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# STATE GOVERNMENT Open and Public Meetings: Require that an Agency Holding a Meeting Make Available an Agenda of All Matters Expected to Be Discussed; Require the Agency to Post and Distribute its Agenda; Require the Chairperson of a Closed Meeting to Execute and File with the Minutes a Notarized Affidavit Stating Why the Meeting was Closed

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# STATE GOVERNMENT

*Open and Public Meetings: Require that an Agency Holding a Meeting Make Available an Agenda of All Matters Expected to Be Discussed; Require the Agency to Post and Distribute its Agenda; Require the Chairperson of a Closed Meeting to Execute and File with the Minutes a Notarized Affidavit Stating Why the Meeting was Closed*

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| CODE SECTIONS: | O.C.G.A. §§ 50-14-1, -4 (amended) |
| BILL NUMBER: | HB 278 |
| ACT NUMBER: | 322 |
| GEORGIA LAWS: | 1999 Ga. Laws 549 |
| SUMMARY: | The Act requires state agencies to make their meeting agendas available to the public. The agencies must post and distribute their meeting agendas. If an agency meeting is closed to the public, the chairperson or the person presiding over the meeting must file a notarized affidavit stating that the closed meeting or portion of a meeting concerns matters within the exceptions allowed for closed meetings. The affidavit must identify the specific relevant exception. The Act also redefines "meeting" to include a gathering at which any public matter is discussed or presented. |
| EFFECTIVE DATE: | July 1, 1999 |

*History*

*Introduction*

The General Assembly amended the Open Meetings Act to "put some teeth" in the state's "sunshine laws" and give the public greater access to government meetings.[1] Georgia's previous Open Meetings

1. Charles Walston, *House "Puts Teeth" in State Sunshine Laws,* ATLANTA J. & CONST., Feb. 12, 1999, at A1.



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Act had been in effect for approximately twenty years.[2] A sponsor of the bill, Representative Charlie Smith, Jr. of the 175th District, told his fellow legislators that the great majority of public officials complied with existing law.[3] However, he stated that the bill's provisions were necessary to deal with those "few who did not care to follow the law."[4] Few people were fined under the old law, and citizens had to file lawsuits to force some public officials to comply.[5]

Governor Roy Barnes made the legislation's goals part of his campaign platform and his 1999 legislative agenda.[6] The Governor's House Floor Leaders, Representatives Smith, Henrietta Turnquest of the 73rd District, Winfred Dukes of the 161st District, sponsored HB 278.[7]

### *Original Draft of the Governor's Counsel*

#### *Definition of "Meeting" Expanded*

The Governor's counsel drafted HB 278 with help from the Georgia Press Association.[8] The drafters added language that expands the definition of "meeting" to include a gathering at which participants discuss or present "any public matter, official business, or policy" decisions.[9] The old law required that officials open meetings to the public only when they *discussed* policy.[10] The drafters added the new language because some public agencies had read the existing law narrowly; that is, the agencies claimed that they did not have to open a meeting to the public if attendees only heard *presentations*, as opposed to discussions, about public matters.[11] Proponents of the Act say agencies used this interpretation to circumvent the purpose of the

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2. *See State of Georgia Session Archives* (audio recording of Feb. 11, 1999, House proceedings) (remarks by Rep. Charlie Smith, Jr.) <http://www.ganet.org/services/leg/audio/99archive/>.

3. *See id.*

4. *Id.*

5. *See id.*

6. *See* Facsimile Interview with Rep. Jim Martin, House District No. 47 (May 19, 1999) [hereinafter Martin Interview].

7. *See* HB 278, as introduced, 1999 Ga. Gen. Assem.

8. *See* E-mail Interview with Rep. Charlie Smith, Jr., House District No. 175 (May 18, 1999) [hereinafter Smith Interview].

9. *Id.*

10. *See* 1988 Ga. Laws 235, § 1, at 237 (formerly found at O.C.G.A. § 50-14-1(a)(2) (1998)).

11. *See* Facsimile Interview with David E. Hudson, General Counsel, Georgia Press Association (May 20, 1999) [hereinafter Hudson Interview].

old law.[12] Thus, the Act now requires agencies to open meetings that include both discussions and presentations.[13]

*Agency Must Post Agenda of Meeting*

The previous law required agencies to post an agenda of a public meeting within two business days *after* the meeting was adjourned.[14] The drafters of HB 278 replaced this requirement with language that requires agencies to make their agendas available to the public *before* a meeting.[15] The drafters added this provision because many agencies did not voluntarily make their agendas available before meetings.[16] Proponents of the Act say "an agenda helps citizens and the press . . . know whether they wish to attend the meeting, and if so, what part of the meeting."[17]

Under the Act, the agenda must include all matters expected to arise at the meeting.[18] However, an agency may address an item even if it does not include the item on the agenda, so long as the discussion is necessary.[19] The drafters added this provision to prevent technical violations of the Act.[20] Proponents wanted to enable governmental bodies to deal with matters that they did not anticipate when they posted the agenda.[21] Representative Smith offered the following example: if lightning strikes city equipment on the day of a meeting, a city may bring up authorization for repairs, even though the emergency matter did not appear on the agenda.[22] Moreover, Representative Martin noted that the minutes of a meeting reflect what happened, so the public is not totally uninformed about the discussion.[23] The Act requires agencies to post their agendas as far in advance as reasonably possible.[24]

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12. *See* Smith Interview, *supra* note 8.
13. *See* O.C.G.A. § 50-14-1(a)(2) (Supp. 1999).
14. *See* 1988 Ga. Laws 235, § 1, at 238-39 (formerly found at O.C.G.A. § 50-14-1(e)(1) (1998)).
15. *Compare* 1988 Ga. Laws 235, § 1, at 238-39, *with* O.C.G.A. § 50-14-1(e)(1) (Supp. 1999).
16. *See* Hudson Interview, *supra* note 11.
17. *Id.*
18. *See* O.C.G.A. § 50-14-1(e)(1) (Supp. 1999).
19. *See id.*
20. *See* Martin Interview, *supra* note 6.
21. *See* Hudson Interview, *supra* note 11.
22. *See* Smith Interview, *supra* note 8.
23. *See* Martin Interview, *supra* note 6.
24. *See* O.C.G.A. § 50-14-1(e)(1) (Supp. 1999).


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*Agency Must Make Summary of Meeting Available*

The Act also requires an agency to make available to the public a summary of the subjects it acts upon or the presentations it considers.[25] The agency must make the summary available within two business days after the meeting.[26] The drafters added this language so that the public would have prompt notice of what took place at a meeting.[27] Members of the public could consult the minutes of the meeting, but this approach could take longer because an agency does not officially adopt the minutes until it meets again.[28]

*If Meeting is Closed, the Person Who Presides Must File Affidavit Explaining Why*

The Act requires the person who presides over a closed meeting to sign an affidavit and file it with the meeting minutes.[29] Representative Smith called this provision the "hammer," which would fall when public officials meet behind closed doors.[30] He said it would keep those who preside over public meetings focused on the need to comply with the law.[31] The affidavit must state that the subject matter of the closed meeting fell under one of the specific exceptions provided by law.[32] Proponents say the drafters added this language because governmental bodies commonly met in closed session for a legitimate purpose and then discussed other topics that they should have addressed publicly.[33] The person presiding over the meeting must make the affidavit under oath; thus, if the person misrepresents what participants discussed, he or she can be held criminally liable for false swearing, a felony in Georgia.[34] The House and Senate adopted the original provisions of the Act, except as noted below.[35]

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25. *See id.* § 50-14-1(e)(2).
26. *See id.*
27. *See* Smith Interview, *supra* note 8.
28. *See* Hudson Interview, *supra* note 11.
29. *See* O.C.G.A. § 50-14-4(b) (Supp. 1999).
30. *See* Smith Remarks, *supra* note 2.
31. *See id.*
32. *See id.*
33. *See* Hudson Interview, *supra* note 11.
34. *See* O.C.G.A. § 50-14-4(b) (Supp. 1999); *see also id.* § 16-10-71 (1999). The penalty for false swearing is one to five years in prison. *See id.* § 16-10-71(b); Smith Remarks, *supra* note 2.
35. *See* O.C.G.A. § 50-14-1 (Supp. 1999).

*House Judiciary Committee Substitute*

The House Judiciary Committee defined more precisely a public agency's deadline for posting a meeting agenda. The Committee's version of the bill required that an agency post its agenda no more than two weeks before a meeting.[36] The House Judiciary Committee added this provision to prevent agencies from posting agendas too far in advance. This keeps the agendas from becoming "stale" or out of date.[37] The House and Senate added the House Judiciary Committee's change to the final version of the bill.[38]

*House Committee Floor Substitute*

The Act amends Code section 50-14-1 by adding the words "public corporation" to the list of agencies that must comply with the statute.[39] Representative Smith said this language was added to a floor substitute to make it clear that the Act applies to bodies such as the Georgia Lottery Corporation.[40] Both the House and Senate incorporated this change into the final version of the bill.[41]

*Opposition to HB 278*

Representative Glen Richardson of the 26th District told his fellow lawmakers that the bill had "so many teeth, it [would] chew [government agencies] up."[42] He expressed support for open government, but asserted that government agencies will have to consult lawyers more frequently to make sure they comply with the Act.[43] Richardson stated that the concerns raised by the bill's sponsors could be addressed if authorities enforced the existing open meetings

36. *See* HB 278 (HCS), 1999 Ga. Gen. Assem.
37. *See* Hudson Interview, *supra* note 11.
38. *See* O.C.G.A. § 50-14-1(e)(1) (Supp. 1999).
39. *See id.* § 50-14-1(a)(1)(A).
40. *See* HB 278 (HCSFA), 1999 Ga. Gen. Assem.; Smith Interview, *supra* note 8.
41. *See* O.C.G.A. § 50-14-1(a)(1)(4) (Supp. 1999).
42. *State of Georgia Session Archives* (audio recording of Feb. 11, 1999, House proceedings) (remarks by Rep. Glen Richardson) <http://www.ganet.org/services/leg/audio/99archive/>.
43. *See id.*


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law.[44] He proposed an amendment that would have eliminated the affidavit requirement, but it failed.[45]

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44. *See id.*
45. *See id.*


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