

1 SB400
2 114820-1
3 By Senator Figures
4 RFD: Governmental Affairs
5 First Read: 09-FEB-10

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8 SYNOPSIS: Under existing state law, meetings of state
9 regulatory boards and agencies are generally
10 required to be open to the public and electronic
11 communications may not be used to circumvent that
12 requirement.

13 This bill would allow state regulatory
14 boards and agencies to hold teleconference meetings
15 under certain circumstances.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT

20
21 Relating to the open public meetings of state
22 regulatory boards and agencies; to amend Sections 36-25A-1 and
23 36-25A-2, Code of Alabama 1975, and to add Section 36-25A-2.5
24 to the Code of Alabama 1975, to authorize the use of
25 teleconference meetings under certain circumstances for
26 meetings of state regulatory boards and agencies.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

3 "§36-25A-1.

4 "(a) It is the policy of this state that the
5 deliberative process of governmental bodies shall be open to
6 the public during meetings as defined in Section 36-25A-2(6).
7 Except for executive sessions permitted in Section 36-25A-7(a)
8 or as otherwise expressly provided by other federal or state
9 statutes, all meetings of a governmental body shall be open to
10 the public and no meetings of a governmental body may be held
11 without providing notice pursuant to the requirements of
12 Section 36-25A-3. No executive sessions are required by this
13 chapter to be held under any circumstances. Electronic
14 communications ~~shall not be utilized to circumvent any of the~~
15 ~~provisions of this chapter~~ may be used only on a limited basis
16 by state regulatory boards and agencies as provided in Section
17 36-25A-2.5.

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

20 "§36-25A-2.

21 "As used in and for determining the applicability of
22 this chapter, the following words shall have the following
23 meanings solely for the purposes of this chapter:

24 "(1) DELIBERATION. An exchange of information or
25 ideas among a quorum of members of a governmental body
26 intended to arrive at or influence a decision as to how the
27 members of the governmental body should vote on a specific

1 matter that, at the time of the exchange, the participating
2 members expect to come before the body immediately following
3 the discussion or at a later time.

4 "(2) EXECUTIVE SESSION. That portion of a meeting of
5 a governmental body from which the public is excluded for one
6 or more of the reasons prescribed in Section 36-25A-7(a).

7 "(3) GENERAL REPUTATION AND CHARACTER.
8 Characteristics or actions of a person directly involving good
9 or bad ethical conduct, moral turpitude, or suspected criminal
10 activity, not including job performance.

11 "(4) GOVERNMENTAL BODY. All boards, bodies, and
12 commissions of the executive and legislative departments of
13 the state or its political subdivisions or municipalities
14 which expend or appropriate public funds; all multimember
15 governing bodies of departments, agencies, institutions, and
16 instrumentalities of the executive and legislative departments
17 of the state or its political subdivisions or municipalities,
18 including, without limitation, all corporations and other
19 instrumentalities whose governing boards are comprised of a
20 majority of members who are appointed or elected by the state
21 or its political subdivisions, counties, or municipalities;
22 and all quasi-judicial bodies of the executive and legislative
23 departments of the state and all standing, special, or
24 advisory committees or subcommittees of, or appointed by, the
25 body. The term "governmental body" does not include any of the
26 following:

27 "a. Legislative party caucuses or coalitions.

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

4 "c. Voluntary membership associations comprised of
5 public employees, counties, municipalities, or their
6 instrumentalities which have not been delegated any
7 legislative or executive functions by the Legislature or
8 Governor.

9 "(5) JOB PERFORMANCE. The observed conduct or
10 actions of a public employee or public official while on the
11 job in furtherance of his or her assigned duties. Job
12 performance includes whether a person is meeting, exceeding,
13 or failing to meet job requirements or whether formal
14 employment actions should be taken by the governmental body.
15 Job performance does not include the general reputation and
16 character of the person being discussed.

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

19 "1. The prearranged gathering of a quorum of a
20 governmental body or a quorum of a committee or subcommittee
21 of a governmental body at a time and place which is set by law
22 or operation of law.

23 "2. The prearranged gathering of a quorum of a
24 governmental body or a quorum of a committee or subcommittee
25 of a governmental body during which the body, committee, or
26 subcommittee of the governmental body is authorized, either by

1 law or otherwise, to exercise the powers which it possesses or
2 approve the expenditure of public funds.

3 "3. The gathering, whether or not it was
4 prearranged, of a quorum of a governmental body or a quorum of
5 a committee or a subcommittee of a governmental body during
6 which the members of the governmental body deliberate specific
7 matters that, at the time of the exchange, the participating
8 members expect to come before the body, committee, or
9 subcommittee at a later date.

10 "4. Teleconference meetings of state regulatory
11 boards and agencies as authorized in Section 36-25A-2.5.

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

13 "1. Occasions when a quorum of a governmental body,
14 committee, or subcommittee attends social gatherings,
15 conventions, conferences, training programs, press
16 conferences, media events, or otherwise gathers so long as the
17 governmental body does not deliberate specific matters that,
18 at the time of the exchange, the participating members expect
19 to come before the governmental body at a later date.

20 "2. Occasions when a quorum of a governmental body
21 gathers, in person or by electronic communication, with state
22 or federal officials for the purpose of reporting or obtaining
23 information or seeking support for issues of importance to the
24 governmental body.

25 "(7) OPEN OR PUBLIC PORTION OF A MEETING. The open
26 or public portion of a meeting is that portion which has not
27 been closed for executive session in accordance with this

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

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

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

24 "(10) PUBLIC FUNDS. Taxes or fees charged or
25 collected by a governmental body or from the sale of public
26 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.

26 "(13) STATE REGULATORY BOARD OR AGENCY. Any state
27 board, agency, or entity, other than an executive branch

1 department of state government, that licenses and regulates
2 individuals engaged in a business or profession."

3 Section 2. Section 36-25A-2.5 is added to the Code
4 of Alabama 1975, to read as follows:

5 §36-25A-2.5. Teleconference Meetings of State
6 Regulatory Boards and Agencies Authorized.

7 (a) A state regulatory board or agency may conduct a
8 meeting by teleconference if a reasonable attempt to plan for
9 an in-person meeting is not successful.

10 (b) A teleconference meeting by a state regulatory
11 board or agency may not be held if annual budgeting issues are
12 to be discussed or if an executive session is to be held.

13 (c) A state regulatory board or agency that conducts
14 a teleconference meeting pursuant to this section shall
15 otherwise comply with the notice requirements of this chapter,
16 and the board or agency shall provide public access by
17 allowing access to the teleconferencing technology.

18 (d) Teleconference meetings may include an audio
19 only meeting or an audio and video meeting and must be
20 conducted in a real-time setting in which all participants
21 have the ability to communicate simultaneously during the
22 meeting.

23 Section 3. This act shall become effective
24 immediately following its passage and approval by the
25 Governor, or its otherwise becoming law.