

1 SB392  
2 176496-2  
3 By Senator Dial  
4 RFD: Governmental Affairs  
5 First Read: 07-APR-16

1 SB392

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4 ENROLLED, An Act,

5 To amend Section 36-25A-2, Code of Alabama 1975, as  
6 amended by Act 2015-340, 2015 Regular Session, relating to the  
7 defined term "serial meeting" for purposes of the Alabama Open  
8 Meetings Act; to exclude boards of trustees of institutions of  
9 higher education created by statute.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

14 "§36-25A-2.

15 "As used in and for determining the applicability of  
16 this chapter, the following words shall have the following  
17 meanings solely for the purposes of this chapter:

18 "(1) DELIBERATION. An exchange of information or  
19 ideas among a quorum of members of a subcommittee, committee,  
20 or full governmental body intended to arrive at or influence a  
21 decision as to how any members of the subcommittee, committee,  
22 or full governmental body should vote on a specific matter  
23 that, at the time of the exchange, the participating members  
24 expect to come before the subcommittee, committee, or full  
25 body immediately following the discussion or at a later time.

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

5           "(3) GENERAL REPUTATION AND CHARACTER.  
6 Characteristics or actions of a person directly involving good  
7 or bad ethical conduct, moral turpitude, or suspected criminal  
8 activity, not including job performance.

9           "(4) GOVERNMENTAL BODY. All boards, bodies, and  
10 commissions of the executive and legislative departments of  
11 the state or its political subdivisions or municipalities  
12 which expend or appropriate public funds; all multimember  
13 governing bodies of departments, agencies, institutions, and  
14 instrumentalities of the executive and legislative departments  
15 of the state or its political subdivisions or municipalities,  
16 including, without limitation, all corporations and other  
17 instrumentalities whose governing boards are comprised of a  
18 majority of members who are appointed or elected by the state  
19 or its political subdivisions, counties, or municipalities;  
20 all quasi-judicial bodies of the executive and legislative  
21 departments of the state; and all standing, special, or  
22 advisory committees or subcommittees of, or appointed by, the  
23 body. The term "governmental body" does not include any of the  
24 following:

25           "a. Legislative party caucuses or coalitions.

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

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

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

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

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

23            "2. The prearranged gathering of a quorum of a  
24 governmental body or a quorum of a committee or subcommittee  
25 of a governmental body during which the full governmental

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

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

10 "4. The gathering, whether or not it was  
11 prearranged, of a quorum of a committee or subcommittee of a  
12 governmental body during which the members of the committee or  
13 subcommittee deliberate specific matters relating to the  
14 purpose of the committee or subcommittee that, at the time of  
15 the exchange, the participating members expect to come before  
16 the full governmental body, committee, or subcommittee at a  
17 later date.

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

19 "1. Occasions when a quorum of a governmental body,  
20 committee, or subcommittee attends social gatherings,  
21 conventions, conferences, training programs, press  
22 conferences, media events, association meetings and events or  
23 gathers for on-site inspections or meetings with applicants  
24 for economic incentives or assistance from the governmental  
25 body, or otherwise gathers so long as the subcommittee,

1 committee, or full governmental body does not deliberate  
2 specific matters that, at the time of the exchange, the  
3 participating members expect to come before the subcommittee,  
4 committee, or full governmental body at a later date.

5 "2. Occasions when a quorum of a subcommittee,  
6 committee, or full governmental body gathers, in person or by  
7 electronic communication, with state or federal officials for  
8 the purpose of reporting or obtaining information or seeking  
9 support for issues of importance to the subcommittee,  
10 committee, or full governmental body.

11 "3. Notwithstanding subparagraph 1., occasions when  
12 two members of a governmental body, including two members of a  
13 governmental body which has three members, gather for the sole  
14 purpose of exchanging background and education information or  
15 for the sole purpose of discussing an economic, industrial, or  
16 commercial prospect or incentive that does not include a  
17 conclusion as to recommendations, policy, decision, or final  
18 action on the terms or request or an offer of public financial  
19 resources.

20 "c. Nothing herein shall restrict or prevent two  
21 members of the same full governmental body from talking  
22 together without deliberation, including two members of a full  
23 governmental body having only three members, and nothing  
24 herein shall restrict or prevent a mayor or executive director  
25 of a city or municipality who is not a voting member of the

1 city or municipal council from talking or deliberating with a  
2 member of the city or municipal council.

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

1 limited to providing professional services other than  
2 lobbying, the compensation for which constitutes less than 50  
3 percent of the part-time employee's income.

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

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

16 "(12) QUORUM. Unless otherwise provided by law, a  
17 quorum is a majority of the voting members of a governmental  
18 body. Except where a governmental body is prohibited from  
19 holding a non-emergency meeting as defined in subdivision  
20 (6)a.1. between the date of election of members and the date  
21 such members take office, any person elected to serve on a  
22 governmental body shall be counted in the determination of  
23 whether a quorum of that governmental body is present, except  
24 for any meeting as defined in subdivisions (6)a.1. and 2.,  
25 beginning on the date of certification of the results of the



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

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

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

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

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

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

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

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

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

5           "1. Gatherings, including a gathering of two members  
6 of a full governmental body having only three members, at  
7 which no deliberations were conducted or the sole purpose was  
8 to exchange background and education information with members  
9 on specific issues.

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

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

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

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB392

Senate 27-APR-16

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris  
Secretary

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House of Representatives  
Passed: 04-MAY-16

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By: Senator Dial