

STATE OF WISCONSIN *ex rel.***ISMAEL R. OZANNE**

District Attorney for Dane County, Wis.
Dane County District Attorney's Office
215 S. Hamilton St. #3000
Madison, WI 53703

Plaintiff,

vs.

JEFF FITZGERALD

Rm. 211 West
State Capitol
Madison, WI 53708

Case No: 11CV1244

Case Code:
30703 – Unclassified

SCOTT FITZGERALD

Room 211 South
State Capitol
Madison, WI 53707

MICHAEL ELLIS

Room 220 South
State Capitol
Madison, WI 53707

SCOTT SUDER

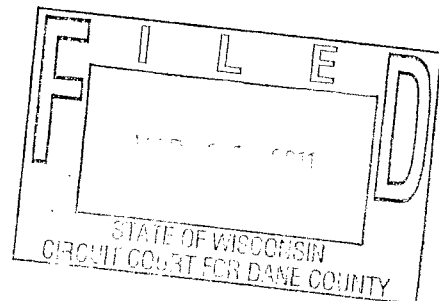
Room 215 West
State Capitol
Madison, WI 53708

MARK MILLER

Room 206 South
State Capitol
Madison, WI 53707

PETER BARCA

Room 201 West
State Capitol
Madison, WI 53708



DOUGLAS LAFOLLETTE

30 West Mifflin
Madison, WI 53703

JOINT COMMITTEE OF CONFERENCE

(as constituted on March 9, 2011)
State Capitol
Madison, WI 53707

WISCONSIN STATE SENATE

State Capitol
Madison, WI 53707

WISCONSIN STATE ASSEMBLY

State Capitol
Madison, WI 53708

Defendants.

AMENDED SUMMONS

THE STATE OF WISCONSIN:

To each person named as a Defendant:

You are hereby notified that the plaintiff, State of Wisconsin, by Dane County District Attorney Ismael R. Ozanne, has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and the basis of the legal action.

Within forty-five (45) days of receiving this Summons, you must respond with a written answer as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court whose address is Dane County Clerk of Circuit Court, Dane County Courthouse, 215 S. Hamilton St. #1000, Madison, WI 53703, and to Dane County District Attorney Ismael R. Ozanne, whose address is Dane County District Attorney's Office, 215 S. Hamilton St. #3000, Madison, WI 53703. You may have an attorney help or represent you.

If you do not provide a proper answer within forty-five (45) days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose the right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

If you require the assistance of auxiliary aids or services because of a disability, call (608) 266-4678 [TDD (608) 266-9138] and ask for the Court A.D.A Coordinator.

Dated this 23rd day of March, 2011.

A handwritten signature in black ink, appearing to read 'Ismael R. Ozanne', written over a horizontal line.

Ismael R. Ozanne
Dane County District Attorney
State Bar # 1031954

MAILING ADDRESS:

Dane County District Attorney's Office
215 S. Hamilton St. #3000
Madison, WI 53703
Phone: (608)266-4211
Fax: (608) 267-2545

STATE OF WISCONSIN *ex rel.*

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State Capitol
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Defendants.

AMENDED COMPLAINT

NOW COMES plaintiff State of Wisconsin, by Dane County District Attorney Ismael R. Ozanne, and alleges as follows:

1. Ismael R. Ozanne is an adult resident of the State of Wisconsin and is the District Attorney for Dane County, Wisconsin with business address of Dane County District Attorney's Office, 215 S. Hamilton St. #3000, Madison, WI 53703.

2. Pursuant to Sec. 19.97(1) of the Wisconsin Statutes, the District Attorney is authorized to enforce Wisconsin's Open Meetings Law, Sec. 19.81 through 19.98 of the Wisconsin Statutes, upon the verified complaint of any person alleging a violation of said Law within the County of the District Attorney's jurisdiction; the entirety of Wisconsin's Open Meetings Law is attached to this Complaint as Attachment 1 and is incorporated herein by reference.

3. Defendant Jeff Fitzgerald, whose business address is Room 211 West, State Capitol, Madison, WI 53708, is an adult resident of the State of Wisconsin; is an elected Representative in the Wisconsin Assembly; and is the chief presiding officer of the Wisconsin Assembly.

4. Scott Fitzgerald, whose business address is Room 211 South, State Capitol, P.O. Box 7882, Madison, WI 53707-7882, is an adult resident of the State of Wisconsin; is an elected Senator in the Wisconsin Senate; and is the chief presiding officer of the Wisconsin Senate.

5. Michael Ellis, whose business address is Room 220 South, State Capitol, P.O. Box 7882, Madison, WI 53707-7882, is an adult resident of the State of Wisconsin and is an elected Senator in the Wisconsin Senate.

6. Scott Suder, whose business address is Room 215 West, State Capitol, P.O. Box 8953, Madison, WI 53708, is an adult resident of the State of Wisconsin and is an elected Representative in the Wisconsin Assembly.

7. Mark Miller, whose business address is Room 206 South, State Capitol, Madison, WI 53707, is an adult resident of the State of Wisconsin and is an elected Senator in the Wisconsin Senate.

8. Peter Barca, whose business address is Room 201 West, State Capitol, Madison, WI 53708, is an adult resident of the State of Wisconsin and is an elected Representative in the Wisconsin Assembly.

9. Douglas La Follette, whose business address is 30 West Mifflin, Madison, WI 53703, is the duly elected Secretary of State for the State of Wisconsin. Among other duties, Secretary of State La Follette is charged with the responsibility of publishing all laws duly passed by the Wisconsin Legislature and approved by the Governor.

10. The Joint Committee of Conference is a Committee of the Wisconsin Legislature organized, established and functioning pursuant to the Joint Rules of the Wisconsin Legislature on March 9, 2011 and whose members included State Senators Scott Fitzgerald, Michael Ellis and Mark Miller and State Representatives Jeff Fitzgerald, Scott Suder and Peter Barca. The Joint Committee of Conference is a governmental body within the meaning of the Open Meetings Law, Wis. Stat. § 19.81, *et seq.*, and is amenable to suit to redress violations of the Open Meetings Law.

11. The Wisconsin State Senate is a House of the Wisconsin Legislature created by the Wisconsin Constitution, art. IV, § 1. The Wisconsin State Senate is a governmental body within the meaning of the Open Meetings Law, Wis. Stat. § 19.81, *et seq.*, and is amenable to suit to redress violations of the Open Meetings Law.

12. The Wisconsin State Assembly is a House of the Wisconsin Legislature created by the Wisconsin Constitution, art. IV, § 1. The Wisconsin State Senate is a governmental body within the meaning of the Open Meetings Law, Wis. Stat. § 19.81, *et seq.*, and is amenable to suit to redress violations of the Open Meetings Law.

13. Peter Barca, whose business address is Room 201 West, State Capitol, Madison, WI 53708, is an adult resident of the State of Wisconsin and is an elected Representative in the Wisconsin Assembly; Peter Barca has filed a verified complaint with the Dane County District Attorney's Office alleging a violation of Wisconsin's Open Meetings Law by the named Defendants on March 9, 2011 as more fully set forth

below; a copy of said complaint is attached to this Complaint as Attachment 2 and is incorporated herein by reference.

14. Kathleen Falk, whose business address is City County Building, Room 421, 210 Martin Luther King, Jr. Blvd., Madison, WI 53703, is an adult resident of the State of Wisconsin and is acting County Executive for Dane County, Wisconsin; Kathleen Falk has filed a verified complaint with the Dane County District Attorney's Office alleging a violation of Wisconsin's Open Meetings Law by the named Defendants on March 9, 2011 as more fully set forth below; a copy of said complaint is attached to this Complaint as Attachment 3 and is incorporated herein by reference.

15. Martin Biel, whose business address is 8033 Excelsior Drive, Suite C, Madison, WI 53717, is an adult resident of the State of Wisconsin; Martin Biel has filed a verified complaint with the Dane County District Attorney's Office alleging a violation of Wisconsin's Open Meetings Law by the named Defendants on March 9, 2011 as more fully set forth below; a copy of said complaint is attached to this Complaint as Attachment 4 and is incorporated herein by reference.

16. Dave Cieslewicz, whose business address is City County Building, Room 403, 210 Martin Luther King Jr. Blvd., Madison, WI 53703, is an adult resident of the State of Wisconsin and is the elected Mayor of the City of Madison, a Wisconsin municipal corporation; Dave Cieslewicz has filed a verified complaint with the Dane County District Attorney's Office alleging a violation of Wisconsin's Open Meetings Law by the named Defendants on March 9, 2011 as more fully set forth below; a copy of said complaint is attached to this Complaint as Attachment 5 and is incorporated herein by reference.

17. The Wisconsin Assembly, the Wisconsin Senate and the Joint Committee of Conference on January 2011 Special Session Assembly Bill 11 ("Joint Committee of Conference") are governmental bodies within the meaning of Sec. 19.82(1) and 19.87 of the Wisconsin Statutes.

18. Wisconsin's Open Meetings Law applies to members of the Wisconsin Legislature, including Senator Fitzgerald, Senator Ellis, Representative Fitzgerald and Representative Suder.

19. Wisconsin's Open Meetings Law, as applied to members of the Legislature, is a codification of the mandates expressly provided for in the Wisconsin Constitution to the effect that "[t]he right of the people peaceably to assemble, to consult for the common good, and to petition the government, or any department thereof, shall never be abridged," Wis. Const. art. I, § 4, and that "[t]he doors of each house shall be kept open except when the public welfare shall require secrecy," Wis. Const. art. IV, § 10. See Wis. Stat. § 19.81(3).

20. On February 15, 2011, January 2011 Special Session Assembly Bill 11 was introduced in the Assembly at the request of Governor Scott Walker. Assembly Bill 11, and its companion, Senate Bill 11, are informally known as “the Budget Repair Bill.”

21. On February 25, 2011, January 2011 Special Session Assembly Bill 11 was passed by the Assembly and messaged to the Senate.

22. Prior to the evening of March 9, 2011, the Senate did not take any formal action with respect to January 2011 Special Session Assembly Bill 11 other than to read it a first time, refer it to a committee, withdraw it from the committee and read it a second and third time.

23. Despite the absence of any prior vote by the Senate on any version of January 2011 Special Session Assembly Bill 11, in the afternoon of March 9, 2011, the Senate requested a Committee of Conference and appointed Senator Scott Fitzgerald, Senator Michael Ellis and Senator Mark Miller as its conferees.

24. Shortly thereafter, the Assembly agreed to a Committee of Conference on January 2011 Special Session Assembly Bill 11 and appointed Representative Jeff Fitzgerald, Representative Scott Suder and Representative Peter Barca as its conferees.

25. Representative Jeff Fitzgerald and Senator Scott Fitzgerald presided over a meeting of the Joint Committee of Conference on January 2011 Special Session Assembly Bill 11 at or about 6:00 PM on March 9, 2011 at the Senate Parlor, State Capitol, located in Madison, Wisconsin in Dane County.

26. Upon information and belief, the only notice of the March 9, 2011, meeting of the Joint Committee of Conference was posted less than two hours prior to the commencement of the meeting. A copy of the notice is attached to this Complaint as Attachment 6 and incorporated herein by reference.

27. Said meeting was attended by Senator Scott Fitzgerald, Senator Michael Ellis, Representative Jeff Fitzgerald, Representative Scott Suder, and Representative Peter Barca.

28. Senator Fitzgerald, Senator Ellis, Representative Fitzgerald and Representative Suder are Republicans and Representative Barca is a Democrat; the meeting of the Joint Committee of Conference was not a meeting of any partisan caucus within the meaning of sec. 19.87(3), Wis. Stats.

29. The Joint Committee of Conference convened on March 9, 2011, for the purpose and with the intent of exercising the responsibilities, authority, power and/or duties delegated to or vested in the Committee.

30. The Joint Committee of Conference, by and through the actions of Senator Fitzgerald, Senator Ellis, Representative Fitzgerald and Representative Suder, and over

the objections of Representative Barca, did act on January 2011 Special Session Assembly Bill 11 as amended by Conference Substitute Amendment 1 by voting to adopt and concur in the Bill as amended and offering said Bill as amended to the Senate and the Assembly.

31. The Joint Committee of Conference constitutes a committee of the two Houses of the Legislature and is governed by the Joint Rules adopted by the Legislature.

32. Under Joint Rule 3 of the Wisconsin Legislature, a Committee of Conference “consisting of 3 members from each house may be requested by either house” in “all cases of disagreement between the senate and assembly on amendments, adopted by either house to a bill or joint resolution passed by the other house.” Joint Rule 3 of the Wisconsin Legislature is attached to this Complaint as Attachment 7 and is incorporated herein by reference.

33. Under Joint Rule 3 of the Wisconsin Legislature, the Committee of Conference “shall meet and state to each other, orally or in writing, the reasons of their respective houses for or against the disagreement, and confer thereon, and shall report to their respective houses any agreement they arrive at by the vote of at least a majority of the members of the committee representing each house.”

34. Under Joint Rule 3 of the Wisconsin Legislature, “when the committee of conference has reached agreement the report shall be first presented, if a senate bill or joint resolution, to the assembly and, if an assembly bill or joint resolution, to the senate.”

35. Under Joint Rule 3 of the Wisconsin Legislature, “approval of the conference report by a roll call vote in each house sufficient to constitute final passage of the proposal shall be final passage of the bill or final adoption and concurrence in the joint resolution in the form and with the changes proposed by the report.”

36. The meeting of the Joint Committee of Conference on January 2011 Special Assembly Bill 11 convened at 6:00 PM on March 9, 2011; said meeting was not conducted in compliance with Joint Rule 3 of the Wisconsin Legislature.

37. No Joint Rule of the Wisconsin Legislature establishes a different procedure for providing public notice and public access to the meeting of the Joint Committee of Conference on January 2011 Special Assembly Bill 11 than is required by Wisconsin’s Open Meetings Law and, therefore, as contemplated by Sec. 19.87(2) of the Wisconsin Statutes, the requirements of Wisconsin’s Open Meetings Law apply to the March 9, 2011 meeting of the Joint Committee of Conference.

38. The public notice for said meeting was insufficient as to reasonably likely apprise the public and the news media that the Joint Committee of Conference would consider, discuss, debate and act on a new version of said Bill consisting of only those items denominated “non-fiscal,” which had not been previously passed by the Senate, in violation of Sec. 19.84(2) of the Wisconsin Statutes.

39. The public notice of said meeting did not adequately set forth the subject matter of said meeting in such form as was reasonably likely to apprise the members of the public and the news media thereof, in violation of Sec. 19.84(2) of the Wisconsin Statutes.

40. The public notice of said meeting was not given 24 hours in advance of said meeting.

41. No good cause existed such that the notice of 24 hours was impossible or impractical, in violation of Sec. 19.84(3) of the Wisconsin Statutes.

42. That the subject matter of January 2011 Special Assembly Bill 11 included, but was not limited to, state finances, collective bargaining for public employees, compensation and fringe benefits of public employees, the state civil service system, and the Medical Assistance program all of which subjects are of high public interest and which have generated not only public debate, but also thousands of Wisconsin citizens demonstrating at the State Capitol for several weeks.

43. That said meeting of Joint Committee of Conference was held in the Wisconsin Senate Parlor in the State Capitol, located in Madison, Dane County, Wisconsin; that said Parlor is a small room with very limited space and was not reasonably accessible to members of the public or all citizens in violation of Sec. 19.81(2) and 19.82(3) of the Wisconsin Statutes.

44. That the State Capitol building where said meeting was held had restricted access to the general public before the meeting preventing those citizens who may have wished to attend the meeting from entering the building, in violation of Sec. 19.81(2), 19.82(3), and 19.96 of the Wisconsin Statutes.

45. That during said meeting, Representative Peter Barca repeatedly objected to conducting said meeting on the grounds that said meeting violated Wisconsin's Open Meetings Law; said objections were overruled or ignored by Senator Scott Fitzgerald, one of the presiding officers; and that Senator Fitzgerald, Senator Ellis, Representative Fitzgerald and Representative Suder proceeded with said meeting to its conclusion despite Representative Barca's objections.

46. That Senator Fitzgerald, Senator Ellis, Representative Fitzgerald and Representative Suder knowingly attended said meeting in violation of Wisconsin's Open Meetings Law.

47. That the actions of the Joint Committee of Conference in considering, voting on and concurring in January 2011 Special Session Assembly Bill 11 as amended by Conference Substitute Amendment 1 provided the basis for consideration of this version of the bill by the Wisconsin State Senate and then the Wisconsin State Assembly,

each of which passed the bill in this version on March 9, 2011, and March 10, 2011, respectively.

48. That this version of the said bill, as passed by both Houses of the Legislature, was enrolled, presented to Governor Walker and approved by him on March 11, 2011. As approved, the enrolled bill has been numbered 2011 Wisconsin Act 10.

49. The actions of the Joint Committee of Conference, taken at a meeting held and conducted in violation of the Open Meetings Law, are void, pursuant to Wis. Stat. § 19.97(3).

50. 2011 Wisconsin Act 10, as the final product of void actions by the Joint Conference of Committee, is itself void and a nullity.

51. The Wisconsin Constitution, art. IV, § 17(2), provides that “[n]o law shall be in force unless published.” Secretary of State La Follette is required to publish every act passed by the Legislature and approved by the Governor within ten working days of its enactment. Sec. 35.095(3)(b), Wis. Stats.

52. Secretary of State La Follette has publicly announced that he will publish 2011 Wisconsin Act 10 on the tenth working day following the Governor’s approval, or on March 25, 2011.

53. It is beyond the constitutional and statutory authority of Secretary of State La Follette to publish null and void legislation.

54. Final resolution of the factual and legal issues presented by this complaint is likely not to take place prior to March 25, 2011. This is, at least in part, because the Senator Fitzgerald, Senator Ellis, Representative Fitzgerald and Representative Suder enjoy a constitutional privilege from being subject to civil process during each session of the Legislature as well as for fifteen days before the commencement and after the termination of each session, pursuant to Wis. Const. art. IV, § 15.

55. Unless Secretary of State La Follette is enjoined from publishing 2011 Wisconsin Act 10, he will exceed his constitutional and statutory authority and 2011 Wisconsin Act 10 shall be in full force and effect prior to the final determination by this Court of whether the Open Meetings Law was violated as alleged and, if so, whether the actions of the Joint Committee of Conference, through Defendants Fitzgerald, Fitzgerald, Ellis and Suder, and of the Senate and Assembly, should be voided.

THEREFORE, PLAINTIFF REQUESTS THE FOLLOWING RELIEF:

(1) Judgment against Defendants Senator Scott Fitzgerald, Senator Michael Ellis, Representative Jeff Fitzgerald and Representative Scott Suder finding them in violation of Wisconsin’s Open Meetings Law.

(2) Judgment declaring that the actions taken by the Joint Committee of Conference, consisting of Defendants Senator Scott Fitzgerald, Senator Michael Ellis, Senator Mark Miller, Representative Jeff Fitzgerald, Representative Scott Suder and Representative Peter Barca, as set forth above, violate the provisions of the Open Meetings Law, Wis. Stat. §§ 19.81, *et seq.*, and Wis. Const. art. I, § 4, and Wis. Const. art. IV, § 10.

(3) Judgment declaring the actions taken by the Joint Committee of Conference, consisting of Defendants Senator Scott Fitzgerald, Senator Michael Ellis, Senator Mark Miller, Representative Jeff Fitzgerald, Representative Scott Suder and Representative Peter Barca, as set forth above, void, pursuant to Sec. 19.97(3), upon a finding that, under the facts of this particular case, the public interest in the enforcement of Wisconsin's Open Meetings Law outweighs any public interest in maintaining the validity of said actions.

(4) Judgment declaring 2011 Wisconsin Act 10 null and void, as considered and passed by the Wisconsin State Senate and Wisconsin State Assembly, in reliance on the void actions by the Joint Committee of Conference, consisting of Defendants Senator Scott Fitzgerald, Senator Michael Ellis, Senator Mark Miller, Representative Jeff Fitzgerald, Representative Scott Suder and Representative Peter Barca, which took place in violation of the Open Meetings Law.


(5) A forfeiture assessed against Defendants Senator Scott Fitzgerald, Senator Michael Ellis, Representative Jeff Fitzgerald and Representative Scott Suder individually in the amount of \$300.00 each, plus court costs and attorney's fees, payable to Dane County.

(6) Judgment declaring that it is in excess of the authority of the Secretary of State to publish 2011 Wisconsin Act 10, which is null and void.

(7) For a temporary and permanent injunction enjoining Secretary of State Douglas LaFollette from publishing 2011 Wisconsin Act 10.

(8) For any further relief that the Court deems to be equitable and just under the circumstances.

Dated this 23rd day of March, 2011.



Ismael R. Ozanne
Dane County District Attorney
State Bar # 1031954

MAILING ADDRESS:
Dane County District Attorney's Office
215 S. Hamilton St. #3000
Madison, WI 53703
Phone: (608) 266-4211
Fax: (608) 267-2545

19.69 Computer matching. (1) **MATCHING SPECIFICATION.** A state authority may not use or allow the use of personally identifiable information maintained by the state authority in a match under a matching program, or provide personally identifiable information for use in a match under a matching program, unless the state authority has specified in writing all of the following for the matching program:

- (a) The purpose and legal authority for the matching program.
- (b) The justification for the program and the anticipated results, including an estimate of any savings.
- (c) A description of the information that will be matched.

(2) **COPY TO PUBLIC RECORDS BOARD.** A state authority that prepares a written specification of a matching program under sub. (1) shall provide to the public records board a copy of the specification and any subsequent revision of the specification within 30 days after the state authority prepares the specification or the revision.

(3) **NOTICE OF ADVERSE ACTION.** (a) Except as provided under par. (b), a state authority may not take an adverse action against an individual as a result of information produced by a matching program until after the state authority has notified the individual, in writing, of the proposed action.

(b) A state authority may grant an exception to par. (a) if it finds that the information in the records series is sufficiently reliable.

(4) **NONAPPLICABILITY.** This section does not apply to any matching program established between the secretary of transportation and the commissioner of the federal social security administration pursuant to an agreement specified under s. 85.61 (2).

History: 1991 a. 39, 269; 1995 a. 27; 2003 a. 265.

19.71 Sale of names or addresses. An authority may not sell or rent a record containing an individual's name or address of residence, unless specifically authorized by state law. The collection of fees under s. 19.35 (3) is not a sale or rental under this section.

History: 1991 a. 39.

19.77 Summary of case law and attorney general opinions. Annually, the attorney general shall summarize case law and attorney general opinions relating to due process and other legal issues involving the collection, maintenance, use, provision of access to, sharing or archiving of personally identifiable information by authorities. The attorney general shall provide the summary, at no charge, to interested persons.

History: 1991 a. 39.

19.80 Penalties. (2) **EMPLOYEE DISCIPLINE.** Any person employed by an authority who violates this subchapter may be discharged or suspended without pay.

(3) **PENALTIES.** (a) Any person who willfully collects, discloses or maintains personally identifiable information in violation of federal or state law may be required to forfeit not more than \$500 for each violation.

(b) Any person who willfully requests or obtains personally identifiable information from an authority under false pretenses may be required to forfeit not more than \$500 for each violation.

History: 1991 a. 39, 269.

SUBCHAPTER V

OPEN MEETINGS OF GOVERNMENTAL BODIES

19.81 Declaration of policy. (1) In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.

(2) To implement and ensure the public policy herein expressed, all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law.

(3) In conformance with article IV, section 10, of the constitution, which states that the doors of each house shall remain open, except when the public welfare requires secrecy, it is declared to be the intent of the legislature to comply to the fullest extent with this subchapter.

(4) This subchapter shall be liberally construed to achieve the purposes set forth in this section, and the rule that penal statutes must be strictly construed shall be limited to the enforcement of forfeitures and shall not otherwise apply to actions brought under this subchapter or to interpretations thereof.

History: 1975 c. 426; 1983 a. 192.

NOTE: The following annotations relate to s. 66.77, repealed by Chapter 426, laws of 1975.

Subsequent to the presentation of evidence by the taxpayer, a board of review's consideration of testimony by the village assessor at an executive session was contrary to the open meeting law. Although it was permissible for the board to convene a closed session for the purpose of deliberating after a quasi-judicial hearing, the proceedings did not constitute mere deliberations but were a continuation of the quasi-judicial hearing without the presence of or notice to the objecting taxpayer. *Dolphin v. Butler Board of Review*, 70 Wis. 2d 403, 234 N.W.2d 277 (1975).

The open meeting law is not applicable to the judicial commission. *State ex rel. Lynch v. Dancy*, 71 Wis. 2d 287, 238 N.W.2d 81 (1976).

A regular open meeting, held subsequent to a closed meeting on another subject, does not constitute a reconvened open meeting when there was no prior open meeting on that day. 58 Atty. Gen. 41.

Consideration of a resolution is a formal action of an administrative or minor governing body and when taken in proper closed session, the resolution and result of the vote must be made available for public inspection, pursuant to 19.21, absent a specific showing that the public interest would be adversely affected. 60 Atty. Gen. 9.

Joint apprenticeship committees, appointed pursuant to Wis. Adm. Code provisions, are governmental bodies and subject to the requirements of the open meeting law. 63 Atty. Gen. 363.

Voting procedures employed by worker's compensation and unemployment advisory councils that utilized adjournment of public meeting for purposes of having members representing employers and members representing employees or workers to separately meet in closed caucuses and to vote as a block on reconvening was contrary to the open records law. 63 Atty. Gen. 414.

A governmental body can call closed sessions for proper purposes without giving notice to members of the news media who have filed written requests. 63 Atty. Gen. 470.

The meaning of "communication" is discussed with reference to giving the public and news media members adequate notice. 63 Atty. Gen. 509.

The posting in the governor's office of agenda of future investment board meetings is not sufficient communication to the public or the news media who have filed a written request for notice. 63 Atty. Gen. 549.

A county board may not utilize an unidentified paper ballot in voting to appoint a county highway commissioner, but may vote by ayes and nays or show of hands at an open session if some member does not require the vote to be taken in such manner that the vote of each member may be ascertained and recorded. 63 Atty. Gen. 569.

NOTE: The following annotations refer to ss. 19.81 to 19.98.

When the city of Milwaukee and a private non-profit festival organization incorporated the open meetings law into a contract, the contract allowed public enforcement of the contractual provisions concerning open meetings. *Journal/Sentinel, Inc. v. Pleva*, 155 Wis. 2d 704, 456 N.W.2d 359 (1990).

Sub. (2) requires that a meeting be held in a facility that gives reasonable public access, not total access. No person may be systematically excluded or arbitrarily refused admittance. *State ex rel. Badke v. Greendale Village Bd.* 173 Wis. 2d 553, 494 N.W.2d 408 (1993).

This subchapter is discussed. 65 Atty. Gen. preface.

Public notice requirements for meetings of a city district school board under this subchapter and s. 120.48, 1983 stats., are discussed. 66 Atty. Gen. 93.

A volunteer fire department organized as a nonprofit corporation under s. 213.05 is not subject to the open meeting law. 66 Atty. Gen. 113.

Anyone has the right to tape-record an open meeting of a governmental body provided the meeting is not thereby physically disrupted. 66 Atty. Gen. 318.

The open meeting law does not apply to a coroner's inquest. 67 Atty. Gen. 250.

The open meeting law does not apply if the common council hears a grievance under a collective bargaining agreement. 67 Atty. Gen. 276.

The application of the open meeting law to the duties of WERC is discussed. 68 Atty. Gen. 171.

A senate committee meeting was probably held in violation of the open meetings law although there was never any intention prior to the gathering to attempt to debate any matter of policy, to reach agreement on differences, to make any decisions on any bill or part thereof, to take any votes, or to resolve substantive differences. Quorum gatherings should be presumed to be in violation of the law, due to a quorum's ability to thereafter call, compose and control by vote a formal meeting of a governmental body. 71 Atty. Gen. 63.

Nonstock corporations created by statute as bodies politic clearly fall within the term "governmental body" as defined in the open meetings law and are subject to the provisions of the open meetings law. Nonstock corporations that were not created by the legislature or by rule, but were created by private citizens are not bodies politic and not governmental bodies. 73 Atty. Gen. 53.

A "quasi-governmental corporation" in sub. (1) includes private corporations that closely resemble governmental corporations in function, effect, or status. 80 Atty. Gen. 129.

Understanding Wisconsin's open meeting law. Harvey, WBB September 1980. Getting the Best of Both Worlds: Open Government and Economic Development. Westerberg, Wis. Law, Feb. 2009.

19.82 Definitions. As used in this subchapter:

(1) "Governmental body" means a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley center sports and entertainment corporation; a local exposition district under subch. II of ch. 229; a long-term care district under s. 46.2895; or a formally constituted subunit of any of the foregoing, but excludes any such body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining under subch. I, IV, V, or VI of ch. 111.

(2) "Meeting" means the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any social or chance gathering or conference which is not intended to avoid this subchapter, any gathering of the members of a town board for the purpose specified in s. 60.50 (6), any gathering of the commissioners of a town sanitary district for the purpose specified in s. 60.77 (5) (k), or any gathering of the members of a drainage board created under s. 88.16, 1991 stats., or under s. 88.17, for a purpose specified in s. 88.065 (5) (a).

(3) "Open session" means a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times. In the case of a state governmental body, it means a meeting which is held in a building and room thereof which enables access by persons with functional limitations, as defined in s. 101.13 (1).

History: 1975 c. 426; 1977 c. 364, 447; 1985 a. 26, 29, 332; 1987 a. 305; 1993 a. 215, 263, 456, 491; 1995 a. 27, 185; 1997 a. 79; 1999 a. 9; 2007 a. 20, 96; 2009 a. 28.

A "meeting" under sub. (2) was found although the governmental body was not empowered to exercise the final powers of its parent body. *State v. Swanson*, 92 Wis. 2d 310, 284 N.W.2d 655 (1979).

A "meeting" under sub. (2) was found when members met with a purpose to engage in government business and the number of members present was sufficient to determine the parent body's course of action regarding the proposal discussed. *State ex rel. Newspapers v. Showers*, 135 Wis. 2d 77, 398 N.W.2d 154 (1987).

The open meetings law is not meant to apply to single-member governmental bodies. Sub. (2) speaks of a meeting of the members, plural, implying there must be at least two members of a governmental body. *Plourde v. Berends*, 2006 WI App 147, 294 Wis. 2d 746, 720 N.W.2d 130, 05-2106.

A corporation is quasi-governmental if, based on the totality of circumstances, it resembles a governmental corporation in function, effect, or status, requiring a case-by-case analysis. Here, a primary consideration was that the body was funded exclusively by public tax dollars or interest thereon. Additionally, its office was located in the municipal building, it was listed on the city Web site, the city provided it with clerical support and office supplies, all its assets revert to the city if it ceases to exist, its books are open for city inspection, the mayor and another city official are directors, and it had no clients other than the city. *State v. Beaver Dam Area Development Corporation*, 2008 WI 90, 312 Wis. 2d 84, 752 N.W.2d 295, 06-0662.

A municipal public utility commission managing a city owned public electric utility is a governmental body under sub. (1). 65 Atty. Gen. 243.

A "private conference" under s. 118.22 (3), on nonrenewal of a teacher's contract is a "meeting" within s. 19.82 (2). 66 Atty. Gen. 211.

A private home may qualify as a meeting place under sub. (3). 67 Atty. Gen. 125. A telephone conference call involving members of governmental body is a "meeting" that must be reasonably accessible to the public and public notice must be given. 69 Atty. Gen. 143.

19.83 Meetings of governmental bodies. (1) Every meeting of a governmental body shall be preceded by public notice as provided in s. 19.84, and shall be held in open session. At any meeting of a governmental body, all discussion shall be held and all action of any kind, formal or informal, shall be initiated, deliberated upon and acted upon only in open session except as provided in s. 19.85.

(2) During a period of public comment under s. 19.84 (2), a governmental body may discuss any matter raised by the public.

History: 1975 c. 426; 1997 a. 123.

When a quorum of a governmental body attends the meeting of another governmental body when any one of the members is not also a member of the second body, the gathering is a "meeting," unless the gathering is social or by chance. *State ex rel. Badke v. Greendale Village Board*, 173 Wis. 2d 553, 494 N.W.2d 408 (1993).

19.84 Public notice. (1) Public notice of all meetings of a governmental body shall be given in the following manner:

(a) As required by any other statutes; and

(b) By communication from the chief presiding officer of a governmental body or such person's designee to the public, to those news media who have filed a written request for such notice, and to the official newspaper designated under ss. 985.04, 985.05 and 985.06 or, if none exists, to a news medium likely to give notice in the area.

(2) Every public notice of a meeting of a governmental body shall set forth the time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof. The public notice of a meeting of a governmental body may provide for a period of public comment, during which the body may receive information from members of the public.

(3) Public notice of every meeting of a governmental body shall be given at least 24 hours prior to the commencement of such meeting unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 2 hours in advance of the meeting.

(4) Separate public notice shall be given for each meeting of a governmental body at a time and date reasonably proximate to the time and date of the meeting.

(5) Departments and their subunits in any University of Wisconsin System institution or campus are exempt from the requirements of subs. (1) to (4) but shall provide meeting notice which is reasonably likely to apprise interested persons, and news media who have filed written requests for such notice.

(6) Notwithstanding the requirements of s. 19.83 and the requirements of this section, a governmental body which is a formally constituted subunit of a parent governmental body may conduct a meeting without public notice as required by this section during a lawful meeting of the parent governmental body, during a recess in such meeting or immediately after such meeting for the purpose of discussing or acting upon a matter which was the subject of that meeting of the parent governmental body. The presiding officer of the parent governmental body shall publicly announce the time, place and subject matter of the meeting of the subunit in advance at the meeting of the parent body.

History: 1975 c. 426; 1987 a. 305; 1993 a. 215; 1997 a. 123; 2007 a. 20.

There is no requirement in this section that the notice provided be exactly correct in every detail. *State ex rel. Olson v. City of Baraboo Joint Review Board*, 2002 WI App 64, 252 Wis. 2d 628, 643 N.W.2d 796, 01-0201.

Sub. (2) does not expressly require that the notice indicate whether a meeting will be purely deliberative or if action will be taken. The notice must alert the public of the importance of the meeting. Although a failure to expressly state whether action will be taken could be a violation, the importance of knowing whether a vote would be taken is diminished when no input from the audience is allowed or required. *State ex rel. Olson v. City of Baraboo Joint Review Board*, 2002 WI App 64, 252 Wis. 2d 628, 643 N.W.2d 796, 01-0201.

Sub. (2) sets forth a reasonableness standard for determining whether notice of a meeting is sufficient that strikes the proper balance between the public's right to information and the government's need to efficiently conduct its business. The standard requires taking into account the circumstances of the case, which includes analyzing such factors as the burden of providing more detailed notice, whether the subject is of particular public interest, and whether it involves non-routine action that the public would be unlikely to anticipate. *Buswell v. Tomah Area School District*, 2007 WI 71, 301 Wis. 2d 178, 732 N.W.2d 804, 05-2998.

Under sub. (1) (b), a written request for notice of meetings of a governmental body should be filed with the chief presiding officer or designee and a separate written request should be filed with each specific governmental body. 65 Atty. Gen. 166.

The method of giving notice pursuant to sub. (1) is discussed. 65 Atty. Gen. 250. The specificity of notice required by a governmental body is discussed. 66 Atty. Gen. 143, 195.

The requirements of notice given to newspapers under this section is discussed. 66 Atty. Gen. 230.

A town board, but not an annual town meeting, is a "governmental body" within the meaning of the open meetings law. 66 Atty. Gen. 237.

News media who have filed written requests for notices of public meetings cannot be charged fees by governmental bodies for communication of the notices. 77 Atty. Gen. 312.

A newspaper is not obligated to print a notice received under sub. (1) (b), nor is governmental body obligated to pay for publication. *Martin v. Wray*, 473 F. Supp. 1131 (1979).

19.85 Exemptions. (1) Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer's announcement of the closed session. A closed session may be held for any of the following purposes:

(a) Deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body.

(b) Considering dismissal, demotion, licensing or discipline of any public employee or person licensed by a board or commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter; provided that the faculty member or other public employee or person licensed is given actual notice of any evidentiary hearing which may be held prior to final action being taken and of any meeting at which final action may be taken. The notice shall contain a statement that the person has the right to demand that the evidentiary hearing or meeting be held in open session. This paragraph and par. (f) do not apply to any such evidentiary hearing or meeting where the employee or person licensed requests that an open session be held.

(c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.

(d) Except as provided in s. 304.06 (1) (eg) and by rule promulgated under s. 304.06 (1) (em), considering specific applications of probation, extended supervision or parole, or considering strategy for crime detection or prevention.

(e) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.

(ee) Deliberating by the council on unemployment insurance in a meeting at which all employer members of the council or all employee members of the council are excluded.

(eg) Deliberating by the council on worker's compensation in a meeting at which all employer members of the council or all employee members of the council are excluded.

(em) Deliberating under s. 157.70 if the location of a burial site, as defined in s. 157.70 (1) (b), is a subject of the deliberation and if discussing the location in public would be likely to result in disturbance of the burial site.

(f) Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse

effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.

(g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

(h) Consideration of requests for confidential written advice from the government accountability board under s. 5.05 (6a), or from any county or municipal ethics board under s. 19.59 (5).

(i) Considering any and all matters related to acts by businesses under s. 560.15 which, if discussed in public, could adversely affect the business, its employees or former employees.

(2) No governmental body may commence a meeting, subsequently convene in closed session and thereafter reconvene again in open session within 12 hours after completion of the closed session, unless public notice of such subsequent open session was given at the same time and in the same manner as the public notice of the meeting convened prior to the closed session.

(3) Nothing in this subchapter shall be construed to authorize a governmental body to consider at a meeting in closed session the final ratification or approval of a collective bargaining agreement under subch. I, IV, V, or VI of ch. 111 which has been negotiated by such body or on its behalf.

History: 1975 c. 426; 1977 c. 260; 1983 a. 84; 1985 a. 316; 1987 a. 38, 305; 1989 a. 64; 1991 a. 39; 1993 a. 97, 215; 1995 a. 27; 1997 a. 39, 237, 283; 1999 a. 32; 2007 a. 1, 20; 2009 a. 28.

Although a meeting was properly closed, in order to refuse inspection of records of the meeting, the custodian was required by s. 19.35 (1) (a) to state specific and sufficient public policy reasons why the public interest in nondisclosure outweighed the public's right of inspection. *Oshkosh Northwestern Co. v. Oshkosh Library Board*, 125 Wis. 2d 480, 373 N.W.2d 459 (Ct. App. 1985).

The balance between protection of reputation under sub. (1) (f) and the public interest in openness is discussed. *Wis. State Journal v. UW-Platteville*, 160 Wis. 2d 31, 465 N.W.2d 266 (Ct. App. 1990). See also *Pangman v. Stigler*, 161 Wis. 2d 828, 468 N.W.2d 784 (Ct. App. 1991).

A "case" under sub. (1) (a) contemplates an adversarial proceeding. It does not connote the mere application for and granting of a permit. *Hodge v. Turtle Lake*, 180 Wis. 2d 62, 508 N.W.2d 603 (1993).

A closed session to discuss an employee's dismissal was properly held under sub. (1) (b) and did not require notice to the employee under sub. (1) (c) when no evidentiary hearing or final action took place in the closed session. *State ex rel. Epping v. City of Neillsville*, 218 Wis. 2d 516, 581 N.W.2d 548 (Ct. App. 1998), 97-0403.

The exception under sub. (1) (e) must be strictly construed. A private entity's desire for confidentiality does not permit a closed meeting. A governing body's belief that secret meetings will produce cost savings does not justify closing the door to public scrutiny. Providing contingencies allowing for future public input was insufficient. Because legitimate concerns were present for portions of some of the meetings does not mean the entirety of the meetings fell within the narrow exception under sub. (1) (e). *Citizens for Responsible Development v. City of Milton*, 2007 WI App 114, 300 Wis. 2d 649, 731 N.W.2d 640, 06-0427.

Section 19.35 (1) (a) does not mandate that, when a meeting is closed under this section, all records created for or presented at the meeting are exempt from disclosure. The court must still apply the balancing test articulated in *Linzmeier*, 2002 WI 84, 254 Wis. 2d 306. *Zellner v. Cedarburg School District*, 2007 WI 53, 300 Wis. 2d 290, 731 N.W.2d 240, 06-1143.

Nothing in sub. (1) (e) suggests that a reason for going into closed session must be shared by each municipality participating in an intergovernmental body. It is not inconsistent with the open meetings law for a body to move into closed session under sub. (1) (e) when the bargaining position to be protected is not shared by every member of the body. Once a vote passes to go into closed session, the reason for requesting the vote becomes the reason of the entire body. *Herro v. Village of McFarland*, 2007 WI App 172, 303 Wis. 2d 749, 737 N.W.2d 55, 06-1929.

In allowing governmental bodies to conduct closed sessions in limited circumstances, this section does not create a blanket privilege shielding closed session contents from discovery. There is no implicit or explicit confidentiality mandate. A closed meeting is not synonymous with a meeting that, by definition, entails a privilege exempting its contents from discovery. *Sands v. The Whitnall School District*, 2008 WI 89, 312 Wis. 2d 1, 754 N.W.2d 439, 05-1026.

Boards of review cannot rely on the exemptions in sub. (1) to close any meeting in view of the explicit requirements in s. 70.47 (2m). 65 Atty. Gen. 162.

A university subunit may discuss promotions not relating to tenure, merit increases, and property purchase recommendations in closed session. 66 Atty. Gen. 60.

Neither sub. (1) (c) nor (f) authorizes a school board to make actual appointments of a new member in closed session. 74 Atty. Gen. 70.

A county board chairperson and committee are not authorized by sub. (1) (c) to meet in closed session to discuss appointments to county board committees. In appropriate circumstances, sub. (1) (f) would authorize closed sessions. 76 Atty. Gen. 276.

Sub. (1) (c) does not permit closed sessions to consider employment, compensation, promotion, or performance evaluation policies to be applied to a position of employment in general. 80 Atty. Gen. 176.

A governmental body may convene in closed session to formulate collective bargaining strategy, but sub. (3) requires that deliberations leading to ratification of a ten-

ative agreement with a open session. 81
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tative agreement with a bargaining unit, as well as the ratification vote, must be held in open session. 81 Atty. Gen. 139.

"Evidentiary hearing" as used in s. 19.85 (1) (b), means a formal examination of accusations by receiving testimony or other forms of evidence that may be relevant to the dismissal, demotion, licensing, or discipline of any public employee or person covered by that section. A council that considered a mayor's accusations against an employee in closed session without giving the employee prior notice violated the requirement of actual notice to the employee. *Campana v. City of Greenfield*, 38 F. Supp. 2d 1043 (1999).

Closed Session, Open Book: Sifting the *Sands* Case. *Bach*. Wis. Law. Oct. 2009.

19.851 Closed sessions by government accountability board. The government accountability board shall hold each meeting of the board for the purpose of deliberating concerning an investigation of any violation of the law under the jurisdiction of the ethics and accountability division of the board in closed session under this section. Prior to convening under this section, the government accountability board shall vote to convene in closed session in the manner provided in s. 19.85 (1). No business may be conducted by the government accountability board at any closed session under this section except that which relates to the purposes of the session as authorized in this section or as authorized in s. 19.85 (1).

History: 2007 a. 1.

19.86 Notice of collective bargaining negotiations. Notwithstanding s. 19.82 (1), where notice has been given by either party to a collective bargaining agreement under subch. I, IV, V, or VI of ch. 111 to reopen such agreement at its expiration date, the employer shall give notice of such contract reopening as provided in s. 19.84 (1) (b). If the employer is not a governmental body, notice shall be given by the employer's chief officer or such person's designee.

History: 1975 c. 426; 1987 a. 305; 1993 a. 215; 1995 a. 27; 2007 a. 20; 2009 a. 28.

19.87 Legislative meetings. This subchapter shall apply to all meetings of the senate and assembly and the committees, subcommittees and other subunits thereof, except that:

(1) Section 19.84 shall not apply to any meeting of the legislature or a subunit thereof called solely for the purpose of scheduling business before the legislative body; or adopting resolutions of which the sole purpose is scheduling business before the senate or the assembly.

(2) No provision of this subchapter which conflicts with a rule of the senate or assembly or joint rule of the legislature shall apply to a meeting conducted in compliance with such rule.

(3) No provision of this subchapter shall apply to any partisan caucus of the senate or any partisan caucus of the assembly, except as provided by legislative rule.

(4) Meetings of the senate or assembly committee on organization under s. 71.78 (4) (c) or 77.61 (5) (b) 3. shall be closed to the public.

History: 1975 c. 426; 1977 c. 418; 1987 a. 312 s. 17.

Sub. (3) applied to a closed meeting of the members of one political party on a legislative committee to discuss a bill. *State ex rel. Lynch v. Conia*, 71 Wis. 2d 662, 239 N.W.2d 313 (1976).

19.88 Ballots, votes and records. (1) Unless otherwise specifically provided by statute, no secret ballot may be utilized to determine any election or other decision of a governmental body except the election of the officers of such body in any meeting.

(2) Except as provided in sub. (1) in the case of officers, any member of a governmental body may require that a vote be taken at any meeting in such manner that the vote of each member is ascertained and recorded.

(3) The motions and roll call votes of each meeting of a governmental body shall be recorded, preserved and open to public inspection to the extent prescribed in subch. II of ch. 19.

History: 1975 c. 426; 1981 c. 335 s. 26.

Under sub. (1), a common council may not vote to fill a vacancy on the common council by secret ballot. 65 Atty. Gen. 131.

19.89 Exclusion of members. No duly elected or appointed member of a governmental body may be excluded from any meeting of such body. Unless the rules of a governmental body provide to the contrary, no member of the body may be excluded from any meeting of a subunit of that governmental body.

History: 1975 c. 426.

19.90 Use of equipment in open session. Whenever a governmental body holds a meeting in open session, the body shall make a reasonable effort to accommodate any person desiring to record, film or photograph the meeting. This section does not permit recording, filming or photographing such a meeting in a manner that interferes with the conduct of the meeting or the rights of the participants.

History: 1977 c. 322.

19.96 Penalty. Any member of a governmental body who knowingly attends a meeting of such body held in violation of this subchapter, or who, in his or her official capacity, otherwise violates this subchapter by some act or omission shall forfeit without reimbursement not less than \$25 nor more than \$300 for each such violation. No member of a governmental body is liable under this subchapter on account of his or her attendance at a meeting held in violation of this subchapter if he or she makes or votes in favor of a motion to prevent the violation from occurring, or if, before the violation occurs, his or her votes on all relevant motions were inconsistent with all those circumstances which cause the violation.

History: 1975 c. 426.

The state need not prove specific intent to violate the Open Meetings Law. *State v. Swanson*, 92 Wis. 2d 310, 284 N.W.2d 655 (1979).

19.97 Enforcement. (1) This subchapter shall be enforced in the name and on behalf of the state by the attorney general or, upon the verified complaint of any person, by the district attorney of any county wherein a violation may occur. In actions brought by the attorney general, the court shall award any forfeiture recovered together with reasonable costs to the state; and in actions brought by the district attorney, the court shall award any forfeiture recovered together with reasonable costs to the county.

(2) In addition and supplementary to the remedy provided in s. 19.96, the attorney general or the district attorney may commence an action, separately or in conjunction with an action brought under s. 19.96, to obtain such other legal or equitable relief, including but not limited to mandamus, injunction or declaratory judgment, as may be appropriate under the circumstances.

(3) Any action taken at a meeting of a governmental body held in violation of this subchapter is voidable, upon action brought by the attorney general or the district attorney of the county wherein the violation occurred. However, any judgment declaring such action void shall not be entered unless the court finds, under the facts of the particular case, that the public interest in the enforcement of this subchapter outweighs any public interest which there may be in sustaining the validity of the action taken.

(4) If the district attorney refuses or otherwise fails to commence an action to enforce this subchapter within 20 days after receiving a verified complaint, the person making such complaint may bring an action under subs. (1) to (3) on his or her relation in the name, and on behalf, of the state. In such actions, the court may award actual and necessary costs of prosecution, including reasonable attorney fees to the relator if he or she prevails, but any forfeiture recovered shall be paid to the state.

(5) Sections 893.80 and 893.82 do not apply to actions commenced under this section.

History: 1975 c. 426; 1981 c. 289; 1995 a. 158.

Judicial Council Note, 1981: Reference in sub. (2) to a "writ" of mandamus has been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto. [Bill 613-A]

Awards of attorney fees are to be at a rate applicable to private attorneys. A court may review the reasonableness of the hours and hourly rate charged, including the rates for similar services in the area, and may in addition consider the peculiar facts

of the case and the responsible party's ability to pay. *Hodge v. Town of Turtle Lake*, 190 Wis. 2d 181, 526 N.W.2d 784 (Cl. App. 1994).

Actions brought under the open meetings and open records laws are exempt from the notice provisions of s. 893.80 (1). *Auchinleck v. Town of LaGrange*, 200 Wis. 2d 585, 547 N.W.2d 587 (1996), 94-2809.

Failure to bring an action under this section on behalf of the state is fatal and deprives the court of competency to proceed. *Fabyan v. Achtenhagen*, 2002 WI App 214, 257 Wis. 2d 310, 652 N.W.2d 649, 01-3298.

Complaints under the open meetings law are not brought in the individual capacity of the plaintiff but on behalf of the state, subject to the 2-year statute of limitations under s. 893.93 (2). *Leung v. City of Lake Geneva*, 2003 WI App 129, 265 Wis. 2d 674, 666 N.W.2d 104, 02-2747.

When a town board's action was voided by the court due to lack of statutory authority, an action for enforcement under sub. (4) by an individual as a private attorney general on behalf of the state against individual board members for a violation of the open meetings law that would subject the individual board members to civil forfeitures was not rendered moot. *Lawton v. Town of Barton*, 2005 WI App 16, 278 Wis. 2d 388, 692 N.W.2d 304, 04-0659.

19.98 Interpretation by attorney general. Any person may request advice from the attorney general as to the applicability of this subchapter under any circumstances.

History: 1975 c. 426.

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VERIFIED OPEN MEETINGS LAW COMPLAINT

Now comes the complainant, Peter Barca, pursuant to Wis. Stat. §§ 19.96 and 19.97,

being first duly sworn on oath alleges and complains:

1. That I am an adult resident of the State of Wisconsin and am the elected Representative of the 64th Assembly District.
2. That I make this affidavit on my own personal knowledge.
3. That my principal office is located at Room 201 West, State Capitol, Madison, WI, 53708.
4. That Jeff Fitzgerald, whose principal office is located at Room 211 West, State Capitol, Madison, WI 53708, is on the day of March 10, 2011, chief presiding officer of the Wisconsin Assembly, and that the Wisconsin Assembly is a governmental body within the meaning of Wis. Stat. §§ 19.82(1) and 19.87;
5. That Scott Fitzgerald, whose principal office is located at Room 211 South, State Capitol, P.O. Box 7882, Madison, Wisconsin, 53707-7882, is on the day of March 10, 2011, chief presiding officer of the Wisconsin Senate, and that the Wisconsin Senate is a governmental body within the meaning of Wis. Stat. §§ 19.82(1) and 19.87;
6. That Representative Jeff Fitzgerald and Senator Scott Fitzgerald presided over a meeting of the Joint Committee of Conference on January 2011 Special Session Assembly Bill 11 at 6:00 p.m. on the 9th day of March 1, 2011, at the Senate Parlor, State Capitol, Dane County, Wisconsin;

7. That the meeting of Conference Committee was attended by 2 Senators and 3 Representatives, and that I was the sole Democratic member of the Legislature in attendance;

8. That the members of the Senate voted on and passed Special Session Assembly Bill 11 at the meeting, even though the Senate had not previously voted on or passed Assembly Bill 11 or the companion Senate Bill; a floor period of the Senate had not been called or publicly noticed; and the meeting was announced to the public and members of the legislature as a meeting of the Joint Committee of Conference.

9. That under Joint Rule 3 of the Wisconsin Legislature, a Committee of Conference "consisting of 3 members from each house may be requested by either house" in "all cases of disagreement between the senate and assembly on amendments, adopted by either house to a bill or joint resolution passed by the other house." Joint Rule 3(1).

10. That under Joint Rule 3 of the Wisconsin Legislature, the Committee of Conference "shall meet and state to each other, orally or in writing, the reasons of their respective houses for or against the disagreement, and confer thereon, and shall report to their respective houses any agreement they arrive at by the vote of at least a majority of the members of the committee representing each house." Joint Rule 3(1)(a).

11. That under Joint Rule 3 of the Wisconsin Legislature, "when the committee of conference has reached agreement the report shall be first presented, if a senate bill or joint resolution, to the assembly and, if an assembly bill or joint resolution, to the senate." Joint Rule 3(1)(b).

12. That under Joint Rule 3 of the Wisconsin Legislature, "approval of the conference report by a roll call vote in each house sufficient to constitute final passage of the proposal shall be final passage of the bill or final adoption and concurrence in the joint resolution in the form and with the changes proposed by the report."

13. That the meeting of "the Joint Committee of Conference on January 2011 Special Session Assembly Bill 11" convened at 6:00 p.m. on the 9th day of March 1, 2011, was not conducted in compliance with Joint Rule 3, and is not exempt from the requirements of the Open Meetings Law, as mandated by Wis. Stat. §§ 19.87 and 19.87(2);

14. That the public notice for the meeting was misleading and insufficient to apprise the public and the news media that the majority of the Senate would take a vote to pass the bill, which had not previously passed the Senate;

15. That the public notice of the meeting did not set forth the time, date, place and subject matter of the meeting in such form as was reasonably likely to apprise members of the public and the news media thereof in violation of Wis. Stat. § 19.84(2);

16. That I did not receive notice of the meeting until 4:20 p.m. on March 9, 2010;

17. That the public notice of the meeting was not given 24 hours in advance of the meeting and no good cause existed such that notice of 24 hours was impossible or impractical, in violation of Wis. Stat. § 19.84 (3);

18. That even if good cause existed, public notice of the meeting was given less than two hours before the meeting, in violation of Wis. Stat. § 19.84 (4);

19. That there has been an extremely high level of public interest in Special Session Assembly Bill 11;

20. That the meeting was held in the Senate Parlor, which is a small room with very limited space for the public, and was not reasonably accessible to members of the public or all citizens, in violation of Wis. Stat. §§19.81(2) and 19.82(3);

21. That the Capitol was locked before the meeting and that citizens who wished to attend the meeting could not enter the building to attend the meeting, in violation of Wis. Stat. §§ 19.81(2), 19.82(3), and 19.96;

22. That, after the meeting convened, I repeatedly objected to the meeting on grounds that it violated the Open Meetings Law, and my objection was overruled or ignored by Senator Scott Fitzgerald;

23. That Scott Fitzgerald, Jeff Fitzgerald, and all other participants knowingly attended the meeting held in violation of the Open Meetings law and are thereby subject to the penalties prescribed in Wis. Stat. § 19.96;

24. That declaratory and injunctive relief are necessary under Wis. Stat. § 19.97(2) to avoid irreparable injury to the public;

25. That the action taken in the meeting should be ordered void under Wis. Stat. § 19.97(3);

26. That the following documentary evidence of said acts or omissions is attached to this complaint:

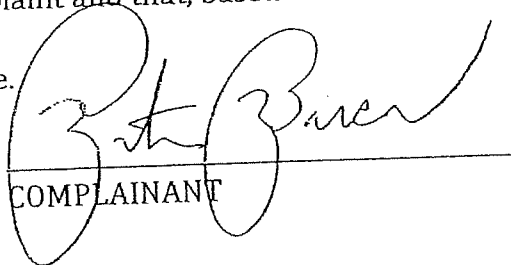
- a. Meeting Notice
- b. Joint Rule 3
- c. Senate Rule 93
- d. Email of Notice to Legislators

27. That this complaint is made to the District Attorney for Dane County under the provisions of Wis. Stat. § 19.97, and that the district attorney may bring an action to recover the forfeiture provided in Wis. Stat. § 19.96 and to petition for declaratory and injunctive relief pursuant to Wis. Stat. §19.96(2).


WHEREFORE, complainant prays that the District Attorney for County, Wisconsin, timely institute an action against Scott Fitzgerald and Jeff Fitzgerald to recover the forfeiture provided in Wis. Stat. § 19.96, and to obtain declaratory and injunctive relief pursuant to Wis. Stat. § 19.96(2) together with reasonable costs and disbursements as provided by law.

STATE OF WISCONSIN)
) ss.
COUNTY OF)

Peter Barca, being first duly sworn on oath deposes and says that he is the above-named complainant, that he has read the foregoing complaint and that, based on his or her knowledge, the contents of the complaint are true.


COMPLAINANT

Subscribed and sworn to before me
this 10th day of March, 2011.


Notary Public, State of Wisconsin

My Commission: is permanent

McGuire, Thaddeus

From: Renk, Jeff
Sent: Wednesday, March 09, 2011 4:18 PM
Subject: Committee of Conference on January 2011 Special Session Assembly Bill 11 meeting at 6:00 P.M. on Wednesday, March 9, 2011

Attachments: Conference Notice - AB11JR1.doc

Jeffrey Renk

Assistant Chief Clerk

Wisconsin Senate

Room B20 Southeast, State Capitol

(608) 266-2517

jeff.renk@legis.wisconsin.gov

3/10/2011

EXECUTIVE SESSION

Committee of Conference on January 2011 Special Session Assembly Bill 11

The committee will hold an executive session on the following items at the time specified below:

Wednesday, March 9, 2011

6:00 PM

Senate Parlor

State Capitol

January 2011 Special Session Assembly Bill 11

Relating to: state finances, collective bargaining for public employees, compensation and fringe benefits of public employees, the state civil service system, the Medical Assistance program, sale of certain facilities, granting bonding authority, and making an appropriation.

By Committee on Assembly Organization, by request of Governor Scott Walker.

Seating for the public and legislative staff will be limited. Access for the public will be available by contacting the Sergeant-at-Arms staff outside the 2nd floor entrance of the Senate Chamber 30 minutes prior to the start of the meeting.

Senator Scott Fitzgerald
Senate Chair

Representative Jeff Fitzgerald
Assembly Chair

Joint Rule 3

Joint Rule 3

Joint Rule 3 . Committee of conference.

Joint Rule 3

Joint Rule 3 (1)

(1) In all cases of disagreement between the senate and assembly on amendments, adopted by either house to a bill or joint resolution passed by the other house, a committee of conference consisting of 3 members from each house may be requested by either house, and the other house shall appoint a similar committee. At least one member from each house shall be a member of the minority party.

Joint Rule 3

Joint Rule 3 (1) (a)

(a) The usual manner of procedure is as follows: If a bill of one house has been amended and passed by the other house, and has been returned to the house of origin and the house of origin has refused to concur in an amendment, the house of origin may appoint a committee of conference and notify the other house, which shall appoint a committee of conference unless it votes to recede from its amendment. Such committees shall be appointed as provided in the rules of each house. The joint committee shall meet and state to each other, orally or in writing, the reasons of their respective houses for or against the disagreement, and confer thereon, and shall report to their respective houses any agreement they arrive at by the vote of at least a majority of the members of the committee representing each house.

Joint Rule 3

Joint Rule 3 (1) (b)

(b) When the committee of conference has reached agreement the report shall be first presented, if a senate bill or joint resolution, to the assembly and, if an assembly bill or joint resolution, to the senate. The vote by each house to approve the conference report constitutes final action on the proposal and may not be reconsidered.

Joint Rule 3

Joint Rule 3 (1) (c)

(c) Approval of the conference report by a roll call vote in each house sufficient to constitute final passage of the proposal shall be final passage of the bill or final adoption and concurrence in the joint resolution in the form and with the changes proposed by the report.

Joint Rule 3

Joint Rule 3 (1)(d)

(d) If the committee of conference is unable to agree, another committee of conference consisting of new members may be appointed as provided in the rules of each house and may proceed to further consideration of the proposal.

Joint Rule 3

Joint Rule 3 (2)

(2) A committee of conference shall meet on the call of either cochairperson.

Joint Rule 3 3

Joint Rule 3 (3)

(3) A report of a committee of conference may not be amended and may not be divided.

[(1) and (2) am. 1987 SJR-48]

[(1) m.am. 2001 AJR-15]

[(2) and (3) cr. 2001 AJR-15]

Senate Rule 93

Senate Rule 93. Special or extraordinary sessions. Unless otherwise provided by the senate for a specific special or extraordinary session, the rules of the senate adopted for the biennial session, with the following modifications, apply to each special session called by the governor and to each extraordinary session called by the senate and assembly organization committees or called by a joint resolution approved by both houses:

Senate Rule 93 (1)

(1) Except as provided in sub. (1d), a proposal or amendment may not be considered unless it accomplishes the special purposes for which the special session was convened or the business specified in the action authorizing the extraordinary session. Notwithstanding rule 46 (6), any proposal that is adversely and finally disposed of for the biennial session may be revived by specific inclusion in the action authorizing an extraordinary session, provided that the proposal had not failed a vote of concurrence or passage in the senate. Any proposal revived under this subsection is considered to be at the same stage of the proceedings as it had attained upon being adversely and finally disposed of.

Senate Rule 93 (1d)

(1d) Resolutions offering commendations, congratulations, or condolences, memorializing congress or an individual, or affecting senate or legislative rules or proceedings are declared not to be within the meaning of the term "business" under the constitutional provision limiting the matters to be considered during special sessions to those enumerated in the governor's call for a special session. All such matters may be considered during any extraordinary session.

Senate Rule 93 (1p)

(1p) A senate proposal may not be considered unless it is recommended to be introduced, offered, or considered by the committee on senate organization, the senate committee on finance, the joint committee on finance, the joint committee on legislative organization, or by the joint committee on employment relations.

Senate Rule 93 (2)

(2) A notice of a committee meeting is not required other than posting on the legislative bulletin board, and a bulletin of committee hearings may not be published.

Senate Rule 93 (3)

(3) The daily calendar is in effect immediately upon posting on the legislative bulletin boards. The calendar need not be distributed.

Senate Rule 93 (4)

(4) Any point of order shall be decided within one hour.

Senate Rule 93 (5)

(5) A motion may not be entertained to postpone action to a day or time certain.

Senate Rule 93 (6)

(6) Any motion to advance a proposal and any motion to message a proposal to the assembly may be adopted by a majority of those present and voting.

[cr. 1983 S.Res. 4]

[(intro.) am. 1989 S.Res. 3]

[(1) and (3) am. 1995 S.Res. 2]

[(1) to (3) and (5) am. 2001 S.Res. 2]

[(intro.), (1), (1p) and (6) am. 2003 S.Res. 3]

[(1d) (from rule 33 (3)) am. 2003 S.Res. 3]

[(intro.), (1), (1d), (1p) and (2) am. 2005 S.Res. 2]

NOW COMES THE COMPLAINANT Kathleen Falk, personally, and the County of Dane, as and for a verified complaint pursuant to Wis. Stat. Sec. 19.96 and 19.97 alleges and complains as follows:

1. That Kathleen Falk states she is a resident of the City of Madison, Wisconsin and that her business post office address is City County Building, Room 421, 210 Martin Luther King Jr. Blvd., WI 53703.
2. That she is the acting County Executive for Dane County, Wisconsin and was formerly the elected County Executive for Dane County, Wisconsin.
3. That Wisconsin State SENATOR SCOTT FITZGERALD whose business post office address is Room 211 South, State Capitol, Madison, Wisconsin, on the 9th day of March, 2011, is the Senate Majority Leader of the State of Wisconsin, currently presiding as the chair of the Joint Legislative Conference Committee and that the Conference Committee and the State Senate are both governmental bodies within the meaning of Wis. Stats. sec. 19.82(1).
4. That SENATOR SCOTT FITZGERALD, SENATOR MICHAEL ELLIS, REPRESENTATIVE JEFF FITZGERALD AND REPRESENTATIVE SCOTT SUDER knowingly attended a meeting of the Joint Legislative Conference Committee said governmental bodies held in violation of Wis. Stat. Sec. 19.84, 19.87, 19.88 and otherwise violated those sections in they failed to provide the requisite and timely notice for the committee meeting and the Senate vote as required by law. They were warned in the committee by State Representative Peter Barca that they would be violating the Open Meetings provisions of Chapter 19 by proceeding. Representative Barca, who read from 2010 guidance of the Wisconsin Attorney General on Open Meetings, and his warning were ignored.
5. That SENATOR SCOTT FITZGERALD, SENATOR MICHAEL ELLIS, REPRESENTATIVE JEFF FITZGERALD AND REPRESENTATIVE SCOTT SUDER voted in favor of the alleged amendments to Senate Bill 11 bill at the Joint Legislative Conference Committee meeting, said amendments to purportedly strip the bill of any fiscal impacts so that the bill could be forwarded within minutes to the full Senate for consideration. That at this committee meeting, SENATOR SCOTT FITZGERALD, SENATOR MICHAEL ELLIS, REPRESENTATIVE JEFF FITZGERALD AND REPRESENTATIVE SCOTT SUDER failed to heed the warning of Representative Barca and are thereby subject to the penalties prescribed in Wis. Stat. Sec. 19.96 and in addition the voiding any action taken by the Joint Legislative Conference Committee or the Wisconsin Senate in violation of the Open Meetings Laws of Wisconsin.

6. The following witnesses can testify to the said acts or omissions:

Rep. Peter Barca – Room 201 West, State Capitol, Madison, WI 53703 – Phone # 266-5504

Sen. Scott Fitzgerald - Room 211 South, State Capitol, Madison, WI 53703 – Phone # 266-5660.

Members of the news media and public who attended the committee meeting or Senate vote.

All Republican members of the Wisconsin Senate.

7. That the following documentary evidence of said acts or omissions is available: video footage of the committee meeting exists from various news outlets, particularly WisconsinEye, Public Affairs Network, upon information and belief statements of SENATOR SCOTT FITZGERALD confirming that less than 24 hours notice was given for both the Joint Legislative Conference Committee and the vote of the State Senate, also upon information and belief notices for the Joint Legislative Conference Committee or the Wisconsin Senate vote that were posted with less than 2 hours notice.

8. That this complaint is made to the District Attorney for Dane County, Wisconsin and the Attorney General of the State of Wisconsin to timely institute an action against SENATOR SCOTT FITZGERALD, SENATOR MICHAEL ELLIS, REPRESENTATIVE JEFF FITZGERALD AND REPRESENTATIVE SCOTT SUDER and members of the Wisconsin Senate who voted in favor of the "Budget Repair Bill" on March 9, 2011 to recover the forfeiture provided in Wis. Stat. Sec. 19.96, together with reasonable costs and disbursements as provided by law as well as further relief voiding any action taken following a violation of the Open Meetings Laws. Such action would include the voiding of amendments to Senate Bill 11 made during the improperly noticed and therefore, illegal meeting of the

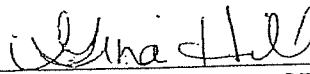
Joint Finance Committee and the subsequent approval of the purportedly amended Senate Bill 11 which was both the product of an illegal meeting of the Joint Finance Committee and the product of a vote taken during an improperly noticed and therefore illegal meeting of the Wisconsin Senate. Upon information and belief the vote in the Senate was 18-1 with Senator Dale Schultz voting "no."

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Kathleen Falk, being first duly sworn on oath deposes and says that he is the above-named Complainant, that she has read the foregoing Complaint and that, based on her knowledge, the contents of the Complaint are true.


KATHLEEN FALK - COMPLAINANT

Subscribed and sworn to before me
this 10th day of March, 2011.


Notary Public, State of Wisconsin
My commission: 7-14-13.

COPY

STATE OF WISCONSIN ex rel
Martin Beil
8033 Excelsior Drive, Suite C
Madison, WI 53717,

Bauer & Bach, LLC
ATTORNEYS AT LAW

Plaintiff,

MICHAEL R. BAUER

123 E. MAIN STREET, SUITE 300
MADISON, WI 53703

v.

PHONE 608.260.0295 FAX 608.260.0002
E-MAIL bauer@bauer-bach.com

STATE OF WISCONSIN
SENATE, and
SCOTT FITZGERALD, Wisconsin
Senate Minority Leader and as a
member of the Wisconsin Senate, and
STATE OF WISCONSIN
ASSEMBLY, and
JEFF FITZGERALD, Wisconsin
Assembly Speaker and as a
member of the Wisconsin Assembly,

Defendants.

VERIFIED COMPLAINT

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Martin Beil, being first duly sworn on oath, alleges that the defendants have violated subchapter V of Chapter 19, Wisconsin Statutes, as follows:

1. Plaintiff, Martin Beil, is an adult resident of the State of Wisconsin whose business address is 8033 Excelsior Drive, Suite C, Madison, WI 53717.
2. Plaintiff, State of Wisconsin, is a sovereign state of the United States of America, with its principal offices at the State Capitol in Madison, Wisconsin.

3. Defendant Wisconsin State Senate is a legislative body of the State of Wisconsin, with its principal offices at the State Capitol in Madison, Wisconsin. Robert Marchant is the Chief Clerk of the Wisconsin Senate.

4. Defendant Scott Fitzgerald is an adult resident of the State of Wisconsin, whose address is N4652 Maple Road, Juneau, Wisconsin 53039. At all times pertinent to the events of this complaint, Scott Fitzgerald has served as the Wisconsin Senate Majority Leader and has been a member of the Wisconsin Senate and served as chair of the conference committee for the Special Session Budget Repair Bill.

5. Defendant Wisconsin State Assembly is a legislative body of the State of Wisconsin, with its principal offices at the State Capitol in Madison, Wisconsin. Patrick Fuller is the Chief Clerk of the Wisconsin Assembly.

6. Defendant Jeff Fitzgerald is an adult resident of the State of Wisconsin, whose address is 10 Sunset, Horicon, Wisconsin 53032. At all times pertinent to the events of this complaint, Jeff Fitzgerald has served as the Wisconsin Assembly Speaker and has been a member of the Wisconsin Assembly.

7. Pursuant to Wis. Stat. § 19.97(1), the district attorney may enforce the state open meetings law on behalf of any person who has filed a verified complaint.

FIRST CLAIM

Violation of Wis. Stat. § 19.83—Open Session

8. On March 9, 2011, Defendants held a meeting of a Conference Committee to consider Assembly Bill No. 11, known as the Budget Repair Bill.

9. The committee took action on the bill, passing it on a vote of four ayes and two nays

10. On March 9, 2011, the public was denied entry to the Wisconsin Capitol, thus precluding members of the public, except those already inside the building from attending the committee meeting.

11. Wis. Stat. § 19.83 requires that every meeting of a governmental body, except as provided in § 19.85 be held in open session.

SECOND CLAIM

Violation of Wis. Stat. §§ 19.83, 19.84(2) and (3)—Open Session/Public Notice

12. Plaintiff reasserts the allegations set forth in Paragraphs 8 and 9.

13. Notice of the Conference Committee meeting referenced above was given to legislators, the media, and the public less than two hours prior to the meeting of the committee.

14. Wis. Stat. § 19.84(3) requires that meetings be noticed, absent special circumstances, at least 24 hours in advance of the meeting.

15. The Wisconsin Senate Clerk has issued a statement that Senate Rule 93 allows the Wisconsin Senate to ignore the mandates of Wis. Stat. §§ 19.83, 19.84(2) and (3).

16. Despite Wisconsin Senate Rules to the contrary, the plain language of Wisconsin Statutes must be followed.

WHEREFORE, Plaintiff asks for judgment as follows:

1. An order of the Court finding that the actions of the defendants are voidable and void for failure to be done in accordance with the provisions of the Open Meetings Law, pursuant to Wis. Stat. § 19.97(3);

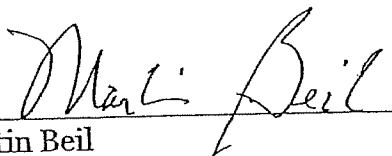
2. For the remedies described in Wis. Stat. § 19.96, providing for forfeitures being assessed against any member of the State Legislature who knowingly attended a meeting in violation of state statute;

3. For reasonable attorney fees;

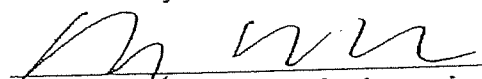
4. For costs and disbursements; and

5. Such other relief as the Court deems appropriate.

Dated this 10th day of March, 2011.


Martin Beil

Subscribed and sworn to before me
this 10th day of March, 2011.


Notary Public, State of Wisconsin
My commission is permanent.

COPY

NOW COMES the complainant Dave Cieslewicz personally and as Mayor of the City of Madison for a verified complaint pursuant to Wis. Stat. Sec. 19.96 and 19.97 alleges and complains as follows:

1. That Dave Cieslewicz states he is a resident of the City of Madison, Wisconsin and that his business post office address is City County Building, Room 403, 210 Martin Luther King Jr. Blvd. , WI 53703. That he is the duly elected Mayor for the City of Madison, a Wisconsin municipal corporation.
2. That Wisconsin State SENATOR SCOTT FITZGERALD whose business post office address is Room 211 South, State Capitol, Madison, Wisconsin on the 9th day of March, 2011, is the Senate Majority Leader of the State of Wisconsin, currently presiding as the chair of the Joint Legislative Conference Committee and that said conference committee and the State Senate are both governmental bodies within the definition provided by of Wis. Stats. sec. 19.82(1).
3. That SENATOR SCOTT FITZGERALD, SENATOR MICHAEL ELLIS, REPRESENTATIVE JEFF FITZGERALD AND REPRESENTATIVE SCOTT SUDER knowingly attended a meeting of the Joint Legislative Conference Committee held in violation of Wis. Stat. Sec. 19.84, 19.87, 19.88 and otherwise violated those sections in that they failed to provide the requisite and timely notice for the committee meeting and the Senate vote as required by law and were warned in the committee by State Assemblyman Peter Barca that they would be violating the Open Meetings provisions of Chapter 19 by proceeding. Assemblyman Barca, who further read from a 2010 opinion of the Wisconsin Attorney General, was ignored.
4. Upon information and belief the notice for the meeting of the Joint Legislative Conference Committee and a separate notice of the Wisconsin Senate meeting were posted at or about 4:00 PM (CST) or "shortly thereafter". The Meeting of the Joint Legislative Conference Committee began at or about 6:04 PM (CST). The Wisconsin Senate met immediately following the meeting of the Joint Legislative Conference Committee.
5. That SENATOR SCOTT FITZGERALD, SENATOR MICHAEL ELLIS, REPRESENTATIVE JEFF FITZGERALD AND REPRESENTATIVE SCOTT SUDER (three others) voted in favor of the alleged amendments to Senate Bill 11 at the committee meeting, said amendments to purportedly strip the bill of any fiscal impacts so that the bill could be forwarded within minutes to the full Senate for consideration. That at this committee meeting SCOTT FITZGERALD, SENATOR MICHAEL ELLIS, REPRESENTATIVE JEFF FITZGERALD AND REPRESENTATIVE SCOTT SUDER failed to heed the warning of Assemblyman Barca. and are thereby subject to the penalties prescribed in Wis.

Stat. Sec. 19.96 and in addition the voiding any action taken by the Joint Legislative Conference Committee or the Wisconsin Senate in violation of the Wisconsin Open Meetings Laws. Additionally, Senate Majority Leader SENATOR FITZGERALD failed to inform the Senate that REPRESENTATIVE BARCA had raised concerns that said meetings were not properly noticed and thus, violated the Wisconsin Open Meetings Laws.

COPY

6. The following witnesses can testify to the said acts or omissions:

Representative Peter Barca

Representative Scott Fitzgerald

All Republican members of the Wisconsin Senate.

Members of the news media and public who attended said meetings.

7. That the following documentary evidence of said acts or omissions is available: video footage of the committee meeting exists from various news outlets, particularly WisconsinEye, Public Affairs Network, upon information and belief statements of SENATOR SCOTT FITZGERALD confirming that less than 24 hours notice was given, also upon information and belief no official records exist to establish the timing of said meeting notices and furthermore, it cannot be established with certainty that notices for the Joint Legislative Conference Committee or the Wisconsin Senate were posted such that the public was provided with 2 or more hours notice of said meetings..

8. That this complaint is made to the District Attorney for Dane County, Wisconsin and to the Attorney General for the State of Wisconsin, to timely institute an action against SENATOR SCOTT FITZGERALD, SENATOR MICHAEL ELLIS, REPRESENTATIVE JEFF FITZGERALD AND REPRESENTATIVE SCOTT SUDER and members of the Wisconsin Senate who voted in favor of the Senate Bill 11, the "Budget Repair Bill" on March 9, 2011 to recover the forfeiture provided in Wis. Stat. Sec. 19.96, together with reasonable costs and disbursements as provided by law as well as further relief including voiding any action taken following a violation of the Open Meetings Laws. Such action would include the voiding of amendments to Senate Bill 11 made during the improperly noticed and therefore, illegal meeting of the Joint Legislative Conference Committee and the subsequent approval of the purportedly amended Senate Bill 11 which was both the product of an illegal meeting of the Joint Legislative Conference Committee and the product of a vote taken during an improperly noticed and therefore illegal meeting of the Wisconsin Senate. Upon information and belief the vote in the Senate was 18-1

with Senator Dale Schultz voting "no."

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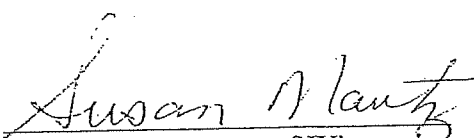
STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Dave Cieslewicz, being first duly sworn on oath deposes and says that he is the above-named Complainant, that he has read the foregoing Complaint and that, based on his/her knowledge, the contents of the Complaint are true.



DAVE CIESLEWICZ - COMPLAINANT

Subscribed and sworn to before me
this 10th day of March, 2011.



Notary Public, State of Wisconsin

My commission: expires 12/1/2013

COPY

EXECUTIVE SESSION

Committee of Conference on January 2011 Special Session Assembly Bill 11

The committee will hold an executive session on the following items at the time specified below:

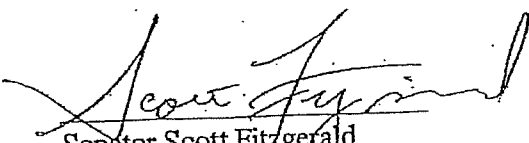
Wednesday, March 9, 2011
6:00 PM
Senate Parlor
State Capitol

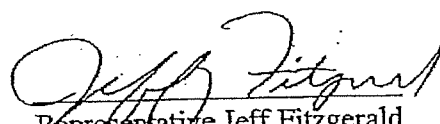
January 2011 Special Session Assembly Bill 11

Relating to: state finances, collective bargaining for public employees, compensation and fringe benefits of public employees, the state civil service system, the Medical Assistance program, sale of certain facilities, granting bonding authority, and making an appropriation.

By Committee on Assembly Organization, by request of Governor Scott Walker.

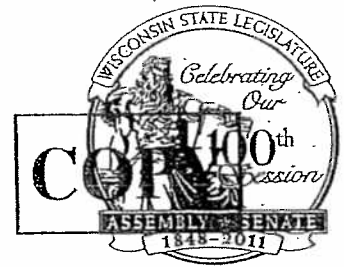
Seating for the public and legislative staff will be limited. Access for the public will be available by contacting the Sergeant-at-Arms staff outside the 2nd floor entrance of the Senate Chamber 30 minutes prior to the start of the meeting.


Senator Scott Fitzgerald
Senate Chair


Representative Jeff Fitzgerald
Assembly Chair



State of Wisconsin
SENATE CALENDAR



January 2011 Special Session

Wednesday, March 9, 2011

- | | |
|---------------|---------------------------------------------------------|
| First Order. | Call of Roll. |
| Second Order. | Chief clerk's entries. |
| Third Order. | Introduction, first reading and reference of proposals. |
| Fourth Order. | Report of committees. |

QUESTION: Shall the committee of conference report be adopted?

January 2011 Special Session Assembly Bill 11. Relating to: state finances, collective bargaining for public employees, compensation and fringe benefits of public employees, the state civil service system, the Medical Assistance program, sale of certain facilities, granting bonding authority, and making an appropriation. By Committee on Assembly Organization, by request of Governor Scott Walker.

- | | |
|-------------------|---------------------------------------------------------------------------------------------|
| Fifth Order. | Petitions and communications. |
| Sixth Order. | Referrals and receipt of committee reports concerning proposed administrative rules. |
| Seventh Order. | Advice and consent of the Senate |
| Eighth Order. | Messages from the Assembly. |
| Ninth Order. | Special Orders. |
| Tenth Order. | Consideration of motions, resolutions, and joint resolutions not requiring a third reading. |
| Eleventh Order. | Second reading and amendments of senate joint resolutions and senate bills. |
| Twelfth Order. | Second reading and amendments of assembly joint resolutions and assembly bills. |
| Thirteenth Order. | Third reading of joint resolutions and bills. |
| Fourteenth Order. | Motions may be offered. |
| Fifteenth Order. | Announcements, adjournment honors, and remarks under special privilege. |
| Sixteenth Order. | Adjournment. |

COPY

EXECUTIVE SESSION

Committee of Conference on January 2011 Special Session Assembly Bill 11

The committee will hold an executive session on the following items at the time specified below:

Wednesday, March 9, 2011

6:00 PM

Senate Parlor

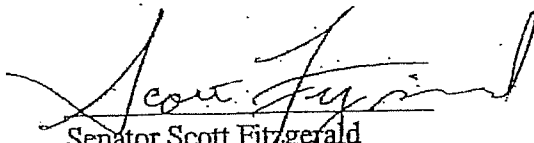
State Capitol

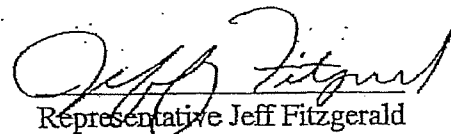
January 2011 Special Session Assembly Bill 11

Relating to: state finances, collective bargaining for public employees, compensation and fringe benefits of public employees, the state civil service system, the Medical Assistance program, sale of certain facilities, granting bonding authority, and making an appropriation.

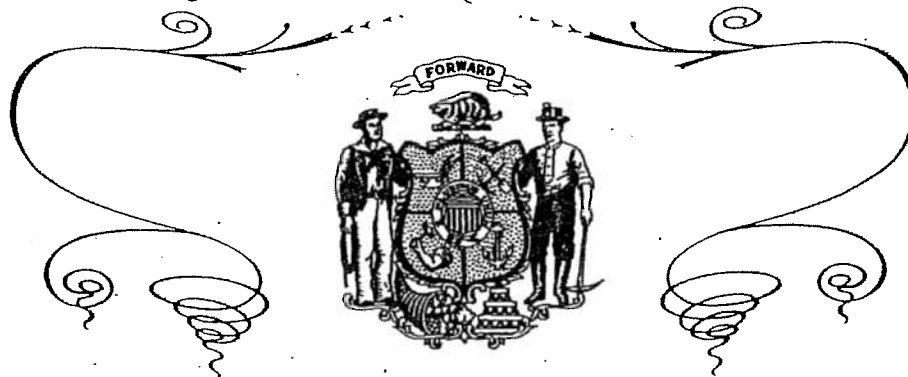
By Committee on Assembly Organization, by request of Governor Scott Walker.

Seating for the public and legislative staff will be limited. Access for the public will be available by contacting the Sergeant-at-Arms staff outside the 2nd floor entrance of the Senate Chamber 30 minutes prior to the start of the meeting.


Senator Scott Fitzgerald
Senate Chair


Representative Jeff Fitzgerald
Assembly Chair

State of Wisconsin



JOINT RULES

As last affected by 2007 Senate Joint Resolution 1
Concurred in January 3, 2007

2007-2008 SESSION SCHEDULE AT A GLANCE Created by 2007 SJR-1, January 3, 2007

January 3, 2007	(Wednesday)	2007 Inauguration
January 9, 2007	(Tuesday)	Floorperiod
Jan. 30 to Feb. 1, 2007	(Tu - Th)	Floorperiod
February 13, 2007	(Tuesday)	Floorperiod
Feb. 20 to March 1, 2007	(Tu - Th)	Floorperiod
March 13 to 15, 2007	(Tu - Th)	Floorperiod
April 17 to 26, 2007	(Tu - Th)	Floorperiod
May 3, 2007	(Thursday)	Bills sent to Governor
May 8 to 17, 2007	(Tu - Th)	Floorperiod
May 29 to June 29, 2007, OR budget passage	(Tu - Fri)	Floorperiod
August 9, 2007	(Thursday)	Nonbudget Bills sent to Governor
August 9, 2007 (or later)	(Thursday)	Budget Bill sent to Governor
Sept. 18 to 20, 2007	(Tu - Th)	Floorperiod
Oct. 23 to Nov. 8, 2007	(Tu - Th)	Floorperiod
December 11 to 13, 2007	(Tu - Th)	Floorperiod
January 10, 2008	(Thursday)	Bills sent to Governor

JOINT RULES

As last affected by 2007 Senate Joint Resolution 1.
(Concurred in January 3, 2007)

Chapter 1: JOINT PROCEDURES OF THE TWO HOUSES

JOINT RULE 1. Joint convention. Whenever there is a joint convention of the 2 houses, the president of the senate shall preside over the joint convention, if present, and the speaker of the assembly shall preside if the president is not present, and the chief clerk of the assembly shall act as clerk thereof, assisted by the chief clerk of the senate.

[am. 1981 SJR-11]
[am. 2001 AJR-15]

JOINT RULE 2. Receding from position on amendment. Whenever an amendment has been nonconcurrent in by the other house, any member may move to recede from the amendment. If the motion prevails the amendment shall thereby be reconsidered and rejected and the bill or amendment to which the amendment had been adopted by the house shall thereby be passed or concurred in, as the case may be, so that further action is not required thereon in either house.

JOINT RULE 3. Committee of conference. (1) In all cases of disagreement between the senate and assembly on amendments, adopted by either house to a bill or joint resolution passed by the other house, a committee of conference consisting of 3 members from each house may be requested by either house, and the other house shall appoint a similar committee. At least one member from each house shall be a member of the minority party.

(a) The usual manner of procedure is as follows: If a bill of one house has been amended and passed by the other house, and has been returned to the house of origin and the house of origin has refused to concur in an amendment, the house of origin may appoint a committee of conference and notify the other house, which shall appoint a committee of

conference unless it votes to recede from its amendment. Such committees shall be appointed as provided in the rules of each house. The joint committee shall meet and state to each other, orally or in writing, the reasons of their respective houses for or against the disagreement, and confer thereon, and shall report to their respective houses any agreement they arrive at by the vote of at least a majority of the members of the committee representing each house.

(b) When the committee of conference has reached agreement the report shall be first presented, if a senate bill or joint resolution, to the assembly and, if an assembly bill or joint resolution, to the senate. The vote by each house to approve the conference report constitutes final action on the proposal and may not be reconsidered.

(c) Approval of the conference report by a roll call vote in each house sufficient to constitute final passage of the proposal shall be final passage of the bill or final adoption and concurrence in the joint resolution in the form and with the changes proposed by the report.

(d) If the committee of conference is unable to agree, another committee of conference consisting of new members may be appointed as provided in the rules of each house and may proceed to further consideration of the proposal.

(2) A committee of conference shall meet on the call of either cochairperson.

(3) A report of a committee of conference may not be amended and may not be divided.

[(1) and (2) am. 1987 SJR-48]
[(1) m.am. 2001 AJR-15]
[(2) and (3) cr. 2001 AJR-15]

JOINT RULE 5. Bill recalled from governor. Any bill may be recalled by joint resolution from the governor for further consideration and shall, after having been returned to the house where it originated, be before the house for its action thereon. The bill may be reconsidered or otherwise acted upon without any reconsideration or other action thereon being first had in the other house. Any action taken shall be messaged to the other house for its concurrence.

[am. 1987 SJR-48]