

1 SB56
2 171292-1
3 By Senators Figures, Smitherman, Singleton, Holley, Reed,
4 Whatley, Ross, Marsh and Dial
5 RFD: Finance and Taxation Education
6 First Read: 05-AUG-15

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8 SYNOPSIS: The term "serial meeting," as defined in
9 the Alabama Open Meetings Act, specifically
10 excludes certain meetings by trustees of an
11 institution of higher education created by the
12 Constitution of Alabama of 1901.

13 This bill would also exclude boards of
14 trustees of institutions of higher education
15 created by statute.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT
20

21 To amend Section 36-25A-2, Code of Alabama 1975, as
22 amended by Act 2015-340, relating to the defined term "serial
23 meeting" for purposes of the Alabama Open Meetings Act; to
24 exclude boards of trustees of institutions of higher education
25 created by statute.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Section 36-25A-2, Code of Alabama 1975,
2 as amended by Act 2015-340, is amended to read as follows:

3 "§36-25A-2.

4 "As used in and for determining the applicability of
5 this chapter, the following words shall have the following
6 meanings solely for the purposes of this chapter:

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

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 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, retirees, 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 during which
17 the members of the governmental body deliberate specific
18 matters that, at the time of the exchange, the participating
19 members expect to come before the full governmental body at a
20 later date.

21 "4. The gathering, whether or not it was
22 prearranged, of a quorum of a committee or subcommittee of a
23 governmental body during which the members of the committee or
24 subcommittee deliberate specific matters relating to the
25 purpose of the committee or subcommittee that, at the time of
26 the exchange, the participating members expect to come before

1 the full governmental body, committee, or subcommittee at a
2 later date.

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

4 "1. Occasions when a quorum of a governmental body,
5 committee, or subcommittee attends social gatherings,
6 conventions, conferences, training programs, press
7 conferences, media events, association meetings and events or
8 gathers for on-site inspections or meetings with applicants
9 for economic incentives or assistance from the governmental
10 body, or otherwise gathers so long as the subcommittee,
11 committee, or full governmental body does not deliberate
12 specific matters that, at the time of the exchange, the
13 participating members expect to come before the subcommittee,
14 committee, or full governmental body at a later date.

15 "2. Occasions when a quorum of a subcommittee,
16 committee, or full governmental body gathers, in person or by
17 electronic communication, with state or federal officials for
18 the purpose of reporting or obtaining information or seeking
19 support for issues of importance to the subcommittee,
20 committee, or full governmental body.

21 "3. Occasions when a quorum of a subcommittee,
22 committee, or full governmental body, including two members of
23 a full governmental body having only three members, gathers to
24 discuss an economic, industrial, or commercial prospect or
25 incentive that does not include a conclusion as to
26 recommendations, policy, decisions or final action on the
27 terms of a request or an offer of public financial resources.

1 "c. Nothing herein shall restrict or prevent two
2 members of the same full governmental body from talking
3 together without deliberation, including two members of a full
4 governmental body having only three members, and nothing
5 herein shall restrict or prevent a mayor or executive director
6 of a city or municipality who is not a voting member of the
7 city or municipal council from talking or deliberating with a
8 member of the city or municipal council.

9 "(7) OPEN OR PUBLIC PORTION OF A MEETING. The open
10 or public portion of a meeting is that portion which has not
11 been closed for executive session in accordance with this
12 chapter, for which prior notice was given in compliance with
13 this chapter, and which is conducted so that constituents of
14 the governmental body, members of the media, persons
15 interested in the activities of the governmental body, and
16 citizens of this state could, if they desired, attend and
17 observe.

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

26 "(9) PUBLIC EMPLOYEE. Any person employed at the
27 state, county, or municipal levels of government or their

1 instrumentalities, including governmental corporations and
2 authorities, who is paid in whole or in part from state,
3 county, or municipal funds. A public employee does not include
4 a person employed on a part-time basis whose employment is
5 limited to providing professional services other than
6 lobbying, the compensation for which constitutes less than 50
7 percent of the part-time employee's income.

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

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

20 "(12) QUORUM. Unless otherwise provided by law, a
21 quorum is a majority of the voting members of a governmental
22 body. Except where a governmental body is prohibited from
23 holding a non-emergency meeting as defined in subdivision
24 (6)a.1. between the date of election of members and the date
25 such members take office, any person elected to serve on a
26 governmental body shall be counted in the determination of
27 whether a quorum of that governmental body is present, except

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

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

12 "1. Less than a quorum is present at each individual
13 gathering and each individual gathering is attended by at
14 least one member who also attends one or more other gatherings
15 in the series.

16 "2. The total number of members attending two or
17 more of the series of gatherings collectively constitutes a
18 quorum.

19 "3. There is no notice or opportunity to attend
20 provided to the public in accordance with the Alabama Open
21 Meetings Act.

22 "4. The members participating in the gatherings
23 deliberate specific matters that, at the time of the exchange,
24 the participating members expect to come before the
25 subcommittee, committee or full governmental body at a later
26 date.

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

3 "6. At least one of the meetings in the series
4 occurs within seven calendar days of a vote on any of the
5 matters deliberated.

6 "b. The term serial meeting does not include:

7 "1. Gatherings, including a gathering of two members
8 of a full governmental body having only three members, at
9 which no deliberations were conducted or the sole purpose was
10 to exchange background and education information with members
11 on specific issues shall not be considered a serial meeting
12 under this chapter.

13 "2. A series of gatherings related to a search to
14 fill a position required to file a statement of economic
15 interests with the Alabama Ethics Commission pursuant to
16 Section 36-25-14 until the search has been narrowed to three
17 or fewer persons under consideration.

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

20 "4. A series of gatherings by the trustees of an
21 institution of higher education established by the
22 Constitution of Alabama of 1901, as amended, or by any
23 statutorily created four-year institution of higher education
24 in the state, involving a search to fill a position that
25 directs the institution or a department or major divisions
26 thereof, including the position of president, vice president,
27 provost, dean, department head, or athletic coach.

1 "5. A meeting in which a public official who is a
2 member of a non-profit professional association comprised of
3 members of the same profession, ~~when discussing or~~
4 ~~participating~~ discusses or participates in the formation of
5 the policy or policies of the professional association of
6 which the public official is a member. This exception shall
7 apply to both legislative policies of the professional
8 association and regulatory polices of the professional
9 association of which the public official is a member, and
10 regardless of whether ~~or not~~ a quorum of the members of the
11 governmental body are members of the same professional
12 association."

13 Section 2. This act shall become effective
14 immediately following its passage and approval by the
15 Governor, or its otherwise becoming law.