

1 SB21
2 160580-5
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 03-MAR-15
6 PFD: 02/04/2015

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to the Open Meetings Act of 2005; to amend
12 Sections 36-25A-1, 36-25A-2, 36-25A-3, and 36-25A-9, Code of
13 Alabama 1975, to define and prohibit serial meetings; to
14 further define deliberation, governmental body, and meeting to
15 apply to the exchange of information or ideas among a quorum
16 of members of a committee, subcommittee, or full governmental
17 body intended to arrive at or influence a decision as to how
18 any members of the governmental body should vote on a specific
19 matter that, at the time of the exchange, the participating
20 members expect to come before the committee, subcommittee, or
21 full governmental body immediately following the discussion or
22 at a later time; to clarify that the Alabama Legislature is
23 solely governed by the Alabama Constitution which establishes
24 that the doors of each house of the Alabama Legislature shall
25 be open to the public except when secrecy is required under
26 the circumstances and that no other provision of this chapter
27 applies to the Alabama Legislature; to reaffirm that private

1 citizens may bring civil actions under the Open Meetings Act;
2 to provide that the prevailing plaintiff shall receive any
3 civil penalties awarded against the defendants; and to set a
4 minimum penalty for a violation of the Open Meetings Act at
5 \$1.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Sections 36-25A-1, 36-25A-2, 36-25A-3,
8 and 36-25A-9, Code of Alabama 1975, are amended to read as
9 follows:

10 "§36-25A-1.

11 "(a) It is the policy of this state that the
12 deliberative process of governmental bodies shall be open to
13 the public during meetings as defined in Section 36-25A-2(6).
14 Except for executive sessions permitted in Section 36-25A-7(a)
15 or as otherwise expressly provided by other federal or state
16 laws or statutes, all meetings of a governmental body shall be
17 open to the public and no meetings of a governmental body may
18 be held without providing notice pursuant to the requirements
19 of Section 36-25A-3. No executive sessions are required by
20 this chapter to be held under any circumstances. ~~Electronic~~
21 Serial meetings or electronic communications shall not be
22 utilized to circumvent any of the provisions of this chapter."

23 "(b) This chapter shall be known and may be cited as
24 the "Alabama Open Meetings Act."

25 "§36-25A-2.

1 "As used in and for determining the applicability of
2 this chapter, the following words shall have the following
3 meanings solely for the purposes of this chapter:

4 "(1) DELIBERATION. An exchange of information or
5 ideas among a quorum of members of a subcommittee, committee,
6 or full governmental body intended to arrive at or influence a
7 decision as to how ~~the~~ any members of the subcommittee,
8 committee, or full governmental body should vote on a specific
9 matter that, at the time of the exchange, the participating
10 members expect to come before the subcommittee, committee, or
11 full body immediately following the discussion or at a later
12 time.

13 "(2) EXECUTIVE SESSION. That portion of a meeting of
14 a subcommittee, committee, or full governmental body from
15 which the public is excluded for one or more of the reasons
16 prescribed in Section 36-25A-7(a).

17 "(3) GENERAL REPUTATION AND CHARACTER.
18 Characteristics or actions of a person directly involving good
19 or bad ethical conduct, moral turpitude, or suspected criminal
20 activity, not including job performance.

21 "(4) GOVERNMENTAL BODY. All boards, bodies, and
22 commissions of the executive and legislative departments of
23 the state or its political subdivisions or municipalities
24 which expend or appropriate public funds; all multimember
25 governing bodies of departments, agencies, institutions, and
26 instrumentalities of the executive and legislative departments
27 of the state or its political subdivisions or municipalities,

1 including, without limitation, all corporations and other
2 instrumentalities whose governing boards are comprised of a
3 majority of members who are appointed or elected by the state
4 or its political subdivisions, counties, or municipalities;
5 ~~and~~ all quasi-judicial bodies of the executive and legislative
6 departments of the state; and all standing, special, or
7 advisory committees or subcommittees of, or appointed by, the
8 body. The term "governmental body" does not include any of the
9 following:

10 "a. Legislative party caucuses or coalitions.

11 "b. Alabama appellate or trial courts, except as
12 required by the constitution of this state or any body
13 governed by rules of the Alabama Supreme Court.

14 "c. Voluntary membership associations comprised of
15 public employees, retirees, counties, municipalities, or their
16 instrumentalities which have not been delegated any
17 legislative or executive functions by the Legislature or
18 Governor.

19 "(5) JOB PERFORMANCE. The observed conduct or
20 actions of a public employee or public official while on the
21 job in furtherance of his or her assigned duties. Job
22 performance includes whether a person is meeting, exceeding,
23 or failing to meet job requirements or whether formal
24 employment actions should be taken by the governmental body.
25 Job performance does not include the general reputation and
26 character of the person being discussed.

1 "(6) MEETING. a. Subject to the limitations herein,
2 the term meeting shall only apply to the following:

3 "1. The prearranged gathering of a quorum of a
4 governmental body or a quorum of a committee or subcommittee
5 of a governmental body at a time and place which is set by law
6 or operation of law.

7 "2. The prearranged gathering of a quorum of a
8 governmental body or a quorum of a committee or subcommittee
9 of a governmental body during which the full governmental
10 body, committee, or subcommittee of the governmental body is
11 authorized, either by law or otherwise, to exercise the powers
12 which it possesses or approve the expenditure of public funds.

13 "3. The gathering, whether or not it was
14 prearranged, of a quorum of a governmental body or a quorum of
15 a committee or a subcommittee of a governmental body during
16 which the members of the subcommittee, committee, or full
17 governmental body deliberate specific matters that, at the
18 time of the exchange, the participating members expect to come
19 before the full governmental body, committee, or subcommittee
20 at a later date.

21 "b. The term "meeting" shall not include:

22 "1. Occasions when a quorum of a governmental body,
23 committee, or subcommittee attends social gatherings,
24 conventions, conferences, training programs, press
25 conferences, media events, gathers for on-site inspections or
26 meetings with applicants for economic incentives or assistance
27 from the governmental body, or otherwise gathers so long as

1 the subcommittee, committee, or full governmental body does
2 not deliberate specific matters that, at the time of the
3 exchange, the participating members expect to come before the
4 subcommittee, committee, or full governmental body at a later
5 date.

6 "2. Occasions when a quorum of a subcommittee,
7 committee, or full governmental body gathers, in person or by
8 electronic communication, with state or federal officials for
9 the purpose of reporting or obtaining information or seeking
10 support for issues of importance to the subcommittee,
11 committee, or full governmental body.

12 "3. Occasions when a quorum of a subcommittee,
13 committee, or full governmental body gathers to discuss an
14 economic, industrial, or commercial prospect or incentive that
15 does not include a conclusion as to recommendations, policy,
16 decisions or final action on the terms of a request or an
17 offer of public financial resources.

18 "c. Nothing herein shall restrict or prevent two
19 members of the same full governmental body from talking
20 together without deliberation, including two members of a full
21 governmental body having only three members, and nothing
22 herein shall restrict or prevent a mayor or executive director
23 of a city or municipality who is not a voting member of the
24 city or municipal council from talking or deliberating with a
25 member of the city or municipal council.

26 "(7) OPEN OR PUBLIC PORTION OF A MEETING. The open
27 or public portion of a meeting is that portion which has not

1 been closed for executive session in accordance with this
2 chapter, for which prior notice was given in compliance with
3 this chapter, and which is conducted so that constituents of
4 the governmental body, members of the media, persons
5 interested in the activities of the governmental body, and
6 citizens of this state could, if they desired, attend and
7 observe.

8 "(8) PROFESSIONAL COMPETENCE. The ability of an
9 individual to practice a profession within the profession's
10 acceptable standards of care and responsibility. A profession
11 is a vocation requiring certification by the State of Alabama
12 or passage of a state licensing examination that may only be
13 granted to or taken by persons who have completed at least
14 three years of college-level education and obtained at least a
15 college-level degree.

16 "(9) PUBLIC EMPLOYEE. Any person employed at the
17 state, county, or municipal levels of government or their
18 instrumentalities, including governmental corporations and
19 authorities, who is paid in whole or in part from state,
20 county, or municipal funds. A public employee does not include
21 a person employed on a part-time basis whose employment is
22 limited to providing professional services other than
23 lobbying, the compensation for which constitutes less than 50
24 percent of the part-time employee's income.

25 "(10) PUBLIC FUNDS. Taxes or fees charged or
26 collected by a governmental body or from the sale of public
27 property including, but not limited to, matching funds from

1 the federal government or income derived from the investment
2 of taxes or fees.

3 "(11) PUBLIC OFFICIAL. Any person elected to public
4 office, whether or not that person has taken office, by the
5 vote of the people at state, county, or municipal levels of
6 government or their instrumentalities, including governmental
7 corporations, and any person appointed to a position at the
8 state, county, or municipal levels of government or their
9 instrumentalities, including governmental corporations.

10 "(12) QUORUM. Unless otherwise provided by law, a
11 quorum is a majority of the voting members of a governmental
12 body. Except where a governmental body is prohibited from
13 holding a non-emergency meeting as defined in subdivision
14 (6)a.1. between the date of election of members and the date
15 such members take office, any person elected to serve on a
16 governmental body shall be counted in the determination of
17 whether a quorum of that governmental body is present, except
18 for any meeting as defined in subdivisions (6)a.1. and 2.,
19 beginning on the date of certification of the results of the
20 general election. In the case of appointment to a governmental
21 body, any person shall be counted in the determination of
22 whether a quorum of that governmental body is present, except
23 for any meeting as defined in subdivisions (6)a.1. and 2.,
24 from the date that the appointment is made or issued whether
25 or not the appointment is effective on that date.

1 "(13) SERIAL MEETING. a. The term serial meeting
2 applies to any series of gatherings of two or more members of
3 a governmental body, at which:

4 "1. Less than a quorum is present at each individual
5 gathering and each individual gathering is attended by at
6 least one member who also attends one or more other gatherings
7 in the series.

8 "2. The total number of members attending two or
9 more of the series of gatherings collectively constitutes a
10 quorum.

11 "3. There is no notice or opportunity to attend
12 provided to the public in accordance with the Alabama Open
13 Meetings Act.

14 "4. The members participating in the gatherings
15 deliberate specific matters that, at the time of the exchange,
16 the participating members expect to come before the
17 subcommittee, committee or full governmental body at a later
18 date.

19 "5. The series of gatherings was held for the
20 purpose of circumventing the provisions of this chapter.

21 "6. At least one of the meetings in the series
22 occurs within seven calendar days of a vote on any of the
23 matters deliberated.

24 b. The term serial meeting does not include:

25 1. Gatherings, including a gathering of two members
26 of a full governmental body having only three members, at
27 which no deliberations were conducted or the sole purpose was

1 to exchange background and education information with members
2 on specific issues shall not be considered a serial meeting
3 under this chapter.

4 2. A series of gatherings related to a search to
5 fill a position required to file a statement of economic
6 interests with the Alabama Ethics Commission pursuant to
7 Section 36-25-14 until the search has been narrowed to three
8 or fewer persons under consideration.

9 3. A gathering or series of gatherings involving
10 only a single member of a governmental body."

11 "§36-25A-3.

12 "(a) Unless otherwise specified by law and as
13 provided herein, any governmental body subject to this
14 chapter, except for an advisory board, advisory commission,
15 advisory committee, task force, or other advisory body created
16 solely to make recommendations on public policy issues and
17 composed of persons who do not receive compensation for their
18 service as members of the board, commission, committee, task
19 force, or body from public funds, shall post notice of all
20 meetings, as defined in Section 36-25A-2(6)a.1., at least
21 seven calendar days prior to the meeting as follows:

22 "(1) The Alabama Legislature is solely governed by
23 the Alabama Constitution which establishes that the doors of
24 each house of the Alabama Legislature shall be open to the
25 public unless a vote is taken that secrecy is required under
26 the circumstances. The respective houses of the Alabama
27 Legislature shall develop rules consistent with the

1 Constitution of Alabama of 1901, providing for access to and
2 prior notice of all sessions and standing committee and
3 standing subcommittee meetings and all meetings of permanent
4 and joint legislative committees. Because the Alabama
5 Legislature is solely governed by the Alabama Constitution and
6 sets its own rules to ensure public access as guaranteed by
7 the Constitution, no other provision of this chapter applies
8 to the Alabama Legislature.

9 "(2) Any governmental body with statewide
10 jurisdiction shall submit notice of its meeting to the
11 Secretary of State. The Secretary of State shall post the
12 notice on the Internet for at least seven calendar days prior
13 to the day of the meeting. The Secretary of State shall also
14 send electronic mail notifications to anyone who has
15 registered with the Secretary of State to receive notification
16 of meetings. The Secretary of State may promulgate reasonable
17 rules and regulations necessary for the uniform receipt and
18 posting of notice and of registration for electronic mail
19 notification. The Secretary of State shall provide during
20 regular office hours a computer terminal at a place convenient
21 to the public in the office of the Secretary of State that
22 members of the public may use to view notices of meetings
23 posted by the Secretary of State. Any governmental body with
24 less than statewide jurisdiction may also submit notice to the
25 Secretary of State for posting on the website. Nothing shall
26 prevent a governmental body subject to this subsection from
27 posting notice in any additional manner.

1 "(3) A municipal governmental body shall post notice
2 of each meeting on a bulletin board at a place convenient to
3 the public in the city hall, provided, however, that a
4 corporation a majority of whose governing board is appointed
5 or elected by a municipality and that has a principal office
6 separate from the city hall may, in lieu of posting notice in
7 the city hall, post notice of each meeting on a bulletin board
8 at a place convenient to the public in the principal office of
9 the corporation or other instrumentality.

10 "(4) A local school board shall post notice of each
11 meeting on a bulletin board at a place convenient to the
12 public in the central administrative office of the board.

13 "(5) Any other governmental body shall post notice
14 of each meeting in a reasonable location or shall use a
15 reasonable method of notice that is convenient to the public.
16 Any change of the location or method for posting notices of
17 meetings shall not take effect until the change has been
18 approved at an open meeting by the members of the governmental
19 body and announced to the public at an open meeting.

20 "(6) If practicable, a governmental body other than
21 those with statewide jurisdiction, in addition to the posting
22 requirements, shall provide direct notification of a meeting,
23 as defined in Section 36-25A-2(6)a., to any member of the
24 public or news media covering that governmental body who has
25 registered with the governmental body to receive notification
26 of meetings. A governmental body may promulgate reasonable
27 rules and regulations necessary for the uniform registration

1 and payment for direct notice and for the distribution of the
2 notices. The governmental body may choose to transmit a notice
3 using electronic mail, telephone, facsimile, the United States
4 Postal Service, or any other method reasonably likely to
5 provide the requested notice. The actual cost of issuing
6 notices, if there is one, may be required to be paid in
7 advance by the person requesting notice by the governmental
8 body. Direct notice to persons who have registered with the
9 governmental body shall, at a minimum, contain the time, date,
10 and place of the meeting.

11 "(b) Unless otherwise specified by law directly
12 applicable to the governmental body, notice of a meeting, as
13 defined in Section 36-25A-2(6)a.2. and 3. as well as meetings
14 called pursuant to Section 11-43-50 shall be posted as soon as
15 practicable after the meeting is called and in no event less
16 than 24 hours before the meeting is scheduled to begin, unless
17 such notice (i) is prevented by emergency circumstances
18 requiring immediate action to avoid physical injury to persons
19 or damage to property; or (ii) relates to a meeting to be held
20 solely to accept the resignation of a public official or
21 employee. In such situations, notice shall be given as soon as
22 practical, but in no case less than one hour before the
23 meeting is to begin. At the same time general notice is given,
24 special notice shall be directed to any person who has
25 registered to receive direct notices pursuant to the
26 provisions of subsection (a)(6).

1 "(c) Posted notice pursuant to this section shall
2 include the time, date, and place of meeting. If a preliminary
3 agenda is created, it shall be posted as soon as practicable
4 in the same location or manner as the notice given pursuant to
5 this section. A governmental body may discuss at a meeting
6 additional matters not included in the preliminary agenda. If
7 a preliminary agenda is not available, the posted notice shall
8 include a general description of the nature and purpose of the
9 meeting.

10 "(d) County commissions which provide proper notice
11 in conformance with Section 11-3-8 shall not be required to
12 comply with subsections (a), (b), and (c) of this section, nor
13 shall committees or subcommittees of such commissions so long
14 as the committees also comply with the notice procedures
15 applicable to the full commission in Section 11-3-8.

16 "(e) Governmental bodies may give, but shall not be
17 required to give, notice of quasi-judicial or contested case
18 hearings which could properly be conducted as an executive
19 session under this chapter or existing state law.

20 "(f) A governmental body is authorized, but not
21 required, to provide notice in addition to that specified in
22 this section and to provide notice for gatherings which are
23 not meetings as defined in Section 36-25A-2(6).

24 "§36-25A-9.

25 "(a) ~~Enforcement~~ This chapter is designed and
26 intended to hold members of governmental bodies, and the
27 bodies themselves, accountable to the public for violations of

1 this chapter. Therefore, enforcement of this chapter, except a
2 violation of Section 26-25A-3(a)(1), may be sought by civil
3 action brought in the county where the governmental body's
4 primary office is located by any media organization, any
5 Alabama citizen directly impacted by the alleged violation,
6 the Attorney General, or the district attorney for the circuit
7 in which the governmental body is located; provided, however,
8 that no member of a governmental body may serve as a plaintiff
9 in an action brought against another member of the same
10 governmental body for an alleged violation of this chapter.
11 The complaint shall be verified, shall state specifically the
12 applicable ground or grounds for the complaint as set out in
13 subdivisions (1) through (4) of subsection (b), and shall name
14 in their official capacity all members of the governmental
15 body remaining in attendance at the alleged meeting held in
16 violation of this chapter. If filed by an Alabama citizen,
17 such complaint shall state the direct impact the alleged
18 violation will have on the plaintiff. Members of a
19 governmental body who are named as a defendant in a complaint
20 under this chapter shall serve an initial response to the
21 complaint within seven business days of personal service of
22 the complaint. A preliminary hearing on the complaint filed
23 shall be held no later than 10 business days after the date of
24 the filing of the defendant or defendants' initial response to
25 the complaint or, if no response is filed, no later than 17
26 business days after the filing of the complaint, or on the
27 nearest day thereafter as the court shall fix, having regard

1 to the speediest possible determination of the cause
2 consistent with the rights of the parties.

3 "(b) In the preliminary hearing on the complaint,
4 the plaintiff shall establish by a preponderance of the
5 evidence that a meeting of the governmental body occurred and
6 that each defendant attended the meeting. Additionally, to
7 establish a prima facie case the plaintiff must present
8 substantial evidence of one or more of the following claims:

9 "(1) That the defendants disregarded the
10 requirements for proper notice of the meeting pursuant to the
11 applicable methods set forth in Section 36-25A-3.

12 "(2) That the defendants disregarded the provisions
13 of this chapter during a meeting, other than during an
14 executive session.

15 "(3) That the defendants voted to go into executive
16 session and while in executive session the defendants
17 discussed matters other than those subjects included in the
18 motion to convene an executive session as required by Section
19 36-25A-7(b).

20 "(4) That, other than a claim under subdivisions (1)
21 through (3), the defendants intentionally violated other
22 provisions of this chapter.

23 "(c) If the court finds that the plaintiff has met
24 its initial burden of proof as required in subsection (b) at
25 the preliminary hearing, the court shall establish a schedule
26 for discovery and set the matter for a hearing on the merits.
27 If, at the preliminary hearing, the plaintiff has presented

1 its prima facie case that an executive session appears to have
2 been improperly conducted as set out in subsection (b) (3), the
3 defendants shall bear the burden of proof at the hearing on
4 the merits to prove by a preponderance of the evidence that
5 the discussions during the executive session were limited to
6 matters related to the subjects included in the motion to
7 convene an executive session required in Section 36-25A-7(a).

8 "(d) During a proceeding involving claims brought
9 under subsection (b) (3), the court shall conduct an in camera
10 proceeding or adopt another procedure as necessary to protect
11 the confidentiality of the matters discussed during the
12 executive session, and if there is a determination that the
13 executive session was authorized by this chapter, the matters
14 shall not be disclosed or utilized in any other legal
15 proceeding by any individual or attorney who attends the in
16 camera portion of the proceedings.

17 "(e) Upon proof by a preponderance of the evidence
18 of a defendant's violation of this chapter, the circuit court
19 shall issue an appropriate final order including, if
20 appropriate, a declaratory judgment or injunction. Prior to a
21 final determination of the merits, temporary restraining
22 orders or preliminary injunctions may be issued upon proper
23 motion and proof as provided and required in the Alabama Rules
24 of Civil Procedure. A final order on the merits shall be
25 issued within 60 days after the preliminary hearing unless a
26 longer period is consented to by all parties and the court.

1 "(f) The court may invalidate the action or actions
2 taken during a meeting held in violation of this chapter,
3 provided that the complaint is filed within 21 days of the
4 date when the action is made public, the violation was not the
5 result of mistake, inadvertence, or excusable neglect, and
6 invalidation of the governmental action taken would not unduly
7 prejudice third parties who have changed their position or
8 taken action in good faith reliance upon the challenged action
9 of the governmental body; provided further, however, that any
10 action taken at an open meeting conducted in a manner
11 consistent with this chapter shall not be invalidated because
12 of a violation of this chapter which occurred prior to such
13 meeting.

14 "(g) A final order issued against a defendant shall
15 state specifically upon which claim or claims in subdivisions
16 (1) through (4) the ruling is based. For each meeting proven
17 to be held in violation of this chapter for one or more
18 reasons, the court shall impose a civil penalty payable to the
19 plaintiff(s). The maximum penalty for each meeting shall not
20 exceed one thousand dollars (\$1,000) or one half of the
21 defendant's monthly salary for service on the governmental
22 body, whichever is less. The minimum penalty shall be one
23 dollar (\$1). With regard to claims related to improper
24 discussions during executive sessions, monetary penalties may
25 only be assessed against defendant members of a governmental
26 body who voted to go into an executive session and who
27 remained in the executive session during a discussion

1 determined by the court not to have been authorized by this
2 chapter. Penalties imposed against a member of a governmental
3 body found to have acted in violation of this chapter shall
4 not be paid by nor reimbursed to the member by the
5 governmental body he or she serves. If more than one cause of
6 action is filed pursuant to this chapter, all causes of action
7 based on or arising out of the same alleged violation or
8 violations shall be consolidated into the action that was
9 first filed and any party may intervene into the consolidated
10 action pursuant to the Alabama Rules of Civil Procedure, and
11 no member found to have acted in violation of this chapter by
12 a final court order and assessed a penalty as authorized
13 herein shall be subject to further liability or penalty to the
14 same or different plaintiffs in separate causes of action for
15 the same violation or violations."

16 "(h) A governmental body is authorized to pay for or
17 provide for the legal expenses of present or former members of
18 the body named as defendants in a proceeding under this
19 chapter."

20 Section 2. This act shall become effective on the
21 first day of the third month following its passage and
22 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Judiciary..... 03-MAR-15

Read for the second time and placed on the calen-
dar 2 amendments..... 11-MAR-15

Read for the third time and passed as amended 18-MAR-15

Yeas 30
Nays 0

Patrick Harris
Secretary