

1 HB461
2 176071-1
3 By Representatives Hall and Davis
4 RFD: Ethics and Campaign Finance
5 First Read: 22-MAR-16

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8 SYNOPSIS: The term "serial meeting," as defined in the
9 Alabama Open Meetings Act, specifically excludes
10 certain meetings by trustees of an institution of
11 higher education created by the Constitution of
12 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, 2015 Regular Session, relating to the
23 defined term "serial meeting" for purposes of the Alabama Open
24 Meetings Act; to exclude boards of trustees of institutions of
25 higher education 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, 2015 Regular Session, is amended
3 to read as follows:

4 "§36-25A-2.

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

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

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

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

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

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

13 "a. Legislative party caucuses or coalitions.

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

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

22 "(5) JOB PERFORMANCE. The observed conduct or
23 actions of a public employee or public official while on the
24 job in furtherance of his or her assigned duties. Job
25 performance includes whether a person is meeting, exceeding,
26 or failing to meet job requirements or whether formal
27 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. Notwithstanding subparagraph 1., occasions when
22 two members of a governmental body, including two members of a
23 governmental body which has three members, gather for the sole
24 purpose of exchanging background and education information or
25 for the sole purpose of discussing an economic, industrial, or
26 commercial prospect or incentive that does not include a
27 conclusion as to recommendations, policy, decision, or final

1 action on the terms or request or an offer of public financial
2 resources.

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

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

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

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

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

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

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

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

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

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

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

21 "3. There is no notice or opportunity to attend
22 provided to the public in accordance with this chapter.

23 "4. The members participating in the gatherings
24 deliberate specific matters that, at the time of the exchange,
25 the participating members expect to come before the
26 subcommittee, committee or full governmental body at a later
27 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.

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

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

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