

1 HB203
2 208330-1
3 By Representative Wadsworth
4 RFD: State Government
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8 SYNOPSIS: Under current law, the definition of
9 meetings within the Alabama Open meetings Act does
10 not include certain gatherings of a quorum of a
11 governmental body which involve an exchange of
12 information or ideas relating to a matter that will
13 come before the full governmental body, unless
14 there is actual deliberation among those members at
15 that time.

16 Also under current law, the definition of
17 deliberation within the Alabama Open Meetings Act
18 does not include an exchange of information or
19 ideas in the presence of a quorum of members of a
20 governmental body intended to influence a decision
21 as to how those members of the governmental body
22 should vote on a certain matter, unless the
23 exchange occurs between the members.

24 This bill would amend the Alabama Open
25 Meetings Act, to include within the definition of
26 deliberation an exchange of information or ideas in
27 the presence of a quorum of members of a

1 governmental body that is intended to influence how
2 those members of the governmental body should vote
3 on a certain matter.

4 This bill would also amend the Alabama Open
5 Meetings Act, to include within the definition of
6 meeting a gathering of a quorum of members of a
7 governmental body during which the members hear
8 deliberation on a matter that will come before that
9 body.

10 This bill would also make nonsubstantive,
11 technical revisions to update the existing code
12 language to current style.

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT

17
18 Relating to the Alabama Open Meetings Act; to amend
19 Section 36-25A-2, to further define the terms deliberation and
20 meeting; and to make nonsubstantive, technical revisions to
21 update the existing code language to current style.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. Section 36-25A-2, Code of Alabama 1975,
24 is amended to read as follows:

25 "§36-25A-2.

1 "As used in and for determining the applicability of
2 this chapter, the following words shall have the following
3 meanings solely for the purposes of this chapter:

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

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

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

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

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

10 "a. Legislative party caucuses or coalitions.

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

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

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

1 "(6) MEETING. a. Subject to the limitations herein,
2 the term meeting shall only apply to any of the following:

3 "1. The prearranged gathering of a quorum of a
4 governmental body or a quorum of a committee or subcommittee
5 of a governmental body at a time and place ~~which~~ that is set
6 by law or operation of law.

7 "2. The prearranged gathering of a quorum of a
8 governmental body or a quorum of a committee or subcommittee
9 of a governmental body during which the full governmental
10 body, committee, or subcommittee of the governmental body is
11 authorized, either by law or otherwise, to exercise the powers
12 ~~which~~ that it possesses or approve the expenditure of public
13 funds.

14 "3. The gathering, whether or not it was
15 prearranged, of a quorum of a governmental body during which
16 the members of the governmental body deliberate or hear
17 deliberation on specific matters that, at the time of the
18 exchange, the participating members expect to come before the
19 full governmental body at a later date.

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

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

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

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

19 "3. Notwithstanding subparagraph 1., occasions when
20 two members of a governmental body, including two members of a
21 governmental body ~~which~~ that has three members, gather for the
22 sole purpose of exchanging background and education
23 information or for the sole purpose of discussing an economic,
24 industrial, or commercial prospect or incentive that does not
25 include a conclusion as to recommendations, policy, decision,
26 or final action on the terms or request or an offer of public
27 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~~ that has
11 not 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 subparagraph (6)a.1. between the date of election of members
25 and the date such members take office, any person elected to
26 serve on a governmental body shall be counted in the
27 determination of whether a quorum of that governmental body is

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

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

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

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

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

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.

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, any statutorily
22 created four-year institution of higher education in the
23 state, or Athens State University involving a search to fill a
24 position that directs the institution or a department or major
25 divisions thereof, including the position of president, vice
26 president, 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 discusses or participates in
4 the formation of the policy or policies of the professional
5 association of which the public official is a member. This
6 exception shall apply to both legislative policies of the
7 professional association and regulatory polices of the
8 professional association of which the public official is a
9 member, and regardless of whether a quorum of the members of
10 the governmental body are members of the same professional
11 association."

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