

1 HB48  
2 170928-1  
3 By Representatives Davis and Hall  
4 RFD: Ethics and Campaign Finance  
5 First Read: 04-AUG-15

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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 delete that specific  
14 exemption.

15  
16 A BILL  
17 TO BE ENTITLED  
18 AN ACT

19  
20 To amend Section 36-25A-2, Code of Alabama 1975, as  
21 amended by Act 2015-340, relating to the defined term "serial  
22 meeting" for purposes of the Alabama Open Meetings Act; to  
23 delete a specific exemption from the term relating to trustees  
24 of an institution of higher education created by the  
25 Constitution of Alabama of 1901.

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, involving a  
23 search to fill a position that directs the institution or a  
24 department or major divisions thereof, including the position  
25 of president, vice president, provost, dean, department head,  
26 or athletic coach.~~

1                   "5.4. 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.