

1 SB191
2 156489-2
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 15-JAN-14

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8 SYNOPSIS: Under existing law, the Open Meetings Act
9 of 2005 specifically applies to quorums of
10 committees and subcommittees of governmental
11 bodies. In 2012, the Alabama Supreme Court, in a
12 5-4 decision, ruled that the Open Meetings Act did
13 not apply to a series of committee or subcommittee
14 gatherings at which discussions were conducted on
15 matters that would later come before the full
16 governmental body. In 2013, the Alabama Supreme
17 Court ruled, in a 5-3 decision, that citizens do
18 not have standing to bring suits under the Open
19 Meetings Act if the civil penalty is paid to the
20 state and there is no allegation of a likelihood of
21 future violations. Also in 2013, the Alabama
22 Supreme Court stated that there is no requirement
23 that the Alabama Legislature hold open meetings.

24 This bill would define and expressly
25 prohibit serial meetings.

26 This bill would further define the terms
27 deliberation, governmental body, and meeting, to

1 clarify that the Open Meetings Act of 2005 applies
2 to meetings of the Alabama Legislature, committees,
3 or subcommittees of governmental bodies involving
4 the exchange of information or ideas among a quorum
5 of members of the committee, subcommittee, or full
6 governmental body intended to arrive at or
7 influence a decision as to how any members of the
8 governmental body should vote on a specific matter
9 that, at the time of the exchange, the
10 participating members expect to come before the
11 committee, subcommittee, or full governmental body
12 immediately following the discussion or at a later
13 time.

14 This bill would provide that both houses of
15 the Alabama Legislature and their committees shall
16 meet in public unless there is a public vote taken
17 by the respective house or committee that the
18 meeting requires secrecy.

19 This bill would provide that private
20 citizens may bring civil actions under the Open
21 Meetings Act, that penalties may not exceed the
22 greater of one thousand dollars or one-half the
23 monthly salary of a defendant for service on the
24 governmental body, and that the prevailing
25 plaintiff shall receive any penalties awarded
26 against the defendants.

1 A BILL
2 TO BE ENTITLED
3 AN ACT
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5 Relating to the Open Meetings Act of 2005; to amend
6 Sections 36-25A-1, 36-25A-2, 36-25A-3, and 36-25A-9, Code of
7 Alabama 1975, to define and prohibit serial meetings; to
8 further define deliberation, governmental body, and meeting to
9 apply to the exchange of information or ideas among a quorum
10 of members of a committee, subcommittee, or full governmental
11 body intended to arrive at or influence a decision as to how
12 any members of the governmental body should vote on a specific
13 matter that, at the time of the exchange, the participating
14 members expect to come before the committee, subcommittee, or
15 full governmental body immediately following the discussion or
16 at a later time; to require the Alabama Legislature to meet
17 with doors open to the public unless a motion to go into
18 executive session is made and a vote is taken that secrecy is
19 required under the circumstances; to provide that a violation
20 of this chapter is a concrete and particularized injury to
21 every citizen of Alabama; to provide for penalties assessed
22 under this chapter payable to the prevailing plaintiff; and to
23 provide a maximum penalty for each meeting not to exceed one
24 thousand dollars or one-half of the defendant's monthly salary
25 for service on the governmental body, whichever is greater.
26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 36-25A-1, 36-25A-2, 36-25A-3,
2 and 36-25A-9, Code of Alabama 1975, are amended to read as
3 follows:

4 "§36-25A-1.

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

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

19 "§36-25A-2.

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

23 "(1) DELIBERATION. An exchange of information or
24 ideas among a quorum of members of a subcommittee, committee,
25 or full governmental body intended to arrive at or influence a
26 decision as to how ~~the~~ any members of the subcommittee,
27 committee, or full 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 subcommittee, committee, or
3 full body immediately following the discussion or at a later
4 time.

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

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

13 "(4) GOVERNMENTAL BODY. All boards, bodies, and
14 commissions of the executive and legislative departments of
15 the state or its political subdivisions or municipalities
16 which expend or appropriate public funds; all multimember
17 governing bodies of departments, agencies, institutions, and
18 instrumentalities of the executive and legislative departments
19 of the state or its political subdivisions or municipalities,
20 including, without limitation, all corporations and other
21 instrumentalities whose governing boards are comprised of a
22 majority of members who are appointed or elected by the state
23 or its political subdivisions, counties, or municipalities;
24 ~~and~~ all quasi-judicial bodies of the executive and legislative
25 departments of the state; and all standing, special, or
26 advisory committees or subcommittees of, or appointed by, the

1 body. The term "governmental body" does not include any of the
2 following:

3 "a. Legislative party caucuses or coalitions.

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

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

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

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

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

26 "2. The prearranged gathering of a quorum of a
27 governmental body or a quorum of a committee or subcommittee

1 of a governmental body during which the full governmental
2 body, committee, or subcommittee of the governmental body is
3 authorized, either by law or otherwise, to exercise the powers
4 which it possesses or approve the expenditure of public funds.

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

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

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

23 "2. Occasions when a quorum of a subcommittee,
24 committee, or full governmental body gathers, in person or by
25 electronic communication, with state or federal officials for
26 the purpose of reporting or obtaining information or seeking

1 support for issues of importance to the subcommittee,
2 committee, or full governmental body.

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

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

20 "(9) PUBLIC EMPLOYEE. Any person employed at the
21 state, county, or municipal levels of government or their
22 instrumentalities, including governmental corporations and
23 authorities, who is paid in whole or in part from state,
24 county, or municipal funds. A public employee does not include
25 a person employed on a part-time basis whose employment is
26 limited to providing professional services other than

1 lobbying, the compensation for which constitutes less than 50
2 percent of the part-time employee's income.

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

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

15 "(12) QUORUM. Unless otherwise provided by law, a
16 quorum is a majority of the voting members of a governmental
17 body. Except where a governmental body is prohibited from
18 holding a non-emergency meeting as defined in subdivision
19 (6)a.1. between the date of election of members and the date
20 such members take office, any person elected to serve on a
21 governmental body 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 beginning on the date of certification of the results of the
25 general election. In the case of appointment to a governmental
26 body, any person 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 from the date that the appointment is made or issued whether
3 or not the appointment is effective on that date.

4 "(13) SERIAL MEETING. Any series of (less than a
5 quorum) meetings for which no notice or opportunity to attend
6 was provided to the public in accordance with the Alabama Open
7 Meetings Act and where a. the members attending one or more of
8 the meetings collectively constitute at least a quorum of the
9 members of the governmental body and b. the members in
10 attendance at each meeting in the series engage in
11 deliberation concerning the same matter.

12 "§36-25A-3.

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

23 "(1) The Alabama Constitution requires the Alabama
24 Legislature to meet with their doors open to the public unless
25 a motion to go into executive session is made and a vote is
26 taken that secrecy is required under the circumstances. The
27 respective houses of the Alabama Legislature shall develop

1 written rules consistent with the Constitution of Alabama of
2 1901, providing for access to and prior notice of all sessions
3 and standing committee and standing subcommittee meetings and
4 all meetings of permanent and joint legislative committees.

5 "(2) Any governmental body with statewide
6 jurisdiction shall submit notice of its meeting to the
7 Secretary of State. The Secretary of State shall post the
8 notice on the Internet for at least seven calendar days prior
9 to the day of the meeting. The Secretary of State shall also
10 send electronic mail notifications to anyone who has
11 registered with the Secretary of State to receive notification
12 of meetings. The Secretary of State may promulgate reasonable
13 rules and regulations necessary for the uniform receipt and
14 posting of notice and of registration for electronic mail
15 notification. The Secretary of State shall provide during
16 regular office hours a computer terminal at a place convenient
17 to the public in the office of the Secretary of State that
18 members of the public may use to view notices of meetings
19 posted by the Secretary of State. Any governmental body with
20 less than statewide jurisdiction may also submit notice to the
21 Secretary of State for posting on the website. Nothing shall
22 prevent a governmental body subject to this subsection from
23 posting notice in any additional manner.

24 "(3) A municipal governmental body shall post notice
25 of each meeting on a bulletin board at a place convenient to
26 the public in the city hall, provided, however, that a
27 corporation a majority of whose governing board is appointed

1 or elected by a municipality and that has a principal office
2 separate from the city hall may, in lieu of posting notice in
3 the city hall, post notice of each meeting on a bulletin board
4 at a place convenient to the public in the principal office of
5 the corporation or other instrumentality.

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

9 "(5) Any other governmental body shall post notice
10 of each meeting in a reasonable location or shall use a
11 reasonable method of notice that is convenient to the public.
12 Any change of the location or method for posting notices of
13 meetings shall not take effect until the change has been
14 approved at an open meeting by the members of the governmental
15 body and announced to the public at an open meeting.

16 "(6) If practicable, a governmental body other than
17 those with statewide jurisdiction, in addition to the posting
18 requirements, shall provide direct notification of a meeting,
19 as defined in Section 36-25A-2(6)a., to any member of the
20 public or news media covering that governmental body who has
21 registered with the governmental body to receive notification
22 of meetings. A governmental body may promulgate reasonable
23 rules and regulations necessary for the uniform registration
24 and payment for direct notice and for the distribution of the
25 notices. The governmental body may choose to transmit a notice
26 using electronic mail, telephone, facsimile, the United States
27 Postal Service, or any other method reasonably likely to

1 provide the requested notice. The actual cost of issuing
2 notices, if there is one, may be required to be paid in
3 advance by the person requesting notice by the governmental
4 body. Direct notice to persons who have registered with the
5 governmental body shall, at a minimum, contain the time, date,
6 and place of the meeting.

7 "(b) Unless otherwise specified by law directly
8 applicable to the governmental body, notice of a meeting, as
9 defined in Section 36-25A-2(6)a.2. and 3. as well as meetings
10 called pursuant to Section 11-43-50 shall be posted as soon as
11 practicable after the meeting is called and in no event less
12 than 24 hours before the meeting is scheduled to begin, unless
13 such notice (i) is prevented by emergency circumstances
14 requiring immediate action to avoid physical injury to persons
15 or damage to property; or (ii) relates to a meeting to be held
16 solely to accept the resignation of a public official or
17 employee. In such situations, notice shall be given as soon as
18 practical, but in no case less than one hour before the
19 meeting is to begin. At the same time general notice is given,
20 special notice shall be directed to any person who has
21 registered to receive direct notices pursuant to the
22 provisions of subsection (a)(6).

23 "(c) Posted notice pursuant to this section shall
24 include the time, date, and place of meeting. If a preliminary
25 agenda is created, it shall be posted as soon as practicable
26 in the same location or manner as the notice given pursuant to
27 this section. A governmental body may discuss at a meeting

1 additional matters not included in the preliminary agenda. If
2 a preliminary agenda is not available, the posted notice shall
3 include a general description of the nature and purpose of the
4 meeting.

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

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

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

19 "§36-25A-9.

20 "(a) ~~Enforcement~~ Any violation of this chapter
21 results in a concrete and particularized injury to every
22 citizen of Alabama. This chapter is designed and intended to
23 redress such injury by holding members of the governmental
24 bodies and the bodies themselves accountable to the public for
25 violations of this chapter. Therefore, enforcement of this
26 chapter may be sought by civil action brought in the county
27 where the governmental body's primary office is located by any

1 media organization, any Alabama citizen, the Attorney General,
2 or the district attorney for the circuit in which the
3 governmental body is located; provided, however, that no
4 member of a governmental body may serve as a plaintiff in an
5 action brought against another member of the same governmental
6 body for an alleged violation of this chapter. The complaint
7 shall be verified, shall state specifically the applicable
8 ground or grounds for the complaint as set out in subdivisions
9 (1) through (4) of subsection (b), and shall name in their
10 official capacity all members of the governmental body
11 remaining in attendance at the alleged meeting held in
12 violation of this chapter. Members of a governmental body who
13 are named as a defendant in a complaint under this chapter
14 shall serve an initial response to the complaint within seven
15 business days of personal service of the complaint. A
16 preliminary hearing on the complaint filed shall be held no
17 later than 10 business days after the date of the filing of
18 the defendant or defendants' initial response to the complaint
19 or, if no response is filed, no later than 17 business days
20 after the filing of the complaint, or on the nearest day
21 thereafter as the court shall fix, having regard to the
22 speediest possible determination of the cause consistent with
23 the rights of the parties.

24 "(b) In the preliminary hearing on the complaint,
25 the plaintiff shall establish by a preponderance of the
26 evidence that a meeting of the governmental body occurred and
27 that each defendant attended the meeting. Additionally, to

1 establish a prima facie case the plaintiff must present
2 substantial evidence of one or more of the following claims:

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

6 "(2) That the defendants disregarded the provisions
7 of this chapter during a meeting, other than during an
8 executive session.

9 "(3) That the defendants voted to go into executive
10 session and while in executive session the defendants
11 discussed matters other than those subjects included in the
12 motion to convene an executive session as required by Section
13 36-25A-7(b).

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

17 "(c) If the court finds that the plaintiff has met
18 its initial burden of proof as required in subsection (b) at
19 the preliminary hearing, the court shall establish a schedule
20 for discovery and set the matter for a hearing on the merits.
21 If, at the preliminary hearing, the plaintiff has presented
22 its prima facie case that an executive session appears to have
23 been improperly conducted as set out in subsection (b) (3), the
24 defendants shall bear the burden of proof at the hearing on
25 the merits to prove by a preponderance of the evidence that
26 the discussions during the executive session were limited to

1 matters related to the subjects included in the motion to
2 convene an executive session required in Section 36-25A-7(a).

3 "(d) During a proceeding involving claims brought
4 under subsection (b)(3), the court shall conduct an in camera
5 proceeding or adopt another procedure as necessary to protect
6 the confidentiality of the matters discussed during the
7 executive session, and if there is a determination that the
8 executive session was authorized by this chapter, the matters
9 shall not be disclosed or utilized in any other legal
10 proceeding by any individual or attorney who attends the in
11 camera portion of the proceedings.

12 "(e) Upon proof by a preponderance of the evidence
13 of a defendant's violation of this chapter, the circuit court
14 shall issue an appropriate final order including, if
15 appropriate, a declaratory judgment or injunction. Prior to a
16 final determination of the merits, temporary restraining
17 orders or preliminary injunctions may be issued upon proper
18 motion and proof as provided and required in the Alabama Rules
19 of Civil Procedure. A final order on the merits shall be
20 issued within 60 days after the preliminary hearing unless a
21 longer period is consented to by all parties and the court.

22 "(f) The court may invalidate the action or actions
23 taken during a meeting held in violation of this chapter,
24 provided that the complaint is filed within 21 days of the
25 date when the action is made public, the violation was not the
26 result of mistake, inadvertence, or excusable neglect, and
27 invalidation of the governmental action taken would not unduly

1 prejudice third parties who have changed their position or
2 taken action in good faith reliance upon the challenged action
3 of the governmental body; provided further, however, that any
4 action taken at an open meeting conducted in a manner
5 consistent with this chapter shall not be invalidated because
6 of a violation of this chapter which occurred prior to such
7 meeting.

8 "(g) A final order issued against a defendant shall
9 state specifically upon which claim or claims in subdivisions
10 (1) through (4) the ruling is based. For each meeting proven
11 to be held in violation of this chapter for one or more
12 reasons, the court shall impose a civil penalty payable to the
13 plaintiff(s). The maximum penalty for each meeting shall not
14 exceed one thousand dollars (\$1,000) or one half of the
15 defendant's monthly salary for service on the governmental
16 body, whichever is ~~less~~ greater. With regard to claims related
17 to improper discussions during executive sessions, monetary
18 penalties may only be assessed against defendant members of a
19 governmental body who voted to go into an executive session
20 and who remained in the executive session during a discussion
21 determined by the court not to have been authorized by this
22 chapter. Penalties imposed against a member of a governmental
23 body found to have acted in violation of this chapter shall
24 not be paid by nor reimbursed to the member by the
25 governmental body he or she serves.

26 "(h) A governmental body is authorized to pay for or
27 provide for the legal expenses of present or former members of

1 the body named as defendants in a proceeding under this
2 chapter."

3 Section 2. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.