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State Government HB 397

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STATE GOVERNMENT

Open and Public Meetings: Amend Title 50 of the Official Code of Georgia Annotated, Relating to State Government, so as to Comprehensively Revise the Provisions of Law Regarding Open Meetings and Open Records; Provide Definitions Relating to Open Meetings; Provide for the Manner of Closing Meetings; Provide for Open Meetings; Provide for Remedies for Improperly Closing Meetings; Provide for Notice of Meetings; Provide for Exceptions; Provide for Certain Privileges; Provide for Sanctions; Provide for Related Matters; Provide for Legislative Intent Regarding Open Records; Provide for Definitions Relating to Open Records; Provide for Applicability; Provide for Procedures Regarding Disclosure and Enforcement of Disclosure Provisions; Provide for Fees and the Amount and Manner of Collection thereof; Provide for Exceptions and Exemptions; Provide for Sanctions; Provide for Related Matters; Conform Certain Cross References; Provide for an Effective Date and Applicability; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 15-12-11 (amended); 15-16-10 (amended); 20-2-55 (amended); 31-7-402, -405 (amended); 33-2-8.1 (amended); 36-76-6 (amended); 38-3-152 (amended); 40-5-2 (amended); 43-34-7 (amended); 45-6-6 (amended); 46-5-1 (amended); 50-1-5 (amended); 50-14-1, -2, 3, -4, -6 (amended); 50-17-22 (amended); 50-18-70, -71, -72, -73, -74 (amended); 50-29-2 (amended)
BILL NUMBER:	HB 397
ACT NUMBER:	605
GEORGIA LAWS:	2012 Ga. Laws 218
SUMMARY:	The Act clarifies Georgia's open records and open meetings laws regarding state government in order to increase transparency and lessen the

confusion surrounding ambiguous sunshine laws. The Act also provides for criminal and civil remedies and reduces the cost of requesting records.

EFFECTIVE DATE: July 1, 2012

History

In 1972, Governor Jimmy Carter signed into law Georgia's first "sunshine law,"¹ the label given to any bill aimed at promoting openness in government records and meetings.² High-profile political scandals such as Watergate shook public confidence in government and led to the enactment of sunshine laws in several states,³ as well as the substantial amendment to the Federal government's sunshine law, the Freedom of Information Act (FOIA).⁴

Following the 1972 enactment, the Georgia legislature amended the sunshine law several times.⁵ By 1988, the 1972 sunshine law had evolved into its current two-act framework, under which the Open Records Act is codified at O.C.G.A. § 50-18-70 *et seq.*, and the current Open Meetings Act is codified at O.C.G.A. § 50-14-1 *et seq.*

The judiciary generally treated the sunshine laws favorably, extolling the virtues of openness and transparency in government.⁶

1. 1971 Ga. Laws 575; *Georgia Sunshine Laws*, GA. PRESS ASS'N (May 17, 2012), <http://www.gapress.org/sunshine.html#Anchor-51540>.

2. BLACK'S LAW DICTIONARY 1574 (9th ed. 2009).

3. JAMES C. HEARN ET AL., GOVERNING IN THE SUNSHINE: OPEN MEETINGS, OPEN RECORDS, AND EFFECTIVE GOVERNANCE IN PUBLIC HIGHER EDUCATION 4, 15 (2004), available at <http://www.usc.edu/dept/chepa/pdf/Sunshine%20Final%20Report%20040415.pdf>.

4. Freedom of Information Act, 5 U.S.C. § 552 (originally enacted in 1946, amended 1966, codified as amended at 5 U.S.C. § 552 (2006)).

5. 1978 Ga. Laws 1364; 1980 Ga. Laws 595; 1980 Ga. Laws 1254, 1982 Ga. Laws 1810, 1988 Ga. Laws 916, 1991 Ga. Laws 595; see D. Voyles, *Open Meetings: Revise Law*, 5 GA. ST. U. L. REV. 475, 477-78 (1988) (outlining the amendments to Georgia's sunshine law between 1972 and 1988). The law was amended in 1992 to provide that a governing board or agency may hold an emergency meeting with less than 24 hours notice, but must give "such notice of the meeting and the subjects expected to be considered . . . as is reasonable . . . including notice to the local legal organ or newspaper." 1992 Ga. Laws 1061, §§ 1, 2 (codified at O.C.G.A. § 50-14-1 (2)(d),(2)(e) (2011)). In 1998, the General Assembly amended both the Open Meetings Law and the Open Records Law to give the Attorney General specific authority to enforce the Sunshine Laws at his discretion. 1995 Ga. Laws 595, § 1(codified at O.C.G.A. § 50-14-5(a) (2011)).

6. See *McLarty v. Bd. of Regents of Univ. Sys. of Ga.*, 200 S.E.2d 117, 119 (Ga. 1973) (The purpose of the Open Meetings Act is to eliminate "closed meetings which engender in the people a distrust of its officials who are clothed with the power to act in their name."); *Howard v. Sumter Free*

Judicial praise notwithstanding, Georgia courts dealt fairly severe blows to proponents of increased transparency. For example, in 1975, the Georgia Supreme Court held the Open Records and Open Meetings Acts do not apply to the legislative branch,⁷ and in 1992, the Court of Appeals held the Acts do not apply to the judicial branch.⁸

Despite Legislative expansion of the Act and its generally positive judicial treatment, Georgia remained a relatively “closed” government.⁹ In 2012, for example, the Center for Public Integrity released its State Integrity Investigation report, which compared accountability and transparency among the states—Georgia ranked last.¹⁰ With regard to Georgia’s sunshine laws, the report stated:

Inconsistent enforcement of Georgia’s open records law can also block citizens’ access to information. Compliance is only monitored by an informal mediation in the Attorney General’s Office, where effectiveness is generally “hit or miss.” The Open Records Act also exempts the legislative and judicial arms of state government. Each tends to comply with requests for administrative information but has also cited the exemption in refusing to produce other records.¹¹

Attorney General Sam Olens recognized the need for more transparency immediately upon taking office in 2011.¹² In an interview with the Atlanta Press Club, Olens stated: “As soon as I got

Press, Inc., 531 S.E.2d 698, 699 (Ga. 2000) (citations omitted) (“The very purpose of the Open Records Act is to encourage public access to government information and to foster confidence in government through openness to the public.”); *Atlanta Journal v. Long*, 369 S.E.2d 755, 758 (Ga. 1988) (“The aim of this presumption [that the public will have access to all court records] is to ensure that the public will continue to enjoy its traditional right of access to judicial records, except in cases of clear necessity.”).

7. *Coggin v. Davey*, 233 Ga. 407, 410 (1975).

8. *Fathers Are Parents Too v. Hunstein*, 202 Ga. App. 716, 717 (1992).

9. CTR. FOR PUB. INTEGRITY, STATE INTEGRITY INVESTIGATION, GEORGIA: WORST SCORE IN THE COUNTRY (2012), available at <http://www.iwatchnews.org/2012/03/19/8427/georgia-worst-score-country> (last visited Aug. 15, 2012) (“Between loopholes and ineffective enforcement of disclosure laws, that promise of transparency [in Georgia] has frequently proven to be an empty one.”).

10. *Id.*

11. *Id.*

12. Admin APC, *Attorney General Talks about the Revamped Sunshine Laws*, ATLANTA PRESS CLUB (MAY 10, 2012), <http://atlantapressclub.org/attorney-general-talks-about-the-revamped-sunshine-laws/>.

into office, I got emails from journalists saying they were having issues getting records.”¹³ He also revealed that the State received over 250 complaints about open records and meetings in 2010 and more than 400 complaints in 2011.¹⁴

Additionally, the Atlanta Public Schools Scandal of 2011 highlighted the deficiencies in Georgia’s Open Records and Open Meetings Act.¹⁵ As Cynthia Counts, a prominent first Amendment lawyer in Atlanta noted, “[t]he Atlanta Public School cheating scandal is ripe with examples of outright violations of open records laws, including a directive to cover-up important public documents requested by the AJC.”¹⁶ Ms. Counts also highlighted some of the more outrageous fees charged for record requests by government entities throughout the State, including, “\$1,000 for basic salary and benefit information on a single government employee; \$20,000 for the Atlanta Police Department’s database of 911 calls; \$324,000 for records related to a charter school in Cherokee County; and, \$16 million for a copy of Fulton County’s tax lien database.”¹⁷ These examples illustrate how agencies used the laws to further secrecy rather than serve openness.

By 2011 the need for reform in Georgia’s sunshine laws was apparent. Accordingly, Attorney General Olens initiated reform efforts and soon became the driving force behind the new Open Records Act and Open Meetings Act, HB 397.¹⁸ He worked with key

13. *Id.*

14. *Id.*

15. PowerPoint: Cynthia Counts, Attorney, Counts Law Firm, *Lorman Seminar: The Basics of Georgia’s Open Records Law* (May 3, 2012) (on file with Georgia State Law Review); Video Recording of House Judiciary Committee Meeting, Feb. 28, 2012 at 1 hr., 31 min., 57 sec. (remarks by Cynthia Counts), http://www.livestream.com/gahln132/video?clipId=pla_1f52f1fd-0480-43b2-90ef-eae8581be737&utm_source=slibrary&utm_medium=ui-thumb [hereinafter House Committee Video].

16. PowerPoint: Cynthia Counts, *supra* note 15.

17. *Id.*

18. Aaron Gould Sheinin & Bill Rankin, *Governor Signs Open Records Rewrite Into Law*, ATLANTA J-CONST., Apr. 18, 2012, at B1, available at <http://www.ajc.com/news/georgia-government/governor-signs-open-records-1419957.html> (“Attorney General Sam Olens spearheaded the sunshine law overhaul and made it a top legislative priority.”); Press Advisory, Attorney General of Georgia, Governor Deal Signs HB 397, Revamping Georgia’s Sunshine Laws, available at http://law.ga.gov/00/press/detail/0,2668,87670814_180301954_183880195,00.html (last visited Aug. 15, 2012) (“Attorney General Olens, a long-time champion of government transparency, began working with Representative Jay Powell and stakeholders, including the Georgia Press Association, the *Atlanta Journal Constitution*, the First Amendment Foundation, the Association County Commissioners of Georgia, the Georgia Municipal Association and many other key groups, on the first significant revision of Georgia’s Open Meetings and Open Records Laws in over a decade.”) [hereinafter Attorney General

stakeholders in the sunshine laws, including the Georgia Press Club, the Atlanta Journal-Constitution, the First Amendment Foundation, the Association County Commissioners of Georgia, the Georgia Municipal Association, and many others.¹⁹ In light of the negative media attention surrounding Georgia's current sunshine laws, the obvious need for reform, and the collaborative efforts put into creating HB 397, the new Act was generally well-received.²⁰ Following a nearly unanimous vote in the House and a unanimous vote in the Senate, Governor Deal signed HB 397 into law on April 17, 2012.²¹

Bill Tracking of HB 397

Consideration and Passage by House

Representatives Jay Powell (R-171st), Timothy Bearden (R-68th), Alan Powell (R-29th), Gerald Greene (R-149th), Glen Baker (D-78th), and Jon Burns (R-157th) sponsored HB 397.²² The House read the bill on March 1, 2011 for the first time and on March 2, 2011 for the second time.²³ Speaker of the House David Ralston assigned the bill to the House Judiciary Committee, which favorably reported the bill on February 29, 2012.²⁴ The Committee made an amendment, offered by Representative Mike Jacobs (R-80th), that excluded e-mail communications from the definition of "meetings" under the Open Meetings Act.²⁵ The motion carried.²⁶ Representative Powell offered a second amendment, which dealt with attorney-client privileges and work product surrounding hospital authority

Press Advisory].

19. Attorney General Press Advisory, *supra* note 18; *Attorney General Talks about the Revamped Sunshine Laws*, *supra* note 12.

20. Attorney General Press Advisory, *supra* note 18 ("The bill won sweeping, bipartisan approval . . .").

21. See Georgia General Assembly, HB 397, Bill Tracking, http://www1.legis.ga.gov/legis/2011_12/sum/hb397.htm.

22. HB 397, as introduced, 2012 Ga. Gen. Assem.

23. State of Georgia Final Composite Status Sheet, HB 397, May 10, 2012.

24. *Id.*

25. House Committee Video, *supra* note 15, at 2 hr., 26 min., 13 sec. (remarks by Rep. Mike Jacobs (R-80th)). Representative Jacobs reiterated that e-mails would still be subject to disclosure under the Open Records Act, just not the Open Meetings Act. *Id.*

26. *Id.*, at 2 hr., 27 min., 41 sec. (remarks by Rep. Wendell Willard (R-49th)).

investigations as exemptions from the Act.²⁷ The motion carried.²⁸ Representative Mary Margaret Oliver (D-83rd) offered the next amendment.²⁹ The amendment deleted a provision that would have provided an exemption for advisory committees of public hospitals.³⁰ The motion carried.³¹ Representative Mark Hatfield (R-177th) offered the next amendment.³² The amendment deleted the word “recklessly” from the level of intent required for violating the Act dealing with public meetings.³³ The intent required for being penalized for violating the Act thus became simply “knowingly and willfully”—“recklessly” was not included.³⁴ The motion carried.³⁵ Further, Representative Hatfield offered an amendment that would allow good faith as a defense to a criminal action only, but not a civil action.³⁶ The motion carried.³⁷ Representative Hatfield further moved to replace “recklessly” with “knowingly and willingly” in another provision of the Act dealing with public records as a level of intent on the actor.³⁸ The motion carried.³⁹ Representative Hatfield also moved to limit the application of good faith as a defense in criminal actions only in yet another section of the Act dealing with open records.⁴⁰ The motion carried.⁴¹ Representative Oliver moved to

27. HB 397 (LC 29 5215ERS), § 2, p. 31, ln. 1096–105, 2012 Ga. Gen. Assem.; House Committee Video, *supra* note 15, at 2 hr., 27 min., 51 sec. (remarks by Rep. Jay Powell (R-171st)).

28. House Committee Video, *supra* note 15, at 2 hr., 28 min., 57 sec. (remarks by Rep. Wendell Willard (R-49th)).

29. *Id.* at 2 hr., 29 min., 03 sec. (remarks by Rep. Mary Margaret Oliver (D-83rd)).

30. *Id.*; HB 397 (LC 29 5215ERS), § 1, p. 7, ln. 221–23, 2012 Ga. Gen. Assem.

31. House Committee Video, *supra* note 15, at 2 hr., 29 min., 43 sec. (remarks by Rep. Wendell Willard (R-49th)).

32. *Id.*, at 2 hr., 29 min., 50 sec. (remarks by Rep. Mark Hatfield (R-177th)).

33. *Id.*

34. O.C.G.A. § 50-14-6 (Supp. 2012).

35. House Committee Video, *supra* note 15, at 2 hr., 31 min., 09 sec. (remarks by Rep. Wendell Willard (R-49th)).

36. HB 397 (LC 29 5215ERS), § 1, p. 10, ln. 334–35, 2012 Ga. Gen. Assem.; House Committee Video, *supra* note 15, at 2 hr., 31 min., 22 sec. (remarks by Rep. Mark Hatfield (R-177th)).

37. House Committee Video, *supra* note 15, at 2 hr., 31 min., 42 sec. (remarks by Rep. Wendell Willard (R-49th)).

38. HB 397 (LC 29 5215ERS), § 2, p. 34, ln. 1197, 2012 Ga. Gen. Assem.; House Committee Video, *supra* note 15, at 2 hr., 31 min., 57 sec. (remarks by Rep. Mark Hatfield (R-177th)).

39. House Committee Video, *supra* note 15, at 2 hr., 32 min., 39 sec. (remarks by Rep. Wendell Willard (R-49th)).

40. HB 397 (LC 29 5215ERS), § 2, p. 34, ln. 1209, 2012 Ga. Gen. Assem.; House Committee Video, *supra* note 15, at 2 hr., 32 min., 44 sec. (remarks by Rep. Mark Hatfield (R-177th)).

41. House Committee Video, *supra* note 15, at 2 hr., 33 min., 14 sec. (remarks by Rep. Wendell Willard (R-49th)).

include the word “officers” as under the definition of “Agency,” so that the Act would not exempt officers who receive a certain amount of funding from the Open Records Act.⁴² The motion carried.⁴³

The House read the bill for the third time and adopted the bill on March 5, 2012.⁴⁴ There were no amendments during the floor debate, and, with a vote of 154-5, the House adopted the Committee substitutes.⁴⁵

Consideration and Passage by Senate

The Senate read the bill for the first time on March 7, 2012.⁴⁶ Senator Charlie Bethel (R-54th) sponsored HB 397.⁴⁷ Lieutenant Governor Casey Cagle (R) assigned the bill to the Senate Judiciary Committee.⁴⁸ The Senate Judiciary Committee made two amendments that did not substantively change the bill.⁴⁹ The Senate read the bill for a second time on March 21, 2012.⁵⁰ The Senate read the bill for the third time and adopted the bill on March 27, 2012, with a vote of 46 to 0.⁵¹ The House agreed to the Senate amendments on March 29, 2012.⁵²

The Act

The Act amends Title 50 of the Official Code of Georgia Annotated with the purpose of comprehensively revising the provisions of two separate Acts: the Open Records Act and the Open Meetings Act. The Act clarifies definitions relating to open meetings

42. HB 397 (LC 29 5215ERS), § 2, p. 11, ln. 355, 2012 Ga. Gen. Assem.; House Committee Video, *supra* note 15, at 2 hr., 34 min., 26 sec. (remarks by Rep. Mary Margaret Oliver (D-83rd)).

43. House Committee Video, *supra* note 15, at 2 hr., 35 min., 46 sec. (remarks by Rep. Wendell Willard (R-49th)).

44. State of Georgia Final Composite Status Sheet, HB 397, May 17, 2012.

45. Video Recording of House Floor Debate, March 5, 2012 at 34 min., 58 sec., *available at* <http://www.gpb.org/lawmakers/2012/day-29>.

46. State of Georgia Final Composite Status Sheet, HB 397, May 10, 2012.

47. HB 397, as introduced, 2012 Ga. Gen. Assem.

48. State of Georgia Final Composite Status Sheet, HB 397, May 10, 2012.

49. Minutes of the Senate Judiciary Committee (Unofficial), Mar. 19, 2012 (on file with Georgia State University Law Review).

50. State of Georgia Final Composite Status Sheet, HB 397, May 10, 2012.

51. Georgia State Senate Voting Record, HB 397 (March 27, 2012).

52. State of Georgia Final Composite Status Sheet, HB 397, May 10, 2012.

and open records; provides for the manner of closed meetings; provides for remedies for improperly closing meetings; provides for notice of meetings; provides for exemptions, exceptions and privileges; provides for sanctions; provides procedures regarding disclosure and enforcement of disclosure provisions; and provides for fees for producing records.⁵³

Section 1 of the Act, codified at O.C.G.A. 50-14-1, amends the current Open Meetings Act by providing additional definitions that clarify the meaning of “meeting” by identifying specifically what the term does and does not include.⁵⁴ The Act defines “meeting” as:

[t]he gathering of a quorum of the members of the governing body of an agency at which any official business, policy, or public matter of the agency is formulated, presented, discussed, or voted upon; or [t]he gathering of a quorum of any committee of the members of the governing body of an agency or a quorum of any committee created by the governing body, at which any official business, policy, or public matter of the committee is formulated, presented, discussed, or voted upon.⁵⁵

“Meeting” does not include any quorum of an Agency where the Agency conducts no “official business.”⁵⁶ Unless a gathering is excluded from the definition of a “meeting,” the public must have access to it as well as any votes taken during the meeting; if a gathering is a meeting and the public is denied access, then any rule or resolution adopted in that meeting is not binding.⁵⁷ Conversely, minutes from “executive session” discussions, defined as “portion[s] of a meeting lawfully closed to the public” are not available to the public.⁵⁸ Section 50-14-2 makes clear that the Act does not interfere with attorney-client privilege or tax matters protected by law.⁵⁹

Section 50-14-3 lists the meetings, deliberations, and conversations to which the Open Meetings does not apply:

53. HB 397, as passed, p. 1, ln. 1-10, 2012 Ga. Gen Assem.

54. O.C.G.A. § 50-14-1(a) (Supp. 2012).

55. *Id.* §50-14-1(a)(3)(A)(i)-(ii).

56. *Id.* § 50-14-1(a)(3)(B).

57. *Id.* § 50-14-1(b)(1)-(2), (c).

58. *See id.* § 50-14-1(a)(2), and *id.* § 50-14-1(e)(2)(C).

59. *Id.* § 50-14-2.

- “Staff meetings held for investigative purposes under duties or responsibilities imposed by law”;
- “[D]eliberations and voting of the State Board of Pardons and Paroles”;
- Meetings of the Georgia Bureau of Investigation or any other law enforcement or prosecutorial agency in the state;
- Adoption proceedings;
- Gatherings involving an agency and one or more neutral third parties in mediation of a dispute between the agency and any other party;
- Meetings of any medical staff committee of a public hospital;
- Meetings of the governing authority of a public hospital or any committee thereof when performing a peer review or medical review function;
- Meetings of the governing authority of a public hospital or any committee thereof in which the granting, restriction, or revocation of staff privileges or the granting of abortions under state or federal law is discussed, considered, or voted upon;
- Incidental conversation unrelated to the business of the agency; or
- E-mail communications among members of an agency (provided, however, that such communications shall be subject to disclosure pursuant to the Open Records Act).⁶⁰

Section 15-14-4 requires that the presiding officer over an executive session immediately rule a discussion out of order” if the discussion is not authorized as a private executive session discussion, and “all present shall cease the questioned conversation” if the presiding officer makes such a ruling.⁶¹ Section 50-14-5 also provides for a “good faith” defense to any criminal action under the

60. O.C.G.A. § 50-14-3 (Supp. 2012).

61. *Id.* § 50-14-4.

Act.⁶² Section 50-14-6 increases criminal fines for initial violations of the Open Meeting Act from \$500 to \$1,000 and creates a new fine of up to \$2,500 for each additional violation within a year of the original violation.⁶³ In order to be subject to the criminal penalty, a person must have “knowingly and willfully” violated the Open Meetings Act.⁶⁴ Section 50-14-6 also adds a civil penalty of up to \$1,000 for violations of the Open Meetings Act. In order to be subject to the civil penalty, a person must have negligently violated the Open Meetings Act.⁶⁵ The former version of the Open Meetings Act allowed only for criminal penalties.

Section 2 of the Act, codified at O.C.G.A. § 50–18–70, presents the General Assembly’s findings and intent in revising the current Open Records Act, declaring:

[T]he strong public policy of this state is in favor of open government; that open government is essential to a free, open, and democratic society; and that public access to public records should be encouraged to foster confidence in government and so that the public can evaluate the expenditure of public funds and the efficient and proper functioning of its institutions.⁶⁶

The findings also provide an interpretive rule of construction: “This article shall be broadly construed to allow the inspection of governmental records. The exceptions set forth in this article, together with any other exception located elsewhere in the Code, shall be interpreted narrowly”⁶⁷ Subsection 50-18-70(b)(2) expands the definition of “public record” to include data or data fields.⁶⁸ Section 50-18-71 requires that all public records be available for “personal inspection and copying,” unless exempted by court order or law, and requires that agencies respond to records requests within three day of receiving the request.⁶⁹ If an agency cannot

62. *Id.* § 50-14-5.

63. *Id.* § 50-14-6.

64. *Id.*

65. *Id.*

66. O.C.G.A. § 50-18-70(a) (Supp. 2012).

67. *Id.*

68. *Id.* § 50-18-70(b)(2).

69. *Id.* § 50-18-71(a), (b)(1)(A).

provide the records within three days, the agency must provide a description of the records to the requester and provide the records “as soon as practicable.”⁷⁰ The section then describes the logistics of agency retrieval and production of records, including the requirement of a “reasonable” charge for retrieval, price thresholds for production, and methods of production.⁷¹

Section 2 of the Act completely replaces Code sections 50-18-71.1 to 71.2 with Code section 50-18-72, which lists exemptions to public disclosure requirements.⁷² Section 50-18-73 deals with enforcement and compliance of the Open Records Act.⁷³ It gives the superior courts of Georgia jurisdiction over claims arising under the Open Records Act.⁷⁴ Additionally, it states that actions seeking to enforce compliance may be brought by “any person, firm, corporation, or other entity.”⁷⁵ Finally, it gives the Attorney General discretion to bring action to enforce compliance and to choose whether to seek civil or criminal penalties.⁷⁶

Section 50-18-74 imposes a \$1,000 fine for criminal violations of the Open Records Act and creates a fine of up to \$2,500 for each additional violation within a year of the original violation.⁷⁷ In order to be subject to the criminal penalty, a person must have “knowingly and willfully” violated the Open Records Act.⁷⁸ Section 50-18-74 also adds a civil penalty of up to \$1,000.00 for violations of the Open Records Act. In order to be subject to the civil penalty, a person must have “negligently” violated the Open Records Act. The former version of the Open Records Act allowed only for criminal penalties.⁷⁹

Section 3 of the Act, codified at O.C.G.A. § 15–12–11(c), moves the provision under which juror questionnaires are confidential from code section 50-18-70 to Article 4 of Chapter 18 of Title 50.⁸⁰

70. *Id.* § 50-18-71(b)(1)(A).

71. *Id.* § 50-18-71(c).

72. O.C.G.A. § 50-18-72 (Supp. 2012).

73. *Id.* § 50-18-73.

74. *Id.* § 50-18-73(a).

75. *Id.* § 50-18-73(a).

76. *Id.* § 50-18-73(a).

77. *Id.* § 50-18-74(a).

78. O.C.G.A. § 50-18-74(a) (Supp. 2012).

79. *Id.*

80. *Id.* § 15–12–11(c).

Section 4 of the Act, codified at O.C.G.A. § 15-16-10(a)(10), makes technical deletions in certain provision to reflect substantive changes elsewhere in the Act.⁸¹ Section 5 of the Act, O.C.G.A. § 20-2-55, remains materially the same.⁸²

Section 6 of the Act amends Code section 31-7-402, which provides that the notice and notice documents that must be filed with the Attorney General regarding hospital acquisitions are public records pursuant to Article 4 of Chapter 18 of Title 50.⁸³ The Act changes the reference from Code section 50-18-70 to Article 4 of Chapter 18 of Title 50.⁸⁴

Section 7 of the Act amends Code subsection 31-7-405(a), which provides that written comments relating to public hearings regarding hospital acquisitions will be considered public records pursuant to Article 4 of Chapter 18 of Title 50.⁸⁵ The Act changes the reference from Code section 50-18-70 to Article 4 of Chapter 18 of Title 50.⁸⁶

Section 8 of the Act amends Code subsection 33-2-8.1(c), which addresses insurance, by changing the reference from Code section 50-18-70 to Article 4 of Chapter 18 of Title 50.⁸⁷ The Act provides that “notwithstanding the provisions of Article 4 of Chapter 18 of Title 50,” confidential information received from the National Association of Insurance Commissioners will not be subject to inspection.⁸⁸

Section 9 of the Act amends Code section 36-76-6(d), relating to franchise fees, which provides a public inspection exemption, by changing the reference from Code section 50-18-70 to Article 4 of Chapter 18 of Title 50.⁸⁹

Section 10 of the Act amends Code section 38-3-152(f), which provides that “Information provided to the agency under this article shall be exempt from public disclosure” pursuant to paragraph 31, instead of paragraph 21, in Code section 50-18-72(a).⁹⁰

81. HB 397, as passed, § 4, p. 37, ln. 1290–315, 2012 Ga. Gen. Assem.

82. *Id.*, § 5, p. 37–38, ln. 1316–34, 2012 Ga. Gen. Assem.

83. O.C.G.A. § 31-7-402 (Supp. 2012).

84. *Id.*

85. *Id.* § 31-7-405(a).

86. *Id.*

87. *Id.* § 33-2-8.1(c).

88. *Id.*

89. O.C.G.A. § 36-76-6(d) (Supp. 2012).

90. *Id.* § 38-3-152(f); *Id.* § 50-18-72(a). Paragraph 31 provides an exemption for certain building

Section 11 of the Act amends Code section 40-5-2, relating to licenses.⁹¹ The amended subsection (b) provides that Georgia Uniform Motor Vehicle Accident Reports are subject to disclosure “pursuant to paragraph (5)” of Code section 50-18-72(a).⁹² This change in paragraph reference is the result of a renumbering of Code section 50-18-72.⁹³

Section 12 of the Act amends paragraph (4) of Code section 43-34-7, which addresses the Georgia Composite Medical Board.⁹⁴ The Act provides that releasing information pursuant to paragraph (4) will not cause privileged documents to be released under Article 4, Chapter 18, of Title 50.⁹⁵ Thus, the Act references the entire Article, instead of specifically referencing Code section 50-18-70.⁹⁶

Section 13 of the Act amends Code section 45-6-6 to provide that citizens may copy or inspect office property of public officers pursuant to Article 4 of Chapter 18 of Title 50.⁹⁷ Under the Act, citizens may now copy *and* inspect, rather than only inspect, such property.⁹⁸ Further, there are no listed requirements in Code section 45-6-6.⁹⁹ Rather, Article 4 of Chapter 18 of Title 50 provides the requirements by which citizens may copy and inspect such property.¹⁰⁰

Section 14 of the Act amends paragraph (13) of Code subsection 46-5-1(b).¹⁰¹ The Act provides that information related to telephone and telegraph companies pursuant to paragraph (1) and paragraph

mapping information. *Id.* § 50-18-72(a).

91. *Id.* § 40-5-2(b).

92. *Id.* O.C.G.A. § 50-18-72(a)(5) (Supp. 2012) provides for an exemption from disclosure for Individual Georgia Uniform Motor Vehicle Accident Reports; however, the statute provides that “any person or entity whose name or identifying information is contained in a Georgia Uniform Motor Vehicle Accident Report shall be entitled, either personally or through a lawyer or other representative, to receive a copy of such report.” *Id.* The law further defines who may inspect or copy such reports. *Id.*

93. O.C.G.A. § 50-18-72 (Supp. 2012).

94. *Id.* § 43-34-7.

95. *Id.*

96. *Id.*

97. *Id.* § 45-6—6 (Supp. 2012).

98. *Id.* This statute had only provided for the inspection of such property; it did not provide for the copying of office property. *Id.*

99. O.C.G.A. § 45-6-6 (Supp. 2012). The statute provided that inspection could only take place “within office hours every day except Sundays and holidays.” *Id.*

100. *Id.*

101. *Id.* § 46-5-1(b)(13).

(12) is not subject to public inspection provided by Article 4 of Chapter 18 of Title 50.¹⁰²

Section 15 of the Act amends Code Section 50-1-5(b), which addresses teleconference meetings and other meetings.¹⁰³ The Act provides that the notice of a meeting must also conform to the “notice provisions” provided by Code section 15-14-1.¹⁰⁴ The phrase “due notice” no longer appears in Code section 50-1-5(b), and is replaced with “notice.”¹⁰⁵

Section 16 of the Act amends Code section 50-17-22(c) to provide that the records of the meetings of the State Financing and Investment Commission must comply with Article 4 of Chapter 18 of Title 50, instead of Code sections 50-18-70 and 50-18-71.¹⁰⁶

Section 17 of the Act amends Code section 50-29-2(a) to provide that notwithstanding Article 4 of Chapter 18 of Title 50—instead of Code section 50-18-71 or 50-18-71.2—the public agencies provided in Code section 50-29-2(a) may contract to “market” information and “may license or establish fees” for access to the information.¹⁰⁷

Section 18 of the Act provides that paragraph 47 of Code section 50-18-72(a) applies retroactively to record requests that occurred before the effective date of the Act.¹⁰⁸

Analysis

How the Act Promotes Transparency, Efficiency

“A popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or,

102. *Id.* The statute had previously referred to Code section 50-19-70, et. seq. *Id.* The amended Code section instead refers to Article 4 of Chapter 18 of Title 50. *Id.*

103. *O.C.G.A.* § 50-1-5(b) (Supp. 2012).

104. *Id.* Code section 50-14-1 relates to notice required for such meetings. *Id.* § 50-14-1.

105. *Id.* § 50-1-5(b).

106. *Id.* § 50-17-22(c). Thus, the Code section is referring to all of Article 4 of Chapter 18, which deals with public records, instead of just two statutes. *Id.*

107. *O.C.G.A.* § 50-29-2(a) (Supp. 2012). The Code section now refers to Article 4 of Chapter 18, dealing with public records, instead of just two Code sections.

108. *Id.* § 50-18-72(a). Paragraph 47 provides an exemption from disclosure for records “related to a training program” under Article 3 of Chapter 4 of Title 20 “disclosing an economic development project” before it is secured. *Id.* “Economic development project” is defined as a project that “would involve an expenditure of more than \$25 million by the business or the hiring of more than 50 employees by the business.” *Id.*

perhaps, both.”¹⁰⁹ The Act promotes transparency by increasing public access to information and raising penalties on violators of the Act. The Act decreases the costs of obtaining records by lowering the charge of copying from \$0.25 to \$0.10 per copy.¹¹⁰ The Act also provides that agencies can collect “search, retrieval, [and] redaction” charges, but the cost is limited.¹¹¹ The Act prevents abusive charges¹¹² that deter record requests by requiring that agencies use “the most economical means reasonably calculated” to produce records.¹¹³ If the estimated cost of retrieval is more than \$25.00, then the agency must inform the requester of the estimate within three business days.¹¹⁴ In addition, if the cost of production “exceeds \$500.00,” the agency can require the prepayment of such costs before beginning the retrieval process.¹¹⁵ Thus, the cost of record requests both protects citizens from abusive charges and prevents agencies from not receiving payment from citizens.

The Act also increases penalties for violators of both open meetings laws and open records laws. The fine for violating the Open Meetings Act increased from \$500 to \$1,000 for first time offenders.¹¹⁶ First time offenders of the Open Records Act now owe a \$1,000 fine instead of \$100.¹¹⁷ In addition, repeat offenders that violate either law within twelve months of the first offense may be fined up to \$2,500 for each additional offense.¹¹⁸

109. 9 THE WRITINGS OF JAMES MADISON 103–9 (Gaillard Hunt ed. 1987) (1822).

110. O.C.G.A. § 50-18-71(c)(2) (Supp. 2012).

111. *Id.* § 50-18-71(c)(1) (providing that “the charge for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid full-time employee who, in the reasonable discretion of the custodian of the records, has the necessary skill and training to perform the request; provided, however, that no charge shall be made for the first quarter hour”).

112. PowerPoint: Cynthia Counts, *supra* note 15 (noting “outrageous amounts” that agencies have charged for producing records, such as “\$1,000 for basic salary and benefit information on a single government employee; \$20,000 for the Atlanta Police Department’s database of 911 calls; \$324,000 for records related to a charter school in Cherokee County; and \$16 million for a copy of Fulton County’s tax lien database”).

113. O.C.G.A. § 50-18-71(c)(1) (Supp. 2012). In the past, governments have used hefty copy fines as a way to “scare off” records requests. *Olens, Legislature Right to Strengthen Georgia’s Sunshine Laws*, MDJ ONLINE.COM (Apr. 4, 2012), http://www.mdjonline.com/view/full_story/18097376/article-Olens—Legislature—right—to—strengthen—Georgia%E2%80%99s—Sunshine—laws?instance=home_editorial.

114. O.C.G.A. § 50-18-71(d) (Supp. 2012).

115. *Id.*

116. Sheinin & Rankin, *supra* note 18; O.C.G.A. § 50-14-6 (Supp. 2012).

117. O.C.G.A. § 50-18-74 (Supp. 2012).

118. *Id.* §§ 50-14-6; 50-18-74.

In addition to increased fines, the Act promotes transparency by creating a civil penalty as well as a criminal penalty for violating its provisions.¹¹⁹ The lower burden of proof for civil actions makes legal actions against violators more accessible.¹²⁰

During the amendment process, recklessness was the standard for civil penalties, and good faith was also a defense to civil actions.¹²¹ Tom Clyde, an attorney for The Atlanta Journal-Constitution, argued at the House Judiciary Committee meeting that such elements had “watered down” the bill as originally introduced.¹²² Clyde stated that the recklessness standard was “unnecessarily high in order to impose a straightforward civil fine.”¹²³ Ultimately, the legislature lowered the burden of proof for civil penalties to negligence, while the standard for criminal penalties is “knowingly and willfully.”¹²⁴ The legislature also removed good faith as a defense to civil actions.¹²⁵ The amendments show the legislature’s willingness to promote transparency. Notably, the Act provides that prosecution per Code section 45-11-1 may be imposed for destroying records.¹²⁶ As state Attorney General Sam Olens stated, “If you destroy records, that’s a felony separate from the Open Records Act.”¹²⁷ These changes embody the Act’s progress towards transparency.

Additionally, the Act promotes efficiency by decreasing the length of time the University System of Georgia must wait after public disclosure of information on the candidates for the position of a university president. The Act provides that the University System of Georgia may make its final hiring decision of university presidents

119. Sheinin & Rankin, *supra* note 18 (“Previously, the sunshine laws allowed only criminal complaints to be filed against suspected violators, meaning a prosecutor would have to prove the case beyond a reasonable doubt. The rewrite now allows the filing of civil complaints, which have a lower burden of proof.”).

120. *Id.*

121. House Committee Video, *supra* note 15, at 1 hr., 46 min., 22 sec. (remarks by Tom Clyde).

122. *Id.*

123. *Id.*

124. O.C.G.A. § 50-14-6 (Supp. 2012); *Id.* § 50-18-74(a).

125. *Id.* §§ 50-14-6, 50-18-74(a).

126. *Id.* § 50-18-74(a) (“[P]ersons or entities that destroy records for the purpose of preventing their disclosure under this article may be subject to prosecution under Code Section 45-11-1.”).

127. *Sunshine Laws: Olens’ Update Worthwhile Tutorial for Officials, Media*, MARIETTA DAILY J. ONLINE.COM (May 17, 2012), http://mdjonline.com/pages/full_story/push?article=Sunshine+Laws+Olens%E2%80%99+update+worthwhile+tutorial+for+officials+media%20&id=18625384&instance=secondary_story_left_column.

after five days, instead of fourteen days, of the release of candidates' information to the public.¹²⁸ Burns Newsome, vice chancellor of the Board of Regents, supported the change because of a history of losing candidates in the past to other universities during the fourteen-day waiting period.¹²⁹ However, the change was not met without opposition. Tom Clyde, an attorney for The Atlanta Journal-Constitution, argued that a five-day period is not enough time “for a news organization to probe a candidate’s extensive background, publish the information and give the public enough time to scrutinize it before the board makes such an important hiring decision.”¹³⁰

A Place in the Sun: How Effective Will Georgia’s New Sunshine Laws Be?

This section analyzes the overall potential effectiveness of the Act by examining the strength of the Act’s deterrent effect, the avenues of enforcement, and the provisions that undermine the Act’s goals of openness and transparency.

Deterrence and Enforcement

The first front of the Act’s effectiveness is deterrence. The Act will almost certainly have a stronger deterrent effect than its predecessor. A person who violates the Open Records and Open Meetings Act may now be subject to criminal or civil penalties, or both. Civil penalties are easier to impose because of the lower liability threshold—a person must only negligently violate the Act in order to be subject to civil penalties.¹³¹ Under the criminal penalties a person is subject to liability only if the person acted knowingly and willfully.¹³² Would-be violators must now consider the additional risk of unreasonably withholding records or conducting secret meetings. Furthermore, the financial penalties’ augmentation works

128. O.C.G.A. § 50-18-72(a)(11) (Supp. 2012).

129. Bill Rankin, *Open Records Exemption Approved for Economic Development*, ATLANTA J-CONST., Mar. 19, 2012, at B1, available at <http://www.ajc.com/news/georgia-government/open-records-exemption-approved-1391097.html>.

130. *Id.*

131. O.C.G.A. §§ 50-14-6, 50-18-74(a) (Supp. 2012).

132. *Id.* § 50-14-6 (emphasis added); *Id.* § 50-18-74(a).

as a natural deterrent.¹³³ By increasing the potential liability of government agencies and employees, these changes should significantly improve Georgia's sunshine laws.

The future effectiveness of the Act primarily depends on its enforcement. After the Act took effect on April 17, 2012, the Attorney General's Office filed a civil suit against the mayor of Cumming, Georgia for his alleged violations of the Open Meetings Act.¹³⁴ The suit stems from an incident where the Mayor allegedly forced a citizen to turn off her recording device before proceeding with a city council meeting covered under the Act.¹³⁵ The woman refused to turn off her video camera and was forcibly removed; she subsequently filed a complaint with the Attorney General's office, which then filed suit against the mayor.¹³⁶ The suit and the incident that gave rise to it gained substantial media attention.¹³⁷ This incident is illustrative of how significant the civil penalty provision is: not only does it enable citizens to actually hold their government officials accountable for their actions, but it also puts violators, who could previously evade liability, in the spotlight that accompanies negative press, thereby drawing the public's attention to, and increasing public awareness of, the citizenry's lawful access to government.

While the addition of a civil enforcement action substantially strengthens the Attorney General's ability to enforce the Act, the criminal sanction provisions, apart from the increased fine, are virtually unchanged. Under the former Open Records and Open Meetings Acts, violators very rarely faced criminal liability largely due to the extreme difficulty in utilizing the criminal enforcement

133. See *supra* note 115 and accompanying text (discussing the increased fines associated with violations of the Act).

134. *Olens v. Gravitt*, No. 12CV-1205 (Forsyth Cnty. Sup. Ct. filed June 5, 2012).

135. Liz Kennedy, *Mayor of Cumming, City Named in Lawsuit*, CUMMINGPATCH (June 10, 2012), <http://cumming.patch.com/articles/mayor-and-city-of-cumming-named-in-lawsuit>.

136. *Id.*

137. See, e.g., *id.*; Aldo Nahed, *City of Cumming Faces Open Meeting Violation Suit*, NORTHFULTON.COM (June 7, 2012), <http://www.northfulton.com/Articles-NEWS-c-2012-06-07-193602.114126-sub-City-of-Cumming-faces-open-meeting-violation-suit.html>; Georgia News Network, *Olens Urges Officials to Know Open Meetings/Records Laws*, ACCESSNORTHGA.COM (June 11, 2012 10:43 AM), <http://www.accessnorthga.com/detail.php?n=249546> (discussing the lawsuit against Mayor Gravitt). The video recording of the incident has received nearly 5,000 views on YouTube. *Cumming Mayor H. Ford Gravitt—HB 397*, YOUTUBE (Apr. 17, 2012), <http://www.youtube.com/watch?v=vaulDwK6ou0>.

provisions.¹³⁸ For example, in order to even initiate prosecution under either the Open Records or Open Meetings Act, the Attorney General's office had to—and still must—obtain a citation, the functional equivalent of a warrant, which can only be issued by a Superior, State, or Probate Court judge.¹³⁹ Previously, the substantial effort required to institute a criminal action under the Act substantially outweighed the results of a successful prosecution—a maximum \$500.00 fine and a misdemeanor.

Consequently, enforcement under Georgia's sunshine laws consisted of fewer than five successful prosecutions of public officials;¹⁴⁰ in the past fourteen years, there were zero.¹⁴¹ Although the penalty is now \$1000.00, the logistical hurdles such as the warrant and the “knowingly and willfully” standard continue to bog down the criminal enforcement provisions of the Act. Further, a person can assert “good faith” as a complete defense against all criminal charges and penalties.¹⁴² While some legitimate policy considerations support a good faith defense for criminal actions—namely, punishing only the most culpable offenders, those who maliciously violate the law—such policy concerns are not compelling in light of the principal public policy upon which the Act is premised: open government. The opening text of the Act proclaims “open government is *essential* to a free, open, and democratic society; . . . public access to public records should be encouraged to foster confidence in government.”¹⁴³ Accepting ignorance and good faith as criminal defenses to the Act's mandate of public access undermines the legitimacy of its proclamation. Public officials should be charged with knowledge of their obligations and the rights of citizens. As is,

138. House Committee Video, *supra* note 15, at 2 hr., 04 min., 50 sec., (remarks by Attorney General Sam Olens). In the House Judiciary Committee's discussion of the bill, state Attorney General Sam Olens stated the purpose of the civil penalty option: “The Attorney General's office is limited to seeking a criminal warrant. What we were seeking in collaboration with the sponsor was to give our office an alternative of civil versus criminal, because there are cases where I can't satisfy the criminal burden.” *Id.*

139. O.C.G.A. § 50-18-74(b) (Supp. 2012); O.C.G.A. § 17-4-40(c) (2011).

140. Hyde Post, *Clearing a Path to a More Open Government*, REPORTER NEWSPAPERS, <http://www.reporternewspapers.net/2012/06/06/clearing-a-path-to-a-more-open-government/> (last visited August 15, 2012).

141. *Georgia Not Prosecuting Sunshine Law Cases*, TIMESFREEPRESS.COM (Mar. 13, 2011), <http://www.timesfreepress.com/news/2011/mar/13/georgia-not-prosecuting-sunshine-law-cases/>.

142. O.C.G.A. § 50-14-6 (Supp. 2012).

143. *Id.* § 50-18-70(a).

the criminal penalties will likely continue to be of little value as an enforcement tool.¹⁴⁴

Future Changes to Strengthen Enforcement— a “Special Master”

One significant enforcement mechanism not included in the Act, but used by nineteen other states, is a designated open records ombudsman or “special master”—an agency or officer with responsibilities specifically related to enforcing a state’s sunshine laws.¹⁴⁵ Among those states, the authority of the ombudsman varies greatly: some have the authority to issue binding opinions, whereas other perform a more advisory role, educating the public about the State’s open records and open meetings laws.¹⁴⁶ During the House Judiciary Committee’s discussion of HB 397, Cynthia Counts proposed creating a special master within the Attorney General’s Office as a way of strengthening enforcement.¹⁴⁷ Although the amendment was never adopted, the idea was not flatly rejected and may be present in future changes to the Act.¹⁴⁸

Where Does the Legislature Fit in?

Georgia’s government suffered an embarrassing rank this year by the Center for Public Integrity as the United States’ “most corruptible state.”¹⁴⁹ The Act, with its stronger penalties and enforcement provisions, may, hopefully, help the State address some of the problems underlying its corruption ranking. However, the report’s discussion of public access to information cites the substantial lack of

144. For example, the stringent “knowingly and willfully” standard remains the same, despite specific discussion and consideration of the appropriate standard for both the civil and criminal provisions by legislators. House Committee Video, *supra* note 15, at 1 hr., 55 min., 7 sec. (remarks by Rep. Wendell Willard (R-49th) and Georgia First Amendment Foundation board member, Tom Clyde).

145. Christine Beckett, *The Open Records Appeal Process*, NEWS MEDIA & THE L. Winter 2011, at 16, available at <http://www.rcfp.org/browse-media-law-resources/news-media-law/news-media-and-law-winter-2011/open-records-appeal-process>.

146. *Id.*

147. House Committee Video, *supra* note 15, at 1 hr., 31 min., 57 sec. (remarks by Cynthia Counts).

148. House Committee Video, *supra* note 15, at 1 hr., 31 min., 57 sec. (remarks by Rep. Wendell Willard (R-49th) (“[The special master] may be a good idea but it is something we may need to look at without delaying what we feel to be a good product going forward with the work that’s gone into it in the last year to the rewrite of the law.”).

149. GEORGIA: WORST SCORE IN THE COUNTRY, *supra* note 9.

transparency in the legislative branch as a major problem. It notes that Georgia's Open Records and Open Meetings Acts exempt the legislative branch from its requirements:

The Open Records Act also exempts the legislative and judicial arms of state government. Each tends to comply with requests for administrative information but has also cited the exemption in refusing to produce other records. Legislative leaders have trumpeted the need for increased transparency while presiding over a process that effectively denies a seat at the table to members of the minority party. In the Senate, the Republican Caucus meets privately to decide on virtually every bill the full chamber will consider. House budget writers make major spending and cutting decisions behind closed doors with little subsequent public debate. Sponsors of pork-barrel spending may be identified only on the whim of the Appropriations committee chairmen.¹⁵⁰

The new law is identical to the former versions with respect to the legislative exemption.¹⁵¹ Legislators continue to enjoy immunity from the Act's mandate.¹⁵² While the corruption fighting and transparency-promoting power in the Act would likely be stronger if it covered legislators, the Act is still a vast improvement from its predecessor. Given the need for a successful overhaul of Georgia's

150. *Id.*

151. The Act itself does not explicitly exempt Legislators. Rather, in 1975, three years after the enactment of Georgia's first sunshine law, the Supreme Court of Georgia held:

[t]he 'Sunshine Law' is not applicable to the Legislative branch of the government and its committees. If the House, the Senate, or both want to let the sun shine more brilliantly and more pervasively upon their deliberations and actions, they can do so by adopting rules and procedures applicable to their operations that will accomplish this purpose.

Such purpose was not accomplished by the enactment of the 'Sunshine Law' in 1972.

Coggin v. Davey, 233 Ga. 407, 411 (1975). The ruling, which has never been statutorily or judicially overturned, removes the burden from Georgia's legislators of having to explicitly exempt themselves from Georgia's sunshine laws. The Legislators do not appear particularly bothered by their exclusion from the Act's requirements. In an interview with Senator Bethel, the Senate sponsor of HB 397, the Georgia State University Law Review asked about the legislature exemption from the Act and whether the Senator could see the passage of sunshine laws in the future that would include the Legislature. The Senator correctly noted it was "not an exemption in fact [not in the text of the Bill]" and stated "that's been the case for as long as Open Records Laws." See Telephone Interview with Sen. Charlie Bethel (R-54th) (Apr. 2, 2012).

152. Admin APC, *supra* note 12.

sunshine laws, Attorney General Olens recognized that the revisions, while substantial, had to be modest enough to pass. During a speech at the Atlanta Press Club, Attorney Olens gave an honest response to the question of why the revised Open Records and Open Meetings Acts continued to exclude legislators: “[b]ecause I wanted the Bill to pass.”¹⁵³

Although Legislators refrained from revising the Act to include their branch, they nonetheless made significant strides in opening their doors to the public. For example, video recordings of the floor debates in both houses and of the Committee Meetings in the House are freely available online.¹⁵⁴ While Senate committee meetings are not available online, they are open to the public, pursuant to Senate rules. Political realities surrounding HB 397, and crafting it accordingly, resulted in the much-needed changes the Act implements.

Other Exemptions, Meetings Not Covered

In addition to the implicit legislative exemption, there are several meetings that are excluded from the statutory definition of “meeting” or are exempt from the disclosure and access requirements in the Open Records and Open Meetings Act.¹⁵⁵ For example, the Open Meetings Act does not apply to meetings among public hospital authorities.¹⁵⁶ This exclusion shields a fairly significant amount of government activity. As Tom Clyde, an Atlanta attorney and board member of the Georgia First Amendment Foundation stated in front of the House Judiciary Committee during its discussion of HB 397:

In many communities, the hospital authority is the largest government entity in that community. And now there is a brand new exemption that allows advisory bodies to hospital authorities to skip, entirely, compliance with the Open Meetings Act. [The exemption] clearly suggest[s] that organizations that

153. *Id.*

154. *Prime Time Lawmakers*, GPB LAWMAKERS, <http://www.gpb.org/lawmakers#> (last visited June 22, 2012) (floor debates); *Georgia House of Representatives*, LIVESTREAM.COM, <http://www.livestream.com/gahln132/folder> (last visited June 22, 2012) (House committee meetings).

155. O.C.G.A. §§ 50-14-1, 50-14-3, 50-18-72 (Supp. 2012).

156. *Id.* § 50-14-3(a)(6)(A)–(C).

will have significant input into the policies of hospital authorities, will now be outside the reach of the Open Records and Open Meetings Act.¹⁵⁷

The Act's economic development exemption, an exemption aimed at protecting Georgia's economic competitiveness, received a substantial amount of attention. The Act exempts documents relating to potential economic development projects involving expenditures greater than \$25 million, or the employment of over fifty workers, until the project is secured or terminated.¹⁵⁸ However, within five days of securing a state-funded project, the Department of Economic Development must post notice on its website of the commitment.¹⁵⁹ Even if the project has been terminated, the documents are still subject to disclosure upon request.¹⁶⁰ Governor Nathan Deal feared that the absence of this exemption "would have allowed other states to use Georgia's sunshine laws to learn what Georgia was offering to companies looking to locate in the state."¹⁶¹ When he signed the bill into law, he specifically noted the importance of the exemption, stating it protects Georgia from "becom[ing] victimized because of our open records from other states who were our competitors for potential economic development projects."¹⁶² Opponents of the exemption argue that the Act did not need any additional exemptions.¹⁶³ Because the exemption is a new one, its effect on Georgia's efforts towards openness remains to be seen.

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157. House Committee Video, *supra* note 15, at 1 hr., 48 min., 28 sec. (remarks by Georgia First Amendment Foundation board member, Tom Clyde).

158. O.C.G.A. § 50-18-72(a)(46) (Supp. 2012).

159. *Id.*

160. *Id.*

161. Aaron Gould Sheinin & Bill Rankin, *supra* note 18.

162. *Id.*

163. *See* Bill Rankin, *supra* note 129.