legislature. It can only be remedied by adoption of constitutional amendment which will provide a basis for judicial enforcement.

Senate Joint Resolution 1 provides a reasonable and workable standard for when meetings in the legislature must be open and also provides a basis for enforcement of that standard. This resolution is substantially the same as last year's Senate State Affairs committee substitute which was developed after a great deal of work.

The resolution is divided into three sections. Section 1 is the actual language that will be added to the constitution. Section 2 is legislative intent. Section 3 places the amendment before the voters at the next general election.

SECTION 1

Section 1 (a) allows the legislature or its committees to hold executive sessions to consider matters authorized by law.

The first sentence of **Section 1(b)** states that except for the executive sessions authorized in 1(a), private and substantive discussions and debates on legislation under its jurisdiction by a quorum of a house of the legislature or a committee is prohibited. This sentence is the heart of the amendment.

Private and substantive discussions and debates on legislation under its jurisdiction by a quorum of a house or its committee is prohibited under all circumstances other than executive sessions, but this is the only thing that is prohibited.

The treatment of caucuses has been a difficult issue in the drafting of this amendment. SJR 1 handles this problem successfully by making clear that a quorum of a committee or of a house is prohibited from holding substantive debate on a legislation under its jurisdiction in any private setting, whetner that private setting is a caucuses, an informal meeting in the chairman's office, or on the bench during a legislative softball game.

Any grouping of legislators that is not a quorum, however, may discuss anything they wish in private and a quorum of legislators may discuss anything in private except substantive discussion and debate on legislation under the jurisdiction of their particular committee or house.

The rest of Subsection 1(b) specifies that a court may not prescribe rules or procedures for the conduct of the legislature, may not invalidate legislation because of a violation of this section, but may impose civil fines (not civil damages) and other sanctions authorized by the legislature upon individual legislators for wilful violations.

The imposition of a civil fine on an individual legislator, the amount of which can be set by the legislature, is the only intrusion by the court into the legislative process this amendment allows. This is less draconian than invalidation of legislation which is the penalty prescribed in the OMA and which this amendment prohibits .

Subsection 1(c) specifies that the legislature may implement this section. Implementing legislation would be the appropriate place if the legislature wished to define "legislation", "under its jurisdiction", or other terms, or establish a specific fine amount.

SECTION 2

This section is legislative intent. It does not go into the constitution nor on the ballot but will be considered by the Legislative Affairs Agency in its preparation of the neutral summary which will be placed in the voter's pamphlet.

Section 2(a) states the purpose of the amendment is to make openness in government the rule and secrecy the exception and to ensure the public is not excluded during substantive deliberative and decision making stages of the budgetary and lawmaking process.

Section 2(b) states that the amendment provides a basis for judicial enforcement of the existing open meeting law to the extent it is consistent with this amendment, notwithstanding article II, section 6 (legislative immunity) or section 12 (rule making authority). The last sentence makes clear that if the legislature adopts a fine amount or schedule, the court must follow that schedule.

Section 2(C) states that the amendment is not intended to prevent the free flow of ideas among legislators or their participation in public forums, community events, site visitations, or social events.

Section 2(d) is instructions to the Legislative Affairs Agency.

Section 3 puts the amendment on the ballot at the next general election.

This amendment is balanced, workable, and appropriate. Thank you for your consideration of SJR 1.

OPEN MEETINGS (SJR 1, SB 3)

LEAGUE OF WOMEN VOTERS, ANCHORAGE DAILY NEWS, AND FAIRBANKS DAILY NEWS MINER V. AL ADAMS, ET AL

BOTTOM LINE: THE COURT CAN ENFORCE ONLY IF A CONSTITUTIONAL RIGHT OR REQUIREMENT HAS BEEN VIOLATED. THERE IS NO IMPLIED RIGHT OF PUBLIC ACCESS TO MEETINGS, SO THE CONSTITUTION MUST BE AMENDED BEFORE JUDICIAL ENFORCEMENT CAN OCCUR.

Superior Court Ruling, October 1986

Justiciability depends on a determination that a constitutional right or requirement has been violated.

Closed meetings violate an implied constitutional right of public access to meetings of legislative units (Article I, Section 5 - freedom of speech and press).

Fact that closed meetings may have violated the statutory Open Meetings Act and Uniform Rule #22 is nonjusticiable, on grounds that legislature has constitutional right to establish its own rules of procedure.

Supreme Court Ruling, September 1987

Contrary to Superior Court decision, there is no implied constitutional right of public access to legislative meetings.

NOTE: At least 35 states have constitutional requirements that their legislatures meet in public. All fifty states, D.C., and the federal government have some form of an open meetings act.

10-1-86 Superior Ct.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

LEAGUE OF WOMEN VOTERS OF ALASKA, ANCHORAGE DAILY NEWS, and FAIRBANKS DAILY NEWS-MINER, on Behalf of the People of Alaska,

Plaintiffs,

v.

ALBERT P. ADAMS, JOHNE BINKLEY, H.A. BOUCHER, BETTE M. CATO, DONALD E. CLOCKSIN, SAM COTTEN, MIKE DAVIS, JIM DUNCAN, STEVE FRANK, JOHN G. FULLER, PETER GOLL, MAX F. GRUENBERG, JR., BEN F. GRUSSENDORF, ADELHEID HERRMANN, KATHERINE T. HURLEY NIILO E. KOPONEN, RONALD L. LARSON, M. MIKE MILLER, MIKE W. MILLER, MIKE NAVARRE, PAT POURCHOT, JOHN RINGSTAD, RICHARD SHULTZ, JOHN SUND, MIKE SZYMANSKI, ROBIN L. TAYLOR, DAVID W. THOMPSON, KAY WALLIS, MITCHELL E. ABOOD, JR., DON BENNETT, JOHN B. COGHILL, EDNA DeVRIES, RICHARD I. ELIASON, BETTYE FAHRENKAMP, JAN FAIKS, FRANK R. FERGUSON, PAUL FISCHER, RICK HALFORD, TIM KELLY, JALMAR M. KERTTULA, PATRICK RODEY, JOHN C. SACKETT, ARLISS STURGULEWSKI, FRED F. ZHAROFF, ALAN AKIYAMA, SERGEANT-AT-ARMS, ALASKA HOUSE OF REPRESENTATIVES, in his official capacity, JACK GIBBONS, SERGEANT-AT-ARMS, ALASKA SENATE, in his official capacity, IRENE CACHEN, CLERK OF THE ALASKA HOUSE OF REPRESENTATIVES, in her official capacity, PEGGY MILLIGAN, SECRETARY OF THE ALASKA SENATE, in her official capacity,

Defendants,

and

STATE OF ALASKA,

Defendant-Intervenor.

FILED IN THE TRIAL COURTS
STATE OF ALASKA, FIRST DISTRICT
AT JUNEAU

OCT - 1 1986

Clerk of Court

By PB Deputy

No. 1JU-86-986 Civil

MEMORANDUM OF DECISION AND ORDER

The plaintiffs have filed a complaint for declaratory and injunctive relief against the twenty-eight members of the majority caucus of the Alaska State House of Representatives, the sixteen members of the majority caucus of the Alaska State

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Senate, and four House and Senate employees.[1] The plaintiffs argue that they are entitled to relief because the "members of both the House and Senate have improperly met in violation of state statutes, common law and state and federal constitutional guarantees, to collectively gather information about, consider, debate, and act upon the state budget for Fiscal Year 1987." [Plaintiffs' Complaint, p. 1.]

The Senate defendants have moved to dismiss this complaint with prejudice (or alternatively for this court to enter a summary judgment in their favor). Alaska Civil Rules 12(b) and 56. Likewise, the House defendants have moved for a judgment on the pleadings in their favor. Alaska Civil Rule 12(c). Finally, the State of Alaska has intervened in the suit and has moved to dismiss this complaint with prejudice (or alternatively that a summary judgment be entered in the defendants' favor). Alaska Civil Rules 12(b) and 56.

These motions are based on three main legal arguments by the defendants and the intervenor. First, they contend that the complaint raises issues that are nonjusticiable political questions, in part because the public or press have no constitutional right to have notice of nor to attend legislative meetings. Second, they argue that legislative immunity guaranteed by the Alaska Constitution bars this suit entirely, or at a minimum protects a legislator and staff employees from being called to answer in court about legislative acts done during a session. Thus, they argue that to allow this suit to proceed would impermissibly require defendants to waive their immunity in

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1. These employees are the House Sergeant-at-arms, Senate Sergeant-at-arms, Clerk of the House, and the Secretary of the Senate.

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