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STATE GOVERNMENT

Open Meetings Legislation in the 1989 Session of the Georgia General Assembly

CODE SECTIONS: O.C.G.A. §§ 31-7-75.2 (new), 50-14-1 (amended), 50-18-72 (amended)

BILL NUMBERS: SB 270, SB 297, HB 701, HB 140, SR 4

ACT NUMBERS: 530, 461

SUMMARY: Open meetings legislation, which was introduced during the 1989 session of the Georgia General Assembly, included: A proposed constitutional amendment which would have made all General Assembly sessions and committee meetings open to the public; a bill dealing with open meeting and records provisions of school disciplinary hearings; a bill which would have exempted most records dealing with the hiring of high-level or professional personnel by a state agency, and which exempted records resulting from staff services to the Legislative and Congressional Reapportionment Office, the Senate Research Office, or the House Research Office; a bill which, although similar to the above bill, restricted the exemption regarding hiring to the Board of Regents; a bill requiring agencies holding other than regularly scheduled meetings to give notice of the time, place, and subjects expected to be discussed; and a bill exempting county and municipal hospital authorities from the disclosure of any data which may give the hospital authority a competitive advantage.

EFFECTIVE DATE: July 1, 1989

History

Georgia's basic open meetings law requires that, with exceptions provided by law, all meetings which a state agency, county or county agency or department, municipal authority, school board, any authority established by the laws of the state of Georgia, and any nonprofit

organization funded by tax money to the extent of one-third of its total funding, "shall be open to the public."¹ Any action taken at a meeting held in violation of this law "shall not be binding."² The public is afforded access to these meetings and is allowed to record any open meeting.³ Written notice must be given "for at least 24 hours at the place of regular meetings."⁴ An agenda must be recorded and made available, listing the subjects acted upon and members who were present at the meeting.⁵ Minutes of meetings must be recorded and made available to the public not later than "immediately following the next regular meeting."⁶ These minutes, at a minimum, must "include the names of the members present at the meeting, a description of each motion or other proposal made, and a record of all votes."⁷ However, state law provides for exceptions to this general rule.⁸

This concept—that government should be as open to the public as possible—was not well received in the 1989 session of the Georgia General Assembly.⁹ Out of six bills and one resolution introduced during the session, only three bills passed both houses.¹⁰ The only legislation introduced which would have expanded the public's access to state government died in the House Committee on Rules.¹¹

SR 4

The Georgia Constitution provides that "[t]he sessions of the General Assembly and all standing committee meetings thereof shall be open to the public."¹² Either house has the power to suspend this openness requirement.¹³ SR 4 would have placed a constitutional amendment on the Georgia ballot which would do away with *any* exception to the

1. O.C.G.A. § 50-14-1(b) (Supp. 1989).

2. *Id.*

3. O.C.G.A. § 50-14-1 (Supp. 1989).

4. O.C.G.A. § 50-14-1(d) (Supp. 1989).

5. O.C.G.A. § 50-14-1(e) (Supp. 1989).

6. *Id.*

7. *Id.*

8. *See, e.g.*, O.C.G.A. § 50-14-3 (Supp. 1989).

9. The only bills having to do with open meetings which passed were those which exempted some aspect of state and local government from the open meetings provisions. *See, e.g.*, HB 140, which exempted county and municipal hospital authorities from the open meetings provisions when any topic which may give the hospital(s) a "competitive advantage" is discussed. O.C.G.A. § 31-7-75.2 (Supp. 1989). *See also* SB 297, which exempted records of any work done by the staff of the Legislative and Congressional Reapportionment Office, the Senate Research Office, or the House Research Committee when those services are performed for an individual legislator. O.C.G.A. § 50-18-72 (Supp. 1989).

10. Final Composite Status Sheet, Mar. 15, 1989.

11. *Id.*

12. GA. CONST. art. III, § 4, ¶ 11.

13. *Id.*

legislature's obligation to open its workings to the public.¹⁴ SR 4 passed the Senate without amendment in only four days;¹⁵ however, the resolution was assigned to the House Committee on Rules, where it remained until the end of the session.¹⁶

SB 270

The law currently requires that a government agency give notice of regular meetings and, where meetings are to be held at other than regular times, to give "due notice" of such meetings.¹⁷ SB 270 would have amended O.C.G.A. § 50-14-1 by requiring that state agencies not only give "due notice" of a meeting held at other than the agency's regular meeting time and place, but that the notice include the time and place of such meeting and disclose the "subjects expected to be considered at the meeting."¹⁸ When the bill got to the House, the Committee on Judiciary offered a substitute which included the Senate's amendments to O.C.G.A. § 50-14-1.¹⁹ The substitute also added an amendment to O.C.G.A. § 50-18-72.²⁰ This amendment provided that "applications, correspondence, resumes, or other records or documents received or prepared by or for the Board of Regents of the University System of Georgia in connection with the appointment or hiring of the president of any institution subject to its jurisdiction" are not required to be disclosed.²¹ The language added by the substitute was apparently in response to a lawsuit the Attorney General had filed against the Board of Regents to force the Board of Regents to disclose the names and qualifications of the candidates for the presidency of Georgia State University.²² The Senate rejected the House committee substitute and a conference committee was appointed.²³ The Conference Committee members failed to reach an agreement before the session ended, however, and the bill died.²⁴

HB 701

As introduced, HB 701 exempted the provision of staff services to any individual member of the General Assembly by the Legislative and

14. SR 4, as introduced, 1989 Ga. Gen. Assem.

15. Final Composite Status Sheet, Mar. 15, 1989.

16. *Id.*

17. O.C.G.A. § 50-14-1 (Supp. 1989).

18. SB 270, as introduced, 1989 Ga. Gen. Assem.

19. SB 270 (HCS), 1989 Ga. Gen. Assem.

20. *Id.*

21. *Id.*

22. Editorial, *Who Can Hold Regents to the Law?*, Atlanta Const., Mar. 13, 1989, at A14, col. 1.

23. Final Composite Status Sheet, Mar. 15, 1989.

24. *Id.*

Congressional Reapportionment Office, the Senate Research Office, or the House Research Office from public scrutiny under the open records requirement of O.C.G.A. § 50-18-72.²⁵ The House Committee on Rules offered a substitute which would have also exempted any “applications, correspondence, resumes, or other records or documents received or prepared by or for an agency in connection with the appointment or hiring of key or professional personnel”²⁶ The substitute included a proviso that “such information, except confidential letters of reference or evaluation, with respect to the individual appointed or hired shall be subject to disclosure ten days after the hiring or appointment”²⁷ This provision would have exempted all state agencies from this type of disclosure, unlike the House Committee on Judiciary’s substitute to SB 270, which would have restricted the exemption to the Board of Regents of the University System of Georgia.²⁸ The bill, with the committee substitute, was reported favorably by the House Committee on Rules, but it never received a third reading and was never put to a House vote.²⁹

SB 297

SB 297, as introduced, exempted from public notice requirements, records relating to provision of “staff services to individual members of the General Assembly by the Legislative and Congressional Reapportionment Office, the Senate Research Office, or the House Research Office.”³⁰ However, the bill did not exempt records of services provided to legislative committees or subcommittees.³¹ The House Committee on Rules submitted a substitute which included “applications, correspondence, resumes, or other records or documents received or prepared by or for the Board of Regents of the University System of Georgia in connection with the appointment or hiring of the president of any institution subject to its jurisdiction”³² This information, “except confidential letters of reference or evaluation, with respect to the individual appointed or hired” would be eligible for disclosure “ten days after the hiring or appointment”³³ The Senate rejected this substitute, and a conference committee was appointed.³⁴ The Conference

25. HB 701, as introduced, 1989 Ga. Gen. Assem.

26. HB 701 (HCS), 1989 Ga. Gen. Assem.

27. *Id.*

28. *Compare* HB 701 (HCS) with SB 270 (HCS), 1989 Ga. Gen. Assem.

29. Final Composite Status Sheet, Mar. 15, 1989.

30. SB 297, as introduced, 1989 Ga. Gen. Assem.

31. *Id.*

32. SB 297 (HCS), 1989 Ga. Gen. Assem.

33. *Id.*

34. Final Composite Status Sheet, Mar. 15, 1989.

Committee deleted the House committee substitute in its report,³⁵ and both houses then passed the Conference Committee version.³⁶

HB 140

As introduced, HB 140 exempted hospital authorities from the open meetings requirement when the meeting concerned

planning for the future acquisition of real property; marketing; the potential expansion of health related services; preparation in anticipation of the filing of a certificate of need application but only until such application is filed with the appropriate approval agency; the promotion of quality assurance, peer review, and security systems; the investigation of potential claims; or matters involving medical staff recruitment.³⁷

The bill also exempted hospital authority meetings from the open meetings requirements when "matters involving finance, budget, or strategic planning" were to be discussed.³⁸

The bill met with strong opposition from the media.³⁹ As the result of a compromise,⁴⁰ the House Committee on Judiciary offered a substitute bill which deleted this shopping list of topics and instead exempted from disclosure "any potentially commercially valuable plan, proposal, or strategy that may be of competitive advantage in the operation of the authority and which has not been made public."⁴¹ The exemption would terminate when the plan was either "approved or rejected by the hospital authority governing board."⁴² The committee substitute also amended O.C.G.A. § 50-18-72 by striking from hospital authority exemptions the specific shopping list of exemptions which the original HB 140 would have recodified.⁴³ The compromise bill then easily passed both houses.⁴⁴

Conclusion

The 1989 session of the Georgia General Assembly did not break new ground in the field of open meetings legislation. Although there were

35. SB 297 (CCS), 1989 Ga. Gen. Assem.

36. SB 297, as passed, 1989 Ga. Gen. Assem.

37. HB 140, as introduced, 1989 Ga. Gen. Assem.

38. *Id.*

39. Beasley, *Hospitals, Press Group Reach Compromise on Sunshine Laws*, Atlanta J. & Const., Feb. 9, 1989, at B4, col. 1.

40. *Id.*

41. HB 140 (HCS), 1989 Ga. Gen. Assem.

42. *Id.*

43. *Compare* HB 140, as introduced, *with* HB 140 (HCS), 1989 Ga. Gen. Assem.

44. Final Composite Status Sheet, Mar. 15, 1989.

1989]

LEGISLATIVE REVIEW

329

victories both for opponents and proponents of the open meetings concept, a clearer indication of who will eventually win the battle over whether Georgia's state and local governments should make their decisions in the public eye will have to wait for another session.

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