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California: Government Code (Executive Agency Sections)

ARTICLE 9

Meetings

[Added by Stats 1967 ch 1656 § 122.]

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§ 11128. When closed sessions held
§ 11129. Continuance or recontinuance of hearing
§ 11130. Commencement of action
§ 11130.5. Costs and attorney fees
§ 11130.7. Offenses
§ 11131. Prohibition against use of certain facilities

Cross References:

Cancer Advisory Council exempt from conducting meetings open to public in accordance with this article: H & S C § 1702.

Exclusion of meetings of board of directors of State Compensation Insurance Fund from provisions of this article: Ins C § 11770.5.

Application of provisions of this article to meetings of Colorado River Board of California: Wat C § 12516.

Required certificate, of Colorado River Board of California, that meetings were in accordance with provisions of this article: Wat C § 12519.

Collateral References:

Cal Jur 3d Public Housing § 22, Public Utilities § 23.

Annotations:

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

§ 11120. Legislative finding and declaration; Open proceedings; Citation of article

It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

This article shall be known and may be cited as the Bagley-Keene Open Meeting Act.

Added Stats 1967 ch 1656 § 122; Amended Stats 1980 ch 1284 § 4; Stats 1981 ch 968 § 4.

Amendments:

1980 Amendment: Added the last paragraph.
1981 Amendment: Added the third paragraph.

Cross References:

Public policy that local agencies' proceedings be conducted openly: § 54950.

Collateral References:

Witkin Procedure 2d p 1400.
Witkin Summary (8th ed) p 3627.

Attorney General's Opinions:

51 Ops Atty Gen 201 (effect of Brown Act on meeting of public body to discuss labor negotiations).

Annotations:

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

NOTES OF DECISIONS

The Legislature intended that all state and local agencies be included under the provisions of some open meeting act (the Brown Act, Gov. Code, § 54950 et seq.; the State Act, Gov. Code, § 11120 et seq.), unless expressly excluded. Torres v Board of Comrs. (1979) 89 CA3d 545, 152 Cal Rptr 506.

§ 11121. "State body"

As used in this article "state body" means every state board, or commission, or similar multimember body of the state which is required by law to conduct official meetings and every commission created by executive order, but does not include:

(a) State agencies provided for in Article VI of the California Constitution.

(b) Districts or other local agencies whose meetings are required to be open to the public pursuant to the provisions of the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of this code.

(c) State agencies provided for in Article IV of the California Constitution whose meetings are required to be open to the public pursuant to the Grunsky-Burton Open Meeting Act, Sections 9027 et seq., of this code.

(d) State agencies when they are conducting proceedings pursuant to Section 3596 of this code.

(e) State agencies provided for in Section 1702 of the Health and Safety Code, except as provided in Section 1720 of the Health and Safety Code.

(f) State agencies provided for in Section 11770.5 of the Insurance Code.

Added Stats 1967 ch 1656 § 122; Amended Stats 1980 ch 515 § 1; Stats 1981 ch 968 § 5.

Amendments:

1980 Amendment: Added "and every commission created by executive order" after "official meetings".

1981 Amendment: (1) Substituted "state body" for "state agency"; (2) added ": (a)"; (3) substituted ". (b)" for "nor"; (4) added "the Ralph M. Brown Act," in subd (b); and (5) added subds (c)-(f).

Cross References:

Additional definitions: §§ 11121.2, 11121.7, 11121.8.

Collateral References:

Witkin Summary (8th ed) p 3627.

NOTES OF DECISIONS

A housing authority created pursuant to Health & Saf. Code, § 34200 et seq., is a "local agency" within the meaning of the Brown Act (Gov. Code, § 54950 et seq.; open meetings) and is not a "state agency" within the scope of the State Agency Open Meeting Act (Gov. Code, § 11120 et seq.). Torres v Board of Comrs. (1979) 89 CA3d 545, 152 Cal Rptr 506.

§ 11121.2. Additional definition of "state body"

As used in this article, "state body" also means any board, commission, committee, or similar multimember body which exercises any authority of a state body delegated to it by that state body.

Added Stats 1981 ch 968 § 5.2.

§ 11121.5. Applicability to official student body organizations

Under the provisions of this article, the official student body organiza-

tion at any campus of the California State University and Colleges, or of the California Community Colleges, shall be treated in the same manner as a state body.

Added Stats 1974 ch 1179 § 1, effective September 23, 1974; Amended Stats 1981 ch 968 § 5.3.

Amendments:

1981 Amendment: Substituted "body" for "agency" at the end of the section.

Collateral References:

Cal Jur 3d Universities and Colleges § 108.

§ 11121.7. Additional definition of "state body"

As used in this article, "state body" also means any board, commission, committee, or similar multimember body on which a member of a body which is a state body pursuant to Section 11121, 11121.2, or 11121.5 serves in his or her official capacity as a representative of such state body and which is supported, in whole or in part, by funds provided by the state body, whether such body is organized and operated by the state body or by a private corporation.

Added Stats 1980 ch 1284 § 5; Amended Stats 1981 ch 968 § 6.

Amendments:

1981 Amendment: (1) Deleted "(a)" at the beginning of the section; (2) substituted "body" for "agency" wherever it appears; (3) deleted former subd (b) (see now § 11121.8); (4) deleted former subd (c) (see now § 11125 subd (d); and (5) deleted former subd (d) (see now § 11125 subd (c).

§ 11121.8. Additional definition of "state body"

As used in this article, "state body" also means any advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.

Added Stats 1981 ch 968 § 7.

Prior Law: § 11121.7 subd (b) as added by Stats 1980 ch 1284 § 5.

§ 11121.9. Providing copy of article to members of state bodies

Each state body shall provide a copy of this article to each member of the state body upon his or her appointment to membership or assumption of office.

Added Stats 1980 ch 1284 § [illegible]; Amended Stats 1981 ch 714 § 175, ch 968 § 7.1.

Amendments:

1981 Amendment: Substituted "Each state body shall provide a copy of this article to each member of the state body" for "A copy of this article shall be provided to each member of any state agency".

§ 11122. "Action taken"

As used in this article "action taken" means a collective decision made by the members of a state body, a collective commitment or promise by the members of the state body to make a positive or negative decision or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution, order or similar action.

Added Stats 1967 ch 1656 § 122; Amended Stats 1981 ch 968 § 7.3.

Amendments:

1981 Amendment: Substituted "state body" for "state agency" wherever it appears.

§ 11123. Required open and public meetings

All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

Added Stats 1967 ch 1656 § 122; Amended Stats 1981 ch 968 § 7.5.

Prior Law:

(a) Former § 15486, as added by Stats 1957 ch 2216 § 1.

(b) Former § 15625, as added by Stats 1957 ch 2215 § 1.

Amendments:

1981 Amendment: Substituted "body" for "agency" wherever it appears.

§ 11124. Prohibited conditions to attendance

No person shall be required, as a condition to attendance at a meeting of a state body, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

Added Stats 1967 ch 1656 § 122; Amended Stats 1981 ch 968 § 8.

Amendments:

1981 Amendment: (1) Amended the first paragraph by (a) substituting "No person shall be" for "A member of the public shall not be"; (b) substituting "state body" for "state agency"; (c) substituting "or her name, to provide" for "name and"; and (d) adding "or her" before "attendance" at the end; and (2) added the second paragraph.

§ 11124.1. Recording proceedings

Any person attending an open and public meeting of the state body shall have the right to record the proceedings on a tape recorder in the absence of a reasonable finding of the state body that such recording constitutes, or would constitute, a disruption of the proceedings.

Added Stats 1980 ch 1284 § 7; Amended Stats 1981 ch 968 § 9.

Amendments:

1981 Amendment: Substituted "body" for "agency" wherever it appears.

§ 11125. Notice of meeting

(a) The state body shall provide notice of its meeting to any person who requests such notice in writing. Notice shall be given at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The notice requirement shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public, provided, however, that no action is taken by the state body at the same meeting on matters brought before the body by members of the public.

(b) The notice of a meeting of a body which is a state body as defined in Section 11121, 11121.2, 11121.5, or 11121.7, shall include a specific agenda for the meeting, which shall include the items of business to be transacted or discussed, and no item shall be added to the agenda subsequent to the provision of this notice.

(c) The notice of a meeting of an advisory body, which is a state body as defined in Section 11121.8, shall include a brief, general description of the business to be transacted or discussed, and no item shall be added subsequent to the provision of the notice.

(d) Notice of a meeting of a state body which complies with this section shall also constitute notice of a meeting of an advisory body of that state body, provided that the business to be discussed by the advisory body is covered by the notice of the meeting of the state body, provided that the specific time and place of the advisory body's

meeting is announced during the open and public state body's meeting, and provided that the advisory body's meeting is conducted withina reasonable time of, and nearby, the meeting of the state body.

(e) A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

(f) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

Added Stats 1967 ch 1656 § 122; Amended Stats 1973 ch 1126 § 1; Stats 1975 ch 708 § 1; Stats 1979 ch 284 § 1, effective July 24, 1979; Stats 1981 ch 968 § 10.

Prior Law: § 11121.7 subds (c) and (d), as added by Stats 1980 ch 1284 § 5.

Amendments:

1973 Amendment: (1) Designated the former section to be subd (a); (2) amended subd (a) by (a) substituting "one week" for "24 hours"; (b) substituting "one week's" for "twenty-four (24) hours'"; (c) deleting "such as a natural disaster" after "conditions,"; and (d) substituting "this part" for "Part 1 of Division 3 of Title 2 of this code"; and (3) added subds (b) and (c).

1975 Amendment: (1) Amended subd (a) by adding (a) "prepare an agenda for, and" in the first sentence; (b) "and shall include the agenda for" in the second sentence; and (c) the third sentence.

1979 Amendment: (1) Deleted ", as defined by published rule of the agency adopted pursuant to the provisions of Chapter 4.5 (commencing with Section 11371) of this part" at the end of second sentence of subd (a); (2) added subd (b); and (3) redesignated former subds (b) and (c) to be subds (c) and (d).

1981 Amendment: (1) Substituted subd (a) for former subd (a) which read: "(a) The state agency shall prepare an agenda for, and provide notice of, its meeting to any person who requests such notice in writing. Notice shall be given at least one week in advance of and shall include the agenda for the meeting, provided that emergency meetings may be held with less than one week's notice when such meetings are necessary to discuss unforeseen emergency conditions. The agenda need not include a list of any witnesses expected to appear at the meeting."; (2) substituted subd (b) for former subd (b) which read: "(b) Emergency meetings held for the purpose of adopting emergency regulations pursuant to Section 11421 require no prior notice or agenda, except that the agency shall make a reasonable effort to contact any persons requesting notice pursuant to this section or Section 11423, or both."; (3) substituted subd (c) for former subd (c) which read: "(c) Notice shall include the items of business to be transacted, and no item shall be added to the agenda subsequent to the provisions of such notice, absent unforeseen emergency conditions, as provided in subdivision (a)."; (4) added subd (d); (5) redesignated the first sentence of former subd (d) to be subd (e) and the second sentence to be subd (f); (6) amended subd (e) by substituting (a) "a state body or" for "the agency or only" in the first sentence; (b) "state body's" for "agency's"; and (c) "meetings of a state body" for "agency meetings"; and (6) substituted "a state body" for "an agency" in subd (f).

Cross References:

Rules pertaining to meetings by Franchise Tax Board: 18 Cal Adm Code § 17000.2.
Rules pertaining to notice of meetings of State Energy Resources Conservation & Development Commission: 20 Cal Adm Code § 1103.

Collateral References:
Cal Jur 3d Public Utilities § 23.

§ 11125.1. Agenda and other "writing" as public record; Inspection

(a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by a member, officer, employee, or agent of such body for discussion or consideration at a public meeting of such body, are public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) as soon as distributed, and shall be made available pursuant to Sections 6253 and 6256. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7.

(b) Writings which are public records under subdivision (a) and which are distributed prior to commencement of a public meeting shall be made available for public inspection upon request prior to commencement of such meeting.

(c) Writings which are public records under subdivision (a) and which are distributed during a public meeting and prior to commencement of their discussion at such meeting shall be made available for public inspection prior to commencement of, and during, their discussion at such meeting.

(d) Writings which are public records under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.

(e) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section 6257. The writings described in subdivisions (b), (c), and (d) are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall not be construed to exempt from public inspection any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

(f) "Writing" for purposes of this section means "writing" as defined under Section 6252.

Added Stats 1975 ch 959 § 4; Amended Stats 1980 ch 1284 § 8; Stats 1981 ch 968 § 10.1.

Amendments:

1980 Amendment: Substituted the section for the former section which read: "(a) Notwithstanding any other provision of this chapter, agendas of public meetings and copies of public documents, or summaries thereof, which are to be discussed or considered at a public meeting of a state agency shall be made available to the public by the state agency prior to the commencement of such meeting; provided, however, that the state agency may charge a reasonable fee, not to exceed the actual costs of reproduction, for documents furnished pursuant to this subdivision; and further provided that this section shall not include written memoranda prepared for a state agency, or its members, by an attorney holding a fiduciary relationship to such agency.

"(b) Any state agency shall publicly report at a subsequent public meeting any action taken, and any rollcall vote thereon, to appoint, employ, or dismiss a public employee arising out of any executive session of the state agency."

1981 Amendent: (1) Amended subd (a) by (a) substituting "body" for "agency" wherever it appears; and (b) adding "California"; and (2) amended subd (c) by substituting (a) "body" for "agency" wherever it appears; and (b) "be construed to be applicable to any writings solely because they are properly discussed in a closed session of a" for "apply to any writings properly discussed in a closed session of the" in the third sentence.

§ 11125.2. Public report of action taken regarding public employee

Any state body shall report publicly at a subsequent public meeting any action taken, and any rollcall vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the state body.

Added Stats 1980 ch 1284 § 9; Amended Stats 1981 ch 968 § 10.3.

Amendments:

1981 Amendment: Substituted (1) "body" for "agency" wherever it appears; and (2) "report publicly" for "publicly report".

§ 11125.5. Emergency meetings; Notification of media

In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a state body may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125.

For purposes of this section, "emergency situation" means any of the following, as determined by a majority of the members of the state body during a meeting prior to the emergency meeting, or at the beginning of the emergency meeting:

(a) Work stoppage or other activity which severely impairs public health, safety, or both.

(b) Crippling disaster which severely impairs public health, safety, or both.

(c) Difficulties with examinations for licensure which require immediate attention.

(d) Administrative disciplinary matters, including, but not limited to,

consideration of proposed decisions and stipulations, and pending litigation, which require immediate attention.

(e) Consideration of applications for licensure where a decision must be made in less than 10 days.

(f) Consideration by a licensing agency of proposed legislation which requires immediate attention due to legislative action which may be taken prior to the next regularly scheduled meeting of the agency, or due to time limitations imposed by law.

However, newspapers of general circulation and radio or television stations which have requested notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the state body, or a designee thereof, one hour prior to the emergency meeting by telephone. In the event that telephone services are not functioning the notice requirements of this section shall be deemed waived, and the presiding officer of the state body, or a designee thereof, shall notify such newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the state body, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any actions taken at such meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

Added Stats 1981 ch 968 § 11.

§ 11126. Permitted closed sessions

(a) Nothing contained in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment or dismissal of a public employee or to hear complaints or charges brought against such employee by another person or employee unless such employee requests a public hearing. As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal such employee shall be given written notice of his or her right to have a public hearing rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at such closed session shall be null and void. The state body also may exclude from any such public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body. Following

the public hearing or closed session the body may deliberate on the decision to be reached in a closed session.

For the purposes of this section, the term "employee" shall not include any person who is elected to, or appointed to a public office by, any state body; provided, however, that officers of the California State University and Colleges who receive compensation for their services other than per diem and ordinary and necessary expenses shall, when engaged in such capacity, be considered employees.

(b) Nothing in this article shall be construed to prevent state bodies which administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade or administer examinations.

(c) Nothing in this article shall be construed to prevent an advisory body of a state body which administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters which the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided that the advisory body does not include a quorum of the members of the state body itadvises. Such matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(d) Nothing in this article shall be construed to prohibit a state body from holding a closed session to deliberate on a decision to be reached based upon evidence introduced in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 of the Government Code or similar provision of law.

(e) Nothing in this article shall be construed to prevent any state body from holding a closed session to consider matters affecting the national security.

(f) Nothing in this article shall be construed to grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(g) Nothing in this article shall be construed to prevent any closed session to consider the conferring of honorary degrees, or gifts,

donations and bequests which the donor or proposed donor has requested in writing to be kept confidential.

(h) Nothing in this article shall be construed to prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125 of the Government Code.

(i) Nothing in this article shall be construed to prevent the Trustees of the California State University and Colleges from holding closed sessions dealing with site selection for such state university and colleges.

(j) Nothing in this article shall be construed to prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(k) Nothing in this article shall be construed to prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or data the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the executive officer of the Franchise Tax Board.

(l) Nothing in this article shall be construed to prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under the provisions of Section 6027 of the Penal Code.

(m) Nothing in this article shall be construed to prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(n) Nothing in this article shall be construed to prevent a state body which invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues which could have a material effect on the net income of the corporation.

(o) Nothing in this article shall be construed to prevent a state body, or such boards, commissions, administrative officers, or other representatives as may properly be designated by law or by such state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of this code as such sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding

sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(p) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against regulated utilities.

(q) Nothing in this article shall be construed to prevent a state body from holding a closed session to confer with legal counsel regarding pending litigation when discussion in open session concerning those matters would adversely affect or be detrimental to the public interest.

(r) Nothing in this article shall be construed to prevent a state body which invests in retirement, pension, or endowment funds from holding closed sessions to confer with legal counsel regarding pending litigation, when discussion in open session concerning these matters would adversely affect, or be detrimental to, those funds. For purposes of subdivision (q) and this subdivision, litigation shall be considered pending when a complaint, claim or petition for writ of mandate has been filed, or the threat of litigation is imminent in the sound opinion of the state body.

(s) Nothing in this article shall be construed to prevent the examining committee established by the Board of Forestry pursuant to Section 763 of the Public Resources Code from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(t) Nothing in this article shall be construed to prevent an administrative committee established by the Board of Accountancy pursuant to Section 5020 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent an examining committee established by the Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(u) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.2, from conducting a closed session to consider any matter which properly could be considered in closed session by the state body whose authority it exercises.

(v) Nothing in this article shall be construed to prevent a state body,

as defined in Section 11121.7, from conducting a closed session to consider any matter which properly could be considered in a closed session by the body defined as a state body pursuant to Section 11121, 11121.2, or 11121.5.

(w) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.8, from conducting a closed session to consider any matter which properly could be considered in a closed session by the state body it advises.

(x) Nothing in this article shall be construed to prevent the State Board of Equalization from holding closed sessions when considering matters pertaining to the appointment or removal of the executive secretary of the State Board of Equalization.

Added Stats 1967 ch 1656 § 122; Amended Stats 1968 ch 1272 § 1; Stats 1970 ch 346 § 5; Stats 1972 ch 431 § 43, ch 1010 § 63, effective August 17, 1972, operative July 1, 1972; Stats 1974 ch 1254 § 1, ch 1539 § 1; Stats 1975 ch 197 § 1, ch 959 § 5; Stats 1977 ch 730 § 5, effective September 12, 1977; Stats 1980 ch 1197 § 1, ch 1284 § 11; Stats 1981 ch 180 § 1, ch 968 § 12.

Amendments:

1968 Amendment: Added the last paragraph.

1970 Amendment: Substituted "State Air Resources" for "Motor Vehicle Pollution Control" in the eleventh paragraph.

1972 Amendment: Added the thirteenth paragraph.

1974 Amendment: Added the last paragraph.

1975 Amendment: (1) Amended the first paragraph by deleting (a) "officer or" after "a public", "against such", and "unless such"; and (b) "public officer" after "by another" in the first sentence; and (c) "officer or" after "dismissal such" and "against any" in the second and third sentence; (2) added the second paragraph; (3) substituted "Employees'" for "Employees" in the thirteenth paragraph; (4) added the sixteenth paragraph; (5) amended the seventeenth paragraph by deleting (a) "(1)" after "deliberate on"; (b) "enforcement" after "institution of"; and (c) "or litigation or (2) decisions to be reached in matters for which public hearings have been held pursuant to the applicable provisions of the Public Utilities Code" at the end of the paragraph.

1977 Amendment: Added the tenth paragraph.

1980 Amendment: (1) Substituted "a closed" for "an executive" and "closed" for "executive" wherever it appears; (2) amended the second sentence of the first paragraph by (a) adding "or her" after "notice of his"; and (b) substituting "the employee" for "him" after "delivered to"; (3) added the fourth paragraph; (4) added ", or from considering matters pertaining to the appointment or removal of the executive officers of the Franchise Tax Board" at the end of the eleventh paragraph; (5) amended the sixteenth paragraph by (a) substituting "state" for "public" after "body of a" near the beginning of the paragraph; and (b) adding the second and third sentences; and (6) added the last two paragraphs. (As amended by Stats 1980, ch 1284, compared to the section as it read prior to 1980. This section was also amended by an earlier chapter, ch 1197. See Gov C § 9605.)

1981 Amendment: In addition to adding subdivision designations, (1) substituted "body" for "agency" wherever it appears in subd (a); (2) substituted "closed session" for "private meeting" in the fourth sentence of subd (a); (3) substituted "bodies" for "agencies" in subd (b); (4) substituted "state body" for "state agency" wherever it appears in subds (c)–(m); (5) added "University and" and "university and" in subd (i); (6) deleted the former fourteenth paragraph which read: "Nothing in this article shall be construed to prevent the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering investment decisions."; (7) deleted the former fifteenth

paragraph which read: "Nothing in this article shall be construed to prevent the Teachers' Retirement Board of the State Teachers' Retirement System from holding closed sessions when considering investment decisions."; (8) added subd (n); (9) amended the first sentence of subd (o) by (a) substituting "a state body" for "the governing body of a state agency" after "prevent"; (b) substituting "state body" for "governing body" before ", from holding"; and (c) deleting "at any time" after "representatives"; (10) amended the second sentence of subd (o) by (a) substituting "body" for "agency"; and (b) deleting ", providing a quorum of the state agency is present" at the end; (11) deleted the former last sentence of subd (o) which read: "For purposes of this paragraph, a state agency may not otherwise meet without using a designated representative, but it may appoint from its membership a member or members to act as its designated representative, with whom it may meet in closed session."; (12) amended the second paragraph of subd (p) by (a) adding "or" before "disciplinary"; and (b) deleting ", or litigation" at the end; (13) added subds (q) and (r); and (14) added subds (u)–(x). (As amended by Stats 1981, ch 968, compared to the section as it read prior to 1981. This section was also amended by an earlier chapter, ch 180. See Gov C § 9605.)

Cross References:

Meetings of representatives of public agency and employee organization: § 3505.
Franchise Tax Board: §§ 15700 et seq.
State Personnel Board, holding executive sessions as provided by this section: § 18653.
Hearings of Board of Administration of Public Employees' Retirement System: § 20133.
Executive sessions of State Board of Accountancy: B & P C § 5017.
Alcoholic Beverage Control Appeals Board: B & P C §§ 23075–23077.
Hearings of Teachers' Retirement Board: Ed C § 22217.
Powers, duties, and functions of Trustees of California State University and Colleges: Ed C § 66606.
Hearings of State Air Resources Board: H & S C § 41502.
Granting of paroles by Board of Prison Terms: Pen C §§ 3040 et seq.

Collateral References:

Witkin Summary (8th ed) pp 3628, 3821.
Cal Jur 3d Administrative Law § 204.

NOTES OF DECISIONS

Under Gov. Code, § 18653, providing for meetings of the State Personnel Board, the Board is required to hold public hearings, but when the hearing has reached the decisional stage, it may hold an executive session for the sole purpose of deliberating on the decision to be reached, and at the conclusion of the executive session, the Board must reconvene the public hearing and make public announcement of its decision. The provision in Gov. Code, § 18653, authorizing the Board to hold executive sessions "as provided in" Gov. Code, § 11126, containing exceptions to the declared policy of public hearings, was intended to identify the exceptions in Gov. Code, § 18653, with those in Gov. Code, § 11126, and as so construed, the words "as provided in" are synonymous with "in accordance with" rather than being interpreted as "only as provided in." California State Employees' Asso. v State Personnel Board (1973) 31 CA3d 1009, 108 Cal Rptr 57.

In a disciplinary hearing before the Psychology Examining Committee on allegations that a licensed psychologist had illegally prescribed and furnished dangerous drugs and engaged in sexual and other physical intimacies with three female patients, committee members and the hearing office did not violate the requirements of Gov. Code, §§ 11120–11131, of open and public action and deliberation by state agencies, by convening in executive sessions on six occasions during the hearing, where it appeared that the objective in conducting each of the sessions was to reach "a decision . . . based upon evidence introduced" at the hearing, as permitted by Gov. Code, § 11126. Moreover, the subject matter of each session and the decision discussed at it were fully placed on the record before each session, or afterward, or on both occasions in some instances, and the accused had the opportunity to examine and challenge each of the decisions made in executive session and in fact did so. Cooper v State Board of Medical Examiners (1975) 49 CA3d 931, 123 Cal Rptr 563.

§ 11126.1. Minute book of closed session

The state body shall designate a clerk or other officer or employee of the state body, who shall then attend each closed session of the state body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available to members of the state body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction. Such minute book may, but need not, consist of a recording of the closed session.

Added Stats 1980 ch 1284 § 12; Amended Stats 1981 ch 968 § 13.

Amendments:

1981 Amendment: (1) Substituted "body" for "agency" wherever it occurs; and (2) deleted "wherein the state agency lies" at the end of the third sentence.

§ 11126.3. Statement of reasons and authority for closed session

Prior to holding any closed session, the state body shall state the general reason or reasons for the closed session, and cite the specific statutory authority, including the particular section and subdivision, or other legal authority under which the session is being held. In the closed session, the state body may consider only those matters covered in its statement. The statement shall be made as part of the notice provided for the meeting and of any order or notice required by Section 11129. Nothing in this section shall require or authorize the giving of names or other information which would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session.

Added Stats 1980 ch 1284 § 13; Amended stats 1981 ch 968 § 14.

Amendments:

1981 Amendment: (1) Amended the first sentence by substituting (a) "body" for "agency"; and (b) "specific statutory authority, including the particular section and subdivision," for "statutory"; and (2) added "and of any order or notice required by Section 11129" at the end of the third sentence.

§ 11126.5. Clearing room where meeting wilfully interrupted

In the event that any meeting is willfully interrupted by a group or

groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting the state body conducting the meeting may order the meeting room cleared and continue in session. Nothing in this section shall prohibit the state body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting. Notwithstanding any other provision of law, only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section.

Added Stats 1970 ch 1598 § 1; Amended Stats 1981 ch 968 § 15.

Amendments:

1981 Amendment: (1) Substituted "the state body" for ", the members of the state agency" in the first sentence; (2) substituted "body" for "agency" in the second sentence; (3) added "Notwithstanding any other provision of law," at the beginning of the third sentence; and (4) deleted "Duly accredited" at the beginning of the last sentence.

Note—Stats 1970 ch 1598 also provides: § 3. The Legislature finds that it is in the public interest to allow duly accredited representatives of the press or other news media to attend sessions from which members of the general public have been excluded by reason of a willful disturbance.

§ 11126.7. Fees

No fees may be charged by a state body for providing a notice required by Section 11125 or for carrying out any provision of this article, except as specifically authorized pursuant to this article.

Added Stats 1980 ch 1284 § 14; Amended Stats 1981 ch 968 § 16.

Amendments:

1981 Amendment: Substituted "body for providing a notice required by Section 11125 or" for "agency".

§ 11127. State bodies subject to article

Each provision of this article shall apply to every state body unless the body is specifically excepted from that provision by law or is covered by any other conflicting provision of law.

Added Stats 1967 ch 1656 § 122; Amended Stats 1981 ch 968 § 17.

Amendments:

1981 Amendment: Substituted (1) "Each provision" for "The provisions"; (2) "body" for "agency" wherever it appears; and (3) "from that provision by law or is covered by any other conflicting provision of law" for "by law".

§ 11128. When closed sessions held

Each closed session of a state body shall be held only during a regular or special meeting of the body.

Added Stats 1967 ch 1656 § 122; Amended Stats 1980 ch 1284 § 15; Stats 1981 ch 968 § 18.

Amendments:

1980 Amendment: Substituted "closed" for "executive".

1981 Amendment: Substituted (1) "Each closed session of a state body" for "All closed sessions of a state agency"; and (2) "body" for "agency" at the end of the section.

Collateral References:

Witkin Summary (8th ed) p 3628.

§ 11129. Continuance or recontinuance of hearing

Any hearing being held, or noticed or ordered to be held by a state body at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the state body which is noticed pursuant to Section 11125. A copy of the order or notice of continuance shall be conspicuously posted on or near the door of the place where the hearing was held within 24 hours after the time of the continuance; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

Added Stats 1967 ch 1656 § 122; Amended Stats 1981 ch 968 § 19.

Amendments:

1981 Amendment: (1) Substituted "body" for "agency" wherever it appears; and (2) added "which is noticed pursuant to section 11125" at the end of the first sentence.

§ 11130. Commencement of action

Any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this article or to determine the applicability of this article to actions or threatened future action by members of the state body.

Added Stats 1967 ch 1656 § 122; Amended Stats 1969 ch 494 § 1; Stats 1981 ch 968 § 20.

Amendments:

1969 Amendment: (1) Deleted "either" after "an action"; (2) deleted "or" before "injunction,"; (3) added "or declaratory relief" after "injunction," and (4) added "or to determine the applicability of this article to actions or threatened future action".

1981 Amendment: Substituted "body" for "agency" at the end of the section.

Cross References:

Injunction: CCP §§ 525 et seq.
Declaratory relief: CCP §§ 1060 et seq.
Writ of mandate: CCP §§ 1084 et seq.

NOTES OF DECISIONS

The legislative immunity from service of civil process conferred on legislators by Cal Const, art IV, § 14, applicable to the legislator-members of the State Advisory Commission on Indian Affairs, did not expose private citizens to abuse of governmental power untrammeled by judicial restraint, and did not deny due process to plaintiffs seeking in a superior court to enforce a right conferred by state law to demand open meetings of state boards, where the commission itself was the only indispensable party, the individual members were proper but not necessary parties, and plaintiffs' inability to serve effective process on the legislator-members did not bar them from relief, and where the commission was advisory only, did not govern in the sense that it executed and administered the laws, had no power to impinge on the lives, liberty or property of private citizens, and its powers involved merely the interchange of information, the assembling of data, and the formulation of proposals to be placed before the Legislature. Harmer v Superior Court (1969) 275 CA2d 345, 79 Cal Rptr 855.

§ 11130.5. Costs and attorney fees

A court may award court costs and reasonable attorney's fees to the plaintiff in an action brought pursuant to Section 11130 where it is found that a state body has violated the provisions of this article. Such costs and fees shall be paid by the state body and shall not become a personal liability of any public officer or employee thereof.

A court may award court costs and reasonable attorney's fees to a defendant in any action brought pursuant to Section 11130 where the defendant has prevailed in a final determination of such action and the court finds that the action was clearly frivolous and totally lacking in merit.

Added Stats 1975 ch 959 § 6; Amended Stats 1981 ch 968 § 21.

Amendments:

1981 Amendment: Substituted (1) "body" for "agency" wherever it appears; and (2) "attorney's" for "attorney" wherever it appears.

§ 11130.7. Offenses

Each member of a state body who attends a meeting of such body in violation of any provision of this article, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor.

Added Stats 1980 ch 1284 § 16; Amended Stats 1981 ch 968 § 22.

Amendments:

1981 Amendment: Substituted "body" for "agency" wherever it appears.

§ 11131. Prohibition against use of certain facilities

No state agency shall conduct any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex. As used in this section, "state agency" means and

includes every state body, office, officer, department, division, bureau, board, council, commission, or other state agency.

Added Stats 1970 ch 383 § 1; Amended Stats 1981 ch 968 § 23.

Amendments:

1981 Amendment: Added "body," in the second sentence.

ARTICLE 9.5

Discrimination

[Added by Stats 1977 ch 972 § 1.]

§ 11135. Prohibited discrimination
§ 11136. Hearing to determine violation
§ 11137. Action to curtail state funding
§ 11138. Adoption of regulations
§ 11139. Other prohibitions and sanctions; Interpretation of article
§ 11139.5. Standards and guidelines; Coordination of programs and activities

§ 11135. Prohibited discrimination

No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.

Added Stats 1977 ch 972 § 1.

Collateral References:

Cal Jur 3d Civil Rights § 2.

Law Review Articles:

Review of Selected 1977 California Legislation. 9 Pacific LJ 650.
Mandatory retirement: Past, present and future of an anachronism. (1977) 5 West St U LR 1.

Annotations:

Application of state law to sex discrimination in employment. 87 ALR3d 93.
Construction and effect of state legislation forbidding job discrimination on account of physical handicap. 90 ALR3d 393.
Application of state law to age discrimination in employment. 96 ALR3d 195.

§ 11136. Hearing to determine violation

Whenever a state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state, has reasonable cause to believe that a contractor, grantee, or local agency has violated the provisions of Section 11135, or any regulation adopted to implement such section, the head of the state

California: Government Code (Legislative Sections)

§ 9026. Standing committees; Appointment

All standing committees of either the Senate or Assembly shall be appointed by the presiding officer of their respective house if the house by resolution or its rules does not direct otherwise.

Enacted 1943.

Prior Law: Former Pol C § 248, as added by Stats 1899 ch 129 § 1 p 165.

Cross References:

Joint Rules Committee: § 9107.
Engrossing and enrolling committee: § 9501.
Appointment of committees: Const Art IV § 11.

Collateral References:

42 Cal Jur 3d Legislature § 17.
72 Am Jur 2d States, Territories, and Dependencies §§ 44, 50.

Legislative Counsel's Opinions:

Powers of Speaker of Assembly. 1961 AJ 2255.

§ 9027. Open and public proceedings

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.

Added Stats 1973 ch 1148 § 1; Amended Stats 1974 ch 1280 § 1; Stats 1975 ch 959 § 2.

Amendments:

1974 Amendment: Added the second paragraph.
1975 Amendment: Deleted (1) "on the budget" after "committee" in the first paragraph; and (2) "other than that on the budget" after "committee" in the second paragraph.

Former Section: Former § 9027, similar to present § 9126, was added by Stats 1949 ch 567 § 1 and repealed by Stats 1949 ch 1238 § 4.

Note—Stats 1973 ch 1148 also provides: § 7. This act shall be known and may be cited as the "Grunsky-Burton Open Meeting Act."

Collateral References:

42 Cal Jur 3d Legislature § 15.
Cal Digest of Official Reports 3d Series, Legislature § 7.

§ 9028. Public notice of meetings

Any such meetings at which the discussion or adoption of any proposed resolution, rule, regulation, or formal action occurs, or at which a majority or quorum of the body is in attendance, shall be held only after full and timely notice to the public as provided by the Joint Rules of the Senate and Assembly.

Added Stats 1973 ch 1148 § 2.

Former Section: Former § 9028, similar to present § 9126, was added by Stats 1949 ch 567 § 2 and repealed by Stats 1949 ch 1238 § 4.

Collateral References:

Cal Jur 3d Legislature § 15.
Cal Digest of Official Reports 3d Series, Legislature § 7.

§ 9029. Permitted executive sessions

Nothing contained in this article shall be construed to prevent: the Assembly or the Senate or a committee or subcommittee thereof from holding executive sessions to consider the appointment of members to committees or to the chairmanship or vice chairmanship thereof, or to consider the appointment, employment or dismissal of a public officer or employee or to hear complaints or charges brought against such officer or employee, or an elected public official, or to consider matters relating to internal house management, or to consider assignment of bills to committee, or affecting the safety and security of the State Capitol or Members of the Legislature, its staff and employees, or the Members of the Assembly or the Senate from meeting privately in caucus with members of their own political party.

Added Stats 1973 ch 1148 § 3; Amended Stats 1974 ch 1280 § 2; Stats 1975 ch 959 § 3.

Amendments:

1974 Amendment: Added ", except as provided in Section 9027,"; (2) deleted a comma after "legislative conference committee"; and (3) added "a conference committee" before "on the budget,".

1975 Amendment: Deleted ", or, except as provided in section 9027, a legislative conference committee other than a conference committee on the budget, consisting of members of both houses duly appointed and meeting to consider legislation when the first house refused to concur in amendments of the second house" at the end of the section.

Former Section: Former § 9029, similar to present § 9127, was added by Stats 1949 ch 567 § 3 and repealed by Stats 1949 ch 1238 § 4.

Collateral References:

Cal Jur 3d Legislature § 15.
Cal Digest of Official Reports 3d Series, Legislature § 7.

§ 9030. Violation of section as misdemeanor

Each Member of the Legislature who attends a meeting of the Assembly, the Senate, or any committee or subcommittee thereof, where action is taken in violation of Section 9027, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor.

Added Stats 1973 ch 1148 § 4.

Former Section: Former § 9030, similar to present § 9130, was added by Stats 1949 ch 567 § 4 and repealed by Stats 1949 ch 1238 § 4.

Collateral References:
Cal Jur 3d Legislature § 15.
Cal Digest of Official Reports 3d Series, Legislature § 7, Public Officers and Employees § 16.

§ 9031. Remedies against violations

Any interested person may commence an action by mandamus, injunction or declaratory relief for the purpose of stopping or preventing violations or threatened violations of Section 9027 by Members of the Legislature or to determine the applicability of this chapter to actions or threatened future action of the Legislature.

Added Stats 1973 ch 1148 § 5.

Collateral References:
Cal Jur 3d Legislature § 15.
Cal Digest of Official Reports 3d Series, Legislature § 7.

§ 9032. Severability and partial validity

If any provision of this article, or the application thereof, to any person or circumstance is held invalid, the validity of the remainder of such article and the application of such provision to other persons and circumstances shall not be affected thereby.

Added Stats 1973 ch 1148 § 6.

Collateral References:
Cal Jur 3d Legislature § 15.

ARTICLE 2.5

Legislative Session After War or Enemy-Caused Disaster

[Added by Stats 1st Ex Sess 1958 ch 75 § 1, operative November 4, 1958.]

§ 9035. "Disaster"
§ 9036. Special session; Time; Place; Purpose
§ 9037. Legislature convened in special or general session; Authority
§ 9038. [Renumbered]

Cross References:
Filling vacancies caused by war: § 9004.

Collateral References:
Cal Jur 3d Legislature § 13, Military and Civil Defense § 54.
Cal Digest of Official Reports 3d Series, § 7.
Am Jur 2d States, Territories, and Dependencies § 59.

§ 9035. "Disaster"

As used in this article, "disaster" means a war or enemy-caused calamity within this State, such as an attack by nuclear weapons.

senatorial district, when more than one county shall constitute the same, shall be composed of contiguous counties, and no county shall be divided in creating such senatorial districts. Senatorial or representative districts comprising not more than one county may be divided into subdistricts from time to time by law. Subdistricts shall be composed of contiguous territory within the district; and the ratios to population of senators or representatives, as the case may be, elected from the subdistricts, shall be substantially equal within the district. [Constitution of 1859; Amendment proposed by H.J.R. No. 20, 1953, and adopted by people Nov. 2, 1954]

Section 8. Qualification of Senators and Representatives. No person shall be a Senator or Representative who at the time of election is not a citizen of the United States; nor anyone who has not been for one year next preceding the election an inhabitant of the district from which the Senator or Representative may be chosen. However, for purposes of the general election next following the operative date of an apportionment under section 6 of this Article, the person must have been an inhabitant of the district from January 1 of the year following the reapportionment to the date of the election. Senators and Representatives shall be at least twenty one years of age. [Amendment proposed by H.J.R. 6, 1985, and adopted by people Nov. 4, 1986]

Section 9. Legislators free from arrest and not subject to civil process in certain cases; words uttered in debate. Senators and Representatives in all cases, except for treason, felony, or breaches of the peace, shall be privileged from arrest during the session of the Legislative Assembly, and in going to and returning from the same; and shall not be subject to any civil process during the session of the Legislative Assembly, nor during the fifteen days next before the commencement thereof: Nor shall a member for words uttered in debate in either house, be questioned in any other place.—

Section 10. Regular sessions of the Legislative Assembly. The sessions of the Legislative Assembly shall be held biennially at the Capitol of the State commencing on the second Monday of September, in the year eighteen hundred and fifty eight, and on the same day of every second year thereafter, unless a different day shall have been appointed by law.—

Section 10a. Emergency sessions of the Legislative Assembly. In the event of an emergency the Legislative Assembly shall be convened by the presiding officers of both Houses at the Capitol of the State at times other than required by section 10 of this Article upon the written request of the majority of the members of each House to commence within five days after receipt of the minimum requisite number of requests. [Created through H.J.R. No. 28, 1975, and adopted by the people Nov. 2, 1976]

Section 11. Legislative officers; rules of proceedings; adjournments. Each house when assembled, shall choose its own officers, judge of the election, qualifications, and returns of its own members; determine its own rules of proceeding, and sit upon its own adjournments; but neither house shall without the concurrence of the other, adjourn for more than three days, nor to any other place than that in which it may be sitting.—

Section 12. Quorum; failure to effect organization. Two thirds of each house shall constitute a quorum to do business, but a smaller number may meet; adjourn from day to day, and compel the attendance of absent members. A quorum being in attendance, if either house fail to effect an organization within the first five days thereafter, the members of the house so failing shall be entitled to no compensation from the end of the said five days until an organization shall have been effected.—

Section 13. Journal; when yeas and nays to be entered. Each house shall keep a journal of its proceedings.—The yeas and nays on any question, shall at the request of any two members, be entered, together with the names of the members demanding the same, on the journal; provided that on a motion to adjourn it shall require one tenth of the members present to order the yeas, and nays.

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. [Amendment proposed by S.J.R. No. 36, 1973, and adopted by people Nov. 5, 1974; Amendment proposed by H. J. R. No. 29, 1977, and adopted by people May 23, 1978]

Section 15. Punishment and expulsion of members. Either house may punish its members for disorderly behavior, and may with the concurrence of two thirds, expel a member; but not a second time for the same cause.—

Section 16. Punishment of nonmembers. Either house, during its session, may punish by imprisonment, any person, not a mem-

items dishonored or which created overdrafts, dollar volume of dishonored items and items which when paid created overdrafts, a statement explaining any credit arrangement between the financial institution and the customer to pay overdrafts, dates and amounts of deposits and debits to a customer's account, the account balance on such dates, a copy of the customer's signature card and the dates the account opened or closed. [1977 c.517 §8 (2), (3)]

192.590 Civil liability for violation of ORS 192.550 to 192.595; status of evidence obtained in violation. (1) Any customer who suffers any ascertainable loss as a result of a wilful violation of ORS 192.550 to 192.595 by any person, may bring an individual action in an appropriate court to recover actual damages or $1,000, whichever is greater.

(2) Any customer who suffers any ascertainable loss as a result of a negligent violation of ORS 192.550 to 192.595 by any person, may bring an individual action in an appropriate court to recover actual damages.

(3) In any successful action to enforce civil liability for violation of the provisions of ORS 192.550 to 192.595, the customer may recover the cost of the action, together with reasonable attorney fees at trial and on appeal as determined by the court.

(4) An action to enforce any provision of ORS 192.550 to 192.595 must be commenced within two years after the date on which the violation occurred.

(5) Evidence obtained in violation of ORS 192.550 to 192.595 is inadmissible in any proceeding. [1977 c.517 §9; 1981 c.897 §41]

192.595 Severability. If any provision of ORS 192.550 to 192.595 or the application thereof to any person or circumstance is held invalid for any reason, such invalidity shall not affect any other provision or application of ORS 192.550 to 192.595 which can remain in effect without the invalid provision or application, and to this end the provisions of ORS 192.550 to 192.595 are severable. [1977 c.517 §10]

PUBLIC MEETINGS

192.610 Definitions for ORS 192.610 to 192.690. As used in ORS 192.610 to 192.690:

(1) "Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present.

(2) "Executive session" means any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters.

(3) "Governing body" means the members of any public body which consists of two or more members, with the authority to make decisions for or recommendations to a public body on policy or administration.

(4) "Public body" means the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof.

(5) "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. "Meeting" does not include any onsite inspection of any project or program. "Meeting" also does not include the attendance of members of a governing body at any national, regional or state association to which the public body or the members belong. [1973 c.172 §2; 1979 c.644 §1]

192.620 Policy. The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly. [1973 c.172 §1]

192.630 Meetings of governing body to be open to public; location of meetings. (1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.

(2) No quorum of a governing body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690.

(3) A governing body shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age or national origin is practiced. However, the fact that organizations with restricted membership hold meetings at the place shall not restrict its use by a public body if use of the place by a restricted membership organization is not the primary purpose of the place or its predominate use.

(4) Meetings of the governing body of a public body shall be held within the geographic boundaries over which the public body has juris-

diction, or at the administrative headquarters of the public body or at the other nearest practical location. Training sessions may be held outside the jurisdiction so long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies shall be held within the geographic boundaries over which one of the participating public bodies has jurisdiction or at the nearest practical location. Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action. This subsection does not apply to the Oregon State Bar until December 31, 1980. [1973 c.172 §3; 1979 c.644 §2]

192.640 Public notice required; special notice for executive sessions, special or emergency meetings. (1) The governing body of a public body shall provide for and give public notice, reasonably calculated to give actual notice to interested persons including news media which have requested notice, of the time and place for holding regular meetings. The notice shall also include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of a governing body to consider additional subjects.

(2) If an executive session only will be held, the notice shall be given to the members of the governing body, to the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.

(3) No special meeting shall be held without at least 24 hours' notice to the members of the governing body, the news media which have requested notice and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice. [1973 c.172 §4; 1979 c.644 §3; 1981 c.182 §1]

192.650 Written minutes required; content; content of minutes for executive sessions. (1) The governing body of a public body shall provide for the taking of written minutes of all its meetings. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law, but the written minutes must give a true reflection of the matters discussed at the meeting and the views of the participants. All minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

(a) All members of the governing body present;

(b) All motions, proposals, resolutio orders, ordinances and measures proposed a their disposition;

(c) The results of all votes and, except public bodies consisting of more than 25 me bers unless requested by a member of that bo the vote of each member by name;

(d) The substance of any discussion on a matter; and

(e) Subject to ORS 192.410 to 192.505 rel ing to public records, a reference to any docume discussed at the meeting but such reference sh not affect the status of the document under O 192.410 to 192.505.

(2) Minutes of executive sessions shall kept in accordance with subsection (1) of th section. However, the minutes of a hearing he under ORS 332.061 shall contain only the mate ial not excluded under ORS 332.061 (2). Inste of written minutes, a record of any executi session may be kept in the form of a sound ta recording which need not be transcribed unle otherwise provided by law. Material the di closure of which is inconsistent with the purpo for which a meeting under ORS 192.660 authorized to be held may be excluded fro disclosure. However, excluded materials a authorized to be examined privately by a court any legal action and the court shall determi their admissibility. [1973 c.172 §5; 1975 c.664 §1; 19 c.644 §4]

192.660 Executive sessions permitte on certain matters; procedures; new media representatives' attendance; limit (1) Nothing contained in ORS 192.610 to 192.6 shall be construed to prevent the governing bo of a public body from holding executive sessi during a regular, special or emergency meetin after the presiding officer has identified t authorization under ORS 192.610 to 192.690 f the holding of such executive session. Executi session may be held:

(a) To consider the employment of a publ officer, employe, staff member or individu agent. The exception contained in this paragra does not apply to:

(A) The filling of a vacancy in an electi office.

(B) The filling of a vacancy on any publ committee, commission or other advisory grou

(C) The consideration of general employme policies.

(D) The employment of the chief executi officer, other public officers, employes and sta

members of any public body unless the vacancy in that office has been advertised, regularized procedures for hiring have been adopted by the public body and there has been opportunity for public input into the employment of such an officer. However, the standards, criteria and policy directives to be used in hiring chief executive officers shall be adopted by the governing body in meetings open to the public in which there has been opportunity for public comment.

(b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employe, staff member or individual agent, unless such public officer, employe, staff member or individual agent requests an open hearing.

(c) To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063, 441.085, 441.087, 441.990 (3), 442.320 and 442.340 including, but not limited to, all clinical committees, executive, credentials, utilization review, peer review committees and all other matters relating to medical competency in the hospital.

(d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

(e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

(f) To consider records that are exempt by law from public inspection.

(g) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

(i) To review and evaluate, pursuant to standards, criteria and policy directives adopted by the governing body, the employment-related performance of the chief executive officer of any public body, a public officer, employe or staff member unless the person whose performance is being reviewed and evaluated requests an open hearing. The standards, criteria and policy directives to be used in evaluating chief executive officers shall be adopted by the governing body in meetings open to the public in which t[illegible]e has been opportunity for public comment. [illegible]xecutive session for purposes of evaluati[illegible] chief executive officer or other officer, employ[illegible] or staff member shall not include a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs.

(j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.

(2) Labor negotiations may be conducted in executive session if either side of the negotiators requests closed meetings. Notwithstanding ORS 192.640, subsequent sessions of the negotiations may continue without further public notice.

(3) Representatives of the news media shall be allowed to attend executive sessions other than those held under paragraph (d) of subsection (1) of this section relating to labor negotiations or executive session held pursuant to ORS 332.061 (2) but the governing body may require that specified information subject of the executive session be undisclosed.

(4) No executive session may be held for the purpose of taking any final action or making any final decision. [1973 c.172 §6; 1975 c.664 §2; 1979 c.644 §5; 1981 c.302 §1; 1983 c.453 §1; 1985 c.657 §2]

192.670 Meetings by means of telephonic or electronic communication. (1) Any meeting, including an executive session, of a governing body of a public body which is held through the use of telephone or other electronic communication shall be conducted in accordance with ORS 192.610 to 192.690.

(2) When telephone or other electronic means of communication is used and the meeting is not an executive session, the governing body of the public body shall make available to the public at least o[illegible] place where the public can listen to the communication at the time it occurs by means of speakers or other devices. The place provided may be a place where no member of the governing body of the public body is present. [1973 c.172 §7; 1979 c.361 §1]

192.680 Enforcement of ORS 192.610 to 192.690; effect of violation on validity of decision of governing body; liability of members. (1) Any person affected by a decision of a governing body of a public body may commence a suit in the circuit court for the county in which the governing body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of ORS 192.610 to 192.690, by members of the governing body, or to determine the applicability of ORS 192.610 to 192.690 to matters or decisions of the governing body. The court may order such equitable relief as

it deems appropriate in the circumstances. 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.

(2) If the court makes a finding that a violation of ORS 192.610 to 192.690 has occurred under subsection (1) of this section and that the violation is the 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 or the public body of which it is a part for the amount paid by the body under subsection (1) of this section.

(3) The provisions of this section shall be the exclusive remedy for an alleged violation of ORS 192.610 to 192.690. [1973 c.172 §8; 1975 c.664 §3; 1979 c.644 §6; 1981 c.897 §42; 1983 c.453 §2]

192.690 Exceptions to ORS 192.610 to 192.690. (1) ORS 192.610 to 192.690 shall not apply to the deliberations of the State Board of Parole, the State Banking Board, the Psychiatric Security Review Board, of state agencies conducting hearings on contested cases in accordance with the provisions of ORS 183.310 to 183.550, the review by the Workers' Compensation Board of similar hearings on contested cases, meetings of the state lawyers assistance committees, the local lawyers assistance committees in accordance with the provisions of ORS 9.545 and the peer review committees in accordance with the provisions of ORS 441.055 or to any judicial proceeding.

(2) Because of the grave risk to public health and safety that would be posed by misappropriation or misapplication of information considered during such review and approval, ORS 192.610 to 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting Council pursuant to ORS 469.530 (3). [1973 c.172 §9; 1975 c.606 §41b; 1977 c.380 §19; 1981 c.354 §3; 1983 c.617 §4; 1987 c.850 §3]

192.695 Prima facie evidence of violation required of plaintiff. In any suit commenced under ORS 192.680 (1), the plaintiff shall be required to present prima facie evidence of a violation of ORS 192.610 to 192.690 before the governing body shall be required to prove that its acts in deliberating toward a decision complied with the law. When a plaintiff presents prima facie evidence of a violation of the open meetings law, the burden to prove that the provisions of ORS 192.610 to 192.690 were complied with shall be on the governing body. [1981 c.892 §97d]

Note: 192.695 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS 192.610 to 192.990 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.710 Smoking in public meetings prohibited. (1) No person shall smoke or carry any lighted smoking instrument in a room where a public meeting is being held or is to continue after a recess. For purposes of this subsection, a public meeting is being held from the time the agenda or meeting notice indicates the meeting is to commence regardless of the time it actually commences.

(2) As used in this section:

(a) "Public meeting" means any regular or special public meeting or hearing of a public body to exercise or advise in the exercise of any power of government in buildings or rooms rented, leased or owned by the State of Oregon or by any county, city or other political subdivision in the state regardless of whether a quorum is present or is required.

(b) "Public body" means the state or any department, agency, board or commission of the state or any county, city or other political subdivision in the state.

(c) "Smoking instrument" means any cigar, cigarette, pipe or other smoking equipment. [1973 c.168 §1; 1979 c.262 §1]

FINANCIAL INSTITUTION RECORD DISCLOSURES

192.800 Definitions. (1) "Customer" means any person who or which is transacting or has transacted business with a financial institution, or who or which is using or has used the services of such an institution, or for whom or which a financial institution has acted or is acting as a fiduciary.

(2) "Financial institution" means any state or national bank, state or federal savings and loan association, federal savings bank, state or federal credit union, trust company or mutual savings bank.

(3) "Financial records" means any original written document, any copy thereof, or any information contained therein, held by or in the custody of a financial institution, when the document, copy or information is identifiable as pertaining to one or more customers of the financial institution.

(4) "Subpena" means a judicial subpena or subpena duces tecum. [1985 c.797 §1]

192.805 Reimbursement required prior to disclosure; charges. Before producing

Senator Sturgulewski's Office
February 1, 1989

Amending Alaska's Constitution - Step by Step

Amending Alaska's Constitution requires that a joint resolution be passed by two thirds vote in each house and the question then be approved by a majority of voters at the next general election. The public can express its desire to amend the constitution through a rather convoluted initiative process and advisory vote, but can not force the legislature to adopt the required joint resolution. There is no requirement for public action before the legislature proposes or acts on a resolution proposing an amendment to the constitution.

1) Initiative Drive
Initiative Drive would place question on ballot - Should there be a temporary law to instruct the Lt. Governor to place on the ballot at the following general election, an advisory vote asking whether there should be a constitutional open meetings amendment?

2)
If initiative drive is successful the directive to the Lt. Governor becomes temporary law and he places the advisory vote on next ballot.

3) 1st Vote
If Ballot issue passes -

4)
Lt. Governor places advisory vote on next general ballot (two years later).

5) 2nd Vote
If advisory vote passes -

6)
We are where we are right now, with the legislature considering the issue, no action is mandated.

7)
If legislature passes resolution by two thirds vote in each house -

8)
Proposed amendment goes on the ballot of the next general election.

9) 3rd Vote
If voters approve -

10)
Alaska Constitution is amended.

TO: Pat

FROM: Sandra

RE: Interplay of Open Meetings (SJR 1) and Ethics Meetings

Per Dick Bradley, 2-2-89

SJR1 allows executive session. Although Ethics Law references "confidential meetings", he feels this is only a semantics problem, and that Ethics Committee meetings would in fact be covered under the executive session provision.

He is addressing this as part of his memo/opinion to you on the Adams situation.

S.

Daily News - 1/26/89

file SJR 1

In public or private?

Lawmakers again debate open meetings legislation

By BRIAN S. AKRE
The Associated Press

JUNEAU — Chances have improved this year for passage of legislation aimed at requiring lawmakers to comply with Alaska's open meetings statute, Sen. Arliss Sturgulewski said Wednesday.

"I can't say if it has enough votes on the floor, but it's got a lot more support than last year," Sturgulewski told the Senate State Affairs Committee.

Sen. Sturgulewski

Sturgulewski, R-Anchorage, is the primary sponsor of a proposed constitutional amendment to place the legislature and its committees under the same open-meeting requirements demanded of city councils, school boards and state commissions — that most of their business be conducted in public. The amendment would have to be approved by voters.

"We, in a sense, are above the law in this issue," Sturgulewski said.

The committee held its first hearing on the amendment Wednesday, but took no action. Committee members agreed to hold a work session to determine how specific the amendment should be.

The effort to pass a constitutional amendment began after the Alaska Supreme Court in 1987 ruled the courts could not force the legislature to obey the law.

The amendment would permit the courts to fine a legislator who intentionally violates the law.

Last year the House passed a similar amendment, but the measure died in the Senate Rules Committee.

Senate President Tim Kelly, R-Anchorage, said Wednesday that while he supports such legislation, he was concerned that Sturgulewski's proposal does not specify an exception for caucuses in which procedures, organization or political strategy are discussed.

Kelly said that if the amendment is not more specific, it could lead to a barrage of lawsuits which would be costly for the legislature to defend.

"There's a lot of attorneys out there looking for work," Kelly said.

Committee members agreed a companion bill to amend the open meetings law may have to be passed to provide the legislature with specific rules not in the more generally worded constitutional amendment.

Sen. Pat Rodey, D-Anchorage, has introduced such a bill. But committee Chairman Pat Pourchot, D-Anchorage, said Rodey had

Please see Page B-3, OPEN

OPEN MEETINGS: Lawmakers again discuss amendment

Continued from Page B-1

asked the committee to delay considering it until after the constitutional amendment is considered.

Dick Bradley, an attorney with the legislative counsel's office, said the committee should avoid making the constitutional amendment too specific, and should leave the details for an amendment to the law.

Meanwhile, the Committee for an Open Legislature plans to begin circulating petitions aimed at forcing a public vote on the open meetings issue. The committee was formed by members of the League of Women Voters, the Alaska Press Club and the Alaska Public Interest Research Group.

Their proposal is broader than the one before the legislature. It would bring the legislature, its committees and all other "subunits" — including subcommittees and caucuses — under the law. It still would allow closed meetings for discussions of strategy, procedure and organization.

Jeff Bohman, executive director of the Alaska Public Interest Research Group in Anchorage, testified that his group would like to ensure the law applies to "undesignated but influential groups of legislators" who meet in private to make decisions affecting the public.

As an example, he cited frequent closed-door meetings of legislative leaders to discuss budgetary issues.

Legislative Immunity / Legislature's Rulemaking Authority / State Constitution

Imprisonment for Debt — SECTION 17. There shall be no imprisonment for debt. This section does not prohibit civil arrest of absconding debtors.

Eminent Domain — SECTION 18. Private property shall not be taken or damaged for public use without just compensation.

Right to Bear Arms — SECTION 19. A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Quartering Soldiers — SECTION 20. No member of the armed forces shall in time of peace be quartered in any house without the consent of the owner or occupant, or in time of war except as prescribed by law. The military shall be in strict subordination to the civil power.

Construction — SECTION 21. The enumeration of rights in this constitution shall not impair or deny others retained by the people.

Right of Privacy — SECTION 22. The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

(The addition of this section, as an amendment to Article I, was approved by the voters of the state August 22, 1972 and became effective October 14, 1972.)

ARTICLE II

THE LEGISLATURE

Legislative Power; Membership — SECTION 1. The legislative power of the State is vested in a legislature consisting of a senate with a membership of twenty and a house of representatives with a membership of forty.

Members; Qualifications — SECTION 2. A member of the legislature shall be a qualified voter who has been a resident of Alaska for at least three years and of the district from which elected for at least one year, immediately preceding his filing for office. A senator shall be at least twenty-five years of age and a representative at least twenty-one years of age.

Election and Terms — SECTION 3. Legislators shall be elected at general elections. Their terms begin on the fourth Monday of the January following election unless otherwise provided by law. The term of representatives shall be two years, and the term of senators, four years. One-half of the senators shall be elected every two years.

(Exercising its authority under this section, the legislature has provided that terms begin on the second Monday in January, except in years immediately following a gubernatorial election when they begin on the third Monday in January: see AS 24.05.080.)

Vacancies — SECTION 4. A vacancy in the legislature shall be filled for the unexpired term as provided by law. If no provision is made, the governor shall fill the vacancy by appointment.

Disqualifications — SECTION 5. No legislator may hold any other office or position of profit under the United States or the State. During the term for which elected and for one year thereafter, no legislator may be nominated, elected, or appointed to any other office or position of profit which has been created, or the salary or emoluments of which have been increased, while he was a member. This section shall not prevent any person from seeking or holding the office of governor, secretary of state, or member of Congress. This section shall not apply to employment by or election to a constitutional convention.

(The Sixth Legislature's Senate Joint Resolution No. 2 "changing the name of the secretary of state to lieutenant governor" in sixteen sections of the Alaska Constitution, approved by the voters August 25, 1970, inadvertently omitted express amendment of this section.)

Immunities — SECTION 6. Legislators may not be held to answer before any other tribunal for any statement made in the exercise of their legislative duties while the legislature is in session. Members attending, go-

SJR 1: Judicial enforcement of open meetings allowed, notwithstanding Art. II, Sec 6 & 12.

ing to, or returning from legislative sessions are not subject to civil process and are privileged from arrest except for felony or breach of the peace.

Salary and Expenses

SECTION 7. Legislators shall receive annual salaries. They may receive a per diem allowance for expenses while in session and are entitled to travel expenses going to and from sessions. Presiding officers may receive additional compensation.

Regular Sessions

SECTION 8. The legislature shall convene each year on the fourth Monday in January, but the month and day may be changed by law.

(Exercising its authority under this section, the legislature has provided that it shall convene on the second Monday in January, except in years immediately following a gubernatorial election when it shall convene on the third Monday in January; see AS 24.05.090.)

Special Sessions

SECTION 9. Special sessions may be called by the governor or by vote of two-thirds of the legislators. The vote may be conducted by the legislative council or as prescribed by law. At special sessions called by the governor, legislation shall be limited to subjects designated in his proclamation calling the session, to subjects presented by him, and the reconsideration of bills vetoed by him after adjournment of the last regular session. Special sessions are limited to thirty days.

(The amendment of this section was approved by the voters of the state November 2, 1976 and became effective December 23, 1976. This amendment deleted "or" preceding "to subjects" in the third sentence and added "and the reconsideration of bills vetoed by him after adjournment of the last regular session.")

Adjournment

SECTION 10. Neither house may adjourn or recess for longer than three days unless the other concurs. If the two houses cannot agree on the time of adjournment and either house certifies the disagreement to the governor, he may adjourn the legislature.

Interim Committees

SECTION 11. There shall be a legislative council, and the legislature may establish other interim committees. The council and other interim committees may meet between legislative sessions.

They may perform duties and employ personnel as provided by the legislature. Their members may receive an allowance for expenses while performing their duties.

Rules

SECTION 12. The houses of each legislature shall adopt uniform rules of procedure. Each house may choose its officers and employees. Each is the judge of the election and qualifications of its members and may expel a member with the concurrence of two-thirds of its members. Each shall keep a journal of its proceedings. A majority of the membership of each house constitutes a quorum to do business, but a smaller number may adjourn from day to day and may compel attendance of absent members. The legislature shall regulate lobbying.

Form of Bills

SECTION 13. Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title. The enacting clause shall be: "Be it enacted by the Legislature of the State of Alaska."

Passage of Bills

SECTION 14. The legislature shall establish the procedure for enactment of bills into law. No bill may become law unless it has passed three readings in each house on three separate days, except that any bill may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it. No bill may become law without an affirmative vote of a majority of the membership of each house. The yeas and nays on final passage shall be entered in the journal.

Veto

SECTION 15. The governor may veto bills passed by the legislature. He may, by veto, strike or reduce items in appropriation bills. He shall return

Daily News

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Daily News 2/9/89

Open meetings, frivolous suits

One again the legislature is taking a look at an open meetings amendment to the Constitution. But this time, lawmakers also are discussing legislation that addresses penalties for violators as well as punishment for citizens who file malicious or frivolous open meetings suits.

HB 140, offered by three Anchorage representatives, would set a maximum $1,000 fine for legislators found guilty of violating the amendment. The measure also permits judges to fine suit-happy meddlers $1,000 and attorney fees.

If lawmakers want protection from harassment, they should have it. Fine, make someone like Tom Staudenmaier pay court costs for wasting the legislature's time.

But why are the lawmakers so concerned about frivolous suits? The facts suggest frivolous open meeting suits aren't the problem. To our knowledge, none have ever been filed.

The real danger is lawmakers' obsessive longing for secrecy. There have been hundreds of secret meetings over the years. In 1986, legislators were writing the budget itself behind closed doors. It took a lawsuit to stop them.

Alaskans aren't menaced by frivolous open meetings suits; secrecy is the perennial danger. Worrying about frivolous suits completely misfocuses lawmakers' attention. It magnifies minutia and distorts the debate.

Alaskans needs a constitutional guarantee that their government will be open. There is nothing frivolous about the dangers of secrecy.

The people speak

Congress won't get a pay raise for a while. The American people have told lawmakers — loudly, overwhelmingly — to live on $89,000 a year or go

THE NAVY RUNS A DEPTH (

It's time to elimi

james

WASHINGTON — Every four years, it is suggested in this corner that the new administration could double the efficiency of its public relations operations by cutting the federal PR budget in half.

The best estimate available is that these official information offices — or beautification parlors — now cost the government more than $2 billion a year, but this doesn't take into account all the other hidden persuaders who masquerade as assistants to the assistants, social secretaries, pollsters, researchers and various other types of advisers and make-up artists.

You can go through the big, new budget book with a magnifying glass and still not find a reliable account of the cost of all this "flackery."

We know from the Pentagon's ads during the football games that the Marines are "looking for a few good men," and that the Army is a "good place to start," but we don't know the cost of these items, and the Office

of Manageme itself tells u duce a total.

What we d one non-mat of this expa ment publicit skepticism, cynicism, a o of official ir also know th to stop this flation is o start of a n tion, when "experts" a offer their r

Part of t course, is has grown war. There porters ac Congression

Nation's youn

current statute

Article 6. Agency Meetings Public.

Section
310. Agency meetings public
312. State policy regarding meetings

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

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

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

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

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

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

(d) This section does not apply to

(1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff; or

(5) meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

(e) Reasonable public notice shall be given for all meetings required to be open under this section. The notice must include the date, time, and place of the meeting, and if the meeting is by teleconference the location of any teleconferencing facilities that will be used.

(f) Action taken contrary to this section is void. (§ 1 art VI (ch 1) ch 143 SLA 1959; am § 1 ch 48 SLA 1966; am § 1 ch 78 SLA 1968; am § 1 ch 7 SLA 1969; am §§ 1, 2 ch 98 SLA 1972; am § 2 ch 100 SLA 1972; am § 1 ch 189 SLA 1976; am §§ 2, 3 ch 54 SLA 1985)

Effect of amendments. — The 1985 amendment in subsection (a) added the second, third, and next-to-last sentences and in the last sentence substituted "a public body described" for "the bodies specified" and added the last sentence of subsection (e).

NOTES TO DECISIONS

"Meeting". — A private meeting between a quorum of the Anchorage Municipal Assembly and a developer to discuss in detail the developer's application for rezoning violated this section; a "meeting" for purposes of the Open Meetings Act includes every step of the deliberative and decision-making process when a governmental unit meets to transact public business. The rezoning ordinance later passed by the assembly that allowed a modified plan of development was therefore held void. Brookwood Area Homeowners Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 2953 (File Nos. S-575, S-629), 702 P.2d 1317 (1985).

Findings. — There is nothing in the Administrative Procedure Act requiring a board to make any findings when exercising its quasi-legislative function, and therefore there is nothing in the act regulating the manner in which findings must be adopted or approved. State v. Hebert, Ct. App. Op. No. 748 (File A-1743), P.2d (1987).

Legislature's alleged violation of Open Meetings Act held nonjusticiable. — The Open Meetings Act, as it applies to the legislature, like the legislature's Uniform Rule 22, merely establishes a rule of procedure concerning how the legislature has decided to conduct its business; a failure to follow a rule of procedure is not the subject matter of judicial inquiry where there are no allegations that the legislature, acting pursuant to or in violation of one of its rules of procedure, has infringed on the rights of a third person not a member of a legislature or has ignored constitutional restraints or violated fundamental rights. Abood v. League of Women Voters, Sup. Ct. Op. No. 3230 (File Nos. S-1831, S-1841, S-1957), 743 P.2d 333 (1987).

Applied in Meiners v. Bering Strait School Dist., Sup. Ct. Op. No. 2857 (File Nos. S-125, S-140), 687 P.2d 287 (1984); Abood v. Gorsuch, Sup. Ct. Op. No. 2958 (File No. S-706), 703 P.2d 1158 (1985).

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

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

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

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

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

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

(6) the use of teleconferencing under this chapter is for the convenience of the parties, the public, and the governmental units conducting the meetings.

(b) AS 44.62.310(c)(1) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and avoid unnecessary executive sessions. (§ 3 ch 98 SLA 1972; am § 4 ch 54 SLA 1985)

Effect of amendments. — The 1985 amendment added paragraph (6) of subsection (a).

NOTES TO DECISIONS

Quoted in Brookwood Area Homeowners Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 2953 (File Nos. S-575, S-629), 702 P.2d 1317 (1985).

Article 7. Legislative Review of Rules.

Sec. 44.62.320. Legislative annulment of regulations and review.

Editor's notes. — The Alaska Const., art. II, § 22 amendment proposal that was mentioned in the notes to decisions was defeated in the November, 1984 election.

Article 8. Administrative Adjudication.

Section
330. Application of AS 44.62.330 — 44.62.630
410. Time and place of hearing
600. Voting procedure

Sec. 44.62.330. Application of AS 44.62.330 — 44.62.630. (a) The procedure of the state boards, commissions, and officers listed in this subsection or of their successors by reorganization under the constitution shall be conducted under AS 44.62.330 — 44.62.630. This procedure, including, but not limited to, accusations and statements of issues, service, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct of hearing, judicial review and scope of judicial review, continuances, reconsideration, reinstatement or reduction of penalty, contempt, mail vote, oaths, impartiality, and similar matters shall be governed by this chapter, notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed. Where indi-

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Uniform Rule #22

joint committee which acts between legislative sessions constitutes a subcommittee of the Legislative Council for administrative purposes. A special or joint committee may expend money only in accordance with an appropriation made for the work of the committee.

(d) A committee may not be established unless authorized by law or by the Uniform Rules.

OPEN AND EXECUTIVE SESSIONS

RULE 22. OPEN AND EXECUTIVE SESSIONS. (a) All meetings of a legislative body are open to all legislators, whether or not they are members of the particular legislative body that is meeting, and to the general public except as provided in (b) of this rule.

(b) A legislative body may call an executive session at which members of the general public may be excluded for the following reasons:

(1) discussion of matters, the immediate knowledge of which would adversely affect the finances of a government unit;

(2) discussion of subjects that tend to prejudice the reputation and character of a person;

(3) discussion of a matter that may, by law, be required to be confidential.

(c) When a legislative body desires to call an executive session in accordance with (b) of this rule, the body shall first convene as a public meeting and the question of holding an executive session shall be determined by a majority vote of the members present.

(d) The provisions of this rule may not be interpreted as permitting the exclusion of a legislator from an executive session, whether or not the legislator is a member of the body that is meeting. A legislator not a member of the body holding an executive session shall, however, be subject to the same rules of confidentiality and decorum as pertain to regular members of the body.

COMMITTEE MEETINGS

RULE 23. COMMITTEE MEETINGS. (a) Written notice of the time, place and subject matter of all meetings of standing, special, and joint committees during a week shall be provided by the person who chairs the committee to the chief clerk or secretary by 4:00 p.m. on the preceding Thursday. The person who chairs the committee to which a bill or resolution is first referred shall provide to the chief clerk or secretary written notice of the time and place of the first public hearing on the bill or resolution at least five days before the hearing. However, this requirement may be waived by motion of the person who chairs the committee to which a bill or resolution is first referred if concurred in by majority vote of the full membership of the house. The chief clerk or secretary shall publish and distribute copies of the weekly schedule of committee meetings and of the five-day notice of hearing.

9-29-87
Supreme

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

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, JACK GIBBONS, PEGGY MULLIGAN, ALBERT P. ADAMS, JOHNE BINKLEY, H.A. BOUCHER, BETTE M. CATO, JIM DUNCAN, STEVEN FRANK, JOHN G. FULLER, PETER GOLL, MAX F. GRUENBERG, JR., BEN F. GRUSSENDORF, ADELHEID HERRMAN, NIILO E. KOPONEN, RONALD L. LARSON, M. MIKE MILLER, MIKE W. MILLER, MIKE NAVARRE, JOHN RINGSTAD, RICHARD SHULTZ, JOHN SUND, ROBIN L. TAYLOR, DAVID W. THOMPSON, and KAY WILLIS,

Appellants and Cross-Appellees,

v.

LEAGUE OF WOMEN VOTERS OF ALASKA, and ANCHORAGE DAILY NEWS,

Appellees and Cross-Appellants.

File No. S-1831
File No. S-1841
File No. S-1957

OPINION

[No. 3230 - September 29, 1987]

Appeal from the Superior Court of the State of Alaska, First Judicial District, Juneau, Walter L. Carpeneti, Judge.

Appearances: Avrum M. Gross and Susan A. Burke, Gross & Burke, Juneau, for Senate Appellants/Cross-Appellees, Mitchell E. Abood, Jr., Don Bennett, John B. Coghill, Edna DeVries, Richard I. Eliason, Bettye Farhenkamp, Jan Faiks, Frank R. Ferguson, Paul Fischer, Richard Halford, Tim Kelly, Jalmar M. Kerttula, Patrick Rodey, John C. Sackett, Arliss Sturgulewski, Fred F. Zharoff, Jack Gibbons, and Peggy Mulligan. Richard M. Burnham, Findley & Burnham, Juneau, for House of Representatives Appellants/Cross-Appellees, Albert P. Adams, Johne Binkley, H.A. Boucher, Bette M. Cato, Jim Duncan, Steve Frank, John G. Fuller, Peter Goll, Max F. Gruenberg, Jr., Ben F. Grussendorf, Adelheid Herrman, Niilo E. Koponen, Ronald L. Larson, M. Mike Miller, Mike W. Miller, Mike Navarre, John Ringstad, Richard Shultz, John Sund, Robin L. Taylor, David W. Thompson, and Kay Willis. D. John McKay and Laura N. Cromwell, Middleton, Timme & McKay, Anchorage, for Appellees/Cross-Appellants League of Women Voters of Alaska and Anchorage Daily News.

Before: Rabinowitz, Chief Justice, Burke, Matthews, Compton, and Moore, Justices.

MATTHEWS, Justice.
COMPTON, Justice, dissenting.

These appeals arise from the superior court's decision that a claim that certain groups of state legislators held closed committee meetings and caucuses in violation of the Open Meetings Act was not justiciable, but that a claim that the closed meetings violated an implied constitutional right of public access to meetings of legislative units was both justiciable and correct. We agree that the claim of violation of the Open Meetings Act by state legislators is nonjusticiable, but contrary to the superior court's decision, we hold that there is no

implied right of public access to legislative committee or caucus meetings under the Alaska Constitution. We therefore reverse.

I. FACTS AND PROCEEDINGS

In April 1986, the League of Women Voters of Alaska, the Anchorage Daily News, and the Fairbanks Daily News Miner (collectively referred to hereafter as the League) filed an action seeking a declaratory judgment and injunctive relief against certain members of the Alaska Legislature (the Legislators) and four legislative employees. The League alleged that members of the Senate and House Finance Committees had held meetings "closed to the press and members of the public," and during those meetings had "engaged in collective fact-finding, deliberation, debate and decision-making with respect to the budget for FY 1987." The complaint further alleged that members of the House Finance Committee and the Senate Finance Committee had met jointly in meetings closed to the press and public "to discuss and attempt to obtain agreement upon the amount of funds available for the FY 1987 budget." The complaint also alleged that members of the House Finance Committee and the Senate Finance Committee had met from time to time in "closed caucus meetings" with other members of the ruling majority, and during these meetings had engaged in "substantial collective discussion, deliberation, and decision-making" concerning the FY 1987 budget.

The League attached affidavits from several senators and representatives which described these meetings in some detail.

The League charged that these meetings violated the Open Meetings Act (AS 44.62.310), the Uniform Rules of the Legislature (Rule 22), various federal and state constitutional provisions, and common law rights of access to government. The superior court was asked to declare that the closed meetings violated state and federal law, and that any appropriation bill adopted as a result of such meetings would be void unless each house of the legislature conducted "substantial, de novo, independent and public reconsideration of those substantive matters previously discussed in private." The injunctive relief sought by the League was aimed at preventing the legislature from continuing to engage in the type of meetings complained of, and from enacting the state budget for FY 1987 unless and until certain remedial action was taken.

On April 30, the superior court held a hearing on an application by the League for a temporary restraining order, and on May 1 the court issued its first decision in this case. The court concluded that litigation premised upon the alleged closed meetings held in violation of the Open Meetings Act presented a justiciable controversy. The court refused to issue the requested TRO, however, because it found that it could not fashion an order that would effectively control these legislative activities. The court then decided that it was empowered to

issue a final declaratory judgment solely on the basis of the League's complaint and affidavits filed in support of the motion for the TRO. The court found that a pattern of conduct which was violative of the Open Meetings Act had been established, that action taken contrary to the Act was void, and therefore that any budget decision which was reached at a closed meeting was void.

The Legislators immediately appealed from the superior court's decision and requested emergency relief, claiming that due process had been denied to them because the decision had been rendered before the Legislators had been afforded a fair opportunity to respond on the merits. After an expedited argument, we reversed the judgment issued by the superior court and remanded the case for the purpose of conducting a full hearing on the merits.

Shortly thereafter, the Legislators filed their answers to the complaint, and moved to dismiss the case or alternatively for summary judgment, arguing that the issues in the case were nonjusticiable and that the claims against the Legislators were barred by legislative immunity. The League filed a cross-motion for summary judgment on the justiciability issue.

In October 1986, the superior court entered its second decision in this case, the partial final judgment which is the subject of this appeal. The court reversed its earlier ruling and concluded that the League's claim that the closed meetings violated the Open Meetings Act was not justiciable. The League

appeals from this ruling. The court proceeded to hold, however, that the public and press enjoy an implied right of access to the proceedings of the legislature under article I, section 5 of the Alaska Constitution, which guarantees freedom of speech and of the press. The court further held that a claim that the Legislators violated this constitutional right was justiciable. The court finally held that legislative immunity was not a bar to the suit. The Legislators appeal from these rulings. The State of Alaska, intervenor on behalf of the Legislators below, and the Fairbanks Daily News Miner, are not participants in this appeal.

II. STANDARD OF REVIEW

All of the issues in this appeal raise questions of Alaska constitutional and statutory law, subject to *de novo* review. The facts of this case are not in dispute; the only facts in the record are the seven affidavits submitted by the League which attest to a pattern of meetings by legislative committee and caucus majority members which were closed to the public, the press, and sometimes minority members of the legislature. The Legislators do not deny that these meetings occurred, or that they conducted the business and made the decisions that the League alleges.

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III. VIOLATIONS OF THE OPEN MEETINGS ACT ARE NOT JUSTICIABLE

The League argues that the Legislators violated Alaska's Open Meetings Act[1] and the legislature's Uniform Rule

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1. The Alaska Open Meetings Act provides:

> Agency meetings public. (a) All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section. . . . Except when voice votes are authorized, the vote shall be conducted in such manner that the public may know the vote of each person entitled to vote. This section does not apply to any votes required to be taken to organize the bodies specified in this subsection.
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> (b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the body. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. No

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action may be taken at the executive session.

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

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

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

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

(d) This section does not apply to

(1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff; or

(5) meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges, or discipline.

(e) Reasonable public notice shall be given for all meetings required to be open under this section. . . .

(f) Action taken contrary to this section is void.

AS 44.62.310.

22[2] through the closed meetings attested to in the League's affidavits. The superior court held that these claims were

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2. Uniform Rule of the Legislature 22 provides:

OPEN AND EXECUTIVE SESSIONS. (a) All meetings of a legislative body are open to all legislators, whether or not they are members of the particular legislative body that is meeting, and to the general public except as provided by (b) of this rule.

(b) A legislative body may call an executive session at which members of the general public may be excluded for the following reasons:

(1) discussion of matters, the immediate knowledge of which would adversely affect the finances of a government unit;

(2) discussion of subjects that tend to prejudice the reputation and character of a person;

(3) discussion of a matter that may, by law, be required to be confidential.

(c) When a legislative body desires to call an executive session in accordance with (b) of this rule, the body shall first convene as a public meeting and the question of holding an executive session shall be determined by a majority vote of the members present.

(d) The provisions of this rule may not be interpreted as permitting the exclusion of a legislator from an executive session, whether or not the legislator is a member of the body that is meeting. A legislator not a member of the body holding an executive session shall, however, be subject to the same rules of confidentiality and decorum as pertain to regular members of the body.

nonjusticiable because "[j]usticiability in this case depends on a determination that there is a <u>constitutional</u> right alleged to have been infringed." (Emphasis by the court.) As a general proposition, we agree.

In <u>Malone v. Meekins</u>, we recognized that

> the established principle that courts should not attempt to adjudicate "political questions" . . . stems primarily from the separation of powers doctrine. . . . "[I]t is the relationship between the judiciary and the coordinate branches of the . . . Government . . . which gives rise to the 'political question.'"

650 P.2d 351, 356 (Alaska 1982) (quoting <u>Baker v. Carr</u>, 369 U.S. 186, 210, 7 L. Ed. 2d 663, 682 (1962)). <u>See also Abood v. Gorsuch</u>, 703 P.2d 1158, 1160 (Alaska 1985) ("There are certain questions involving coordinate branches of the government, sometimes unhelpfully called political questions, that the judiciary will decline to adjudicate.").

Our statement in <u>Abood</u> suggests the difficulty inherent in precisely defining the contours of the doctrine of justiciability. It is not possible to draw the exact boundary separating justiciable and nonjusticiable questions.

> Justiciability is of course not a legal concept with a fixed content or susceptible of scientific verification. Its utilization is the resultant of many subtle pressures, including the appropriateness of the issues for decision . . . and the actual hardship to the litigants of denying them the relief sought.

Poe v. Ullman, 367 U.S. 497, 508-09, 6 L. Ed. 2d 989, 999 (1961) (Frankfurter, J., plurality opinion). Nor will merely characterizing a case as nonjusticiable or political in nature render it immune from judicial scrutiny. Malone, 650 P.2d at 356. Rather, to identify those political questions which will be held to be nonjusticiable, we have utilized the approach adopted by the United States Supreme Court in Baker v. Carr. Id. at 357; see also Abood, 703 P.2d at 1160. In Malone, we explained that the Supreme Court of the United States had identified "various elements, one or more of which is '[p]rominent on the surface of any case held to involve a political question. . . .' These elements included (1) a textually demonstrable commitment of the issue to a coordinate political department . . . ." 650 P.2d at 357 (citing Baker v. Carr, 369 U.S. at 217, 7 L. Ed. 2d at 686).

The Legislators argue that article II, section 12 of the Alaska Constitution contains an express textual commitment of authority, which specifically and exclusively authorizes the legislature to adopt its own rules of procedure. Article II, section 12 provides in part: "Rules. The houses of each legislature shall adopt uniform rules of procedure." Pursuant to this authority, the legislature has adopted Uniform Rule 22, in language substantially identical to the Open Meetings Act, providing that all meetings of a legislative body are open to the general public. Compare notes 1 and 2, supra. The Legislators argue that since the constitution commits to the legislature the

authority to set its own procedures, only the legislature may determine whether the Open Meetings Act should apply to the legislature, and how it should apply consistent with Uniform Rule 22. The Legislators rely on this court's decisions in Malone and Abood, and on the Florida Supreme Court's opinion in Moffitt v. Willis, 459 So.2d 1018 (Fla. 1984).

In Malone, we declined to address the question of whether the legislature had violated AS 24.10.020, which prohibited a person other than the Speaker of the House from convening a session of the House. We held that the matter of the election or removal of the Speaker was committed by the constitution to the House, and the judicial branch owed respect to that body. We explained that

> [s]uch a declaration would, in our view, be an unwarranted intrusion into the business of the House. To be sure, the judicial branch of government has the constitutionally mandated duty to ensure compliance with the provisions of the Alaska Constitution, including the compliance by the legislature. But a statute such as AS 24.10.020 relates solely to the internal organization of the legislature, a subject which has been committed by our constitution [Article II, section 12] to each house.

650 P.2d at 356 (footnote omitted). We also considered the question whether the "reasonable public notice" requirement of the Open Meetings Act, AS 44.62.310(e), was violated by the legislature and said, "we regard this question as it

relates to the internal organization of one of the Houses of the legislature to be nonjusticiable." Id. at 359.

In Abood, we held nonjusticiable the question of whether a joint session of the legislature could legally be presided over by the President of the Senate in the absence of the Speaker of the House. At issue was the interpretation of the legislature's Uniform Rule 51 which required the presence of both officers. We agreed with the trial court that the issue arose out of "the rulemaking powers of the legislature." 703 P.2d at 1164. We also agreed that "out of respect owed to a coordinate branch of state government, [we must] defer[] to the wisdom of the legislature concerning violations of legislative rules which govern the internal workings of the legislature." Id.

Our holdings in Malone and Abood are controlling in this case. The Alaska Constitution expressly commits to the legislature authority to adopt its own rules of procedure. The question whether legislative business should be conducted in open or closed sessions is a procedural question which has traditionally been the subject of legislative rules. See Society of Professional Journalists v. Secretary of Labor, 616 F. Supp. 569, 577 (D. Utah 1985) (a right of access to administrative hearings is more a procedural right than a substantive right); see also P. Mason, Manual of Legislative Procedure sec. 630 (1979) (committee meetings open to public except when considering specified restricted subjects). Pursuant to this constitutional

grant of authority, the legislature has enacted Uniform Rule 22 and the Open Meetings Act in substantially identical language.

The League asserts that the Legislators have violated both the Uniform Rule and the Open Meetings Act. If they have, to hold that these claims are justiciable places the judiciary in direct conflict with the legislature's constitutionally authorized rulemaking prerogative. We agree with the Florida Supreme Court that it is the legislature's prerogative to make, interpret and enforce its own procedural rules and the judiciary cannot compel the legislature to exercise a purely legislative prerogative. Moffitt v. Willis, 459 So.2d 1018, 1021 (Fla. 1984).[3] As we stated in Malone, "except in extraordinary

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3. The facts in Moffitt are virtually identical to the facts in this case. Newspaper publishing companies brought a declaratory judgment action against the state house speaker and senate president alleging that secret meetings of the legislature violated the legislature's rule requiring open meetings, a statute requiring the legislature to follow its own rules, and various state and federal constitutional provisions. The Florida Supreme Court held that the courts lacked jurisdiction to hear the case, explaining:

> In our view, a judicial determination of this matter hinges on the meaning of legislative committee meetings and what activity constitutes such a meeting. At this point, the judiciary comes into head-to-head conflict with the legislative rulemaking prerogative.
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> Article III, section 4(a) of the Florida Constitution gives each house the power to determine its own rules of procedure. . . .

(Footnote Continued)

circumstances, as where the rights of persons who are not members of the legislature are involved, it is not the function of the judiciary to require that the legislature follow its own rules." 650 P.2d at 359. In support of this proposition, we cited United States v. Smith, 286 U.S. 6, 33, 76 L. Ed. 954, 958-59 (1932), where the Court discussed the rule that the only justiciable limitations on a legislative body's power to adopt rules of its proceedings are that the body

> may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rules and the result which is sought .

(Footnote Continued)

> [T]his provision gives each house the power and prerogative not only to adopt, but also to interpret, enforce, waive or suspend whatever procedures it deems necessary or desirable so long as constitutional requirements for the enacting of laws are not violated. . . . It is the final product of the legislature that is subject to review by the courts, not the internal procedures.
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> . . . .
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> Just as the legislature may not invade our province of procedural rulemaking for the court system, we may not invade the legislature's province of internal rulemaking. . . . A member of the legislature can raise a point of order regarding a violation of any of the rules of the house or senate. That is the proper forum for determining the propriety of the activities complained of in the suit below.

Id. at 1021-22 (emphasis by the court, citations omitted).

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> to be obtained. But within these limitations all matters of method are open to the determination of the house. . . .

Id. at 33, 76 L. Ed. at 959, quoting United States v. Ballin, 144 U.S. 1, 5, 36 L. Ed. 321, 324 (1891). See also Exxon Corp. v. F.T.C., 589 F.2d 582, 590 (D.C. Cir. 1978) ("Although the courts will intervene to protect constitutional rights from infringement by Congress, . . . where constitutional rights are not violated, there is no warrant for the judiciary to interfere with the internal procedures of Congress . . ."), cert. denied, 441 U.S. 943, 60 L. Ed. 2d 1044 (1979); Consumers Union of United States v. Periodical Correspondents' Ass'n, 365 F. Supp. 18, 24 (D.D.C. 1973) ("A congressional rule which infringes upon the constitutional rights of persons other than Congressmen presents a proper question for the judiciary"), rev'd on other grounds, 515 F.2d 1341 (D.C. Cir. 1975), cert. denied, 423 U.S. 1051, 46 L. Ed. 2d 640 (1976); State ex rel. City Loan & Sav. Co. v. Moore, 177 N.E. 910 (Ohio 1931) (the legislature's disregard of its own rules as to its lawmaking procedures is not subject to judicial inquiry, where the rule is not embraced in the constitution); Schweitzer v. Territory, 47 Pac. 1094 (Okla. 1897) (since the court cannot declare an act of the legislature void on account of noncompliance with rules of procedure made by itself to govern its deliberation, the failure of the legislature to observe a statute enacted by itself, and concerning the legislature's procedure for lawmaking, was no ground for refusing

to enforce a statute passed in noncompliance with the rule, where there was no constitutional provision mandating a particular procedure); State v. Cumberland Club, 188 S.W. 583, 585 (Tenn. 1916) (where a state legislature has the right under its constitution to make its own rules of procedure, it must be the judge of those rules, and all the court can do is to ascertain whether the constitution has been complied with). Likewise, in Abood, we noted that the "nonjusticiability [of rules violations] doctrine would not apply to cases involving our constitutionally mandated duty to insure compliance with the provisions of the Alaska Constitution, including compliance by the legislature." 703 P.2d at 1161.[4]

We observe that in Smith, the Court held that where the "construction to be given to the rules affects persons other than members of the Senate, the question presented is of necessity a judicial one." 286 U.S. at 33, 76 L. Ed. at 959. In this case, the construction of the Open Meetings Act and Uniform Rule 22 does not affect persons other than members of the legislature in the same sense as was the case in Smith. There, the controversy was between the United States Senate and an appointee of the

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4. We adjudicated the question presented as to the quorum needed for acts of the legislature in joint session because it "is a question of Alaska constitutional law. . . . to which the nonjusticiability doctrine does not apply." Id. at 1161.

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President, the resolution of which depended upon the right of the Senate to reconsider, under its rules, its prior confirmation of the President's nominee after the President had appointed the nominee pursuant to the earlier confirmation. Here, there is no specific individual with any particular right at stake in the controversy. Rather, the right granted under the Open Meetings Act as it applies to the legislature, and under Uniform Rule 22, is a right of the public generally to observe the legislature's proceedings.

It is true that the legislature has identified in the Open Meetings Act the public's interest in open meetings, AS 44.62.312(a), and we have recognized that the Act exists primarily to advance the people's interest, and that it is applicable to the legislature.[5] Alaska Community Colleges' Federation of Teachers v. University of Alaska, 677 P.2d 886, 891 (Alaska 1984). We do not retreat from these principles. The question before us, however, is not whether the Open Meetings Act applies to the legislature, but rather whether the legislature's alleged violation of the Act or Uniform Rule is justiciable.[6] As

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5. Even so, it is beyond doubt that the legislature has the power to exempt itself at any time from the coverage of the Open Meetings Act.

6. Compare Cole v. State, 673 P.2d 345, 349 (Colo. 1983) (held: requirement of open meetings law that legislative caucus meetings be open to public does not conflict with state

(Footnote Continued)

we have concluded, the Open Meetings Act, as it applies to the legislature, like the legislature's Uniform Rule 22, merely establishes a rule of procedure concerning how the legislature has decided to conduct its business. Of course, having made the rule, it should be followed, but a failure to follow it is not the subject matter of judicial inquiry. See State ex rel. City Loan & Sav. Co. v. Moore, 177 N.E. 910, 911 (Ohio 1931).

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

Thus, because the constitution commits to the legislature the authority to provide for its own rules of procedure, and because the question of whether a legislative committee meeting or caucus meeting shall be open or closed falls within this grant of authority, we regard the question whether the Legislators have violated the Open Meetings Act or Uniform

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(Footnote Continued)

constitutional provision authorizing legislature to establish its own rules, however, court did not discuss justiciability).

Rule 22 to be nonjusticiable. As we have recognized, the legislature's violation of its rules of procedure may be justiciable in "exceptional circumstances" of constitutional dimension. If the League's claim is to survive this justiciability challenge, it must involve a right protected by either the Alaska Constitution or the United States Constitution.

IV. NO IMPLIED CONSTITUTIONAL RIGHT OF ACCESS TO LEGISLATIVE MEETINGS

The United States Constitution does not expressly require the Congress to hold any of its meetings in public. There is also no common law right to attend meetings of government bodies. Society of Professional Journalists, 616 F. Supp. at 572; see Watkins, Open Meetings under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 268 (1984) (Watkins); Note, Open Meeting Statutes: The Press Fights for the "Right to Know", 75 Harv. L. Rev. 1199, 1203 (1962) (Note). Indeed, the tradition of the English Parliament, which was subsequently carried on in the legislative bodies of Colonial America, was to hold legislative debate in secret and to prohibit publication of legislative proceedings. Society of Professional Journalists, 616 F. Supp. at 572 (observing that both the Continental Congress and the Constitutional Convention conducted their proceedings in secret, and thus "[i]t is not surprising . . . that the Framers of the Constitution did not include an express provision in the

Constitution that required Congress to deliberate in public"); Watkins, supra at 271.

On the other hand, at least thirty-five states have constitutional requirements that their legislatures meet in public.[7] See Note, supra at 1203. All fifty states, the District of Columbia, and the federal government have some form of an open meetings act. Watkins, supra at 268, 272. These acts have never been held to be constitutionally required, however. Society of Professional Journalists, 616 F. Supp. at 572; see Watkins, supra at 272.

There is one area where a constitutional right of access clearly does exist, namely, in judicial proceedings. The United States Supreme Court has found under the first amendment that the public and press have a right of access to criminal

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7. The State of Oregon amended its constitution in 1974 and 1978 to require that its legislature conduct its deliberations in public. This amendment is found in that part of the Oregon Constitution dealing with the legislative branch, and provides:

> 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.

Or. Const. article IV, § 14.

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trials even where the defendant expressly waives his or her right to a public trial and desires the proceedings to be closed. Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 65 L. Ed. 2d 973 (1980) (plurality decision adopted as a majority decision in Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 73 L. Ed. 2d 248 (1982)). The Supreme Court's rationale for finding this unenumerated right of access is significant. First, criminal trials have historically been open to the press and public. Globe Newspaper, 457 U.S. at 605, 73 L. Ed. 2d at 256. Second, the right of access to criminal trials plays a significant role in the proper functioning of the judicial process. Id. at 606, 73 L. Ed. 2d at 256.

In this case the superior court utilized the analysis applied by Richmond Newspapers/Globe Newspaper to find that the public and the press have an implied right under the Alaska Constitution, article I, section 5, to attend certain meetings of legislative units. The court's analysis is in two parts: an historical review, looking to the practice in effect at the time of the adoption of the Alaska Constitution to determine what the framers intended, and a functional evaluation seeking to determine the effect that a requirement of public access to legislative meetings would have.

We disagree with this analysis because the history of the Alaska Constitutional Convention indicates that the framers of our constitution did not intend to confer a right of public

access to meetings of legislative committees or legislative caucuses.[8]

The constitution expressly provides that it is the legislature's province to establish its own rules of procedure. Alaska Const. article II, section 12. We have held in part III of this opinion that this provision includes the authority to make rules concerning whether legislative bodies shall conduct their business in open or closed meetings. Of course, if the constitution contained an express or implied guarantee of public access to legislative meetings, the legislature could not, pursuant to article II, section 12, adopt a rule or enact a law to the contrary.

At the outset, we are confronted with the rule that the intent underlying constitutional language should first be gathered from the language itself. Baker v. City of Fairbanks, 471 P.2d 386, 397 (Alaska 1970). Although we would naturally expect a provision requiring legislative bodies to conduct their meetings in public to be found in article II, which pertains to the legislature, it is clear that the constitution contains no express provision there, or in the declaration of rights in

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8. We are not presented with the issue whether there may be an implied constitutional right of the public and the press to attend floor sessions of the two houses of the legislature, or to attend sessions of the legislature meeting as a whole. Our opinion is limited to meetings of legislative committees and so-called caucuses.

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article I, or anywhere else. Thus, we must determine if such a right may be implied.

We begin by seeking to determine the intent of the framers. We find evidence of such intent in the debate at the Constitutional Convention over the question of the public's access to the Convention's own committee meetings. That debate shows clearly that the delegates were aware of the issue and of the necessity for dealing with it directly.

One of the first orders of business for the Constitutional Convention was to adopt procedural rules to govern its own activities in drafting the constitution. Rule 19 concerned public access to the deliberations of the Standing Committees of the Convention. As originally proposed, Rule 19 provided:

> The deliberations of the Standing Committees shall not be open to the public except upon invitation of the Committee. Each Standing Committee shall notify the Secretary of the time and place of meetings, and the Secretary shall make such notice public.

1 <u>Proceedings of the Alaska Constitutional Convention</u> 75 (November 9, 1955) (hereafter "<u>Convention Proceedings</u>"). Delegate Rivers spoke first in support of the Rule.

> The committees have a lot of work to do and need freedom to express themselves to arrive at a consensus of their thinking and, accordingly, the committees in all fairness, could hear anyone who requested to be heard, and that is the reason for saying that the time of these committee meetings shall be posted or publicized by the Secretary. Everyone is supposed to know when we are

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> meeting so that anyone can request to be heard, but we don't want to have them open to the public while we try to develop a consensus of our thinking during all of our exploratory work. We think the committees can do better work if the public is there on invitation or if particular persons who want to be heard, do so upon request, and that is the reason for the rule.

Id. Delegate Hellenthal spoke in opposition to the Rule, stating:

> This is an unusual rule. I doubt if any other body such as this has such a rule. I know the Congress of the United States does not have such a rule, and I think that we would put ourselves open to the well-deserved criticism that we are meeting in secret session, which has an ugly connotation, but which criticism will be levelled at the group unless we adopt a more normal method. I would suggest the method of executive session, that by majority of two-thirds vote of the members of the committee, that the public be excluded to consider stated objects . . . . That is the rule of the United States Congress. I think this rule will involve us in great difficulties, and I see absolutely no need for it. Now if the occasion develops that crackpots or someone (I don't think there are many crackpots in Alaska) start plaguing us, then we can take a prophylactic rule such as the one recommended here, but in the absence of that demonstration I think that this rule has no place before our body.

Id. at 76.

Delegate Sundborg took issue with Delegate Hellenthal's statement.

> Many another deliberative body and I think practically every deliberative body has a rule such as this. Committee meetings of the United States Congress are not open to the public except upon invitation of the committees. Hearings are but committee

> meetings, I've been excluded from them many times, in Congress. I might say that our legislative committee meetings are not open to the public except upon invitation.

Id.[9] After noting the secret nature of both committee meetings and plenary sessions of the Federal Constitutional Convention, Delegate Sundborg commented:

> I feel we do have to have the freedom which we would have in committee only if we can speak without having a lot of people sitting around breathing down our necks. If a matter comes before a committee which would require the presence of the public, or where the presence of the public would help the committee reach a solution, I am sure any committee would be glad to invite the public in, . . . but I just don't think that business can be conducted efficiently if the public is walking in and out wandering around through these committee rooms all the time we are trying to do serious business.

Id. at 76-77.

Delegate Vic Fischer moved that the first sentence of Rule 19 as proposed be amended to read:

> The deliberations of the Standing Committees shall be open to the public, unless the Committee by two-thirds vote of all the members to which it is entitled votes to hold an executive session.

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9. Although not required by the United States Constitution, the United States Senate has met in public on a regular basis since 1794, and the House since the War of 1812. Committee sessions, where the bulk of the Congress' work is done, were not routinely open to the public until the mid-1970's. Watkins, supra at 271-72.

Id. at 77. This proposal met with heated disagreement from Delegates Hermann, Taylor, and Barr. *See id.* at 77-79. Delegate Hermann stated:

> I think that . . . the Convention should remember that no business conducted in the committee itself is even final. What we shall be doing in these committees is threshing out minor details, maybe some major ones too, but the point of the matter is that we have no power to translate that into action until it is brought before the Convention as a whole. If the public meetings are open to the Convention, which they certainly will be at all times, any discussion on any matter pertinent to the Constitution will be open to the public.

Id. at 77-78.

At this point the Convention recessed for lunch. Over the lunch recess a compromise was reached. *Id.* at 80-81. The compromise proposal, adopted by unanimous consent, provided:

> The deliberations of the Standing Committees shall be open to the public at such times as may be designated by the respective committees. If a committee finds it to be in the public interest, upon application any citizen may attend committee sessions. . . .

Id. at 81. It is clear that although Rule 19 was crafted in terms of open meetings, in fact the rule establishes a normal procedure of closed meetings unless a committee acted to open a meeting to the public.

In light of the delegates' debate concerning the merits of adopting a procedural rule governing the public's right of access to the Convention's committee meetings, and of their unanimous decision to establish a norm of closed meetings, we do

not believe that they intended that the constitution would direct that committee meetings of the future state's legislature should be open to public access. Rather, it is our view that the Constitutional Convention left this topic to the legislature by providing in article II, section 12 that the legislature was authorized to adopt its own rules of procedure.

Our conclusion is supported by the constitutional framers' understanding that territorial legislative committee meetings were usually closed to the public. The practice of closed territorial legislative committee meetings was noted in the delegates' debate on whether the Convention's Standing Committee meetings should be closed to the public. Convention Proceedings at 76 (comment of Delegate Sundborg). Given this practice, it seems highly improbable that the delegates, if they intended a contrary rule, would be content to leave it for discovery by implication. Rather, since historically the rule was one of closed meetings, it is most reasonable to conclude that the delegates thought they were not changing traditional practices. See Baker v. City of Fairbanks, 471 P.2d 400-401.

We conclude that the framers of the Alaska Constitution did not intend that the constitution require that committee and caucus meetings of legislative bodies be conducted in public. Therefore, we hold that there is no implied right of access to such meetings under the Alaska Constitution.

V.

That part of the superior court's decision which held as nonjusticiable allegations that the Legislators violated the Open Meetings Act or legislative rules is affirmed. That part of the court's decision which held that the public and press have an implied constitutional right of access to meetings of committees of the legislature and caucuses of legislators is reversed.[10] The case is remanded with instructions to dismiss the League's action.

AFFIRMED in part, REVERSED and REMANDED in part.

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10. Our resolution of the justiciability and implied constitutional right of access issues makes it unnecessary to address the parties' contentions as to legislative immunity (Alaska Const. Article II, section 6).

COMPTON, Justice, dissenting.

In 1972 the Alaska Legislature amended the Open Meetings Act to express that

> [i]t is the policy of the state that
>
> (1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;
>
> (2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;
>
> (3) <u>the people</u> of this state do not yield their sovereignty to the agencies which serve them;
>
> (4) <u>the people</u>, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;
>
> (5) <u>the people's right to remain informed</u> shall be protected so that they may retain control over the instruments they have created.

AS 44.62.312(a) (emphasis added). It is clear that the Open Meetings Act provides for and protects a public right. The Act creates an obligation on the part of all state governmental bodies to open their meetings to public scrutiny. This court has held that the Act by its own language "plainly includes the state legislature." Malone v. Meekins, 650 P.2d 351, 358 (Alaska 1982). Therefore, the legislature cannot now unilaterally and without public debate abrogate that right.

As the court recognizes, the contours of the doctrine of justiciability are not easily defined. To guide our

deliberations, we have in the past looked to the criteria enunciated by the Supreme Court in Baker v. Carr, 369 U.S. 186, 7 L. Ed. 2d 663 (1962). See Malone v. Meekins, 650 P.2d at 356-57. The relevant Baker criterium discussed by the court today is "a textually demonstrable constitutional commitment of the issue to a coordinate political department . . . ." 396 U.S. at 217, 7 L. Ed. 2d at 686. This court recognizes, and I do not contest, that the Alaska Constitution contains an express textual commitment authorizing the legislature to adopt its own rules of procedure.[1] Yet the issue before the court is the public's statutory right to be informed. Our past cases have not held that resolution of this issue lies outside the province of the judiciary, contrary to the opinion of this court today.

In Malone, this court addressed the justiciability of legislative rules regarding who may call the legislature to order. This court refused to act as a "sort of super parliamentarian." 650 P.2d at 359. We also declined to determine what public notice is "reasonable" under the Open Meetings Act. AS 44.62.310(e). I do not seek to overrule that precedent. If courts were to act as "super parliamentarians,"

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1. Alaska Const. art. II, § 12. The fact that the legislature has adopted a rule which mirrors the statute should not confuse the issue before the court. Adoption of a rule similar to a statute cannot erode the force of the statute as law. If the legislature wishes to exempt itself from the requirements of the statute it can do so in the act itself.

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thereby denying the legislature reasonable interpretations of its internal rules, the legislature would be hobbled to the point of inactivity. However, the legislature's disregard of a right granted by the Open Meetings Act does not deserve the same deference as its interpretation of a phrase contained in that Act. This is more than a matter of degree. It is a matter of the complete denial of the public's express right to witness important legislative debate. Thus Malone does not control in the current case.

In Abood v. Gorsuch, 703 P.2d 1158 (Alaska 1985) we held non-justiciable the question of whether the President of the Senate could legally preside over a joint session of the legislature in the absence of the Speaker of the House. We agreed with the trial court to defer "to the wisdom of the legislature concerning violations of legislative rules which govern the internal workings of the legislature." 703 P.2d at 1164 (emphasis added). We did, however, under the guise of constitutional interpretation, see fit to decide whether a quorum was present. At issue was whether the quorum must be composed of a majority of each house respectively or, alternatively, whether it need only be a simple majority of the total number of legislators. We held the latter, clearly deciding a procedural issue. Id. at 1162. Our definition of what constituted a "quorum," a parliamentary matter seemingly committed to the rule making authority of the legislature, is distinct from "insur[ing] compliance with the

provisions of the Alaska Constitution." Thus, Abood is inapposite to the current case because it dealt with a dispute solely between members of the legislature over their own rules. What precedential value the case does possess shows that this court will decide certain procedural issues for the legislature and that this court has not been completely deferential in the past.

The court also relies on Moffitt v. Willis, 459 So. 2d 1018 (Fla. 1984). The court argues that "[t]he facts in Moffitt are virtually identical to the facts in this case." This simply is not so. The Moffitt court was faced with interpretation of a broad constitutional free speech clause and specific legislative rules. The court deferred to the legislature's rule making power only after limiting the case by observing:

> We are not confronted with whether a statute applies, rather we are asked to allow the courts to determine when and how legislative rules apply to members of the legislature.

Moffitt, 459 So. 2d at 1022. Thus the Moffitt court expressly excluded from its holding the specific issue raised in the case at bar.

Moreover, we have recognized the public nature of the Open Meetings Act. In Alaska Community Colleges' Federation of Teachers v. University of Alaska, 677 P.2d 886, 891 (Alaska 1984) we stated that

> [s]ection 312 makes clear that the [Open Meetings Act] exists primarily to advance the interests of "the people of this state." When the sunshine act is breached it is "the

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people's right to remain informed" which sustains injury.

The Supreme Court in United States v. Smith, 286 U.S. 6, 33, 76 L. Ed. 954, 959 (1932) held that where the "construction to be given to the rules affects persons other than members of the Senate, the question presented is of necessity a judicial one." Smith, then, is more analogous to the current issue than the other cases cited by this court.[2] Whereas in Malone and Abood the controversy was between members of the legislature, who were parties to the rule making and enforcement proceedings, in Smith the affected person was other than a member of the [United States] senate and unable to personally participate in rectifying the wrong done him. So it is in the current case. The affected persons are not members of the legislature and in fact their interests are at odds with the legislature. Their only recourse is to the courts which, as Smith suggests, should not decline to decide these disputes.

Finally, it is observed that the doctrine of non-justiciability of issues concerning legislative action "is primarily a function of the separation of powers." Baker v. Carr, 369 U.S. at 210, 7 L. Ed. 2d at 682. But, while the

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2. The court distinguishes Smith on the ground that in Smith a specific individual was affected whereas in the case at bar it is the right of the public that is affected. The court does not explain the signficance of this distinction.

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separation of powers theory requires some deference by the judiciary to a coequal branch of government, the theory originated as a system of checks and balances on the power of each branch. The line between when this court should act with deference and when it should check the power of the legislature is not easily drawn. However, "where the rights of persons who are not members of the legislature are involved . . .," Malone, 650 P.2d at 359, this court should be more willing to defend those rights than it shows itself to be today.[3]

3. I do not believe that the constitutional issue addressed in Part IV of the court's opinion need be decided. The clear policy mandate of the statute should be dispositive of the issues presented in this case. This approach adheres "to the doctrine of abstaining from answering constitutional questions when other dispositive grounds exist." Deubelbeiss v. C.F.E.C., 689 P.2d 487, 491 (Alaska 1984) (Compton, J., concurring).

SJR

3

SENATE STATE AFFAIRS COMMITTEE

BILL NUMBER SJR 3

SPONSOR Coghill

BILL TITLE Amend Constitution - legislative repeal of regulations

DATE REFERRED 1/9/89

HEARING SCHEDULED 3-15-89

FISCAL NOTE PREPARED ✓

SPONSOR CONTACTED Bruce Geraghty 4797

INTERESTED PARTIES CONTACTED

✓Linda Edgeworth, Elections 4611

Dick Bradley (Legal) 2450

yes Art Peterson, AG 3600

OTHER

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

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

FURTHER JUDICIARY

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

DATE TURNED INTO OFFICE 3-17-89

1/9/89

Mr. President:

STATE AFFAIRS Committee considered SJR 3

amending the Constitution of the State of Alaska relating to repeal of regulations by the legislature

and recommended:

[X] replace with CS SJR 3 (St Aff) [X] same title [] new title

[ ] attached amendment(s) and

[ ] ____________ letter of intent adopted

[X] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to ____________

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

MEMBERS SIGNING DO PASS

Joe Adams
Jan Faiks
Tim Kelly

OTHER RECOMMENDATIONS

[signature] No Rec

Pat Pourchot do pass

Chairman signature and recommendation

[ ] Committee backup attached

Introduced: 1/9/89
Referred: State Affairs and
Judiciary

6-0316A

BY COGHILL, KELLY,
KERTTULA, STURGULEWSKI,
PEARCE AND FRANK

IN THE SENATE

SENATE JOINT RESOLUTION NO. 3

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 repeal of regulations by the legislature.

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

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

SECTION 22. REPEAL OF REGULATIONS. The legislature may repeal a regulation adopted by a state department or agency when the legislature believes that the regulation does not reflect the legislative intent of the law that the regulation is intended to implement. The repeal of the regulation is effective thirty days after the adoption of a concurrent resolution by a majority vote of the membership of each house unless the concurrent resolution specifies a different effective date. A concurrent resolution repealing a regulation adopted by a state department or agency requires three readings in each house on three separate days except that it may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it. The yeas and nays on final passage shall be entered in the journal.

* Sec. 2. LEGISLATIVE INTENT. (a) The legislature in proposing this constitutional amendment to the people is seeking the ability to repeal, by concurrent resolution, administrative regulations that do not reflect the intent of the legislature. Administrative regulations are adopted by the state administration to implement laws passed by the legislature by at

1 least a majority vote. Under the existing provisions of the state constitution, if the legislature believes that the regulation does not properly implement the legislative intent, the legislature can overturn the regulation only by passing a bill. Each bill passed by the legislature is subject to veto by the chief administrator, who is the governor. When a bill other than an appropriation bill is vetoed, the legislature may override that veto only during a joint session of both legislative houses by an affirmative vote of two-thirds of the membership. The difficulty in achieving the necessary two-thirds veto override vote in opposition to the governor and the governor's administration, the expense of special legislative sessions to address vetoes that occur after the adjournment of regular legislative sessions, and the force of law that regulations enjoy, have resulted in adverse effects on the public and thus have led the legislature to propose this amendment.

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

(c) In the preparation of the true and impartial summary of the amendment under AS 15.50.020, the lieutenant governor or the director of elections shall consider the statement of legislative intent contained in (a) of this section.

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

ADOPTED

6-0316E
Bradley
3/16/89

Original sponsors: Coghill, Kelly,
Kerttula, et al.

Changes in CS noted.

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE

2 CS FOR SENATE JOINT RESOLUTION NO. 3 (State Affairs)

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 repeal of regulations by the legisla-
8 ture.

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

10 * Section 1. Article II, Constitution of the State of Alaska, is amend-
11 ed by adding a new section to read:

12 SECTION 22. REPEAL OF REGULATIONS. The legislature may repeal a
13 regulation adopted by a state department or agency when the legisla-
14 ture believes that the regulation does not reflect the [legislative] intent of the
15 law [the regulation is intended to implement]. The repeal of the regulation is effective thirty days after the
16 [adoption] passage of a [concurrent] joint resolution by a majority vote of the membership of
17 each house unless the [concurrent] joint resolution specifies a different effective
18 date. [3 readings in each house. Yeas & nays on final passage shall be entered in the journal.]

19 * Sec. 2. LEGISLATIVE INTENT. (a) The legislature in proposing this
20 constitutional amendment to the people is seeking the ability to repeal, by
21 [concurrent] joint resolution, administrative regulations that do not reflect the intent
22 of the legislature. Administrative regulations are adopted by the state
23 administration to implement laws passed by the legislature by at least a
24 majority vote. Under the existing provisions of the state constitution, if
25 the legislature believes that the regulation does not properly implement
26 the legislative intent, the legislature can overturn the regulation only by
27 passing a bill. Each bill passed by the legislature is subject to veto by
28 the chief administrator, who is the governor. When a bill other than an
29 appropriation bill is vetoed, the legislature may override that veto only

during a joint session of both legislative houses by an affirmative vote of two-thirds of the membership. The difficulty in achieving the necessary two-thirds veto override vote in opposition to the governor and the governor's administration, the expense of special legislative sessions to address vetoes that occur after the adjournment of regular legislative sessions, and the force of law that regulations enjoy, have resulted in adverse effects on the public and thus have led the legislature to propose this amendment.

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

(c) In the preparation of the true and impartial summary of the amendment under AS 15.50.020, the lieutenant governor or the director of elections shall consider the statement of legislative intent contained in (a) of this section.

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

Uniform Rule 49

RESOLUTIONS

RULE 49. RESOLUTIONS. (a) The only type of instrument other than a bill or citation authorized under these Uniform Rules is a resolution. The types and uses of resolutions are as follows:

(1) A simple resolution is a formalized motion passed by one house only and bearing the heading "House Resolution" or "Senate Resolution". It may be used to express the will, wish, view, opinion, sympathy, or request of the house adopting it. The simple resolution shall be used to establish a special committee. It does not require committee referral, three readings, or a roll call vote. Approval of a simple resolution requires a majority vote of the full membership of the house.

(2) A special resolution headed "House Special Resolution" or "Senate Special Resolution" is used only for the purpose of expelling a member under provisions of Sec. 12, Art. II, of the State Constitution. The special resolution requires a referral to the Rules Committee, three readings, and a two-thirds vote of the full membership of the house for approval.

Concurrent

(3) A concurrent resolution is similar to the simple resolution but reflects the will, wish, view or decision of both houses speaking concurrently. It is used particularly to handle the internal business of the legislature, e.g., adjournment of the legislature, suspension and amendment of the Uniform Rules, requesting action of executive agencies and interim committees, and fixing the time and place for joint assemblies. This resolution is also used for establishing joint committees. This resolution does not require committee referral, three readings, or anything other than approval of a majority vote of the full membership of each house unless otherwise required by the rules.

(4) A special concurrent resolution is employed to consider disapproval of an executive order of the governor laid before the legislature under provisions of Sec. 23, Art. III, of the State Constitution. This resolution must be considered by a joint committee and may be adopted by a majority vote of the full membership of the legislature in joint session without recourse to three readings.

Joint

(5) A joint resolution is the most formal type of resolution and is adopted by both houses and then signed by the governor as a ministerial formality. The joint resolution is treated in all respects as a bill but it is not subject to veto. It is usually reserved for addressees outside the state. This resolution is used mainly to express the view or wish of the legislature to the President, the Congress or agencies of the United States Government or the governments of other states. It is required for proposing or ratifying amendments to the U. S. Constitution, proposing amendments to the State Constitution under provisions of Sec. 1, Art. XIII, of the State Constitution, and for disapproval of local government boundary changes recommended by the Local Boundary Commission under provisions of Sec. 12, Art. X, of the State Constitution. Approval of a joint resolution requires a majority vote of the full membership of each house.

(b) All resolutions passed by one or both houses are sent to the governor as a matter of information and for permanent filing with the lieutenant governor. The lieutenant governor sends enrolled copies of joint resolutions to the federal and other state officers, agencies and jurisdictions. The transmittal of copies of all other resolutions to designated addressees is the responsibility of the Legislative Affairs Agency.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION : CSSJR 3 (StAff)
PUBLISH DATE : 1/9/89

FISCAL NOTE

REQUEST:

Revision Date: 3/29/89
Title : Repeal or regulations by the Legislature
Sponsor : Coghill
Requestor : Coghill

Agency Affected : Office of the Governor
BRU : Division of Elections
Components : II-Elections
Primary & General Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
GENERAL FUND	-0-	-0-	2.2*	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	2.2*	-0-	-0-	-0-

POSITIONS:

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

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

Prepared by : Linda Edgeworth
Division : Elections
Phone : 465-4611
Date :

Approved by Commissioner : [signature]
Agency : Division of Elections
Date : 3/29/89

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSJR 3 (StAff)

counting purposes. However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per ballot x approximately 320,000 voters. The total cost of printing the additional ballot card would be $51.2.

Under these circumstances the fiscal note would be:

53.4