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Local Government Law Bulletin

1994 Changes to the Open Meetings Law

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The 1994 General Assembly enacted Chapter 570 (HB 120), which makes significant changes to the state's open meetings law, effective October 1, 1994. The major changes are made in two areas of the statute: first, in the definition of *public body*, the type of group subject to the statute; and second, in the authorizations to hold closed sessions. A number of the changes are not entirely clear in their effect and will probably not become clear until and unless they are litigated or a later General Assembly clarifies them. This *Local Government Law Bulletin*, which is being sent to attorneys for counties, cities, school boards, and other local government agencies, discusses the changes made by Chapter 570 and identifies some of the areas of uncertainty. The text refers to the law in effect before October 1, 1994, as the *current law*.

Public Body: Basic Definition

The current open meetings law defines *public bodies*, the entities that must comply with the law, through a bright-line mechanism. If an entity was established in one of five ways set out in the statute, it is a public body; if it was not so established, it is not a public body. Chapter 570 deletes from the definition all reference to methods of establishment, leaving the following definition:

> 'Public body' means any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making quasi-judicial, administrative, or advisory function. . . .
>
> 'Public body' does not include (1) a meeting solely among the professional staff of a public body. . . .[1]

1. The omitted language refers to a variety of hospital boards and, except as noted in the text, *infra*, is not different from the current law.

The first of these paragraphs includes three elements that deserve further comment. First, the members of the public body must be "elected or appointed." This language does not add a great deal substantively, but it probably does mean that if a group of people is to be a public body, someone other than the people within the group must have selected them to be part of the group. That is, if a number of persons in government get together on their own volition, without having been appointed or elected to do so by someone else, they probably are not a public body. For example, if one mayor in a county calls all his or her counterparts in other cities in the county and suggests they meet together for lunch and discuss common problems, the resulting group has not been elected or appointed by anyone and therefore would not be a public body.

Second, there must be at least two members in the group. If a city's personnel ordinance provides for appeals of dismissals to the city manager or some other single official, the hearing of an appeal is not subject to the open meetings law; only the one person is hearing the appeal.

Third, the list of actual or authorized powers—legislative, policy-making, quasi-judicial, administrative, or advisory—does not seem limiting in any real sense. It is hard to imagine an appointed or elected group that does not have at least one of the listed powers.

Meetings of Professional Staff

One of the law's unclear provisions says that "a meeting solely among the professional staff of a public body" is not a public body. The uncertainty raised by the quoted language is this: how does it apply to groups that are formally constituted as boards or committees, perhaps by ordinance or some other formal action, but are made up entirely of professional staff members? A city, for example, might by ordinance create a subdivision review board to give approval to subdivision plats, and provide that the members of the board

are the city engineer, the planning director, and the public works director. Such a board is comprised entirely of professional staff; is it therefore not a public body?

As the bill was introduced, the exclusion for professional staff was phrased somewhat differently: "'Public body' does not include the professional staff of a public body . . . unless the staff members have been appointed to and are meeting as an authority, board, commission, committee, or council." Under this original version, the subdivision review board noted above would pretty clearly be a public body; the professional staff people would be meeting as a board. But this original version of the language was changed by floor amendment in the House, deleting the clause beginning with "unless." One reasonable interpretation of the amendment is that no group comprised entirely of staff members is to be considered a public body, regardless of how it was established or what its powers are.

There is, however, a narrower interpretation of the professional staff provision. The language is oddly phrased, in that the provision defines *public body* as a *meeting* rather than as a type of group (board, committee, etc.). The narrower interpretation reads this language literally: to escape being a public body, the meeting must be "solely among" professional staff. If anyone other than professional staff is present and participates in the meeting, whether as a group member or as a person appearing before the group, then the meeting is no longer solely among staff and the exception does not apply. Thus if a developer or his representatives attended a meeting of the subdivision review board, the meeting would no longer be solely among the staff members and the group would be a public body.

The legislative history is not antagonistic to this second reading. As already noted, the original version said: "'Public body' does not include the professional staff of a public body . . . unless the staff members have been appointed to and are meeting as an authority, board, commission, committee, or council." The amended version made two changes:

1. It took out the clause, "unless the staff members have been appointed to and are meeting as an authority, board, commission, committee, or council."
2. It changed "the professional staff" to "meetings solely among professional staff."

Thus it can be argued that when the limiting language about being a board, commission, etc., was deleted, the House counteracted the effect of the change by adding the language about "meetings solely among" staff. This reading raises practical problems, however, and that fact may argue against the reading. First, such a reading may cause a very broad expansion of the meaning of "public body." If, for example, a planning director instructed two staff members to meet with a developer about a proposed subdivision, that might be construed as an appointment of those two staff members as a committee, and because the subsequent meeting would not be solely among staff members but also include the developer, the two staff members might be held to be a public body. Second, because the language is phrased in terms of "meetings" rather than groups, a group might alternate between being a public body and not being one, depending on whether anyone other than staff members was in attendance. These uncertainties are unfortunate, but clarification will have to await further legislative or judicial action.

"Private" Groups

Local governments often make use of formally private entities to assist with or carry out government programs. For example, counties may lease county-owned hospitals to private corporations; counties and cities may contract with and provide funding to volunteer fire departments and rescue squads organized as private, nonprofit corporations; cities may contract with private corporations to carry out economic development activities; and community colleges may form private foundations to solicit and accept donations for the college. Under the current open meetings law, such private entities do not in general meet the definition of *public body*, because they have not been established by one of the five methods listed in the statute. (Private corporations operating publicly owned hospitals have been subject to the law, by specific provision, and the Court of Appeals held one nonprofit corporation to be a public body because of the extensive involvement of a board of county commissioners in its establishment.)[2] But the amendments delete the references to method of establishment and thus reopen the question of the application of the law to such entities.

The amended law will extend to all appointed and elected boards, commissions, etc., "of one or more counties, cities," and other local governments. If a private entity that is supported by or has other ties to a local government can be consequently characterized as being part *of* that local government, the board of directors of that private entity might then be held subject to the open meetings law. Significantly, a series of decisions of the North Carolina Supreme Court and the court of appeals, in other contexts, have held that formally private corporations are, for several different purposes, agencies of local government.[3] Because of the parallel purposes of

2. WINFAS, Inc. v. Region P Human Development Agency, 64 N.C. App. 724, 308 S.E.2d 99 (1983).

3. Coats v. Sampson County Memorial Hospital, Inc., 264 N.C. 332, 141 S.E.2d 490 (1965) (nonprofit corporation operating county-owned hospital, with corporation board of directors appointed by county commissioners, *held* to be county agency for

the public records and open meetings laws, the most important of these decisions may be *News and Observer Publishing Co. v. Wake County Hospital System, Inc.*, which held that the nonprofit corporation that operates a hospital owned by Wake County is a county agency for purposes of the public records law.[4] In that case the court reviewed the entire relationship between the county and the corporation, as it had been established in three documents: the corporation's articles of incorporation, a lease agreement between the county and the corporation, and an operating agreement between the county and the corporation. It found that the county had clear supervisory responsibilities and control over the corporation, as indicated by the following factors:

1. Upon its dissolution, all the corporation's assets would vest in the county.
2. All vacancies in the board of directors of the corporation had to be approved by the county.
3. County facilities were leased to the corporation for $1.00 a year.
4. The board of county commissioners was empowered to review and approve the corporation's annual budget.
5. The county was entitled to conduct a supervisory audit of the corporation.
6. The corporation was required to report its rates and charges to the county.
7. County revenue bonds financed improvements to the facilities operated by the corporation.
8. Revenues collected by the corporation were county revenues for purposes of revenue bond repayment.
9. The corporation could not change its corporate existence or amend its articles of incorporation without county consent.

The pattern of supervision and control was sufficient to cause the corporation to be held to be an agency of the county for purposes of the public records law, and it would not be surprising if a comparable pattern of connections was found to make such a corporation an agency for purposes of the open meetings law as well.

Unfortunately, even if the *Wake County Hospital System* case is accepted as a likely precedent for the open meetings law, it is not greatly helpful in determining whether other nonprofit agencies, with somewhat different relationships to other local governments, are agencies of those local governments for open meetings purposes. The court in the *Wake County Hospital System* case acknowledged that each relationship of this type must be looked at individually, in its own context. Furthermore, it did not give any suggestion of whether any of the listed factors was crucial to its holding or how many of the factors might be absent without changing the result of the case. Therefore until and unless other cases reach the appellate courts, each nonprofit organization with some of the ties listed in *Wake County Hospital System* or with other ties not present in that case will have to make its own judgment as to whether the total of the relationships indicates that the organization is sufficiently subject to local government supervision and control to be considered an agency of local government for open meetings purposes.[5] It is probable, however, that if the only connection between a local government and a private entity is that the government provides financial support to the entity (as is the case, for example, with many private, volunteer fire departments), the supported entity is *not* an agency of the local government. All the cases that have held private entities to be local government agencies have involved connections in addition to financial support.

purposes of venue under G.S. 1-77); Sides v. Cabarrus Memorial Hospital, Inc., 287 N.C. 14, 213 S.E.2d 197 (1975) (hospital corporation established by local act of the General Assembly *held* to be agency of the county for purposes of waiver of tort immunity through purchase of insurance); News & Observer Publishing Co. v. Wake County Hospital System, Inc., 55 N.C. App. 1, 284 S.E.2d 542 (1981) (nonprofit corporation operating county-owned hospital, with numerous ties to county, *held* to be county agency for purposes of public records law).

4. 55 N.C. App. 1, 284 S.E.2d 542 (1981).

5. A Georgia case, also involving public records, may also be useful in suggesting the factors that courts will find important in determining whether nonprofit organizations are agencies subject to the open meetings law. In Macon Telegraph Publishing Co. v. Board of Regents, 256 Ga. 443, 350 S.E.2d 23 (1986), the plaintiff newspaper sought the records of the University of Georgia Athletic Association, a nonprofit organization that was the nominal employer of the university's football coach and other athletic personnel. The court noted that the university's president was head of the association, the university's treasurer was treasurer of the association, and state statutes imposed on the university president the responsibility of supervising intercollegiate athletics, which he did through the association. It concluded that the association's records were therefore subject to the state's public records law. *See also* Carter v. French, 322 So.2d 305 (La. App. 1975), in which the court held that Louisiana's public records law extended to the records of student government at Southern University; State *ex rel.* Toledo Blade Co. v. University of Toledo Foundation, 65 Ohio St. 3d 258, 602 N.E.2d 1159 (1992), in which the court held that Ohio's public records law extended to records of a foundation that raised money on behalf of a public university; and City of Dubuque v. Dubuque Racing Ass'n, Ltd., 420 N.W.2d 450 (Iowa 1988), in which the court held that the minutes of a nonprofit corporation that leased a city facility were not subject to Iowa's public records law, even though the lease required that three spaces on the corporation's board of directors be filled with city council members.

Committees of Public Bodies

The current law expressly provides that each committee of a public body is itself also a public body. This provision was deleted by Chapter 570, and therefore the question arises of whether the deletion was intended to exclude such committees from the coverage of the statute. The more probable answer is no.

The current law's express provision on committees is necessary because of the current definition of *public body*. To repeat, to be a public body under the current law, an entity must have been established in one of five specific ways. Many committees of public bodies are not established in one of those five ways—for example, the Board of Governors of The University of North Carolina is created by statute and thus is a public body, but its committees are created by the Board itself, which is not one of the five listed methods—and therefore in the absence of the express provision those committees would not be public bodies. The General Assembly wished committees to be subject to the statute and thus included the express provision in the current law. The amended law, however, employs a broader definition of *public body*, one expressly reaching any "appointed . . . committee," and therefore the current law's express provision on committees was most probably thought redundant.

Hospital Committees

The current law also has an express provision dealing with committees of the governing boards of public hospitals: unless such a committee is a "policy-making body," it is not a public body. When the express provision dealing with all committees was deleted from the law, the specific provision dealing with hospital committees was deleted as well. But the effect is somewhat more complicated.

Hospital governing boards become subject to the amended open meetings law in at least three and perhaps four different ways. First, some hospitals are political subdivisions or public corporations of the state, and the governing boards of those hospitals are public bodies under the basic definition set out above. The governing boards of hospital authorities,[6] hospital districts,[7] and a few other hospitals fit into this category.[8] Second, if it is correct to extend to the open meetings context those court decisions holding some nonprofit corporations with close ties to local government to be agencies of local government, such as in the *Wake County Hospital System* case discussed above, a number of hospital corporations (including that in Wake County) would qualify as such agencies of local government. Therefore the governing boards of those corporations would be public bodies *under the basic definition* of the open meetings law. If a hospital corporation is an agency of local government under the basic definition, then it would seem its governing board committees are as much public bodies as are the committees of other local government entities, such as committees of a board of county commissioners or of a city council. For committees of hospital governing boards in these first two categories, it would no longer matter whether they were policy-making bodies or not. They would all be public bodies.

The third and fourth categories of hospital governing boards, however, comprise those boards that are public bodies only because of the special provisions of the amended open meetings law that deal with hospitals: (1) "public hospitals" under G.S. 159-39 and (2) nonprofit corporations that have acquired hospital facilities pursuant to G.S. 131E-8.[9] These special provisions are necessary because the basic definition of *public body* does not include hospital governing boards in these two categories; therefore the basic definition cannot be the source of any rule making the *committees* of such governing boards public bodies as well. The only source for such a rule must be the special hospital provisions themselves. Those provisions, however, speak only of the "governing board" of these hospitals and therefore do not include committees. In summary, whether the committees of hospital governing boards are public bodies appears to depend on the organizational nature of the hospital system in question. If a hospital governing board is a public body because the hospital system is a public corporation or the agency of a local government, its committees are also public bodies. If, however, the hospital governing board is a public body only because of the special open meetings provisions on hospitals, its committees are not public bodies.

Closed Sessions: Substance

Chapter 570 rewrites G.S. 143-318.11, which has authorized executive sessions for a considerable list of subjects. (The revised statute uses the phrase "closed session" rather than "executive session," and the new usage will be followed in the remainder of this bulletin.) The list of authorized

6. G.S. 131E-15 through -34.

7. G.S. 131E-40 through -47.

8. A few hospitals are operated by boards established under the Municipal Hospital Act, G.S. 131E-5 through -14.1.

9. Effective October 1, 1994, the special hospital provisions will read as follows: "In addition, 'public body' means the governing board of a 'public hospital' as defined in G.S. 159-39 and any nonprofit corporation to which a hospital facility has been sold or conveyed pursuant to G.S. 131E-8, any subsidiary of such nonprofit corporation, and any nonprofit corporation owning the corporation to which the hospital facility has been sold or conveyed." G.S. 143-318.10(b).

closed sessions has been reduced from twenty to seven paragraphs, but that represents less of a paring down of subjects than might be thought. As will be seen below, at least one of the seven paragraphs (that dealing with attorney-client communications and with discussions of litigation) contains two separate authorizations for closed sessions, and another (dealing with privileged or confidential information) authorizes closed sessions for several subjects that are separately stated in the current law.

Three of the seven paragraphs continue existing authorizations for closed sessions without important change: to allow discussions of honors and awards, to allow discussions about the location or expansion of industries or other businesses, and to consider and carry out investigations of alleged criminal misconduct. The remainder of this section will discuss the other four paragraphs.

Privileged or Confidential Information

The amended law permits closed sessions to "prevent the disclosure of information that is privileged or confidential" under state or federal law or that is "not considered a public record within the meaning of [the public records statute]." To some extent this authorization for closed sessions duplicates other authorizations, because those others also involve discussions of confidential information: industrial location or expansion,[10] personnel records,[11] and criminal investigations.[12] It is the only authorization for a closed session, however, for several other categories of discussion, particularly several that are especially important to school boards and hospital governing boards. Indeed, this single provision replaces several existing provisions dealing with the operations of public schools and public hospitals. The most important of these categories of privileged or confidential information are the following:

Medical records. Medical and personal financial records about individual patients of public health-care facilities, such as hospitals and health departments (G.S. 131E-97).

Medical staff records. Credentialing and peer review information about persons with practice privileges at public hospitals (G.S. 131E-99).

Hospital competition. Information about competitive health-care activities of public hospitals (G.S. 131E-100).

Mental health records. Medical records about individual patients of area authorities (G.S. 122C-52).

Student records. Official records of school students (G.S. 115C-402). This should continue to allow school disciplinary cases to be heard in closed session.

Public assistance records. Information about persons receiving public assistance (G.S. 108A-80).

Criminal investigation records. Information gathered as part of a criminal investigation (G.S. 132-1.4).

Tax returns. Any information associated with the administration of a tax that reveals a taxpayer's income or gross receipts, such as a local privilege license tax measured by gross receipts or an occupancy tax (G.S. 153A-148.1; G.S. 160A-208.1).

Certain electric power contract discussions. Discussions about contracts to which a joint power agency may be party, concerning electric power operations (G.S. 159B-38).

Attorney-Client Matters and Litigation

A single paragraph in the revised statute permits closed sessions for two separate kinds of discussions: (1) matters falling within the attorney-client privilege of the public body and (2) discussions of specific claims, judicial actions, and administrative procedures.[13] While it might be argued that the specific mention of claims, judicial actions, and administrative procedures in the paragraph limits the use of the attorney-client privilege to those contexts, the legislative history of this provision demonstrates otherwise.

10. Records relating to business location and expansion are made confidential by G.S. 132-6.

11. Most local government personnel records are made confidential by a series of parallel statutes, such as G.S. 153A-98 (counties) and G.S. 160A-168 (cities).

12. G.S. 132-1.4.

13. The relevant paragraph in the statute permits a closed session:

> To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded.
>
> G.S. 143-318.11(a)(3).

In its original version, in HB 120 as introduced, the provision read as follows:

> to permit a public body to receive advice from an attorney employed or retained by the public body with respect to a judicial proceeding in which the public body has a direct interest.

The original bill was then modified in committee, and the committee substitute read as follows:

> to permit an attorney employed or retained by the public body to provide legal advice with respect to (i) the public body's rights and obligations pursuant to an existing or proposed contract to which the public body is or will be a party; or (ii) a pending, threatened, or contemplated judicial proceeding in which the public body has a direct interest.

In the first of these it is clear that discussions with attorneys were limited to judicial proceedings, and in the committee substitute's version, such discussions were limited to judicial proceedings and to contract negotiations.

The bill was amended on the House floor, however, and the engrossed bill that reached the Senate had the following provision:

> *to preserve the attorney client privilege between the attorney and the public body* [emphasis added], or to permit an attorney employed or retained by the public body to provide legal advice with respect to (i) the public body's rights and obligations pursuant to an existing or proposed contract to which the public body is or will be a party; or (ii) a pending, threatened, or contemplated judicial proceeding in which the public body has a direct interest.

The floor amendment left the language of the committee substitute in place but added, for the first time, the provisions (italicized above) that deal with matters within the attorney-client privilege. The conclusion is inescapable that the language allowing closed sessions for matters within the privilege was intended to reach beyond discussions of litigation and contract matters.

The language was changed once again in the Senate committee, so that the Senate committee substitute contains the language of the ratified session law:

> to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. . . . The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, or administrative procedure.

Although the language is modified, the purpose seems to be for clarification rather than to make substantive changes, and this version continues the separation between discussions within the attorney-client privilege and discussions of claims and litigation. Therefore it is clear that attorney-client discussions, within the privilege, need not be restricted to claims, judicial actions, or administrative procedures.

A few other points should be made about these two authorizations for closed sessions. First, the express legislative acknowledgment of the attorney-client privilege responds to a suggestion, in *News & Observer Publishing Company v. Poole*,[14] that the privilege might not exist for governmental clients. The legislative acknowledgment has asserted that it does. Second, although the specific language about "threatened" litigation did not survive into the final version of this provision, it seems clear that a board may discuss a matter that may develop into a lawsuit, although no suit has yet been brought; the express authorization to discuss "claims" surely includes claims that have not yet ripened to litigation. Third, the existing requirement to enter the terms of any settlement discussed in closed session into the public body's minutes is continued without substantive change.

Acquisition of Real Estate

The revisions narrow somewhat the opportunities for discussing acquisition of real estate in closed session.[15] Under the current law, a public body may in closed session discuss the terms under which it will acquire real estate and in addition may discuss which of several sites to select for acquisition. While the first sort of discussion remains possible, there is no longer a specific authorization for the second. The rewritten statute permits closed sessions only to establish or give instructions about the body's position on the "price and other material terms of a contract or proposed contract for the acquisition of real property."

Discussions of Personnel

Perhaps the most commonly used authorization for closed sessions has been that allowing discussion of individual public officers and employees. This provision was extensively debated in the process of enacting Chapter 570, but the result is no substantive change as far as concerns discussions of local government *employees*. Public bodies may continue to hold closed sessions to discuss the "qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment" of present or prospective individual public employees and

14. 330 N.C. 465, 412 S.E.2d 7 (1992).

15. There remains no specific authorization to discuss disposition of real estate in closed session, nor is there any longer an authorization to discuss acquisition or disposition of personal property.

officers. Indeed, the statute adds (in the same paragraph permitting closed sessions for real estate contract discussions) a specific authorization to discuss the terms of existing or proposed employment contracts.

What has changed is a public body's ability to discuss in closed session public officials who are not full-time employees. Under the current law, a public body may discuss the qualifications, performance, and competence of persons who are on or who wish to be on other public bodies; thus a city council may discuss, for example, whom to appoint to a planning and zoning commission. In addition, the current law permits a public body to discuss the performance of one of its own members. These sorts of discussions will no longer be possible under the revisions. The new provisions expressly prohibit any discussions in closed session of "a member of the public body or another body."

Other Changes

It should be noted that there is no longer any express authorization for closed-session discussions of independent contractors or their qualifications or performance, nor is there any authorization for closed discussions of airport contracts or landing fees.

Closed Sessions: Procedural

Chapter 570 adds some requirements for the motion to go into closed session and adds language about minutes of closed sessions.

Motion To Go into Closed Session

The current law requires a public body that wishes to hold a closed session to first adopt a motion in open session to go into closed session, with the motion stating the general purpose of the closed session. The revised statute requires that the motion cite the specific purpose listed in the statute that justifies the closed session. This wording change is probably not substantive: a motion to discuss a personnel matter satisfies the current law and appears to satisfy the amended law as well. There are, however, additional requirements for two categories of closed sessions. First, if the closed session is to discuss matters that are privileged or confidential or are not subject to the public records law, the motion must cite the law that makes the matters privileged or confidential or that exempts them from the public records law. The discussion above lists the most likely subjects of such a session and includes the appropriate citations. Second, if the closed session is to discuss an "existing lawsuit," the motion must name the parties to that lawsuit.

Minutes of Closed Sessions

The open meetings law currently requires that all public bodies keep "full and accurate minutes" of all open sessions; Chapter 570 extends the requirement to closed sessions as well. This change, however, does no more than bring the statutory language into accord with what was required in any event. If a board takes action in closed session, that board needs minutes of the closed session under the current law, in order to have a record of that action. If a board takes no action in a closed session, under the current law it needs no minutes of the closed session, and that will remain true under the changed wording.

The phrase "full and accurate minutes" has been used for more than twenty years for the statutory requirement that city councils and boards of county commissioners keep minutes of all their meetings,[16] and it has a settled meaning in that existing context. Presumably the General Assembly intended the same meaning for the phrase in the open meetings law. Under the existing interpretation of the phrase, the purpose of minutes is to provide a record of the actions taken by a board and evidence that the actions were taken according to proper procedures. If no action is taken, no record (other than the fact the meeting occurred) is necessary. Thus, if the public body uses the closed session only for discussion and takes no action, nothing need appear in the minutes other than the fact that the meeting was held. If some action is taken, of course, the minutes should reflect that fact. If there are substantive minutes, the law continues to permit the public body to seal them "so long as public inspection would frustrate the purpose of a closed session."

Remedies

The final set of changes made by Chapter 570 concerns remedies. First, the provisions dealing with attorneys' fees were changed. Under the current law, a court hearing an action alleging a violation of the open meetings law is required to make findings as to the prevailing party and to award that party attorneys' fees. Under the changes, this will become optional with the court, a matter of its discretion. In addition, if a court makes an award of attorneys' fees, it is permitted to require those members of the public body who violated the statute to pay the award from their own resources rather than have the public body or the unit or agency of which it is a part pay the award. This is probably an option that was open to the court under the current law, but this provision makes the power plain. Before the court may order individual members to pay attorneys' fees, it must find that the

16. G.S. 153A-42 for boards of county commissioners; G.S. 160A-72 for city councils.

violation was knowingly or intentionally committed. Moreover, if a member or if the public body sought and followed the advice of an attorney, that member (or if the advice was to the body, all members) may not be ordered to pay such an award.

The final change is a new provision that directs that any action alleging a violation of the open meetings law is to "be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts."

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