

1 SB191
2 158401-4
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 15-JAN-14

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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 proceedings on the floor of
23 the Alabama Legislature are solely governed by the Alabama
24 Constitution which requires both houses of the Alabama
25 Legislature to meet with doors open to the public unless that
26 secrecy is required under the circumstances and that no other
27 provision of this chapter applies to the Alabama Legislature;

1 to reaffirm that private citizens may bring civil actions
2 under the Open Meetings Act; to provide that the prevailing
3 plaintiff shall receive any civil penalties awarded against
4 the defendants; and to set a minimum penalty for a violation
5 of the Open Meetings Act at \$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 statutes, all meetings of a governmental body shall be open to
17 the public and no meetings of a governmental body may be held
18 without providing notice pursuant to the requirements of
19 Section 36-25A-3. No executive sessions are required by this
20 chapter to be held under any circumstances. ~~Electronic Serial~~
21 meetings or electronic communications shall not be utilized to
22 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 "Nothing shall restrict two individuals from talking
14 together without deliberation.

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

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

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

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

12 "a. Legislative party caucuses or coalitions.

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

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

21 "(5) JOB PERFORMANCE. The observed conduct or
22 actions of a public employee or public official while on the
23 job in furtherance of his or her assigned duties. Job
24 performance includes whether a person is meeting, exceeding,
25 or failing to meet job requirements or whether formal
26 employment actions should be taken by the governmental body.

1 Job performance does not include the general reputation and
2 character of the person being discussed.

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

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

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

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

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

24 "1. Occasions when a quorum of a governmental body,
25 committee, or subcommittee attends social gatherings,
26 conventions, conferences, training programs, press
27 conferences, media events, or otherwise gathers so long as the

1 subcommittee, committee, or full governmental body does not
2 deliberate specific matters that, at the time of the exchange,
3 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 "(7) OPEN OR PUBLIC PORTION OF A MEETING. The open
13 or public portion of a meeting is that portion which has not
14 been closed for executive session in accordance with this
15 chapter, for which prior notice was given in compliance with
16 this chapter, and which is conducted so that constituents of
17 the governmental body, members of the media, persons
18 interested in the activities of the governmental body, and
19 citizens of this state could, if they desired, attend and
20 observe.

21 "(8) PROFESSIONAL COMPETENCE. The ability of an
22 individual to practice a profession within the profession's
23 acceptable standards of care and responsibility. A profession
24 is a vocation requiring certification by the State of Alabama
25 or passage of a state licensing examination that may only be
26 granted to or taken by persons who have completed at least

1 three years of college-level education and obtained at least a
2 college-level degree.

3 "(9) PUBLIC EMPLOYEE. Any person employed at the
4 state, county, or municipal levels of government or their
5 instrumentalities, including governmental corporations and
6 authorities, who is paid in whole or in part from state,
7 county, or municipal funds. A public employee does not include
8 a person employed on a part-time basis whose employment is
9 limited to providing professional services other than
10 lobbying, the compensation for which constitutes less than 50
11 percent of the part-time employee's income.

12 "(10) PUBLIC FUNDS. Taxes or fees charged or
13 collected by a governmental body or from the sale of public
14 property including, but not limited to, matching funds from
15 the federal government or income derived from the investment
16 of taxes or fees.

17 "(11) PUBLIC OFFICIAL. Any person elected to public
18 office, whether or not that person has taken office, by the
19 vote of the people at state, county, or municipal levels of
20 government or their instrumentalities, including governmental
21 corporations, and any person appointed to a position at the
22 state, county, or municipal levels of government or their
23 instrumentalities, including governmental corporations.

24 "(12) QUORUM. Unless otherwise provided by law, a
25 quorum is a majority of the voting members of a governmental
26 body. Except where a governmental body is prohibited from
27 holding a non-emergency meeting as defined in subdivision

1 (6)a.1. between the date of election of members and the date
2 such members take office, any person elected to serve on a
3 governmental body shall be counted in the determination of
4 whether a quorum of that governmental body is present, except
5 for any meeting as defined in subdivisions (6)a.1. and 2.,
6 beginning on the date of certification of the results of the
7 general election. In the case of appointment to a governmental
8 body, any person shall be counted in the determination of
9 whether a quorum of that governmental body is present, except
10 for any meeting as defined in subdivisions (6)a.1. and 2.,
11 from the date that the appointment is made or issued whether
12 or not the appointment is effective on that date.

13 "(13) SERIAL MEETING. Any series of gatherings of
14 members of a governmental body, at which: (i) Less than a
15 quorum is present at each individual gathering; (ii) The total
16 number of members attending two or more of the series of
17 gatherings collectively constitutes a quorum; (iii) There is
18 no notice or opportunity to attend provided to the public in
19 accordance with the Alabama Open Meetings Act; (iv) The
20 members participating in the gatherings deliberate specific
21 matters that, at the time of the exchange, the participating
22 members expect to come before the subcommittee, committee or
23 full governmental body at a later date; (v) The series of
24 gatherings was held for the purpose of circumventing the
25 provisions of this chapter; and (vi) At least one of the
26 meetings in the series occurs within seven calendar days of a
27 vote on any of the matters deliberated. Gatherings at which no

1 deliberations were conducted or the sole purpose was to
2 exchange background and education information with members on
3 specific issues shall not be considered a serial meeting under
4 this chapter. 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 is not a serial meeting until the search has
8 been narrowed to three or fewer persons under consideration. A
9 series of gatherings by the trustees of an institution of
10 higher learning established by the Alabama Constitution
11 including, but not limited to, a search to fill a position
12 that directs such institution or a department or major
13 division thereof, including the position of president,
14 vice-president, provost, dean, department head, or athletic
15 coach, is not a serial meeting."

16 "§36-25A-3.

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

1 "(1) Public access to the proceedings on the floor
2 of the Alabama Legislature is solely governed by the Alabama
3 Constitution which requires the Alabama Legislature to meet
4 with their doors open to the public unless a motion to go into
5 executive session is made and a vote is taken that secrecy is
6 required under the circumstances. The respective houses of the
7 Alabama Legislature shall develop written rules consistent
8 with the Constitution of Alabama of 1901, providing for access
9 to and prior notice of all sessions and standing committee and
10 standing subcommittee meetings and all meetings of permanent
11 and joint legislative committees. Because the Alabama
12 Legislature is solely governed by the Alabama Constitution and
13 sets its own rules to insure constitutionally guaranteed
14 public access, no other provision of this chapter applies to
15 the Alabama Legislature.

16 "(2) Any governmental body with statewide
17 jurisdiction shall submit notice of its meeting to the
18 Secretary of State. The Secretary of State shall post the
19 notice on the Internet for at least seven calendar days prior
20 to the day of the meeting. The Secretary of State shall also
21 send electronic mail notifications to anyone who has
22 registered with the Secretary of State to receive notification
23 of meetings. The Secretary of State may promulgate reasonable
24 rules and regulations necessary for the uniform receipt and
25 posting of notice and of registration for electronic mail
26 notification. The Secretary of State shall provide during
27 regular office hours a computer terminal at a place convenient

1 to the public in the office of the Secretary of State that
2 members of the public may use to view notices of meetings
3 posted by the Secretary of State. Any governmental body with
4 less than statewide jurisdiction may also submit notice to the
5 Secretary of State for posting on the website. Nothing shall
6 prevent a governmental body subject to this subsection from
7 posting notice in any additional manner.

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

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

20 "(5) Any other governmental body shall post notice
21 of each meeting in a reasonable location or shall use a
22 reasonable method of notice that is convenient to the public.
23 Any change of the location or method for posting notices of
24 meetings shall not take effect until the change has been
25 approved at an open meeting by the members of the governmental
26 body and announced to the public at an open meeting.

1 "(6) If practicable, a governmental body other than
2 those with statewide jurisdiction, in addition to the posting
3 requirements, shall provide direct notification of a meeting,
4 as defined in Section 36-25A-2(6)a., to any member of the
5 public or news media covering that governmental body who has
6 registered with the governmental body to receive notification
7 of meetings. A governmental body may promulgate reasonable
8 rules and regulations necessary for the uniform registration
9 and payment for direct notice and for the distribution of the
10 notices. The governmental body may choose to transmit a notice
11 using electronic mail, telephone, facsimile, the United States
12 Postal Service, or any other method reasonably likely to
13 provide the requested notice. The actual cost of issuing
14 notices, if there is one, may be required to be paid in
15 advance by the person requesting notice by the governmental
16 body. Direct notice to persons who have registered with the
17 governmental body shall, at a minimum, contain the time, date,
18 and place of the meeting.

19 "(b) Unless otherwise specified by law directly
20 applicable to the governmental body, notice of a meeting, as
21 defined in Section 36-25A-2(6)a.2. and 3. as well as meetings
22 called pursuant to Section 11-43-50 shall be posted as soon as
23 practicable after the meeting is called and in no event less
24 than 24 hours before the meeting is scheduled to begin, unless
25 such notice (i) is prevented by emergency circumstances
26 requiring immediate action to avoid physical injury to persons
27 or damage to property; or (ii) relates to a meeting to be held

1 solely to accept the resignation of a public official or
2 employee. In such situations, notice shall be given as soon as
3 practical, but in no case less than one hour before the
4 meeting is to begin. At the same time general notice is given,
5 special notice shall be directed to any person who has
6 registered to receive direct notices pursuant to the
7 provisions of subsection (a)(6).

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

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

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

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

5 "§36-25A-9.

6 "(a) ~~Enforcement~~ This chapter is designed and
7 intended to hold members of governmental bodies, and the
8 bodies themselves, accountable to the public for violations of
9 this chapter. Therefore, enforcement of this chapter, except a
10 violation of Section 26-25A-3(a)(1), may be sought by civil
11 action brought in the county where the governmental body's
12 primary office is located by any media organization, any
13 Alabama citizen, the Attorney General, or the district
14 attorney for the circuit in which the governmental body is
15 located; provided, however, that no member of a governmental
16 body may serve as a plaintiff in an action brought against
17 another member of the same governmental body for an alleged
18 violation of this chapter. The complaint shall be verified,
19 shall state specifically the applicable ground or grounds for
20 the complaint as set out in subdivisions (1) through (4) of
21 subsection (b), and shall name in their official capacity all
22 members of the governmental body remaining in attendance at
23 the alleged meeting held in violation of this chapter. Members
24 of a governmental body who are named as a defendant in a
25 complaint under this chapter shall serve an initial response
26 to the complaint within seven business days of personal
27 service of the complaint. A preliminary hearing on the

1 complaint filed shall be held no later than 10 business days
2 after the date of the filing of the defendant or defendants'
3 initial response to the complaint or, if no response is filed,
4 no later than 17 business days after the filing of the
5 complaint, or on the nearest day thereafter as the court shall
6 fix, having regard to the speediest possible determination of
7 the cause consistent with the rights of the parties.

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

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

17 "(2) That the defendants disregarded the provisions
18 of this chapter during a meeting, other than during an
19 executive session.

20 "(3) That the defendants voted to go into executive
21 session and while in executive session the defendants
22 discussed matters other than those subjects included in the
23 motion to convene an executive session as required by Section
24 36-25A-7(b).

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

1 "(c) If the court finds that the plaintiff has met
2 its initial burden of proof as required in subsection (b) at
3 the preliminary hearing, the court shall establish a schedule
4 for discovery and set the matter for a hearing on the merits.
5 If, at the preliminary hearing, the plaintiff has presented
6 its prima facie case that an executive session appears to have
7 been improperly conducted as set out in subsection (b) (3), the
8 defendants shall bear the burden of proof at the hearing on
9 the merits to prove by a preponderance of the evidence that
10 the discussions during the executive session were limited to
11 matters related to the subjects included in the motion to
12 convene an executive session required in Section 36-25A-7(a).

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

22 "(e) Upon proof by a preponderance of the evidence
23 of a defendant's violation of this chapter, the circuit court
24 shall issue an appropriate final order including, if
25 appropriate, a declaratory judgment or injunction. Prior to a
26 final determination of the merits, temporary restraining
27 orders or preliminary injunctions may be issued upon proper

1 motion and proof as provided and required in the Alabama Rules
2 of Civil Procedure. A final order on the merits shall be
3 issued within 60 days after the preliminary hearing unless a
4 longer period is consented to by all parties and the court.

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

18 "(g) A final order issued against a defendant shall
19 state specifically upon which claim or claims in subdivisions
20 (1) through (4) the ruling is based. For each meeting proven
21 to be held in violation of this chapter for one or more
22 reasons, the court shall impose a civil penalty payable to the
23 plaintiff(s). The maximum penalty for each meeting shall not
24 exceed one thousand dollars (\$1,000) or one half of the
25 defendant's monthly salary for service on the governmental
26 body, whichever is less. The minimum penalty shall be one
27 dollar (\$1). With regard to claims related to improper

1 discussions during executive sessions, monetary penalties may
2 only be assessed against defendant members of a governmental
3 body who voted to go into an executive session and who
4 remained in the executive session during a discussion
5 determined by the court not to have been authorized by this
6 chapter. Penalties imposed against a member of a governmental
7 body found to have acted in violation of this chapter shall
8 not be paid by nor reimbursed to the member by the
9 governmental body he or she serves."

10 "(h) A governmental body is authorized to pay for or
11 provide for the legal expenses of present or former members of
12 the body named as defendants in a proceeding under this
13 chapter."

14 Section 2. This act shall become effective on the
15 first day of the third month following its passage and
16 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..... 15-JAN-14

Read for the second time and placed on the calen-
dar with 1 substitute and..... 12-FEB-14

Read for the third time and passed as amended 27-FEB-14

Yeas 26
Nays 1

Patrick Harris
Secretary