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THE SUN RISES ON THE FLORIDA LEGISLATURE: THE CONSTITUTIONAL AMENDMENT ON OPEN LEGISLATIVE MEETINGS

THOMAS ROSS MCSWAIN*

DURING the 1989 and 1990 legislative sessions, the Florida Legislature fundamentally changed the way the public’s business is conducted. This change resulted from a growing willingness of the Legislature to open its meetings to the public, particularly those meetings where the most important legislative decisions are made.

The impetus for a more open Legislature came in the aftermath of the now-defunct sales tax on services (services tax).\(^1\) During consideration of the services tax in April 1987,\(^2\) key legislators and gubernatorial aides met secretly at a pizza and beer party in a lobbyist’s Tallahassee townhouse to iron out the final details of the tax.\(^3\) The public’s reaction both to the tax and to the way it was adopted was fast and furious. Enacted in the first month of the 1987 Regular Session, the tax was repealed after several special sessions in the fall of 1987.\(^4\) A perception was that the tax was formulated in secret with little or no public input. Opponents also noted that many decisions on exemptions from the tax were made at the “pizza and beer party”\(^5\)

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The views expressed in this Article are those of the author and are not intended to reflect the position of the Florida Legislature.


and that the public was unable to hear the debate, discussions, and rationale that gave rise to the decisions made at this secret gathering.6

Other factors were relevant in instituting increased openness. Two leaders in the effort to pass the services tax, Senator Dempsey J. Barron7 and Representative Samuel P. Bell, III,8 were defeated in their 1988 bids for reelection.9 Senator Barron had been a dominant figure in the Florida Senate for almost two decades. He had orchestrated the selection of all but one Senate President since his own tenure as President from 1974 to 1976.10 Likewise, Representative Bell was one of the most powerful members of the House of Representatives.11 The defeat of these key legislative leaders gave the new House and Senate leadership the best opportunity in more than ten years to fundamentally alter the operation of the Florida Legislature.12

Additionally, Governor Bob Martinez, during his 1986 campaign for election, promised to open to the public previously closed legislative meetings.13 Almost immediately after his term began, however, the Governor abandoned this promise and met with legislative leaders behind closed doors.14 His aides also participated in the “pizza and beer party” on the services tax that Martinez was then supporting.15

In October 1988, Senate President-designate Bob Crawford16 announced that he would seek to end secret legislative meetings during his two-year term as Senate President.17 Senator Crawford appointed

9. Senator Barron was defeated in the Democratic primary on September 3, 1988. Representative Bell was defeated at the general election on November 8, 1988.
15. Miami Herald, Apr. 8, 1990, at 6B, col. 3.
17. Pendleton, supra note 3; Tampa Tribune, supra note 13; Tallahassee Democrat, Oct. 18, 1988, at B2, col. 3.
the Sunshine Advisory Committee\textsuperscript{18} to review the Senate rules and make recommendations regarding open meetings.\textsuperscript{19} He noted that the public interest group Common Cause, by initiative petition, was seeking to place a constitutional amendment on the November 1990 election ballot to open legislative meetings. Crawford announced his intention, as an experiment, to amend the Senate rules before the 1989 Regular Session to require all legislative meetings to be open to the public. He hoped to then follow these changes in the Senate rules with a constitutional amendment slated for the 1990 general election ballot.\textsuperscript{20}

This Article seeks to explain the history and purposes of Amendment 4, the amendment to Article III of the Florida Constitution adopted by the voters in November 1990.\textsuperscript{21} Parts I and II of this Article review the history of open government in Florida, discuss the application of the Sunshine Law to the Legislature, and review legislative history on open legislative meetings. Part III addresses the Florida courts’ role in the ongoing debate of the 1980s. In Part IV, the development and adoption of the Florida Senate’s rules on open government, a precursor to the constitutional amendment, is examined to establish some of the concerns faced by the Legislature in crafting the constitutional amendment. Common Cause’s initiative petition proposal on open legislative meetings is analyzed and discussed in Part V. Parts VI and VII follow the evolution of the constitutional amendment in the legislative process to fully document the intent of its drafters and summarizes the editorial debate on the amendment. Actions taken by each house to implement Amendment 4 are reviewed in Part VIII.

\textsuperscript{18} Senator Crawford appointed Burke Kibler, Dexter Lehtinen, and Robert Shevin to the Sunshine Advisory Committee [hereinafter Advisory Comm.]. Kibler was elected Chairman of the Committee. He was a member of the State Board of Regents from 1967 to 1975. Lehtinen, a Republican from Miami, was a member of the Florida Senate from 1986 to 1988, and a member of the Florida House of Representatives from 1980 to 1986. He is currently acting United States Attorney for the Southern District of Florida. Shevin, a Democrat from Miami, was Attorney General of Florida from 1971 to 1979. He was a member of the Florida Senate from 1966 to 1970, and a member of the Florida House of Representatives from 1964 to 1966.


\textsuperscript{21} Fla. SJR 1990 & 2 (1990) (proposed amendment to \textit{Fla. Const. art. III, § 4}).
I. THE HISTORY OF OPEN GOVERNMENT IN FLORIDA

Florida's experiment with open government and its Sunshine Law began with the passage of chapter 67-356, Laws of Florida,22 by the 1967 Legislature—the first Legislature to meet after court-mandated reapportionment ended the "porkchop" era of Florida politics.23 The court-mandated reapportionment had increased legislative representation from the urban areas of South and Central Florida,24 and the sponsors of the Sunshine Law felt that the new urban representatives were more sensitive to media influence than the conservative, rural legislators who had dominated Florida's Legislature in the porkchop days.25 In addition, the media's active support provided a significant catalyst to the passage of the Sunshine Law.26

Before enactment of the Sunshine Law, meetings of municipal governments were regulated by section 165.22, Florida Statutes. This 1905 law provided:

(1) All meetings of any city or town council or board of aldermen of any city or town in the state, shall be held open to the public of any such city or town, and all records and books of any such city or town shall be at all times open to the inspection of any of the citizens thereof.27

In the only case that construed this statute, Turk v. Richard,28 the Florida Supreme Court held that the "all meetings" requirement applied "only to such formal assemblages of the council sitting as a joint deliberative body as were required or authorized by law to be held for the transaction of official municipal business."29 The court held:

[T]here can be no 'meeting' of [a] governing body . . . [where] the individual or separate acts of a member or the unofficial agreements of all or a part of the members of the council are ineffectual and

22. Codified at FLA. STAT. § 286.011 (1967) [hereinafter Sunshine Law].
25. Id.
26. Id.
27. FLA. STAT. § 165.22(1) (1967) (emphasis added).
28. 47 So. 2d 543 (Fla. 1950).
29. Id. at 544.
without binding force; joint, official deliberation and action as provided by law being essential.\textsuperscript{30}

In comparison, the Sunshine Law provides:

(1) \textit{All meetings of any board or commission of any state agency or authority} or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, \textit{at which official acts are to be taken are declared to be public meetings open to the public} at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.

The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.\textsuperscript{31}

Facially, the statute seems similar to its predecessor. However, relying upon legislative intent, the courts have interpreted the Sunshine Law to be far broader in application.\textsuperscript{32}

Almost immediately, the courts rejected the limited applicability of the law as it was construed in \textit{Turk v. Richard}. In \textit{Times Publishing Co. v. Williams},\textsuperscript{33} the Second District Court of Appeal held that because the Legislature is presumed to have been aware of the holding in \textit{Turk v. Richard}, the Legislature must have intended the Sunshine Law to apply to "every 'board or commission' of the state, or of any county or political subdivision over which it has dominion and control."\textsuperscript{34} The court reasoned that the inclusion of the terms "formal action" and "official acts" in the Sunshine Law, and the absence of the terms in section 165.22, was significant, and it determined that:

Every thought, as well as every affirmative act, of a public official as it relates to and is within the scope of his official duties, is a matter of public concern; and it is the entire \textit{decision-making process} that

\textsuperscript{30} \textit{Id.}
\textsuperscript{31} \textit{FLA. STAT. § 286.011(1), (2) (1989) (emphasis added).}
\textsuperscript{32} Note, \textit{supra} note 24, at 364.
\textsuperscript{33} 222 So. 2d 470 (Fla. 2d DCA 1969).
\textsuperscript{34} \textit{Id.} at 473.
the legislature intended to affect by the enactment of the statute before us. . . . Every step in the decision-making process, including the decision itself, is a necessary preliminary to formal action. It follows that each such step constitutes an "official act," an indispensable requisite to "formal action," within the meaning of the act.35

The court thought it clear that "the legislature must have intended to include more than the mere affirmative formal act of voting on an issue or the formal execution of an official document."36 Because the public can almost always determine how officials vote on a matter of record, the court reasoned that the authors of the Sunshine Law must have been seeking to make public:

[H]ow and why the officials decided to . . . act . . . . Thus, in the light of the language in Turk, supra, and of the obvious purpose of the statute, the legislature could only have meant to include therein the acts of deliberation, discussion and deciding occurring prior and leading up to the affirmative "formal action" which renders official the final decisions of the governing bodies.37

Approximately six weeks after the Times Publishing decision, the Florida Supreme Court considered the Sunshine Law in Board of Public Instruction v. Doran.38 In Doran, the court reviewed its prior holding in Turk v. Richard, and found, as had the district court, that "it would have been unnecessary to include a provision declaring certain meetings as 'public meetings' if the intent of the Legislature had been to include only formal assemblages for the transaction of official business."39 The supreme court held that "[t]he obvious intent was to cover any gathering of the members where the members deal with some matter on which foreseeable action will be taken."40 Thus, the Sunshine Law was interpreted to prohibit discussions at closed meet-

35. Id.
36. Id. at 473-74.
37. Id. at 474.
38. 224 So. 2d 693 (Fla. 1969). The decision in Times Publishing Co. v. Williams, 222 So. 2d 470 (Fla. 2d DCA 1969), was rendered May 9, 1969. The decision in Doran was rendered July 2, 1969.
39. Doran, 224 So. 2d at 698.
40. Id.
ings where a tentative decision is reached, followed by a formal meeting where a vote is recorded based upon the private discussions.41

The court in Doran also made it clear that there were no exceptions to the Sunshine Law.42 Somewhat prophetically, the court commented:

During past years tendencies toward secrecy in public affairs have been the subject of extensive criticism. Terms such as managed news, secret meetings, closed records, executive sessions, and study sessions have become synonymous with 'hanky panky' in the minds of public-spirited citizens. One purpose of the Sunshine Law was to maintain the faith of the public in governmental agencies. Regardless of their good intentions, these specified boards and commissions, through devious ways, should not be allowed to deprive the public of this inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made.43

Later, in City of Miami Beach v. Berns,44 the Florida Supreme Court reiterated that there were no exceptions to the Sunshine Law, "regardless of whether a meeting is formal or informal."45 The court noted that "[t]he Legislature did not intend to muzzle lawmakers and administrative boards to an unreasonable degree. . . . An informal conference or caucus of any two or more members permits crystallization of secret decisions to a point just short of ceremonial acceptance."46

A. Application of the Sunshine Law

The Sunshine Law is widely applied. Since Berns, the courts and the Attorney General have determined that meetings of numerous governmental entities are within the scope of the Sunshine Law: citizens' planning committees appointed by local governments;47 all municipal corporations;48 members-elect of boards, commissions, and agencies;49

42. Doran, 224 So. 2d at 700.
43. Id. at 699.
44. 245 So. 2d 38 (Fla. 1971).
45. Id. at 41.
46. Id.
47. IDS Properties, Inc. v. Town of Palm Beach, 279 So. 2d 353 (Fla. 4th DCA 1973), certified question answered, 296 So. 2d 473 (Fla. 1974).
the State Board of Regents;\textsuperscript{50} the Public Service Commission;\textsuperscript{51} county school boards;\textsuperscript{52} a downtown redevelopment task force;\textsuperscript{53} civil service boards with authority over public employees;\textsuperscript{54} government representatives during all phases of the public employee bargaining process;\textsuperscript{55} university search committees;\textsuperscript{56} regulatory boards holding grade review hearings for professional licensure;\textsuperscript{57} boards of special districts;\textsuperscript{58} and the Parole and Probation Commission's parole revocation hearings.\textsuperscript{59}

Also worthy of note is the Sunshine Law's application to situations involving staff, media representatives, public participation at open meetings, telephone conversations, meetings between mayors and city commission members, and private conversations between members of a board or commission.\textsuperscript{60} All of these issues were discussed during consideration of the Senate rules on open meetings that preceded the development of the constitutional amendment; some were discussed during actual consideration of the amendment.\textsuperscript{61}

Members of collegial bodies are not obligated under the Sunshine Law to avoid their staff during their deliberative duties, because to do so would deprive the members of the expertise of their staffs and make intelligent use of staff impossible.\textsuperscript{62} However, when public officials delegate de facto authority to act on their behalf in formulating, preparing, and promulgating plans upon which foreseeable official action is to be taken, those to whom such authority is delegated stand in the shoes of such public officials as far as applicability of the Sunshine Law.\textsuperscript{63} Generally, county commissioner's aides have not been subject to the law unless they have been delegated decision-making authority outside the ambit of staff functions, they are acting as liai-
sions between board members, or they are acting in place of board members at their direction.64

It does not violate the Sunshine Law when a news reporter repeats statements made by a member of a governing body in advance of a meeting on that particular issue.65 This conduct is authorized so long as the reporter is not being used by the member or board to act as an agent or intermediary to collect and circulate information.66 Additionally, no violation of the law occurs when a member of a public entity expresses his or her views to a reporter, anticipating that the reporter would publish the statement in the local newspaper.67

Interestingly, the Attorney General has opined that the Sunshine Law applies to political campaign functions at which an incumbent city council member, in the presence of other council members, discusses his or her position on issues about which foreseeable action will occur.68 Another opinion stated that the law does not apply to conversations between a member of a town council and the town mayor who has no vote on ordinances but may veto them.69 The Attorney General has also opined that telephone conversations between two members of a board or commission relating to public business, or conversations between two or more members of a board at which no one else is present, are not per se violations of the Sunshine Law.70 In contrast, the First District Court of Appeal has held that discussions between individual school board members and the school superintendent regarding redistricting violated the law where the discussions were “repetitive in content, in rapid-fire seriatim and of . . . obvious official portent.”71 Such meetings, the court held, resulted in “de facto meetings by two or more members of the board at which official action was taken.”72

Thus, although the Sunshine Law was broadly interpreted and given wide application, the Legislature was seemingly exempt from its requirements.

66. Id. at 128-29.
67. Id. at 129.
68. 1986 FLA. ATT'Y GEN. ANN. REP. 52-53.
70. 1971 FLA. ATT'Y GEN. ANN. REP. 48-49.
72. Id.
II. THE SUNSHINE LAW AND THE LEGISLATURE

The rules of procedure of the Senate and the House of Representatives contain many provisions that are similar to portions of the Sunshine Law. Between 1986 and 1988, the period during which the services tax was enacted and later repealed, both the House and Senate rules contained provisions that required, subject to order and decorum, all committee meetings to be open to the public. Similar rules have been in effect at least since 1967, the year the Sunshine Law was enacted.

Current rules of both houses also require prior notice of committee meetings and provide that bills heard in committee in violation of such notice requirements can be recommitted to committee under certain circumstances. However, meetings of conference committees were not explicitly required to be open to the public until the House amended its rules at the 1988 Organizational Session and the Senate amended its rules at the beginning of the 1989 Regular Session. In addition, the Florida Constitution requires that Senate and House sessions be open to the public, except for Senate sessions relating to appointments to, or removals from, office.


74. Senate Rule 2.13 provided that "[a]ll committee meetings shall be open to the public, subject always to the powers and authority of the chairman to maintain order and decorum." This rule continues in effect. See FLA. S. RULE 2.13 (1988-1992).

75. House Rule 6.25 provided that "[a]ll meetings of all committees shall be open to the public at all times, subject always to the authority of the presiding officer to maintain order and decorum." This rule also is still in effect. See FLA. H.R. RULE 6.25 (1988-1991).


80. FLA. CONST. art. III, § 4(b).

The 1885 Florida Constitution, which was in effect when the Sunshine Law was adopted in 1967, contained a similar provision. Article III, section 13 of the 1885 Florida Constitution provided that "[t]he doors of each House shall be kept open during its session except the Senate while sitting in Executive Session."
One nationally recognized expert on state legislatures, Alan Rosenthal, director of the Eagleton Institute of Politics at Rutgers University, has described the Florida Legislature as "a fairly open place compared to just about any institution." Yet despite the Legislature's relatively open nature, the applicability of the Sunshine Law to the Legislature was debated for more than ten years. The debate was primarily between the Attorney General's office and the Legislature. From time to time, the media also became involved because of meetings that were not publicized or that were closed to members of the media.

A. The Sunshine Law and the Legislature in the 1970s

One of the earliest pronouncements that the Sunshine Law was applicable to the Legislature came in a 1972 Attorney General's opinion. Senator Charles Weber asked whether it violated the Sunshine Law for two or more legislators to meet during a legislative session outside a committee room or legislative chamber to discuss or agree upon a mutual voting pattern on a particular issue, or for two or more legislators to meet before a local delegation meeting in the district to determine a course of action on a local bill. The Attorney General opined that the Legislature, in passing the Sunshine Law, "'did not intend to muzzle lawmakers . . . to an unreasonable degree.'" He determined that members of the Legislature could meet during a session either in a committee room or in the legislative chamber, "'in full view of the public and press, concerning a 'mutual voting pattern' or a course of action on a particular matter without violating the Sunshine Law.'" In addition, the Attorney General said that "'such a discussion, without prearrangement or any attempt at secrecy, at a place where the public . . . could 'listen in' if desired,'" would not constitute a violation of the law. He noted, however, that a meeting held in secret to agree upon a mutual voting pattern, intentionally excluding the public and the press, would violate the law. While the opinion was directed at meetings between two or more legislators and meetings

82. Supra note 80 (quoting City of Miami Beach v. Berns, 245 So. 2d 38, 41 (Fla. 1971)).
83. Supra note 80.
84. Id.
85. Id.
of two or more members of a local legislative delegation, the Attorney General pointed out that his interpretations applied "regardless of whether two or more legislators constituting a numerical minority of the particular committee or local delegation could control the decision of that body." 86

Two years later, the applicability of the Sunshine Law to the Legislature arose in a lawsuit challenging the validity of a special act passed by the 1973 Legislature. 87 The special act 88 dealt with annexation of an area of unincorporated Pinellas County that was in dispute between two municipalities. The City of Safety Harbor sought to have the special act declared invalid because legislators allegedly violated the Sunshine Law during consideration of the bill that ultimately became law. 89 The circuit court upheld the validity of the special act after reviewing the language of the Sunshine Law. 90 The court held that the Sunshine Law, as a penal statute, required strict construction and that the plain meaning of the statute did not include the Legislature. 91 In addition, the court determined that the Legislature had not intended to include itself within the scope of the law. 92 In dismissing the action, the court specifically acknowledged the conflict between its holding and Attorney General opinion 072-16, but noted that the opinion did not set forth the Attorney General’s rationale. 93 On appeal, the Second District Court of Appeal found it unnecessary to rule on the Sunshine Law question, upholding the decision of the trial court on other grounds. 94

B. 1977: Attorney General Action

In a 1977 Attorney General's opinion, 95 the Attorney General again found that the Legislature was subject to the Sunshine Law. Representative Eric Smith 96 prompted the Attorney General's opinion by asking

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86. Id.
89. Motion in the Nature of Complaint For Declaratory Judgment and Other Relief at 5, City of Safety Harbor v. City of Clearwater, No. 40,269 Civ. (Fla. 6th Cir. Ct. May 14, 1974).
90. City of Safety Harbor, No. 40,269 Civ. at 1-2.
91. Id. at 2.
92. Id.
93. Id.
94. City of Safety Harbor v. City of Clearwater, 330 So. 2d 840, 842 (Fla. 2d DCA 1976).
95. 1977 Fla. ATT'Y GEN. ANN. REP. 17.
whether the House could exercise its rule-making power under article III, section 4(a) of the Florida Constitution to authorize executive sessions of the Select Committee on Organized Crime for the purpose of considering sensitive or confidential information provided by law enforcement. 97 Article III, section 4(a) of the Florida Constitution provides that "[e]ach house shall determine its rules of procedure." This provision is very similar to its predecessor, article III, section 6 of the 1885 Florida Constitution, which stated that "[e]ach house shall . . . determine the rules of its proceedings."

The Attorney General's opinion noted the Florida Supreme Court's opinion that a legislative body has the authority to control its own proceedings because:

[section 6 of article 3 of the Constitution gives the Legislature full power to adopt and enforce its own rules of procedure. So long as the legislative rules are in harmony with the constitutional plan for making laws, proceedings had in conformity thereto are not invalid. 98]

The Attorney General also noted that the supreme court, in construing article III, section 6 of the 1885 Florida Constitution, had previously stated:

The provision that each House 'shall determine the rules of its proceedings' does not restrict the power given to the mere formulation of standing rules, or to the proceedings of the body in ordinary legislative matters; but in the absence of constitutional restraints, and when exercised by a majority of a constitutional quorum, such authority extends to the determination of the propriety and effect of any action as it is taken by the body as it proceeds in the exercise of any power . . . [in the transaction of any business or in the performance] of any duty conferred upon it by the Constitution. 99

Relying on these decisions, the Attorney General stated that so long as no constitutional provision is violated, the Legislature has the un-

98. Id. at 19 (quoting State ex rel. X-Cel Stores v. Lee, 122 Fla. 685, 694, 166 So. 568, 571 (1936)).
99. Id. (quoting Crawford v. Gilchrist, 64 Fla. 41, 54-55, 59 So. 963, 968 (1912)).
limited right to regulate the conduct of its business. He further noted that the Georgia Supreme Court refused to apply Georgia's sunshine law to the Georgia Assembly, holding that the House or Senate could pass an internal procedural rule conflicting with an existing statute. Nonetheless, the Attorney General concluded that the Sunshine Law applied to the Legislature because the Act establishes a substantive, as well as a procedural, right and thus may only be amended by ordinary legislative processes. Support for this substantive right came from the language of Doran: "the right of the public to be present and [to be] heard during all phases of enactments [by boards and commissions] is a source of strength in our country."

In his opinion, the Attorney General pointed out the obvious conflict between the Safety Harbor court decision and Doran. The Attorney General noted that under Doran, statutes enacted for the public benefit, like the Sunshine Law, "should be interpreted most favorably to the public." He added that, under Doran, "a penal provision [in a statute] does not make the entire statute penal so that it must be strictly construed." In making his determination that the Sunshine Law applies to the Legislature, the Attorney General said:

[T]his office was guided primarily by the apparent intent of the 1967 Legislature which enacted the law, the illogic of requiring local boards to comply with s. 286.011, F. S., while at the same time excluding from the law the body which has the greatest impact on the lives and affairs of the people of the state, as well as previous opinions of the Supreme Court of Florida which have consistently stated that all doubts regarding the applicability of the law should be resolved in favor of the public.

In further support of his position, the Attorney General reasoned that if the 1967 Legislature had not intended to include itself within

100. Id. at 20.
101. Id. (citing Coggin v. Davey, 233 Ga. 407, 211 S.E.2d 708 (1975)).
102. Id.
103. Id. (quoting Board of Pub. Instruction v. Doran, 224 So. 2d 693, 699 (Fla. 1969) (second emphasis added).
104. Id. at 18.
105. Id. (quoting Board of Pub. Instruction v. Doran, 224 So. 2d 693, 699 (Fla. 1969)).
106. Id.
107. Id. at 19.
the Act, there would have been no need for the words, ""except as otherwise provided by the Constitution."" The only exception under the 1885 Constitution was in article III, section 13, relating to executive sessions of the Senate. The Attorney General also pointed out that when the Sunshine Law was passed in 1967, the Senate was engaged in debate about the use and potential abuse of the executive session. When the 1967 Senate attempted to go into executive session, the news media refused to leave the gallery and had to be forcibly ejected.

C. The Legislature's View

When these opinions were issued, the Legislature took the position that the Sunshine Law did not apply to it. A Senate staff opinion took the view that the language of the Sunshine Law did not reach the Legislature because the law speaks to ""all meetings of any board or commission of any state agency or authority."" The staff's opinion was that the Senate was neither a board nor a commission within the meaning of the statute, nor was it a ""board, agency, authority . . . commission"" or ""duly appointed committee of a public body"" within the broader judicial interpretation of the law. The House staff also doubted the applicability of the Sunshine Law to the Legislature, pointing to Attorney General opinion 072-16 and to the circuit court opinion in Safety Harbor. In addition, House staff noted a potential constitutional impediment to applying the Sunshine Law for two reasons: (1) the constitutional provisions that allow the Legislature to determine its rules of proceedings, and (2) the constitutional

108. Id. at 18 (emphasis removed) (quoting Fla. Stat. § 286.011 (1967)).
109. Id. This provision was retained as article III, section 4(b) of the 1968 Florida Constitution.
110. Id.
111. Id.
113. Id. (quoting Town of Palm Beach v. Gradison, 296 So. 2d 473, 477 (Fla. 1974); Bigelow v. Howze, 291 So. 2d 645, 647 (Fla. 2d DCA 1974)).
requirement in article III, section 4(b) that *sessions* of each house be public.\textsuperscript{115}

D. The Constitution Revision Commission

In early 1977, Attorney General Shevin, as a member of the 1978 Constitution Revision Commission, severely criticized the Senate staff’s opinion that the Sunshine Law did not apply to the Legislature. He announced that he would propose an amendment to the Florida Constitution similar to the Sunshine Law to ensure it applied to the Legislature.\textsuperscript{116} The proposals of the 1978 Florida Constitution Revision Commission included an amendment to the Declaration of Rights\textsuperscript{117} of the Florida Constitution regarding open meetings:

\begin{quote}
SECTION 25. Open meetings.—No person shall be denied access to any meeting at which official acts are to be taken by any nonjudicial collegial public body in the state or by persons acting together on behalf of such a public body. The legislature may exempt meetings by general law when it is essential to accomplish overriding governmental purposes or to protect privacy interests.\textsuperscript{118}
\end{quote}

The provision was proposed to accomplish the twin purposes of elevating the Sunshine Law and its broad judicial construction to constitutional status and ensuring that the Sunshine Law applied to all public agencies, including the Legislature.\textsuperscript{119} The Constitution Revision Commission perceived a need to put the Sunshine Law in the constitution because members of the Legislature who originally supported passage of the law had moved on to higher state or federal office. As a result, issues such as public records and open meetings laws were no longer at the forefront of the Legislature. In addition, the number of bills introduced in the Legislature to weaken these laws had increased, evidencing a retreat in the Legislature’s posture on its own openness. In a further indication of this retreat from open government, in 1977 the Florida Senate formally

\begin{footnotes}
115. Id. at 8.
117. Fla. Const. art. I.
\end{footnotes}
adopted the position that it was not subject to the Sunshine Law.120

The Constitution Revision Commission's debate on its proposal indicates that the Commission intended the language of the amendment to be interpreted in the same manner as the Sunshine Law.121 During consideration of a similar proposal regarding public records, Attorney General Shevin explained the intent of the proposed provisions on public meetings and public records:

The courts have said different things. The legislature has taken the posture that they do not apply, that they are exempt from the public records law and exempt from the Sunshine Law . . . notwithstanding the fact that by rule they have adopted basically the same kind of provisions.

And what we are doing here with the other provision that was just adopted—and this one which will hopefully be adopted—is to make it crystal clear that the executive and legislative branches are included and that you are writing something into the constitution that speaks to a basic premise of government; and that is openness and the public's right to know.122

All of the proposals of the 1978 Constitution Revision Commission were defeated by the voters in the referendum on November 6, 1978.123

120. Id.
122. Id.
123. Amendment Number One, which contained the revision relating to open meetings, was defeated 1,512,106 to 623,703. Div. of Elections, Dep't of State, Tabulation of Official Votes, Florida General Election 25 (1978).
III. COURT ACTION IN THE 1980S: *MOFFITT v. WILLIS*

By 1980, the debate over open legislative meetings reached a flash point. Thirteen newspapers filed suit against legislative leaders seeking a declaratory judgment that all committee meetings of the Florida Legislature should be open.124 The plaintiff newspapers maintained that in May and June of 1981, legislative leaders excluded the press and the public from a series of secret committee meetings between Senate and House members dealing with the State's budget.125 Members of the press were upset with their exclusion from meetings the House and Senate leadership called to discuss important education, transportation, and tax issues necessary to the annual appropriations bill.126 The complaint alleged that the closed meetings occurred in violation of the Sunshine Law,127 the rules of both houses,128 a statute requiring that legislative committees abide by the rules of their respective chambers,129

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124. Complaint at 4-5, Miami Herald Publishing Co. v. Moffitt, No. 82-84 (Fla. 2d Cir. Ct. Feb. 28, 1983) [hereinafter Complaint].
125. Id. at 2.
129. Senate Rule 2.13 provided that “[a]ll committee meetings shall be open to the public.” The same rule continues to apply. See FLA. S. RuLE 2.13 (1990-1992).
130. House Rule 6.25 provided that “[a]ll meetings of all committees shall be open to the public at all times.” The same rule continues to apply. See FLA. H.R. RuLE 6.25 (1991).
129. Complaint, *supra* note 124, at 4 (referring to FLA. STAT. § 11.142 (1981)). The plaintiffs maintained that even if the defendants were free to waive their own rules, they could not totally ignore statutes regulating their conduct. Plaintiffs’ Memorandum, *supra* note 127, at 29-30.
129. The legislative leadership countered that both houses have an internal procedural system to obtain rulings on or enforcement of a matter of procedure. Memorandum in Support of Motion to Dismiss at 17-18, Miami Herald Publishing Co. v. Moffitt, No. 82-84 (Fla. 2d Cir. Ct. Feb. 28, 1983) [hereinafter Defendants’ Memorandum]. They asserted that section 11.142 merely recognized the procedural self-government of the Legislature, but that it neither operated independently of those rules nor created standing on the part of nonlegislators where none previously existed. Id. at 18.
130. The statute provided that “[e]ach standing committee and each select committee shall meet at such times as it shall determine and shall abide by the general rules and regulations adopted by its respective house to govern the conduct of meetings by such committees.” FLA. STAT. § 11.142 (1981). This statute currently remains in force. See id. (1989).
the Florida Constitution, and the first and fourteenth amendments to the United States Constitution.

The legislative leadership filed a motion to dismiss the action on several grounds. First, the leaders argued that the court lacked both subject matter and personal jurisdiction under the doctrine of separation of powers. Similarly, they maintained that the complaint failed to state a cause of action because the conduct of committee meetings is a nonjusticiable, legislative prerogative under the doctrine of separation of powers. In addition, they argued that the plaintiffs lacked standing to assert, challenge, or enforce the Legislature's procedural rules. Finally, the legislative leadership argued that the Sunshine Law did not apply to the Legislature and that the United States and Florida Constitutions provided no right of access to legislative committee meetings.

The circuit court held that the plaintiff newspapers were entitled to a declaratory judgment regarding the applicability of the first amend-
ment to the United States Constitution, of the corresponding provision of the Florida Constitution, and of section 11.142, Florida Statutes. The remaining legal claims of the plaintiffs were not recognized by the circuit court.

The legislative leadership filed for a writ of prohibition in the Florida Supreme Court, arguing that under the doctrine of separation of powers, the circuit court lacked jurisdiction to declare the meaning and application of the rules and procedures of the Florida Senate and House. The supreme court noted that its role was to determine whether the circuit court had jurisdiction over the matter, but added that in order to resolve the jurisdictional issue, it first had to determine the precise activity complained of. The court reviewed section 11.142, the Senate and House rules the plaintiffs claimed were violated, and the constitutional power of the Legislature to make its own rules.

The supreme court noted that section 11.142 requires legislative committees to abide by the rules of their own house, but said that this case did not involve a question of whether the statute applies. Instead, the court said the suit involved whether the courts could determine when and how legislative rules apply to members of the Legislature:

The constitutionality of the rules themselves is not challenged here. The only issue argued is that of the propriety and constitutionality of certain internal activities of members of the legislature. It is a legislative prerogative to make, interpret and enforce its own procedural rules and the judiciary cannot compel the legislature to exercise a purely legislative prerogative.

... Just as the legislature may not invade our province of procedural rulemaking for the court system, we may not invade the legislature's province of internal procedural rulemaking.

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section 4(b) of the Florida Constitution only served to limit each house's broad powers to make its own rules under article III, section 4(a). Defendants' Memorandum, supra note 129, at 15.

138. Id.
139. Moffitt v. Willis, 459 So. 2d 1018, 1020 (Fla. 1984).
140. Id. at 1021.
141. Id. at 1021-22.
142. Id. at 1021.
143. Id. at 1022.
144. Id.
Thus, the court held that the judiciary does not have jurisdiction over legislative rulemaking. Four justices joined to produce the court’s judgment.\textsuperscript{145} Three justices, however, concurred in part and dissented in part.\textsuperscript{146} The three concurred in the holding that the court should not entertain challenges to Senate and House interpretations of their own rules.\textsuperscript{147} Nonetheless, the justices did not see any impediment to the trial judge answering the question of whether the public could be excluded from legislative committee meetings "so long as the answer is restricted to constitutional or statutory grounds, as opposed to whether the rules of the House or Senate are violated."\textsuperscript{148}

As a result of \textit{Moffitt v. Willis}, the Legislature’s interpretations of its own rules are not subject to judicial review, nor are legislative rules subject to judicial enforcement. Whether legislative meetings would be open, then, seemed up to the Legislature.

\section*{IV. Legislation to Require Open Legislative Meetings 1969—1988}

The bill that ultimately became the Sunshine Law, Senate Bill 9 (1967), was introduced by Senator Emory J. "Red" Cross.\textsuperscript{149} In an interview in 1972, Senator Cross said the Legislature was included under the Sunshine Law.\textsuperscript{150} Cosponsors of Senate Bill 9 disagreed. After the Attorney General’s first opinion that said the Sunshine Law applied to the Legislature,\textsuperscript{151} Senate President Jerry Thomas\textsuperscript{152} said the 1967 law was only intended to apply to the executive branch of government.\textsuperscript{153} He added, however, that there "is a serious question from a
legal viewpoint whether the law applies to the Legislature. When I was a co-sponsor of the bill I know I had no intention that it should apply to the Legislature.”

Nevertheless, in the twenty-two regular sessions between the enactment of the 1967 Sunshine Law and the passage of the 1990 constitutional amendment, thirty-two bills—including thirteen proposed constitutional amendments—were introduced in the Legislature to require that legislative meetings be open to the public. Seventeen of these bills were introduced after the 1987 services tax debacle.

A. The 1970s

The first bills to specifically require all legislative meetings to be open to the public were introduced in the 1969 and 1970 Regular Sessions. These bills each constituted a complete revision of Florida’s laws on open government and would have repealed the then-existing laws, sections 165.22 and 286.011, Florida Statutes. Using similar language, these bills required all meetings of public bodies to be open to the public. The bills defined “meeting” as an assembly “of a quorum of the membership of a public body for the purpose of receiving information relating to public business, or for discussion of public business, or at which there is a collective decision by a majority of the members of the body.” The Legislature was included in the bills because “public body” was defined as “any legislative or administrative body of the state.” In addition, these bills required detailed minutes

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154. Id. at col. 4-5.
155. Fla. SB 175 (1969); Fla. SB 961 (1970); Fla. HB 3091 (1970); Fla. HB 186 (1975); Fla. CS for HB 186 (1976); Fla. SB 286 (1977); Fla. SB 296 (1977); Fla. SB 50 (1978); Fla. SB 1293 (1978); Fla. HB 370 (1978); Fla. HB 769 (1978); Fla. HJR 1041 (1978); Fla. SB 62 (1985); Fla. SB 23 (1986); Fla. HB 623-SF (1987) (short form); Fla. SJR 1 (1988); Fla. SB 1133 (1988); Fla. HJR 110 (1988); Fla. HB 1128 (1988); Fla. HB 1157 (1988); Fla. SJR 341 (1989); Fla. SB 810 (1989); Fla. SJR 1344 (1989); Fla. HJR 883 (1989); Fla. HJR 886 (1989); Fla. HB 1082 (1989); Fla. SJR 2 (1990); Fla. SJR 1990 (1990); Fla. HJR 761 (1990); Fla. HJR 2211 (1990); Fla. HJR 3515 (1990). See infra note 178 for an explanation of the short form designation.
156. Fla. SB 175 (1969); Fla. SB 961 (1970); Fla. HB 3091 (1970).
159. Fla. SB 961, § 2(1) (1970); see also Fla. SB 175, § 1, at 2, lines 11-21 (1969) (proposed Fla. Stat. § 286.021(1)); Fla. HB 3091, § 1, at 2, lines 11-21 (1970) (proposed Fla. Stat. § 286.021(1)).
of public meetings, provided explicit requirements for public notice of
meetings, and permitted executive sessions of public bodies in certain
circumstances.\textsuperscript{161} The bills also provided that final action adopted in
violation of the requirements for public meetings was not binding and
permitted circuit courts to issue injunctions against the operation of
such final action.\textsuperscript{162} None of the three bills was reported favorably by a
legislative committee.\textsuperscript{163}

Five years later, in 1975, a House committee favorably reported a
bill that would have specifically made the Legislature subject to the
Sunshine Law.\textsuperscript{164} As introduced in 1975, the bill would have simply
amended the Sunshine Law to include "all meetings of, between, or
among the governor, the lieutenant governor, members of the cabinet,
and/or members of the legislature."\textsuperscript{165} The committee substitute would
have had a more restricted application, however, excluding from the
Sunshine Law meetings between and among individual legislators and
meetings among individual legislators and the Governor, Lieutenant
Governor, and Cabinet members.\textsuperscript{166} The committee substitute would
have applied the Sunshine Law to "the Speaker of the House and the
President of the Senate when meeting with the Governor, the Lieuten-
ant Governor, or members of the Cabinet to discuss pending legisla-
tion during the session or to discuss the advisability of calling a special
session."\textsuperscript{167} The significant differences between the original bill and the
committee substitute were the issues of meetings among individual leg-
islators—an important issue during legislative consideration of the con-
stitutional amendment in 1990—and meetings between or among the

\begin{footnotes}
\footnotenum{161} Fla. SB 175, § 1, at 3-6 (1969) (proposed Fla. Stat. §§ 286.041, .051, .061); Fla. SB 961,
§§ 4-7 (1970); Fla. HB 3091, § 1, at 3-6 (1970) (proposed Fla. Stat. §§ 286.041, .051, .061).
\footnotenum{162} Fla. SB 175, § 1, at 6-7 (1969) (proposed Fla. Stat. § 286.071); Fla. SB 961, § 8 (1970); Fl.
HB 3091, § 1, at 6-7 (1970) (proposed Fla. Stat. § 286.071).
\footnotenum{163} Senate Bill 175 (1969) was reported unfavorably by the Senate Committee on Judiciary.
\footnotenum{164} Fla. CS for HB 186 (1975). The bill was reported favorably by the House Committee on
\footnotenum{165} Fla. HB 186, § 1 (1975) (proposed amendment to Fla. Stat. § 286.011(1)).
\footnotenum{166} See Fla. CS for HB 186, § 1 (1975) (proposed Fla. Stat. § 286.011(1)(b)).
\footnotenum{167} Id.
\end{footnotes}
Governor, House Speaker, and Senate President. The House passed Committee Substitute for House Bill 186 in 1975 and in 1976, but the Senate failed to pass it.

In the following two legislative sessions, six bills and a proposal for a constitutional amendment were introduced. Two bills would have expressly made all meetings of the Legislature subject to the Sunshine Law. Four other similar bills were introduced that provided that:

[all meetings of either house of the Legislature or of any joint, select, or standing committee thereof are declared to be public meetings and shall be open to the public in the same manner as the meetings of a state agency except as otherwise provided by law or by the rules of the Senate or the House . . . pursuant to Section 4 of Article III of the State Constitution.]

These four bills are important because they recognize the potential conflicts between such a statute and the constitutional provisions relating both to the separation of powers and to the legislative rulemaking powers of the Legislature.

In 1978, the first constitutional amendment relating to open legislative meetings was introduced. It was similar to the amendment that was placed on the ballot that same year by the 1978 Constitution Revi-


170. Before 1977, House bills that failed to become law in the first regular session (odd numbered years) of the biennium were automatically reintroduced for the second regular session (in even numbered years). Thus, in 1976, Committee Substitute for House Bill 186 was reintroduced and was again passed by the House. FLA. LEGIS., HISTORY OF LEGISLATION, 1976 REGULAR SESSION, HISTORY OF HOUSE BILLS at 27, CS for HB 186. The Senate, however, failed to pass the bill. Id. at 28.

171. Fla. SB 296 (1977); Fla. SB 1293 (1978).

172. Fla. SB 50, § 1 (1978); Fla. HB 370, § 1 (1978); see Fla. SB 286, § 1 (1977); Fla. HB 769, § 1 (1978).

173. Fla. HJR 1041 (1978) at 1 (proposed FLA. CONST. art I, § 23(b)).
sion Commission. The proposed amendment, however, died in committee without reaching a vote—the same fate met by the six bills introduced in 1977 and in 1978.

B. The 1980s

The open government proposals of the late 1970s were the last to be introduced until 1985 and 1986, when two bills were introduced to require that all meetings of the Legislature and meetings of a quorum of a legislative committee be open to the public. Neither bill was heard in a committee.

In 1987, several new issues that would be important during consideration of the 1990 constitutional amendment were introduced in the House through a short form bill, cosponsored by twenty representatives. The bill proposed studying whether to amend chapter 286 to

174. Fla. Const. Revision Comm’n, Revised Constitution of the State of Fla: Ballot Packages and Ballot Language 7-8 (May 11, 1978). House Joint Resolution 1041 (1978) and the Constitution Revision Commission proposal differed in two respects: (1) the Commission proposal restricted its application to “nonjudicial” collegial public bodies, and (2) while both allowed exceptions to be created by law to protect privacy rights, the Commission proposal also allowed exceptions to be created when essential to accomplish overriding governmental purposes. See id.; Fla. HJR 1041 (1978) at 1 (proposed Fla. Const. art. I, § 23(b)).

175. Fla. Legis., History of Legislation, 1977 Regular Session, History of Senate Bills at 104, SB 286; id. at 107, SB 296; Fla. Legis., History of Legislation, 1978 Regular Session, History of Senate Bills at 14, SB 50; id. at 332, SB 1293; id., History of House Bills at 80, HB 370; id. at 163, HB 769; id. at 215, HJR 1041.


178. Fla. HB 623-SF (1987) (short form). A short form bill is a bill that suggests the need for legislation in a specific field; it is used in lieu of a bill introduced in the normal form of bills. Short form bills are placed into final form by a committee and are considered by the full House of Representatives only as committee substitutes. Fla. H.R. Rule 7.18.

include the Legislature under the scope of the Sunshine Law,\textsuperscript{180} and it directed that the uniqueness of the Legislature be considered in determining what would constitute an open meeting. Three areas were highlighted for attention: when a meeting of two or more legislators would constitute an open meeting, which meetings would require notice, and whether discussion and conversation in the Senate and House chambers should be open to the public.\textsuperscript{181} As had all others before it, this bill died in committee.\textsuperscript{182}

\textit{C. The Late 1980s: After the Services Tax}

In the 1988 Regular Session, the first one after repeal of the services tax, three approaches to opening legislative meetings were attempted. First, two identical resolutions in the House and Senate proposed a constitutional amendment to require open legislative meetings in and between the executive and legislative branches of government, as well as among local government officials.\textsuperscript{183} Second, a House bill sought to prohibit legislators from attending specific types of meetings unless the meetings were open to the public and notice of the meetings had been given.\textsuperscript{184} Third, a pair of bills, one in the House and one in the Senate, proposed a complete overhaul of Florida's open meeting laws.\textsuperscript{185} All of these proposals died in committee.\textsuperscript{186}

Under the proposed constitutional amendments, "all meetings of the legislature or any legislative committee," governing boards of state agencies, and agencies and authorities of local governments, at which official acts were to be taken, would have been "declared to be public meetings open to the public at all times."\textsuperscript{187} In addition, "meetings between agencies or officers within the executive branch and the legis-

\textsuperscript{180} \textmd{Fla. HB 623-SF, § 1 (1987) (short form).}
\textsuperscript{181} \textmd{Id. § 2.}
\textsuperscript{182} \textmd{FLA. LEGIS., HISTORY OF LEGISLATION, 1987 REGULAR SESSION, HISTORY OF HOUSE BILLS at 294, HB 623-SF (short form).}
\textsuperscript{183} \textmd{Fla. SJR 1 (1988); Fla. HJR 110 (1988).}
\textsuperscript{184} \textmd{Fla. HB 1128 (1988).}
\textsuperscript{185} \textmd{Fla. SB 1133 (1988); Fla. HB 1157 (1988).}
\textsuperscript{186} \textmd{FLA. LEGIS., HISTORY OF LEGISLATION, 1988 REGULAR SESSION, HISTORY OF SENATE BILLS at 31, SJR 1; id. at 183, SB 1133; id., HISTORY OF HOUSE BILLS at 235, HJR 110; id. at 379, HB 1128; id. at 382-83, HB 1157.}
\textsuperscript{187} \textmd{Fla. SJR 1 (1988) at 1 (proposed FLA. CONST. art. II, § 9(a)); Fla. HJR 110 (1988) at 1 (proposed FLA. CONST. art. II, § 9(a)).}
lature or any legislative committee at which official acts [were] to be discussed" would have been public meetings.\textsuperscript{188} The references to meetings between agencies and officers of the executive branch and the Legislature were apparently meant to prevent private meetings between legislative leaders and the Governor, Cabinet members, or State agency heads to discuss pending legislation. Notably, official acts had to be discussed before a meeting was required to be open to the public. During consideration of the constitutional amendment in 1990, the issue of whether all meetings must be open or only meetings at which official acts are discussed would prove to be a key issue.\textsuperscript{189}

The second type of proposal prohibited legislators from attending meetings where a majority of the members of any legislative committee was present, where a majority of the members of either house of the Legislature was present, or where a majority of the members of any party caucus of the Legislature was present, unless the meeting was open to the public and reasonable public notice had been given.\textsuperscript{190} In order for the bill to apply, a meeting was required to be "for the purpose of making a decision or commitment, or discussing action with respect to any matter under consideration."\textsuperscript{191} Circumventing these requirements by means of a series of meetings was also prohibited.\textsuperscript{192} The bill did allow legislators to solicit cosponsors and to ask other legislators their positions on particular issues.\textsuperscript{193} Inadvertent violation of the bill's provisions would have been a noncriminal infraction punishable by a fine of up to $500; a knowing violation, however, would have been punishable as a second-degree misdemeanor.\textsuperscript{194} The bill gave circuit courts authority to issue injunctions to enforce the requirements

\begin{itemize}
\item \textsuperscript{188} Fla. SJR 1 (1988) at 1 (proposed \textit{Fla. Const.} art. II, § 9(b)); Fla. HJR 110 (1988) at 1 (proposed \textit{Fla. Const.} art. II, § 9(b)).
\item \textsuperscript{189} \textit{See infra} notes 350-447 and accompanying text.
\item \textsuperscript{190} Fla. HB 1128, § 1(2)-(4) (1988).
\item \textsuperscript{191} \textit{Id.}
\item \textsuperscript{192} \textit{Id.} § 1(5). A series of meetings would be for the purpose of circumventing the prohibitions in the bill if the meetings:
\begin{itemize}
\item in the aggregate [were] attended by a majority of the members of the legislative committee, a majority of the members of either house of the Legislature, or a majority of the members of one of the party caucuses of either house, and the purpose of the meetings [was] to make a decision or commitment, or to discuss action with respect to any matter under consideration by the respective committee, house, or caucus.
\end{itemize}
\item \textsuperscript{193} \textit{Id.}
\item \textsuperscript{194} \textit{Id.} § 1(6).
\end{itemize}
upon petition by any citizen.\textsuperscript{195} Reasonable attorneys' fees would have been provided to a prevailing plaintiff and could have been assessed against a plaintiff who filed an action maliciously or in bad faith.\textsuperscript{196}

The third type of proposal resembled the bills introduced in 1969 and 1970 that would have completely revised Florida's open government laws.\textsuperscript{197} Senate Bill 1133 and House Bill 1157 declared that the formation of public policy was public business that could not be conducted secretly.\textsuperscript{198} They went on to say that a "person may not be deprived from observing the members of any body subject to this [bill] as they meet to formulate and determine public policy."\textsuperscript{199} Like the holdings in \textit{Doran}\textsuperscript{200} and in \textit{Times Publishing}, the bills instructed that they be liberally construed to ensure public access to the "promises, motivations, policy arguments, and other considerations that underlie the adoption of public policy."\textsuperscript{201} The bills used language identical to the Sunshine Law to describe the governmental entities whose meetings were to be open, but they specifically added the Legislature.\textsuperscript{202} Rather than applying whenever official acts were being taken, as the Sunshine Law does,\textsuperscript{203} the bills applied to any "gathering of two or more members of any body subject to [the bill] or of any member of the Legislature and the Governor, at which formal action is taken or the purpose of which is to agree upon formal action that will be taken at a subsequent time."\textsuperscript{204} The bills prohibited the use of chance meetings, social meetings, and electronic communication to circumvent the act.\textsuperscript{205} Political caucuses were explicitly included.\textsuperscript{206} The Senate and House bills later formed the framework for the initiative petition effort on open government led by Common Cause.\textsuperscript{207}

\begin{footnotes}
\item 195. \textit{Id.} § 1(7).
\item 196. \textit{Id.}
\item 198. Fla. SB 1133, § 1(1) (1988); Fla. HB 1157, § 1(1) (1988).
\item 199. Fla. SB 1133, § 1(1) (1988); Fla. HB 1157, § 1(1) (1988).
\item 200. 224 So. 2d 693, 699 (Fla. 1969).
\item 201. 222 So. 2d 470, 473-74 (Fla. 2d DCA 1969).
\item 202. Fla. SB 1133, § 1(2) (1988); Fla. HB 1157, § 1(2) (1988).
\item 204. FLA. STAT. § 286.011(1) (1987).
\item 205. Fla. SB 1133, § 2(2) (1988); Fla. HB 1157, § 2(2) (1988).
\item 206. Fla. SB 1133, § 2(2) (1988); Fla. HB 1157, § 2(2) (1988).
\item 207. Fla. SB 1133, § 2(2) (1988); Fla. HB 1157, § 2(2) (1988).
\end{footnotes}
The definition of meetings and other provisions in Senate Bill 1133 and House Bill 1157 apparently attempted to treat legislative meetings like meetings of local government boards, authorities, and commissions. While the definition of a meeting used in the bills included meetings of two or more legislators, the bills nevertheless contained a list of factors courts were to consider in determining whether gatherings of legislators were covered.\(^2\) Interestingly, the bills directed the courts to consider the number of legislators present, among other factors, in determining whether the bills applied.\(^2\) This is curious because the legislation noted that the inclusion of such a factor was not to be construed to imply that more than two members of the Legislature were necessary for the meeting to be required to be public.\(^2\)

Senate Bill 1133 and House Bill 1157 also introduced two new ideas into the ongoing debate. One was the notice requirement. Previous proposals had addressed notice without prescribing a particular time period for prior notice of a meeting.\(^2\) The 1988 bills, however, required seven days' notice for a regular meeting, two days' notice for a special meeting, and two hours' notice for emergency meetings.\(^2\) The bills did not, however, state whether committee meetings, sessions of either house, gatherings of two or more legislators, or meetings between legislators and the Governor were regular, special, or emergency meetings. The notice provisions required that the prior notice include the agendas for regular or special meetings and specify the matters to be considered.\(^2\) Additionally, discussion of matters that were not on the agenda was prohibited.\(^2\) The other unique provision of these bills dealt with legislative voting. Under the bills, members of included governmental entities who were present at a meeting would have been prohibited from abstaining from voting unless they had a conflict of interest.\(^2\)

212. See sources cited supra note 155.
213. Fla. SB 1133, § 3(1)-(3) (1988); Fla. HB 1157, § 3(1)-(3) (1988). Senate Bill 1133, section 3, required that notice be specifically given to the media before special and emergency meetings. House Bill 1157, section 3, required that the media be given special notice before emergency meetings only. In the development of the Senate Rules on open meetings in 1989, one issue was whether representatives of the media should be given prior notice other than that provided to the general public. Fla. S. Comm. on Rules & Calen., tape recording of proceedings (Mar. 9, 1989) (on file with comm.).
Like the other statutory approach discussed above, Senate Bill 1133 and House Bill 1157 also contained criminal penalties for violation, provided attorneys' fees for citizens successfully pursuing actions to stop illegal meetings and prohibited activities at meetings, provided for circuit court jurisdiction over alleged violations, and authorized issuance of injunctions to halt violations of the bills' provisions. Like the bills filed in 1969 and 1970, both 1988 bills authorized circuit courts to invalidate any formal action resulting from a meeting held in violation of its requirements.

Senate Bill 1133 and House Bill 1157 also included four new enforcement mechanisms. First, the Commission on Ethics would have been empowered to investigate violations. Second, circuit courts would have been authorized to impose up to a $1,000 civil penalty against public officials for violations. Third, the courts would have been authorized to issue declaratory statements on whether the bill applied to specific situations, an apparent response to the Florida Supreme Court's holding in Moffitt v. Willis. Finally, the circuit courts would have been authorized to remove public officials from office after a second violation. Because these proposals were statutory, serious questions regarding the constitutionality of some of these provisions could have been raised.

V. THE INITIATIVE PETITION PROPOSAL

After two decades of attempts, only one open meetings bill had made it to the floor of either chamber for a vote. When the 1988 legis-
lative session ended, the Florida Sunshine Committee and Common Cause of Florida began an initiative petition drive to place a constitutional amendment on the ballot requiring all legislative meetings to be open. The petition effort resulted from the 1988 Legislature’s failure to hear Senate Bill 1133 and House Bill 1157. Supporters also saw the petition as a way to pressure Governor Martinez into honoring his campaign promise to end closed meetings with legislators.

Unlike the bills from the 1988 session, the petition dealt only with the Legislature. It required that all sessions and meetings of each house be open to allow members of the public to watch legislators determine public policy. Under the proposal, a meeting was a prearranged gathering of two or more members, either to take formal action or to agree to take formal action later—a standard similar to that of the Sunshine Law. The petition directed, as did the failed 1988 legislation, that the amendment be liberally construed “to insure that the public has access to the promises, motivations, policy arguments, and other considerations which underlie the enactment of public policy.”

Like the 1988 legislation, the proposed amendment prohibited the use of social gatherings, chance meetings, and electronic communication to circumvent its provisions. Unlike the 1988 bills, however, the amendment did not include the factors courts were to use to determine whether a meeting had occurred. In addition, the amendment would not have applied to political caucuses unless there was a discussion of legislation.

The petition defined a meeting more narrowly than does the Sunshine Law. Under the petition, a meeting would have been open only

225. Sunshine Comm., Constitutional Amendment: Open Meetings Requirements for the Florida Legislature (petition form) (proposed FLA. CONST. art. III, § 19) (form on file at Fla. Dep’t of State, Div. of Archives, Tallahassee, Fla.) [hereinafter Sunshine Comm. Amendment].
227. Id.
228. Sunshine Comm. Amendment, supra note 225 (proposed FLA. CONST. art. III, § 19(a)).
229. Id.
230. Id.
231. Id.
232. Id. (proposed FLA. CONST. art. III, § 19).
233. May 14 Jones interview, supra note 226.
when formal action would have been agreed on or taken, but the Sunshine Law requires a meeting to be open when officials deal with any matter on which action foreseeably may be taken. In drafting the petition, the Florida Sunshine Committee decided not to require that all information-gathering meetings be formally noticed as meetings open to the public because the Legislature is so much larger than other bodies subject to the Sunshine Law. Although the Committee hoped the Legislature would open all legislative deliberations to the public, its members realized that the practical approach was to require public notice only for meetings resulting in or intended to result in formal action. While this definition of a meeting is narrower than the Sunshine Law's definition, advocates of the petition amendment intended the amendment to require that the Legislature and legislative meetings be treated the same as local government meetings under the Sunshine Law.

The proposed amendment also contained several provisions that had been in the 1988 bills: (1) the requirements for advance notice of meetings; (2) the requirement for voting by legislators at official decision-making meetings; and (3) the invalidation of any formal action taken


235. Sunshine Comm., The Legal Support for the Proposed Constitutional Amendment on Open Meetings at 2 (available at Fla. Dep't of State, Div. of Archives, ser. 157, carton 153, Tallahassee, Fla.).


237. Advance notice of meetings included detailed agendas that specified the matters to be discussed, the purpose of the meetings, and the time and place for the meetings. Sunshine Comm. Amendment, supra note 225, § 19(d)(4). The Legislature could change these requirements by general law consistent with the amendment. Id. § 19(d). While the petition, like the 1988 bills, required seven days' notice for special meetings, it was unclear whether sessions and committee meetings were regular or special meetings and what period of notice would be required for meetings between individual legislators. Id. The proposed amendment also prohibited taking formal action without a reasonable opportunity for public comment. Id. § 19(d)(7). Advocates of the amendment intended it to require the Legislature to allow testimony at committee meetings. May 14 Jones interview, supra note 226.

238. The 1988 bills and the petition prohibited any legislator present at such a meeting from abstaining unless the member had a conflict of interest. Sunshine Comm. Amendment, supra note 225, § 19(d)(6). See also Fla. SB 1133, § 6 (1988); Fla. HB 1157 (1988). The petition supporters' intent was to apply the requirements for local government bodies on recorded votes to the Legislature. May 14 Jones interview, supra note 226.
in violation of the amendment.239 The supporters of the amendment considered this third provision of utmost importance—in effect, the "hammer"—because any violation of the amendment would produce consequences so grave that the potential for political damage would cause legislators to err on the side of openness.240

The amendment’s supporters wanted the Legislature to deal with the subject of open legislative meetings, but did not object to the initiative proposal becoming a part of the Florida Constitution.241 Ultimately, the amendment’s supporters gathered more than 165,000 signatures242—not enough to place the amendment on the ballot,243 but enough to get the Legislature’s attention.

VI. THE 1989 LEGISLATIVE SESSION

The period from the 1988 elections through the beginning of the 1989 legislative session was pivotal in the movement toward a more open legislative process in Florida. During that period, the House revised its rules on conference meetings to make them more accessible to the public. The House also passed legislation in the 1989 session that required open meetings between legislators and executive branch officials. The Senate, acting on proposals of the Sunshine Advisory Committee, revised its rules early in the 1989 session and made changes that would dramatically alter lawmaking. These actions provided the framework for the formulation of the constitutional amendment that was proposed and adopted in 1990.

A. Legislative Rules Changes

At the Organizational Session following the 1988 elections, the House revised its rules on conference committees to increase public ac-

240. May 14 Jones interview, supra note 226.
241. Id.
242. Id.
243. Florida Constitution article XI, section 3 provides that signatures of a number of electors "equal to eight percent of the votes cast . . . in the state as a whole in the last preceding election in which presidential electors were chosen" must be obtained to place an amendment on the ballot. According to the Florida Department of State, there were 4,548,595 electors in 1988, the last year in which presidential electors were chosen. Therefore, approximately 363,886 signatures are required to place an initiative petition on the ballot. Div. of Elections, Dep’t of State, 1992 Initiative Petition Information.
cess to the Legislature's business.244 The rules required open meetings of conference committees, prior notice of any conference committee as soon as practicable, and use of motions for all conference committee actions.245

Steps toward a more open Senate began when Senator Crawford appointed the Sunshine Advisory Committee in October 1988. Between December 1988 and March 1989, the Committee met a half-dozen times and recommended rule revisions to give the public greater information about the Senate's work.246 The committee heard testimony from Common Cause, the Governor's Office, Senator Tom Brown,247 and others about ideas for Senate rules changes.

In February 1989, Senator Crawford made suggestions to the Committee that focused on significant portions of the legislative process.248 The cornerstone of these suggestions was that all meetings among members of the Legislature should be open to the public when public business is discussed.249 Crawford also suggested providing prior notice of important meetings to ensure access by the press and the public,250

246. The charge to the committee was:

The advisory committee has been created to recommend to the President, and to the entire Senate, procedures that can be implemented to allow the citizens of Florida to provide greater input on the issues that face the Florida Senate. In addition, I am looking to the committee to recommend ways that the Senate can provide increased notice of the times and locations of meetings at which decisions affecting public issues will be made as well as means to assure that the public's business is conducted in the sunshine.

In your deliberations, please feel free to recommend any changes that you feel are necessary to the Rules of the Senate, the Florida Statutes and the Constitution of Florida to achieve these goals. It is my hope that a proposal can be developed for adoption by the Senate in early 1989.

Crawford Memorandum, supra note 19, at 4.
249. Id.
250. Id. These important meetings included meetings between or among the Governor, the Senate President, and the House Speaker; meetings of committees or a majority of the members of a committee; meetings of the Appropriations Steering Committee; meetings of all of the chairs of Senate standing committees; and meetings of conference committees. Written Statement of Bob Crawford, Pres., Fla. S., at 2-3, (Feb. 13, 1989) (statement recommendation to the Advisory Comm.) (available at Fla. Dep't of State, Div. of Archives, ser. 157, carton 153, Tallahassee, Fla.) [hereinafter President's Statement].
and he recommended heavy regulation of committee meetings.\textsuperscript{251} His suggestions included requiring that all such meetings be held in the capitol complex, although not in the House or Senate chambers when either house is in session, and requiring actions in a conference committee to be taken by motion of a conference committee member.\textsuperscript{252} As Crawford saw it, "this means no more bubble conferences and midnight pizza parties."\textsuperscript{253}

1. The Sunshine Advisory Committee

The Sunshine Advisory Committee built on these suggestions as the foundation for its recommendations to the Senate.\textsuperscript{254} Its main recommendations dealt with open meetings among legislators, conference committee meetings, prior notice of key meetings, prior availability of legislative amendments and key legislative documents, and legislative voting in committees and on the Senate floor.\textsuperscript{255} Two other proposals dealt with meetings between senators and lobbyists and with meetings between senators and legislative staff members.\textsuperscript{256}

The Advisory Committee recommended open conference committee meetings and open meetings when senators discuss public business.\textsuperscript{257} (The committee limited its scope to senators because House members are not subject to Senate rules.)\textsuperscript{258} In addition, the Committee recom-

\begin{itemize}
\item \textsuperscript{251} Crawford suggested that prior notice be provided of meetings to discuss conference committee business between individual conference committee members, between the presiding officer of one house and a conferee from the other house, and between a majority of the Senate conferees. President's Memorandum \textit{supra} note 248.
\item \textsuperscript{252} President's Memorandum, \textit{supra} note 248, at 2-3; President's Statement, \textit{supra} note 250, at 2-3.
\item \textsuperscript{253} President's Statement, \textit{supra} note 250, at 3. The phrase "bubble conferences" refers to meetings of conference committee members of either house in the "bubble" or glassed conference rooms at the rear of the House and Senate chambers. These meetings occur during sessions of the House and Senate when access to the chamber is limited generally to legislators and required staff members.
\item \textsuperscript{254} Advisory Comm., tape recording of proceedings (Feb. 14, 1989) (available at Fla. Dep't of State, Div. of Archives, ser. 157, carton 153, Tallahassee, Fla.) (Burke Kibler's discussion of Crawford's suggestions).
\item \textsuperscript{255} Advisory Comm., Recommendations of the Sunshine Advisory Committee to the Senate President and the Florida Senate (Mar. 2, 1989) (available at Fla. Dep't of State, Div. of Archives, ser. 157, carton 153, Tallahassee, Fla.) [hereinafter Advisory Comm. Recommendations].
\item \textsuperscript{256} Id.
\item \textsuperscript{257} Advisory Comm. Recommendations, \textit{supra} note 255, Pt. I, at 3, 15 (proposed FLA. S. RULE 1.43 and proposed amendment to FLA. S. RULE 2.19).
\item \textsuperscript{258} Advisory Comm., \textit{supra} note 236, tape recording of proceedings.
\end{itemize}
mended that conference committee meetings and meetings requiring prior notice involving conference committee issues be held in the capitol complex, but not in the chambers of either house during a session.\textsuperscript{259} As a supplemental proposal, the Committee also recommended a Senate rule requiring open meetings when a senator meets with either a lobbyist or with certain Senate employees to discuss public business.\textsuperscript{260}

The Committee proposed that failure to abide by the Senate's open meeting rules would violate legislative ethics and conduct rules.\textsuperscript{261} Under the Senate rules, violations can be punished by censure, reprimand, or expulsion.\textsuperscript{262} To ensure enforcement, the Committee recommended allowing citizens and senators to file complaints.\textsuperscript{263}

Further, the Committee recommended rules changes on legislative voting, availability of Senate records and proposed bills, and conference committee reports.\textsuperscript{264} The practice in the Senate at that time was to often use voice votes rather than recorded votes. The Committee recommended changes that would have required recorded votes on all bills and amendments to bills in committee meetings, and recorded votes on all bills, amendments to bills, removals from office, and Senate confirmations in sessions of the entire Senate.\textsuperscript{265} The Advisory Committee endorsed a proposed rule to make public a lengthy list of Senate records,\textsuperscript{266} similar to a House rule already in existence.\textsuperscript{267} Finally, the Committee recommended that appropriations bills, proposed amendments prepared before a committee meeting or a Senate session, the Senate special order calendar, and conference committee reports be made available to senators and the public at least two hours before the meeting or the Senate session.\textsuperscript{268} These changes would let the public

\begin{align}
\text{259. } & \text{Id. Pt. I, at 15 (proposed amendment to Fla. S. Rule 2.19).} \\
\text{260. } & \text{Advisory Comm. Recommendations, supra note 255, Pt. II, at 1 (proposed Fla. S. Rule 1.43).} \\
\text{261. } & \text{Id. Pt. I, at 6 (proposed Fla. S. Rule 1.46).} \\
\text{262. } & \text{Fla. S. Rule 1.42 (1989).} \\
\text{263. } & \text{Advisory Comm. Recommendations, supra note 255, Pt. I, at 3 (proposed amendment to Fla. S. Rule 1.42).} \\
\text{264. } & \text{Id. Pt. I, at 6-7, 23 (proposed amendments to Fla. S. Rules 1.48 and 5.1).} \\
\text{265. } & \text{Id. Pt. I, at 17, 23 (proposed amendments to Fla. S. Rules 2.28 and 5.1).} \\
\text{266. } & \text{Advisory Comm. Recommendations, supra note 255, Part I, at 6-7 (proposed Fla. S. Rule 1.48).} \\
\text{267. } & \text{See Fla. H.R. Rule 1.11 (1989).} \\
\text{268. } & \text{Advisory Comm. Recommendations, supra note 255, Part I, at 10-12, 18-19, 19-20, 21-22, 24, 26-28 (proposed amendments to Fla. S. Rules 2.16, 2.39, 4.17, 4.5, 7.1, 13.6, respectively).} 
\end{align}
know what would be considered before any formal action was taken.\textsuperscript{269}

2. \textit{The Senate Rules and Calendar Committee}

The Advisory Committee's report went to the Senate Rules and Calendar Committee,\textsuperscript{270} where members considered rule revisions proposed by committee Chair Senator James A. Scott.\textsuperscript{271} Scott's proposal was similar to the Advisory Committee's report, but it did not require open meetings between senators and either lobbyists or certain staff members.\textsuperscript{272}

Scott's proposals included the Advisory Committee's recommendations about the availability of amendments prepared before committee meetings, proposed general appropriations acts, and amendments to bills before the full Senate.\textsuperscript{273} The package also made intentional violations of open meetings rules subject to the procedures and penalties for violating legislative ethics and conduct rules.\textsuperscript{274} Scott's proposals did not include the Advisory Committee's recommendations on voting in committees and on the floor of the Senate, records of the Senate, or prior availability of conference committee reports.\textsuperscript{275}

The Rules Committee adopted several amendments to Scott's proposal, the most significant of which allowed two senators to meet to "exchange information, provided the purpose of the meetings is not to agree upon formal action that will be taken at a subsequent meet-

\textsuperscript{269} Advisory Comm., \textit{ supra} note 236, tape recording of proceedings (discussion of Sen. Tom Brown's suggestions); Advisory Comm., tape recording of proceedings (Feb. 21, 1989) (available at Fla. Dep't of State, Div. of Archives, ser. 157, carton 153, Tallahassee, Fla.) (discussion of revisions to rules).

\textsuperscript{270} Florida Senate Rule 11.3 requires that all actions touching the Senate Rules first be referred to the Committee on Rules and Calendar.

\textsuperscript{271} Repub., Fort Lauderdale.

\textsuperscript{272} Fla. S. Comm. on Rules & Calen., S. Rules Rep. at 2 (proposed Mar. 9, 1989) (proposed \textit{FLA. S. RULE 1.43}) (on file with comm.).

\textsuperscript{273} Fla. S. Comm. on Rules & Calen., S. Rules Rep. at 14-17 (proposed Mar. 9, 1989) (proposed amendments to \textit{FLA. S. RULES 2.39, 3.12, 7.1}) (on file with comm.).

\textsuperscript{274} Fla. S. Comm. on Rules & Calen., S. Rules Rep. at 4 (Mar. 9, 1989) (proposed \textit{FLA. S. RULE 1.45}) (on file with comm.).

\textsuperscript{275} Subsequently, the Senate adopted rules similar to the Advisory Committee recommendations on Senate records and on prior availability of conference committee reports. \textit{See} \textit{FLA. S. JOUR. 142, 143} (Reg. Sess. 1991) (proposed \textit{FLA. S. RULE 1.442} and proposed amendment to \textit{FLA. S. RULE 4.5}).
Some saw the amendment as a compromise "to quell fears that the new rules would cut down on socializing prominent during legislative sessions." Others saw the amendment as preserving the ability to solicit other members' cosponsorship of bills and amendments, as well as to lobby House members about bills being held hostage in the House. Senator Scott assured committee members that the Senate would interpret and enforce the proposed rules, adding: "There's not going to be a Spanish Inquisition." He said the proposed rules would repair the damaged credibility of the Legislature, and, referring to the party at which details of the services tax were resolved, added, "[t]he idea is that if you have to choose between two evils, we ought to choose one that we haven't tried yet. And we tried beer and pizza, and that has caused serious complications." The Rules and Calendar Committee unanimously adopted the bill with these changes.

3. The Senate

The Senate considered the Rules and Calendar Committee report and several amendments during its first substantive meeting of the 1989 Regular Session. The first amendment reworded the Rules Committee's exception regarding informational meetings between two senators to specify that discussions among senators on the Senate floor while in session, and discussions among senators in a committee room during committee meetings, were in compliance with the rules on open meetings. This amendment was designed to calm fears that members of the press and the public could try to enter the Senate chambers to hear these discussions. This issue arose just before the 1989 Regular Session began, when Senate President Crawford announced that he would permit informal conversations on the floor of the Senate without microphones, including conversations where members poll each other to see which way a vote on an amendment might go. Crawford said that "[a]nyone having a conversation on the floor is in clear view

279. Miami Herald, supra note 277.
280. Fort Lauderdale Sun Sentinel, Mar. 10, 1989, at 17A.
282. FLA. S. JOUR. 92 (Reg. Sess. 1989) (Amendment 1 to proposed FLA. S. RULE 1.43).
of the public, and the press has the ability to confront those people afterwards and ask what they said." \(^{283}\)

The Senate rejected a second amendment that would have increased the threshold requiring open meetings from those among two or more senators to those among three or more senators. The amendment included an exception for informational meetings among three or fewer senators. \(^ {284}\) This amendment resurfaced in 1990 when the Senate considered the constitutional amendment.

The third amendment clarified the definition of "legislative business," \(^ {285}\) a term that was used to describe the subject of meetings required to be open under the new rules. \(^ {286}\)

The final amendment exempted caucuses from the prior notice requirement, but required open caucuses on issues pending before the Senate, or upon which foreseeable action was reasonably expected to be taken by the Senate, its committees, or subcommittees. \(^ {287}\) The Senate adopted the revised rules on a vote of 39 to 1. \(^ {288}\)

**B. Proposed Legislation in the Senate**

Additionally, two proposed constitutional amendments and a bill to implement one of the amendments were introduced in the Senate. All would have required legislative meetings to be open to the public. The first amendment, Senate Joint Resolution 341, provided a specific list of meetings required to be open. \(^ {289}\) To be subject to the amendment, meetings had to be for the purpose of taking formal action or agreeing to take formal action later. \(^ {290}\) The proposed amendment required that

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285. *Id.* (Amendment 3 to proposed *FLA. S. RULE* 1.43).

286. "'Legislative business' is defined as issues pending before, or upon which foreseeable action is reasonably expected to be taken by the Senate, a Senate Committee or Senate Subcommittee." *Id.*

287. *Id.* (Amendment 1 to proposed *FLA. S. RULE* 1.44).

288. *FLA. S. JOUR. 95 (Reg. Sess. 1989).*

289. Florida Senate Joint Resolution 341 (1989) required open sessions of each house, meetings of legislative committees and subcommittees, and meetings of a quorum of any legislative committee or subcommittee. In addition, meetings between or among the Governor, a member of the Cabinet, the Senate President, the House Speaker, or the Chair of a legislative committee or subcommittee and four or more members of the Legislature would have been required to be open.

290. *Fla. SJR 341 (1989)* at 2 (proposed *FLA. CONST. art. III*, §§ 19 (a)-(c)).
the public be provided with reasonable notice of the time and place of these meetings.\textsuperscript{291} This amendment also prohibited legislators who are present when formal action is taken by a committee, subcommittee, or house of which they are a member from abstaining from voting, unless they declare a conflict of interest.\textsuperscript{292} Formal action taken in violation of the amendment would not be binding.\textsuperscript{293} Senate Joint Resolution 341 was almost identical to a proposal Governor Martinez supported.\textsuperscript{294} Two similar proposed constitutional amendments\textsuperscript{295} also were introduced in the House during the 1989 Regular Session; however, neither was heard in committee.\textsuperscript{296}

The second proposed constitutional amendment, Senate Joint Resolution 1344, opened to the public "any meeting of a committee, subcommittee, joint committee, conference committee, or any other special committee of the legislature, or any meeting of a group of members of the legislature that formally or informally functions as such a committee."\textsuperscript{297} The amendment would have authorized courts to enjoin violations of the amendment.\textsuperscript{298}

The Senate Committee on Ethics and Elections reported a committee substitute based on both proposals that was substantially the same as Senate Joint Resolution 341, with three exceptions. The threshold for an open meeting was changed from meetings between the named officers and \textit{four or more} legislators, to meetings between the Governor, a Cabinet member, the Senate President, the House Speaker, or a legislative committee or subcommittee chairman and \textit{any} member of the Legislature.\textsuperscript{299} This change was consistent with the Senate's newly adopted Rule 1.43, which required all meetings among two or more senators, except those solely to exchange information, to be open to the public.\textsuperscript{300}

\begin{footnotesize}
\textsuperscript{291} Id. § 19(d) at 2.
\textsuperscript{292} Id. § 19(f) at 2-3.
\textsuperscript{293} Id. § 19(e) at 2.
\textsuperscript{295} Fla. HJR 883 (1989); Fla. HJR 886 (1989).
\textsuperscript{297} Fla. SJR 1344 (1989) at 1 (proposed Fla. Const. art. III, § 4(b)(2)).
\textsuperscript{298} Id.
\textsuperscript{299} Fla. CS for SJs 341 and 1344 (1989) at 2 (proposed Fla. Const. art. III, § 19(b)).
\textsuperscript{300} Fla. S. Rule 1.43 (1989).
\end{footnotesize}
The second major change was that the committee substitute excluded the provision in the original resolution stating that actions taken in violation of the amendment were not binding.\(^\text{301}\)

The last significant difference was that the committee substitute specifically allowed that similar provisions pertaining to public meetings could be provided by law.\(^\text{302}\) This change was made because an implementing bill\(^\text{303}\) for Senate Joint Resolution 341 had been filed in the Senate.\(^\text{304}\) The original proposed amendment did not authorize laws to implement the amendment, whereas the implementing bill included provisions that had been part of earlier statutory proposals for dealing with open legislative meetings.\(^\text{305}\) The committee substitute ultimately died in the Senate Committee on Rules and Calendar.\(^\text{306}\)

C. Proposed Legislation in the House

The House considered a constitutional amendment and a statutory proposal to require open legislative meetings.

The constitutional amendment, House Joint Resolution 953, applied to sessions of both legislative houses and to formal and informal meetings of legislative committees and conference committees. It also applied to meetings between the chairs of the House and Senate

\(^{301}\) Fla. CS for SJs 341 and 1344 (1989) at 3 (statement of substantial changes contained in CS for SJs 341 and 1344 (1989)).

\(^{302}\) Id. at 2 (proposed Fla. Const. art. III, § 19(f)).

\(^{303}\) Fla. SB 810 (1989).

\(^{304}\) Staff of Fla. S. Comm. on Ethics & Elect., SB 810 (1989) Staff Analysis 2 (May 16, 1989) (on file with comm.).

\(^{305}\) Florida Senate Bill 810 (1989) contained virtually the same requirements as Senate Joint Resolution 341 (1989) for open meetings, notice of open meetings, and legislators' voting when present during formal action.

The Senate bill did have several provisions that were not in the joint resolution: (1) a criminal penalty for knowingly violating the requirements for open meetings, (2) a noncriminal infraction for other violations, such as abstaining from voting when formal action was taken, and (3) circuit court jurisdiction over alleged violations.

Senate Bill 810 was similar to legislation suggested by Governor Martinez that dealt with open meetings and voting at meetings where official action was taken. Governor Martinez's proposal also contained provisions relating to public records, campaign finance reform, and prohibitions on former state employees representing others for compensation before their former employers. See Legal & Legislative Affairs, Office of the Gov., Ethics in Government: Constitutional Amendment on Legislative Public Meetings (presented to the Advisory Comm., Feb. 14, 1989) (available at Fla. Dep't of State, Div. of Archives, ser. 157, carton 153, Tallahassee, Fla.).


\(^{306}\) Fla. Legis., History of Legislation, 1989 Regular Session, History of Senate Bills at 82, SJR 341.
Appropriations committees or subcommittees and Finance and Taxation committees. In addition, it applied to meetings between or among the Governor, the Senate President, or the House Speaker, and between or among the Governor and department heads.\textsuperscript{307} To be open, the meeting had to be for one of three purposes: (1) agreeing to pass or defeat a specific bill or budget item pending before the Legislature, (2) supporting or opposing a proposed or actual legislative budget item, or (3) agreeing to take formal action later.\textsuperscript{308} Meetings involving the chairs of the Appropriations Committee or subcommittees and the Finance and Taxation Committee were neither required to be prearranged nor to be for any particular purpose and, therefore, were mandated to be open under all circumstances.\textsuperscript{309} The proposed amendment also had detailed notice requirements for meetings and the meeting places.\textsuperscript{310} Formal action taken willfully in violation of the amendment would have been deemed invalid if challenged within twenty days.\textsuperscript{311} The proposal would have required the Legislature to adopt implementing legislation, including criminal penalties, for willful violations.\textsuperscript{312} The statutory proposal, House Bill 1082, was more significant. While the proposed constitutional amendment was not heard in committee, Committee Substitute for House Bill 1082 passed in the House.\textsuperscript{313}

The sponsors of House Bill 1082 attempted to craft a measure that would apply the Sunshine Law to the Legislature as well as to the Governor and the Cabinet.\textsuperscript{314} At the same time, they wanted to free lawmakers from the court rulings and Attorney General’s opinions that strictly applied the Sunshine Law to local governmental bodies.\textsuperscript{315}

As filed, House Bill 1082 amended the Sunshine Law to require open sessions of each house of the Legislature and open meetings of legislative committees, subcommittees, and conference committees.\textsuperscript{316}

\textsuperscript{307} Fla. HJR 953 (1989) at 1, 2 (1989) (proposed Fla. Const. art. III, § 19(a)).
\textsuperscript{308} Id.
\textsuperscript{309} Id.
\textsuperscript{310} Id. at 2.
\textsuperscript{311} Id. at 2, 3.
\textsuperscript{312} Id. at 3.
\textsuperscript{313} Fla. Legis., History of Legislation, 1989 Regular Session, History of House Bills at 223, HJR 953; id. at 255-56, HB 1082.
\textsuperscript{314} Tampa Tribune, Apr. 28, 1989, at 8B, col. 5.
\textsuperscript{315} Id.
\textsuperscript{316} Fla. HB 1082, § 3 (1989) (proposed Fla. Stat. § 286.011(1)).
Meetings between and among the Governor, the Cabinet, heads of executive agencies, the Senate President, and the House Speaker, at which official acts were to be taken, were also required to be open. Other provisions dealt with prior notice of open meetings and with extending criminal infractions for violating the Sunshine Law to the Governor, the Cabinet, and the Legislature. Amendments also were proposed requiring those present and entitled to vote at open meetings to do so, absent a conflict of interest.

When the bill was considered, there was concern that the case law dealing with the Sunshine Law could be applied to meetings covered by House Bill 1082. The staff analysis of the bill noted that it might be possible to distinguish the Legislature from court interpretations of the Sunshine Law because the case law was developed for governmental bodies that can meet for more than sixty consecutive days each year and that have far fewer than the bicameral Legislature's 160 members. The staff analysis also said the potential for legislation being voided because it was developed in other than a public setting could create problems that could lead to more frequent special sessions or to a full-time Legislature.

Responding to these concerns, the House Committee on Ethics and Elections adopted an amendment to House Bill 1082 clarifying that statutes would not be void or voidable if they were passed in violation of the proposed law. The amendment divided the Sunshine Law's chapter 286 into two parts: (1) current law on open meetings that would apply to agencies of government other than the Legislature, and (2) application of the idea of open meetings to the Legislature and certain executive branch budget hearings. The amendment included a detailed statement of legislative intent and a declaration of public policy that unambiguously said the Legislature would not be subject to the

317. Id.
321. Id. at 2.
322. Id. at 4.
324. Id.
case law interpreting the existing Sunshine Law and that statutes would not be voided because of violations of open legislative meeting requirements.\textsuperscript{325}

Instead of that amendment, the House Committee on Ethics and Elections passed a Proposed Committee Substitute for House Bill 1082.\textsuperscript{326} The bill was changed in several important respects. First, section 11.142, Florida Statutes—the statute that the plaintiff newspapers in Moffitt v. Willis\textsuperscript{327} claimed required the Legislature to abide by its adopted rules of procedure\textsuperscript{328}—would have been amended to require both houses to provide by rule that all sessions and committee meetings of that house of the Legislature were open to the public.\textsuperscript{329} Sec-

\textsuperscript{325} Staff of Fla. H.R. Comm. on Ethics & Elect., HB 1082 (1989) Staff Analysis 4 (Apr. 21, 1989) (on file with comm.).

The legislative intent and declaration of policy sections explain the rationale for these positions:

\textsuperscript{286.30 Legislative intent and declaration of policy.—}

(1) It is essential to the proper conduct and operation of the Legislature that a free flow of information be allowed among and between the elected representatives of the people of this state and those persons with whom these representatives meet. The sharing of information for the purpose of making informed decisions also requires a free exchange of ideas among and between legislators, Cabinet members, executive agency heads and the Governor.

(2) The public has the right to observe its elected representatives while conducting the public’s business. Without the ability to know what action their representatives are considering or taking, the public cannot express their opinion to governmental officials on current issues and past or pending legislative and executive actions at the state level.

(3) It is essential that the distinction between the operation of other governmental agencies and the legislature’s operation be recognized when adopting the practices and procedures applicable to open meetings. To this end, the Legislature is expressly exempted from the case law which has evolved from the application of chapter 286, part I, to the conduct of meetings of other boards, commissions, or agencies of this state.

(4) It is essential the people of Florida have the security and peace of mind of knowing once its laws are enacted the laws will be subject only to scrutiny for constitutional consistency and the people can be confident their laws will be enforceable. Therefore, it is the intent of the Legislature the persons involved in violation of the provisions of this part be held liable. The statute itself shall not be void or voidable on the basis the statute was enacted in violation of this part.


\textsuperscript{326} Fla. H.R. Comm. on Ethics & Elect., PCS for HB 1082 (draft of May 4, 1989). See also Staff of Fla. H.R. Comm. on Ethics & Elect., PCS for HB 1082 (1989) Staff Analysis 1-5 (May 4, 1989); Fla. H.R. Comm. on Ethics & Elect., Amendments to PCS for HB 1082 (draft of May 4, 1989).

\textsuperscript{327} 459 So. 2d 1018, 1021 (Fla. 1984).

\textsuperscript{328} Plaintiffs' Memorandum, supra note 127, at 30.

ond, an exception to the requirement for open meetings would apply to meetings involving security of the state, investigation of criminal activity, consideration of material deemed confidential by statute, or removal from office or expulsion from the Legislature. Third, section 11.142 also would have been amended to require the Senate President, the House Speaker, and the majority and minority party leaders of each house to make schedules of their official duties available daily. Meetings between or among the Governor, the Senate President, the House Speaker, or the majority and minority party leaders of each house would be open to the public when governmental business was to be discussed. Fourth, the conduct of meetings required to be open under the statute would have been governed by the rules of each house; conference committees could have chosen which house’s rules would govern the conduct of their deliberations. Fifth, each house would have been required to adopt a rule requiring meetings between legislators and registered lobbyists at which governmental business was to be discussed to be open to the public. Finally, the revised statute made each house of the Legislature the sole judge of whether a member had violated the provisions on open meetings.

Some of the most powerful members of the House sponsored the bill in order to curtail perceptions that the Legislature does everything in back rooms. One sponsor, Representative Fred Lippman, told the House Ethics and Elections Committee, "When it comes to the public’s right to know, I don’t know of anything we’ll consider this year that’s as important."

The proposed committee substitute for House Bill 1082 passed the Ethics and Elections Committee unanimously, but not without criti-

331. Id. § 1(2).
332. Id. § 1(3).
333. Id. § 1(4).
334. Id. § 1(5).
335. Id. § 1(6); see also Fla. H.R. Comm. on Ethics & Elect., PCS for HB 1082, § 1 (draft of May 4, 1989) (proposed amendment to Fla. Stat. § 11.142).
336. House Bill 1082 was introduced by Representatives Norman Ostrau, Democrat, Plantation; T.K. Wetherell, Democrat, Daytona Beach; and Fred Lippman, Democrat, Fort Lauderdale. Representative Ostrau was Chair of the House Ethics and Elections Committee. Representative Wetherell was Chair of the House Appropriations Committee and 1990-1992 Speaker-designate. Representative Lippman was Chair of the House Rules and Calendar Committee.
cism of the provision requiring open meetings between lobbyists and legislators. Representative George Crady\textsuperscript{339} worried that the bill might prove to be "prohibitive in running state government," and added, "I've never excluded anyone from my office. But making meetings with lobbyists open won't prevent secret meetings. If we do this, we'll create a new army of information-sharers, people who aren't registered as lobbyists, and they'll become as powerful as the lobbyists."\textsuperscript{340} Representative Ron Glickman\textsuperscript{341} defended the provision: "[T]hat's where the most influence comes from, lobbyists meeting with legislators, not legislators meeting with legislators."\textsuperscript{342} Crady offered an amendment to strike the provisions relating to meetings with lobbyists, but the Committee instead voted to accept a substitute amendment requiring open meetings only when they pertain to governmental business.\textsuperscript{343}

Other members expressed concern that they would be unable to work and noted that similar provisions are considered a handicap for local governments. Representative Luis Rojas\textsuperscript{344} said, "[y]ou can't legislate integrity . . . you've either got it or you don't . . . . Sometimes I think we set up blocks to local government by trying to legislate integrity . . . . How far do we go with this? Where do we draw the line?"\textsuperscript{345} The Executive Director for Common Cause, Bill Jones, said the bill was a good sign that the House was "beginning to work toward a product that would develop a greater degree of openness."\textsuperscript{346} The House bill, he noted, went farther than the Senate with respect to meetings between lobbyists and legislators.\textsuperscript{347}

The House passed Committee Substitute for House Bill 1082 unanimously, without amendments to the section dealing with legislative meetings.\textsuperscript{348} As noted earlier, the Senate Ethics and Elections Committee passed Committee Substitute for Senate Joint Resolutions 341 and

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\textsuperscript{339} Dem., Yulee.
\textsuperscript{340} Florida Times-Union, \textit{supra} note 338.
\textsuperscript{341} Dem., Tampa.
\textsuperscript{342} Orlando Sentinel, \textit{supra} note 337.
\textsuperscript{343} Fla. H.R. Comm. on Ethics & Elect., Amendment 5 and Substitute Amendment 6 to PCS for HB 1082 (1989). \textit{See also} Florida Times-Union, \textit{supra} note 338.
\textsuperscript{344} Repub., Hialeah.
\textsuperscript{345} Orlando Sentinel, \textit{supra} note 337; \textit{see also} Florida Times-Union, \textit{supra} note 338.
\textsuperscript{346} Gainesville Sun, May 10, 1989, at 13A, col. 3.
\textsuperscript{347} \textit{Id}.
\textsuperscript{348} \textit{FLA. H.R. JOUR.} 558-59, 573 (Reg. Sess. 1989).
1344. However, neither house took further action on these proposals during the 1989 session.349

VII. THE 1990 LEGISLATIVE SESSION

Declaring that the changes to the Senate rules made in 1989 had worked, Senate President Crawford announced in January 1990 that he would seek a constitutional amendment at the 1990 Regular Session that would be the public's "permanent ticket" to a seat in the Florida Legislature.350 The preliminary draft of the proposed constitutional amendment was similar to the rule revisions the Senate adopted a year earlier.351

The amendment proposed that legislative rules of procedure require open meetings when legislative business is discussed among two or more legislators, except exchanges of information between two members, and that prior notice be provided for "specifically defined, important meetings."352 It also required both houses of the Legislature to adopt rules of procedure mandating that conference committee meetings and other specifically defined meetings involving conference committee members, the Governor, the Senate President, or the House Speaker be reasonably open to the public and that advance notice be provided.353 Legislative rules also would have provided for investigations about sworn complaints of violations of the rules on open meetings; a public hearing would be held once a basis for a complaint had been established.354 To end the practice of presiding officers ignoring the raised hands of members requesting recorded votes on particular questions, recorded votes would have been required upon the written request of five members of a house and upon the written request of two members of a committee or subcommittee.355

351. Palm Beach Post, supra note 350; Florida Times-Union, supra note 350.
353. Id. § 4(f).
354. Id. § 4(g).
355. Id. § 4(c).
A. Senate Action on the Amendment

The joint resolution that Crawford and twenty-seven other senators introduced in the 1989 Regular Session differed from the preliminary draft that was announced in January 1990. Senate Joint Resolution 1990 (SJR 1990) retained the two most prominent features of the earlier version: (1) any meeting where legislative business would be discussed among two or more legislators was required to be open, and (2) conference committee meetings and meetings at which the business of a conference committee would be discussed, and meetings between or among the Governor, the Senate President, or the House Speaker were required to be open. Like the preliminary draft, the joint resolution said the rules of procedure of each house must require open meetings among legislators and open conference committee meetings. Its provisions on written requests for recorded votes were identical to the provisions in the previous version.

The joint resolution did not include the exception for information exchange meetings between two legislators that had been in the preliminary draft and that was in the Senate Rules. Also, the provisions of the earlier draft regarding sworn complaints for violations and a public hearing on substantiated complaints were not included. The prior notice provisions of the earlier draft for “specifically defined, important meetings” and meetings related to a conference committee also were deleted. Instead, the introduced version directed that the rules

356. The cosponsors were: Senators George Kirkpatrick, Democrat, Gainesville; Karen Thurman, Democrat, Inverness; James A. Scott; Tim Deratany, Republican, Indialantic, 1984-1990, House of Representatives 1978-1984; Gwen Margolis, Democrat, North Miami Beach; Pat Thomas, Democrat, Quincy; Winston “Bud” Gardner, Democrat, Titusville; William G. “Doc” Myers, Republican, Hobe Sound; Tom Brown; Larry Plummer; Jeanne Malchon, Democrat, St. Petersburg; W.D. Childers, Democrat, Pensacola; Curtis Peterson, Democrat, Lakeland, 1970-1990; Toni Jennings, Republican, Orlando; Tom McPherson, Democrat, Fort Lauderdale, 1982-1990, House of Representatives 1964-1966, 1972-1982; John Grant, Republican, Tampa; Bob Johnson, Republican, Sarasota; Howard Forman, Democrat, Fort Lauderdale; Sherry Walker, Democrat, Waukeenah; Ander Crenshaw, Republican, Jacksonville; Vince Bruner, Democrat, Fort Walton Beach; Malcolm Beard, Republican, Tampa; Javier Souto, Republican, Miami; Fred Dudley, Republican, Cape Coral; Roberto Casas, Republican, Hialeah; and George Stuart, Democrat, Orlando, 1978-1990.
357. Fla. SJR 1990 (1990) at 1-2 (proposed amendment to FLA. CONST. art. III, § 4(b)).
358. Id.
359. Id. § 4(c), at 2; Preliminary Draft, supra note 352, § 4(c) at 1.
360. See Preliminary Draft, supra note 352, § 4(g) at 2.
361. Id. §§ 4(e)-(f) at 1-2.
of procedure of each house, and joint rules adopted by concurrent res-
olution, prescribe which open meetings require notice.362 Senate Joint
Resolution 1990 also did not specify that discussion occurring at a
meeting requiring prior notice or at a session of either or both houses
complied with the amendment.363

The proposed amendment was referred only to the Senate Rules and
Calendar Committee and was heard in committee on the second day of
the 1990 Regular Session.364 It received grudging approval after exten-
sive debate that mirrored the discussion of the 1989 rules changes.365
The discussion in the Rules Committee focused on three subjects: (1)
whether one-on-one meetings between individual legislators should be
required to be open by the state constitution, (2) the need for an excep-
tion to such a requirement for meetings to exchange information be-
tween two legislators, and (3) interpretation and enforcement of the
amendment’s requirements.

1. One-on-One Meetings

The committee’s major concern was meetings between individual
legislators. Several committee members preferred to list specifically the
types of meetings that were required to be open and for which prior
notice was required.366 They were concerned that legislators would be
accused of violating the amendment because they met with another leg-
islator without notifying the public.367 One fear was that the public and
the news media would interpret the requirement for public meetings
among legislators discussing legislative business as synonymous with
prior notice of such meetings.368

Another fear was that reporters would want notification before a
legislator met with anyone on a particular issue. Committee Chair Scott assured the Committee that these apprehensions were ill-founded—the Florida Constitution would require each house to adopt rules of procedure requiring meetings among two or more legislators to be open and the rules would be subject to legislative interpretation.

Senator Curt Kiser offered an amendment to the joint resolution that would have removed the language regarding meetings among two or more legislators and replaced it with a requirement that meetings of a majority of a legislative committee be open. Ultimately, Senator Kiser withdrew his amendment, indicating that he was concerned about a constitutional provision that required open meetings between two legislators. He also hoped some resolution of this problem could be found before the full Senate heard SJR 1990.

2. Information Exchange Meetings

Senators also raised concerns about the lack of an exception for information exchange meetings between two legislators. The 1989 Senate rules on open meetings included such an exception. Senator Richard "Dick" Langley said that if the constitution said all meetings between two or more legislators were open to the public, then the exception in the Senate rules for meetings to exchange information would be unconstitutional. Several other committee members said the Legislature is different from local governments. Senator Arnett Girardeau explained that "[w]e are not like a city council or a county commission. Once a reporter indicates you have violated the Sunshine Law . . . the

370. Id. (comments of Sen. James A. Scott).
371. The amendment offered by Senator Kiser listed only meetings among "a majority of the members of any legislative committee." Senator Langley offered an amendment to the amendment to add legislative subcommittees to Senator Kiser's amendment. Fla. S. Comm. on Rules & Calen., Fla. SJR 1990 (1990) (proposed Amendment 2); id. (proposed Amendment to proposed Amendment 2) (on file with comm.).
373. Id. (comments of Sen. Langley).
375. Dem., Jacksonville.
onus is on you to prove that you have not. I think we are opening ourselves up and future Legislatures up to unnecessary abuse.”

To resolve these concerns, Senator Langley offered an amendment, which was adopted, to add the language of the exception to the joint resolution.

3. Court Interpretations

Finally, the committee was concerned about court interpretations expanding the meaning of the constitutional amendment. The committee adopted an amendment designed to ensure that the Legislature would interpret the constitutional amendment. In its explanation of SJR 1990, the committee staff indicated that the phrase “the rules of procedure of each house” was intended to mean that only a house of the Legislature could interpret the constitutional amendment. Nonetheless, the amendment to SJR 1990 was intentionally worded to be similar to the provision in the constitution setting forth the power of each house of the Legislature to determine the qualifications of its members and to emphasize and maintain the separation of powers principles announced in Moffitt v. Willis. This amendment also was adopted out of concern that court interpretation of the constitutional amendment would deprive the Legislature of flexibility in its procedures. The Rules and Calendar Committee favorably reported SJR 1990 with three amendments by a 12 to 1 vote.

377. The exception in the amendment said: “meetings between two or more members of the legislature to exchange information need not be open provided the purpose of the meeting between the two members is not to agree upon final action that will be taken at a subsequent meeting.” Fla. S. Comm. on Rules & Calen., Comm. Amendment 1 to SJR 1990 (1990) (on file with comm.).
380. Florida Constitution article III, section 2 provides: “Each house shall be the sole judge of the qualifications, elections, and returns of its members.”
381. 459 So. 2d 1018 (Fla. 1984). See also Fla. S. Comm. on Rules & Calen., tape recording of proceedings (Apr. 5, 1990) (on file with comm.) (comments of D. Steven Kahn, Att’y, Fla. S. Office of the Pres.).
Senators Kiser and Crawford later met to discuss Kiser's views on SJR 1990's provisions on meetings between two legislators other than the Senate President and the House Speaker. They agreed on a compromise amendment that required open meetings when more than two legislators meet to discuss legislative business. Senator Kiser thought that private meetings of more than two legislators—where decisions are most likely to be made—are the meetings that draw the most criticism.384

The Senate took up SJR 1990 and combined it with another measure—Senate Joint Resolution 2—during its first working session of the 1990 Regular Session.385 Kiser and Crawford offered a compromise amendment: “[A]ny meeting at which legislative business is discussed among more than two members of the legislature shall be open to the public.”386 The compromise amendment increased the threshold number of legislators that must participate in a meeting before it would be required to be open387 but did not include any exception for information exchange among legislators.388 However, the amendment permitted the rules to require meetings not specifically listed in the constitutional amendment to be open to the public.389 This language

385. FLA. S. JOUR. 115 (Reg. Sess. 1990). Florida Senate Joint Resolution 2, introduced by Senator Kiser, listed required open meetings and meetings that would require prior notice. The amendment specified that sessions of each house of the Legislature; meetings of legislative committees and subcommittees; meetings among the Governor, Senate President, House Speaker, or Chair of a legislative committee or subcommittee for the purpose of agreeing to take formal action later; and meetings of a quorum of legislative committees and subcommittees for the purpose of agreeing to take formal action later be open to the public. An exception permitted closed Senate sessions when it was considering an appointment to or removal from public office. The amendment also prohibited members of each house or of legislative committees and subcommittees who are present when formal action is taken from abstaining from voting unless the member had a conflict of interest. Fla. SJR 2 (1990) (proposed FLA. CONST. art. III, § 19).

Senator Kiser's proposed constitutional amendment was referred to the Senate Ethics and Elections Committee and the Senate Rules and Calendar Committee, but it was not heard in either committee. FLA. LEGIS., HISTORY OF LEGISLATION, 1990 REGULAR SESSION, HISTORY OF SENATE BILLS at 29, SJR 2.

An identical resolution, House Joint Resolution 2211 (1990), was filed in the House by Representative R.Z. Safley, Republican, Clearwater, but it was not heard in any committee. FLA. LEGIS., HISTORY OF LEGISLATION, 1990 REGULAR SESSION, HISTORY OF HOUSE BILLS at 398, HJR 2211.

387. Id.
388. Id.
389. "The rules of procedure of each house, and, if appropriate, joint rules adopted by concurrent resolution, may require other meetings between members of the legislature to be open to the public." FLA. S. JOUR. 115-16 (Amendment 3 to SJR 1990 & 2).
was intended to authorize either house to adopt rules requiring open meetings between any two legislators or for specifically enumerated types of meetings, as the Senate had done in 1989. The amendment also included the language adopted by the Rules and Calendar Committee to specify that each house is the sole judge in interpreting the provisions of the constitutional amendment that related to open legislative meetings. During the debate, several senators emphasized that the Legislature, not the courts, would interpret the amendment.

Senators also emphasized the need for recognizing the differences between applying the statutory Sunshine Law to local government and the executive branch and applying the constitutional amendment to the Legislature. These included: (1) the difference in the size of city and county commissions and the size of the Legislature; (2) the Legislature's heavy reliance on committees, which most local governments do not use; and (3) the common experiences most local government officials share, as opposed to the different experiences of legislators from various parts of the state. Senators Kiser and Crawford explained that the intent of the amendment was to establish a requirement for openness in legislative proceedings in the Florida Constitution, while recognizing that the needs of the future, as well as caution, dictated a slightly less restrictive standard than the 1989 Senate rules on open meetings. They explained that they wanted to ensure the 1989 reforms would not be adversely impacted by the amendment, but they also wanted to reflect Senator Kiser's concerns about a constitutional requirement concerning meetings between two legislators.

Senators questioned how SJR 1990 & 2 would deal with conversations between legislators that occur on the floor of either house of the Legislature or in committee meetings. In 1989, the rules changes con-

391. Fla. S. Jour. 115-16 (Amendments 2 and 3 to SJR 1990 & 2). The relevant language is: "Each House shall be the sole judge of the interpretation and enforcement of [Florida Constitution article III, section 4(b)]."
395. Id.
tained language that such discussions complied with the new Senate rule requiring open meetings.\footnote{See FLA. S. Rule 1.43 (1989) ("Discussion on the floor while the Senate is in session and discussions among Senators in a committee room during committee meetings shall be deemed to be in compliance with this rule.")} The concern was that the absence of a similar provision in the constitutional amendment could produce an interpretation allowing members of the public and representatives of the press to come onto the floors of the House and Senate during sessions.\footnote{Fla. S., tape recording of proceedings (Apr. 12, 1990) (on file with Secretary) (discussion of access to the S. floor under SJR 1990 & 2).} Senator Fred Dudley offered an amendment to make it clear that each house could continue to limit access to its chamber floor.\footnote{Fla. S. Jour. 115, 117 (Reg. Sess. 1990) (Amendment 3A to SJR 1990 & 2).} The Senate adopted the compromise amendment, as amended by Senator Dudley,\footnote{Id. at 117 (Amendments 3 and 3A to SJR 1990 & 2).} and sent SJR 1990 & 2 to the House of Representatives on a vote of 39 to 1.\footnote{Fla. S. Jour. 119 (Reg. Sess. 1990).}

\textbf{B. House Action on the Amendment}

The Senate Joint Resolution went first to the House Appropriations Committee, where Representative John Long\footnote{Dem., Land O'Lakes.} offered an amendment that considerably broadened the proposal.\footnote{The amendment also dealt with public campaign financing and open meetings in the executive branch. Fla. H.R. Comm. on Approp., SJR 1990 & 2 (1990) Amendment 1 (proposed FLA. CONST. arts. VI, § 7, IV, §§ 13(a), (c)) (on file with comm.).} It required opening prearranged meetings among two or more legislators for the purpose of taking formal action or agreeing to take formal action later.\footnote{Id. (proposed FLA. CONST. art. III, § 4(e)) (on file with comm.).} In addition, conference committee meetings were required to be public, and each house of the Legislature would have had the power to determine which meetings required prior notice and the manner for providing it.\footnote{Id.} The Long amendment allowed committee meetings to be closed for security reasons or to protect witnesses.\footnote{"Notwithstanding the provisions of this section, a meeting of a legislative committee may be closed where necessary for security purposes or for the protection of a witness appearing before the committee." Id.} The amendment provided that each house of the Legislature was the sole judge of interpreting the amendment. However, the Long amendment broadened

\begin{verbatim}
396. See FLA. S. Rule 1.43 (1989) ("Discussion on the floor while the Senate is in session and discussions among Senators in a committee room during committee meetings shall be deemed to be in compliance with this rule.").
399. Id. at 117 (Amendments 3 and 3A to SJR 1990 & 2).
401. Dem., Land O'Lakes.
402. The amendment also dealt with public campaign financing and open meetings in the executive branch. Fla. H.R. Comm. on Approp., SJR 1990 & 2 (1990) Amendment 1 (proposed FLA. CONST. arts. VI, § 7, IV, §§ 13(a), (c)) (on file with comm.).
403. Id. (proposed FLA. CONST. art. III, § 4(e)) (on file with comm.).
404. Id.
405. "Notwithstanding the provisions of this section, a meeting of a legislative committee may be closed where necessary for security purposes or for the protection of a witness appearing before the committee." Id.
\end{verbatim}
this provision to include all of article III, section 4 of the Florida Constitution.406 The amendment required all meetings for the purpose of discussing pending legislation and involving the Governor and one legislator to be public.407 Finally, the Long amendment required recorded votes in committees and subcommittees on final passage of legislation and on other matters upon the request of two members of the committee or subcommittee.408 Representative Keith Arnold409 offered an amendment that exempted casual meetings, strategy sessions, and caucus meetings.410 The Appropriations Committee adopted the Long amendment and passed SJR 1990 & 2, as amended, 32 to 4.411

The House also prepared its own, broader proposal.412 House Joint Resolution 3515 originated in the House Ethics and Elections Committee as a proposed committee bill requiring open meetings when two or more members of the legislature discussed legislative business.413 Meetings of legislative committees, joint legislative committees, and conference committees would have been required to be open and publicly

406. "Each house shall be the sole judge for the interpretation and enforcement of the provisions of [Florida Constitution art. III, section 4]." Id.

Florida Senate Joint Resolution 1990 and 2 (1990) (First Engrossed) (proposed amendment to Florida Constitution article III, section 4(b)) provides: "Each house shall be the sole judge of the interpretation and enforcement of [Florida Constitution article III, section 4(b)]."


408. Id. (proposed amendment to FLA. CONST. art. III, § 4(c)) (on file with comm.).

409. Dem., Fort Myers.


412. Two other constitutional amendments, Florida House Joint Resolution 2211 (1990) and Florida House Joint Resolution 761 (1990), were introduced in the House of Representatives. Neither was heard in any committee. FLA. LEGIS., HISTORY OF LEGISLATION, 1990 REGULAR SESSION, HISTORY OF HOUSE BILLS at 298, HJR 761.

HJR 2211 (1990) was identical to SJR 2 (1990); see supra note 385.

HJR 761 (1990) would have required that meetings between two or more legislators or between a legislator and either the Governor, the Lieutenant Governor, a Cabinet member, the head of an executive department, or a lobbyist, at which any bill—including the general appropriations bill—that had passed either house or a committee was discussed, be open to the public or press. Written notice would have been required in certain circumstances. The time periods for providing notice and the contents of the notice would have been determined by general law. Public participation would have been required to be permitted at committee and subcommittee meetings. The Ethics Commission would have been responsible for investigating and reporting violations.

413. Fla. H.R. Comm. on Ethics & Elect., PCB 90-6 (draft of Mar. 30, 1990) (proposed FLA. CONST. art. III, § 4(e)).
noticed. Recorded votes in committees and subcommittees also would have been required upon the request of any committee member or subcommittee member present.

The Ethics and Elections Committee passed HJR 3515 with three amendments that are relevant to open meetings. First, the provision that required open meetings between two or more legislators was amended to allow each house to adopt rules to define and to implement the requirements. Second, an amendment was added to permit closure of committee meetings where reasonably necessary for the protection of a witness. Third, each house would have been required to establish procedures to investigate complaints alleging violations of open meetings provisions. After it passed the Ethics and Elections Committee, HJR 3515 went to the entire House.

The House took up HJR 3515 and SJR 1990 & 2 on the same day. Representative Norman Ostrau, Chairman of the House Committee on Ethics and Elections, offered an amendment to HJR 3515 that substantially amended the joint resolution and made HJR 3515 nearly identical to an amendment the House Appropriations Committee had adopted to SJR 1990 & 2.

As amended and passed by the House, HJR 3515 required prearranged meetings of more than two legislators to be open if the purpose of the meeting was to take final action or to agree on final action to be taken later. Also, conference committee meetings would have been required to be open to the public. Each house could have prescribed rules on which meetings required prior notice and on the manner for

414. Legislative committee meetings would have been open and noticed as provided by rules of each house of the Legislature. Legislative joint committee and conference committee meetings would have been open and noticed as provided by concurrent resolution. Fla. H.R. Comm. on Ethics & Elect., PCB 90-6 (draft of Mar. 30, 1990) (proposed Fla. Const. art. III, § 4(f)).

415. Id. (proposed Fla. Const. art. III, § 4(c)).

416. Fla. H.R. Comm. on Ethics & Elect., PCB 90-6 (draft of Apr. 5, 1990) (proposed Fla. Const. art. III, § 4(e)).

417. Id. (proposed Fla. Const. art. III, § 4(f)).

418. Id. (proposed Fla. Const. art. III, § 4).

419. House Joint Resolution 3515 was referred to the Finance and Taxation Committee and the Appropriations Committee; however, it was withdrawn from both committees. Fla. Legis., History of Legislation, 1990 Regular Session, History of House Bills at 482, HJR 3515.


421. Fla. HJR 3515 (1990) at 2 (proposed Fla. Const. art. III, § 4(e)).

422. Id.
providing it.\textsuperscript{423} Meetings between the Governor and any legislator to discuss pending legislation would have been required to be public.\textsuperscript{424} The bill also required recorded votes in legislative committees and subcommittees on final passage of legislation and on the request of two members of the committee or subcommittee on any other question.\textsuperscript{425} The amendment did not include requirements that committee and joint committee meetings be public and that legislative rules be established to investigate complaints of open meetings violations. The House passed HJR 3515, as amended, and sent it to the Senate on a vote of 85 to 25.\textsuperscript{426} The Senate never considered HJR 3515.\textsuperscript{427}

Immediately after passing HJR 3515, the House took up SJR 1990 & 2 as amended by the Appropriations Committee. An amendment to the Appropriation Committee’s amendment\textsuperscript{428} was adopted that changed the threshold requirement for an open meeting from “two or more” legislators to “more than two,” the same standard in SJR 1990 & 2 as passed by the Senate.\textsuperscript{429} The House adopted other amendments that further broadened SJR 1990 & 2. They would have amended the constitution to increase the size of the Senate from forty to forty-five members, and they would have increased House terms from two years to four years and Senate terms from four years to six years.\textsuperscript{430}

The debate on the constitutional amendments was spirited. House Majority Leader Keith Arnold said he supported the joint resolutions only because Common Cause would put its amendment on the ballot if the open government amendment did not pass the Legislature:

The issue will be on the ballot whether we like it or not. [Newspaper] editorial boards will spend the summer running coupons to help Common Cause, and some people in the Senate are committed to this and have the ability to raise money and help Common Cause get it on the ballot. . . .\textsuperscript{431} Philosophically, I’m opposed to the bill. . . .

\begin{footnotes}
\item[423.] Id.
\item[424.] Fla. HJR 3515 (1990) (proposed Fla. Const. art. IV, § 13(b)).
\item[425.] Fla. HJR 3515 (1990) at 1, 2 (proposed amendment to Fla. Const. art. III, § 4(c)).
\item[428.] By Rep. Jerry Rehm, Repub., Clearwater.
\item[429.] Fla. H.R. Jour. 1142 (Reg. Sess. 1990) (Amendment 4 to Amendment 1 to SJR 1990 & 2).
\item[430.] Fla. H.R. Jour. 1141-42 (Reg. Sess. 1990) (Amendments 1-3 to Amendment 1 to SJR 1990 & 2).
\item[431.] St. Petersburg Times, May 26, 1990, at 5B, col. 5.
\end{footnotes}
Philosophically, the public and press don’t agree, and pragmatically, we are going to lose.432

Representatives of Common Cause said they would abandon their initiative petition drive if the Legislature placed an amendment on open legislative meetings on the November 1990 ballot.433

Arnold added that the amendment would put the Legislature under the same standard as local governments.434 Some members recognized that adopting the amendment might result in staff members negotiating for legislators because staff members would not come under the open meetings requirements.435 Other members asked whether certain specific gatherings and meetings would be required to be public. Representative Ostrau pointed out that the Legislature would implement the finer points of the amendment.436 He described the amendment as “a skeleton, and it basically gives you a framework . . . . [h]ow we put that meat on that skeleton is going to be decided by the rules.”437 The House passed an amended SJR 1990 & 2 on a vote of 75 to 26, and sent it back to the Senate.438 The Senate rejected the House’s amendments.439

C. The Senate and House Agree

The biggest area of disagreement between the chambers involved describing when meetings of three or more legislators would be open to the public.440 Members of both houses wanted the flexibility to lobby other members privately to cosponsor a bill or to support a bill.441

Ultimately, the phrase “formal legislative action” was used to describe prearranged gatherings of more than two lawmakers to discuss pending legislation or amendments. These gatherings were required to

433. Orlando Sentinel, May 26, 1990, at 5B, col. 5; St. Petersburg Times, supra note 431.
434. Pendleton, supra note 432.
436. Pendleton, supra note 432.
440. Miami Herald, supra note 435.
441. Id.
be public.\textsuperscript{442} The House and Senate also agreed that legislative committee and subcommittee meetings of each house and joint conference committee meetings would open and noticed to the public.\textsuperscript{443} Specific provision was also made to allow the rules of procedure of each house to control admission to the floor of its chamber during its sessions.\textsuperscript{444} Finally, the compromise made it clear that each house would implement, interpret, and enforce the constitutional provision.\textsuperscript{445} The House passed the revised constitutional amendment 109 to 3;\textsuperscript{446} the Senate passed it 36 to 0.\textsuperscript{447}

\textbf{VIII. ADOPTION AND IMPLEMENTATION}

Voters overwhelmingly approved the constitutional amendment, Amendment 4, in the 1990 general election.\textsuperscript{448} Predictably, almost every major newspaper in Florida editorialized in favor of adoption of the constitutional amendment.\textsuperscript{449} The editorials generally stressed the need to open important meetings where public business is discussed because the best way to hold elected officials accountable is to know as much as possible about what they are doing.\textsuperscript{450} Several editorials noted that open meetings would restore confidence in legislative decisions

\begin{itemize}
  \item Prearranged gatherings were handled in the amendment as follows:
  \begin{quote}
    The rules of procedure of each house shall further provide that all prearranged gatherings between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the House of Representatives the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.
  \end{quote}
  \textsuperscript{443} Id.
  \textsuperscript{444} Id.
  \textsuperscript{445} Id.
  \textsuperscript{446} Id. at 1817.
  \textsuperscript{448} Amendment 4 was approved 2,795,784 to 392,323. DIV. OF ELECTIONS, DEP’T OF STATE, STATE OF FLORIDA GENERAL ELECTION RETURNS, NOVEMBER 6, 1990, at 5 (1990).
  \textsuperscript{450} See, e.g., Tampa Tribune, supra note 449; Florida Times-Union, supra note 449.
\end{itemize}
even though it would cause some inconvenience and awkwardness.\textsuperscript{451} Other editorials endorsing Amendment 4 pointed out that it was less onerous than the Sunshine Law because the Legislature alone could interpret and enforce the amendment and because the amendment applied to meetings of more than two legislators.\textsuperscript{452} Other editorials, however, criticized the amendment as unnecessary.\textsuperscript{453}

At the 1990 Organizational Session, the House adopted several rules changes to implement Amendment 4. The new rules require House members to provide reasonable public access to any meeting between a representative and two or more other legislators when the public requests admission to the meeting and the meeting is prearranged to agree upon formal legislative action on pending legislation or amendments.\textsuperscript{454} In addition, the House Speaker must provide reasonable public access to meetings between the Speaker and the Governor or between the Speaker and the Senate President under similar circumstances.\textsuperscript{455} The House rules specifically define the terms "formal legislative action" and pending legislation.\textsuperscript{456} Meetings that occur in the chamber of the House while the House is in session are deemed to be reasonably open to the public.\textsuperscript{457} The House also authorized committee chairs to close committee meetings, with the concurrence of the Speaker, to protect a witness.\textsuperscript{458}

At the beginning of the 1991 session, the Senate adopted minor revisions to its rules to implement the constitutional amendment. The most significant change was a new rule that: (1) required all legislative com-

\textsuperscript{451} See, e.g., St. Petersburg Times, supra note 449.
\textsuperscript{452} See, e.g., Little, Should Florida's Legislature Meet in the Sunshine?: No, Tallahassee Democrat, Nov. 1, 1990, at 13A, col. 4.
\textsuperscript{453} FLA. H.R. RULE 2.7 (1991).
\textsuperscript{454} FLA. H.R. RULE 5.19 provides that:
\textsuperscript{455} [f]or the purpose of this Rule, Rule 2.7, and as used in Article III, Section 4 of the State Constitution, legislation shall be considered pending if filed with the Clerk of the House and an amendment shall be considered pending if it has been delivered to the secretary of a committee in which the legislation is pending or to the Clerk of the House if the amendment is to a bill which has been reported favorably by each committee of reference and the term 'formal legislative action' shall include any vote of the House or Senate, or of a committee, or subcommittee on final passage or on a motion other than a motion to adjourn or recess.
mittee, subcommittee, and joint conference committee meetings to be open and noticed to the public;\(^459\) (2) repeated the language of the constitutional amendment requiring open meetings between more than two legislators; and (3) specified that if the new rule conflicted with any other Senate rule, the rule that allowed greater public access would prevail.\(^460\) Another change provided that political caucuses could be closed if they were held to designate Senate leaders.\(^461\) Minor refinements also were made to time periods for prior notice of various meetings involving the Senate President, including meetings with the Governor or the House Speaker, and of meetings related to issues pending before conference committees.\(^462\)

IX. Conclusion

The constitutional amendment on open legislative meetings was the direct result of the infamous “pizza and beer” party during the debate over the sales tax on services, the public disdain for the services tax combined with the news stories about the party, and the abandoned Martinez campaign pledge to open legislative meetings. These events created the perfect climate for the initiative petition campaign by which Common Cause sought to put its open government amendment on the ballot in 1990. With this “hammer” hanging over their heads, legislative leaders began efforts to open all important legislative meetings to the public.

If the Common Cause proposal had been adopted, it might have caused radical changes because it would have put the Legislature under the same requirements local governments face under the statutory Sunshine Law. However, those might not have been worth the price. Informal communication between legislators, necessary for day-to-day operation of the institution, would have been hampered. In addition, it would have endangered Florida’s tradition of a part-time Legislature because of the lengthy advance notice requirements in the proposal.

With the adoption and implementation of the constitutional amendment, the public will be guaranteed access to most—if not all—truly important meetings that occur in the legislative process.

\(^{459}\) Previously, other Senate rules mandated that these meetings to be open to the public and that prior notice of such meetings be provided. See Fla. S. Rules 2.6, .13, .19 (1988-1990).


\(^{461}\) Id. 1.44(c) (1990-1992).

\(^{462}\) Id. 1.44(a), 2.19 (1990-1992).
The Senate has operated under the more stringent Senate rules for three legislative sessions. The fears that open meetings would harm the legislative process have not been realized. Operating under these rules has been time consuming and, at times, difficult. The process, however, has survived and perhaps even grown stronger. During these past three sessions, the Legislature has passed three general appropriations bills, enacted Preservation 2000, provided for the cleanup of the Everglades, enacted a massive reform of the workers' compensation law, and enacted the largest transportation improvement package in Florida's history. There is surely cause for optimism. With its increased access, the public may develop greater confidence in the decisions made by the Legislature. In 1992, as the Legislature undertakes reapportionment, these reforms will face their greatest test.

463. Ch. 89-253, 1989 Fla. Laws 1043; Ch. 90-209, 1990 Fla. Laws 1165; Ch. 91-193 Fla. Laws 1622.
466. This originally passed as chapter 90-201, 1990 Florida Laws 894. However, the Act was later determined to violate the Florida Constitution's single subject requirement. Martinez v. Scanlan, 582 So. 2d 1167 (Fla. 1991). Chapter 90-201 was repassed as two bills and made retroactive to the original effective date in chapter 91-1, 1991 Florida Laws 21 (workers' compensation provisions) and chapter 91-5, 1991 Florida Laws 133 (international trade provisions).
468. Attorney General Bob Butterworth on Nov. 12, 1991, proposed article I, section 24 to the Florida Constitution, relating to open government. The proposal was in response to the Florida Supreme Court's decision in Locke v. Hawkes, No. 76,090, slip op. (Fla., filed Nov. 7, 1991) (petition for rehearing filed), holding that the Public Records Act, chapter 119, Florida Statutes, is not applicable to members of the Legislature. The Locke opinion did not address open meetings, but Butterworth included both open meetings and records in his proposal. Section (b) relating to meetings states:

   (b) Notwithstanding any other provision of this Constitution, no person shall be denied access to any meeting at which official acts are to be taken by any collegial public body in the state or by persons acting together on behalf of such a public body, with the exception of jury and grand jury deliberations. The legislature may exempt meetings by general law when the exemption serves an identifiable public purpose that is sufficiently compelling to override the public policy of open government.

The language of the proposal is similar to that proposed by the Constitution Revision Commission of 1977-78. See supra note 118.