

VERIFIED OPEN MEETINGS LAW COMPLAINT

Now comes the complainant, Peter Barca, pursuant to Wis. Stat. §§ 19.96 and 19.97, being first duly sworn on oath alleges and complains:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

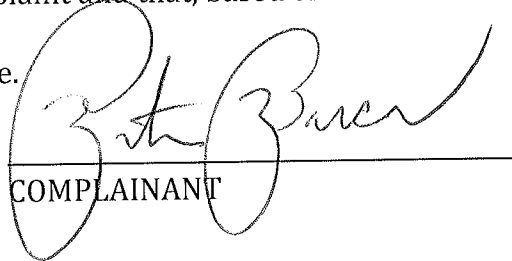
- a. Meeting Notice
- b. Joint Rule 3
- c. Senate Rule 93
- d. Email of Notice to Legislators

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

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

STATE OF WISCONSIN)
) ss.
COUNTY OF)

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



COMPLAINANT

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



Notary Public, State of Wisconsin

My Commission: is permanent

McGuire, Thaddeus

From: Renk, Jeff
Sent: Wednesday, March 09, 2011 4:18 PM
Subject: Committee of Conference on January 2011 Special Session Assembly Bill 11 meeting at 6:00 P.M. on Wednesday, March 9, 2011
Attachments: Conference Notice - AB11JR1.doc

Jeffrey Renk

Assistant Chief Clerk
Wisconsin Senate
Room B20 Southeast, State Capitol
(608) 266-2517
jeff.renk@legis.wisconsin.gov

EXECUTIVE SESSION

Committee of Conference on January 2011 Special Session Assembly Bill 11

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

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

January 2011 Special Session Assembly Bill 11

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

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

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

Senator Scott Fitzgerald
Senate Chair

Representative Jeff Fitzgerald
Assembly Chair

Joint Rule 3**Joint Rule 3****Joint Rule 3 . Committee of conference.****Joint Rule 3****Joint Rule 3 (1)**

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

Joint Rule 3**Joint Rule 3 (1) (a)**

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

Joint Rule 3**Joint Rule 3 (1) (b)**

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

Joint Rule 3**Joint Rule 3 (1) (c)**

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

Joint Rule 3

Joint Rule 3 (1) (d)

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

Joint Rule 3

Joint Rule 3 (2)

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

Joint Rule 3 3

Joint Rule 3 (3)

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

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

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

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

Senate Rule 93

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

Senate Rule 93 (1)

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

Senate Rule 93 (1d)

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

Senate Rule 93 (1p)

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

Senate Rule 93 (2)

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

Senate Rule 93 (3)

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

Senate Rule 93 (4)

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

Senate Rule 93 (5)

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

Senate Rule 93 (6)

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

[cr. 1983 S.Res. 4]

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

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

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

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

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

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