- 1 SB21
- 2 168229-4
- 3 By Senator Ward
- 4 RFD: Judiciary
- 5 First Read: 03-MAR-15
- 6 PFD: 02/04/2015

1 SB21

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4 <u>ENROLLED</u>, An Act,

Relating to the Open Meetings Act of 2005; to amend Sections 36-25A-1, 36-25A-2, 36-25A-3, and 36-25A-9, Code of Alabama 1975, to define and prohibit serial meetings; to further define deliberation, governmental body, and meeting to apply to the exchange of information or ideas among a quorum of members of a committee, subcommittee, or full governmental body intended to arrive at or influence a decision as to how any members of the governmental body should vote on a specific matter that, at the time of the exchange, the participating members expect to come before the committee, subcommittee, or full governmental body immediately following the discussion or at a later time; to clarify that the Alabama Legislature is solely governed by the Alabama Constitution which establishes that the doors of each house of the Alabama Legislature shall be open to the public except when secrecy is required under the circumstances and that no other provision of this chapter applies to the Alabama Legislature; to provide that private citizens under certain conditions may bring civil actions under the Open Meetings Act; to provide that the prevailing plaintiff shall receive any civil penalties awarded against

1	the defendants; and to set a minimum penalty for a violation
2	of the Open Meetings Act at \$1.
3	BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
4	Section 1. Sections 36-25A-1, 36-25A-2, 36-25A-3,
5	and 36-25A-9, Code of Alabama 1975, are amended to read as
6	follows:
7	"§36-25A-1.
8	"(a) It is the policy of this state that the
9	deliberative process of governmental bodies shall be open to
10	the public during meetings as defined in Section $36-25A-2(6)$.
11	Except for executive sessions permitted in Section 36-25A-7(a)
12	or as otherwise expressly provided by other federal or state
13	<u>laws or</u> statutes, all meetings of a governmental body shall be
14	open to the public and <mark>no meetings of a governmental body may</mark>
15)	be held without providing notice pursuant to the requirements
16	of Section 36-25A-3. No executive sessions are required by
17	this chapter to be held under any circumstances. Electronic
18	Serial meetings or electronic communications shall not be
19	utilized to circumvent any of the provisions of this chapter.
20	"(b) This chapter shall be known and may be cited as
21	the "Alabama Open Meetings Act."
22	"§36-25A-2.
23	"As used in and for determining the applicability of
24	this chapter, the following words shall have the following
25	meanings solely for the purposes of this chapter:

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

- "(2) EXECUTIVE SESSION. That portion of a meeting of a <u>subcommittee</u>, <u>committee</u>, <u>or full</u> governmental body from which the public is excluded for one or more of the reasons prescribed in Section 36-25A-7(a).
- "(3) GENERAL REPUTATION AND CHARACTER.

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Characteristics or actions of a person directly involving good or bad ethical conduct, moral turpitude, or suspected criminal activity, not including job performance.

"(4) GOVERNMENTAL BODY. All boards, bodies, and commissions of the executive and legislative departments of the state or its political subdivisions or municipalities which expend or appropriate public funds; all multimember governing bodies of departments, agencies, institutions, and instrumentalities of the executive and legislative departments of the state or its political subdivisions or municipalities, including, without limitation, all corporations and other

instrumentalities whose governing boards are comprised of a majority of members who are appointed or elected by the state or its political subdivisions, counties, or municipalities; and all quasi-judicial bodies of the executive and legislative departments of the state; and all standing, special, or advisory committees or subcommittees of, or appointed by, the body. The term "governmental body" does not include any of the following:

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- "a. Legislative party caucuses or coalitions.
- "b. Alabama appellate or trial courts, except as required by the constitution of this state or any body governed by rules of the Alabama Supreme Court.
 - "c. Voluntary membership associations comprised of public employees, <u>retirees</u>, counties, municipalities, or their instrumentalities which have not been delegated any legislative or executive functions by the Legislature or Governor.
 - "(5) JOB PERFORMANCE. The observed conduct or actions of a public employee or public official while on the job in furtherance of his or her assigned duties. Job performance includes whether a person is meeting, exceeding, or failing to meet job requirements or whether formal employment actions should be taken by the governmental body. Job performance does not include the general reputation and character of the person being discussed.

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

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- "1. The prearranged gathering of a quorum of a governmental body or a quorum of a committee or subcommittee of a governmental body at a time and place which is set by law or operation of law.
- "2. The prearranged gathering of a quorum of a governmental body or a quorum of a committee or subcommittee of a governmental body during which the <u>full governmental</u> body, committee, or subcommittee of the governmental body is authorized, either by law or otherwise, to exercise the powers which it possesses or approve the expenditure of public funds.
- "3. The gathering, whether or not it was prearranged, of a quorum of a governmental body or a quorum of a committee or a subcommittee of a governmental body during which the members of the governmental body deliberate specific matters that, at the time of the exchange, the participating members expect to come before the <u>full governmental</u> body, committee, or subcommittee at a later date.
- "4. The gathering, whether or not it was

 prearranged, of a quorum of a committee or subcommittee of a

 governmental body during which the members of the committee or

 subcommittee deliberate specific matters relating to the

 purpose of the committee or subcommittee that, at the time of

 the exchange, the participating members expect to come before

1	the full governmental body, committee, or subcommittee at a
2	<pre>later date.</pre>
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	<pre>committee, or full governmental body does not deliberate</pre>
12	specific matters that, at the time of the exchange, the
13	participating members expect to come before the <u>subcommittee</u> ,
14	<pre>committee, or full governmental body at a later date.</pre>
15	"2. Occasions when a quorum of a <u>subcommittee</u> ,
16	<pre>committee, or full governmental body gathers, in person or by</pre>
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 <u>subcommittee</u> ,
20	<pre>committee, or full governmental body.</pre>
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

recomm	enc	lat	cions,	pol	icy	,	decisi	Lons	s or	fina	ıl a	ction	on	the
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"c. Nothing herein shall restrict or prevent two
members of the same full governmental body from talking
together without deliberation, including two members of a full
governmental body having only three members, and nothing
herein shall restrict or prevent a mayor or executive director
of a city or municipality who is not a voting member of the
city or municipal council from talking or deliberating with a
member of the city or municipal council.

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

"(8) PROFESSIONAL COMPETENCE. The ability of an individual to practice a profession within the profession's acceptable standards of care and responsibility. A profession is a vocation requiring certification by the State of Alabama or passage of a state licensing examination that may only be granted to or taken by persons who have completed at least

three years of college-level education and obtained at least a college-level degree.

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- "(9) PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal levels of government or their instrumentalities, including governmental corporations and authorities, who is paid in whole or in part from state, county, or municipal funds. A public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income.
- "(10) PUBLIC FUNDS. Taxes or fees charged or collected by a governmental body or from the sale of public property including, but not limited to, matching funds from the federal government or income derived from the investment of taxes or fees.
- "(11) PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal levels of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal levels of government or their instrumentalities, including governmental corporations.
- "(12) QUORUM. Unless otherwise provided by law, a quorum is a majority of the voting members of a governmental

1	body. Except where a governmental body is prohibited from
2	holding a non-emergency meeting as defined in subdivision
3	(6)a.1. between the date of election of members and the date
4	such members take office, any person elected to serve on a
5	governmental body shall be counted in the determination of
6	whether a quorum of that governmental body is present, except
7	for any meeting as defined in subdivisions (6) a.1. and $2.$,
8	beginning on the date of certification of the results of the
9	general election. In the case of appointment to a governmental
10	body, any person shall be counted in the determination of
11	whether a quorum of that governmental body is present, except
12	for any meeting as defined in subdivisions (6) a.1. and 2.,
13	from the date that the appointment is made or issued whether
14	or not the appointment is effective on that date.
15	"(13) SERIAL MEETING. a. The term serial meeting

- "(13) SERIAL MEETING. a. The term serial meeting applies to any series of gatherings of two or more members of a governmental body, at which:
- "1. Less than a quorum is present at each individual gathering and each individual gathering is attended by at least one member who also attends one or more other gatherings in the series.
- "2. The total number of members attending two or
 more of the series of gatherings collectively constitutes a
 quorum.

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1	"3. There is no notice or opportunity to attend
2	provided to the public in accordance with the Alabama Open
3	Meetings Act.
4	"4. The members participating in the gatherings
5	deliberate specific matters that, at the time of the exchange,
6	the participating members expect to come before the
7	subcommittee, committee or full governmental body at a later
8	date.
9	"5. The series of gatherings was held for the
10	purpose of circumventing the provisions of this chapter.
11	"6. At least one of the meetings in the series
(12)	occurs within seven calendar days of a vote on any of the
13	matters deliberated.
14	"b. The term serial meeting does not include:
15	"1. Gatherings, including a gathering of two members
16	of a full governmental body having only three members, at
17	which no deliberations were conducted or the sole purpose was
18	to exchange background and education information with members
19	on specific issues shall not be considered a serial meeting
20	under this chapter.
21	"2. A series of gatherings related to a search to
22	fill a position required to file a statement of economic
23	interests with the Alabama Ethics Commission pursuant to
24	Section 36-25-14 until the search has been narrowed to three
25	or fewer persons under consideration.

1			" <u>3.</u>	Α	gathe	erir	ng	or	series	of	gather	ings	involv	<u>ing</u>
2	only	a	single	me	mber	of	a	got	vernmen	tal	body.			

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"4. A series of gatherings by the trustees of an institution of higher education established by the Constitution of Alabama of 1901, as amended, involving a search to fill a position that directs the institution or a department or major divisions thereof, including the position of president, vice president, provost, dean, department head, or athletic coach.

mon-profit professional association comprised of members of the same profession, when discussing or participating in the formation of the policy or policies of the professional association of which the public official is a member. This exception shall apply to both legislative policies of the professional association and regulatory polices of the professional association of which the public official is a member, and regardless of whether or not a quorum of the members of the governmental body are members of the same professional association."

"§36-25A-3.

"(a) Unless otherwise specified by law and as provided herein, any governmental body subject to this chapter, except for an advisory board, advisory commission, advisory committee, task force, or other advisory body created

solely to make recommendations on public policy issues and 1 composed of persons who do not receive compensation for their 2 service as members of the board, commission, committee, task 3 force, or body from public funds, shall post notice of all meetings, as defined in Section 36-25A-2(6)a.1., at least seven calendar days prior to the meeting as follows:

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"(1) The Alabama Legislature is solely governed by the Alabama Constitution which establishes that the doors of each house of the Alabama Legislature shall be open to the public unless a vote is taken that secrecy is required under the circumstances. The respective houses of the Alabama Legislature shall develop rules consistent with the Constitution of Alabama of 1901, providing for access to and prior notice of all sessions and standing committee and standing subcommittee meetings and all meetings of permanent and joint legislative committees. Because the Alabama Legislature is solely governed by the Alabama Constitution and sets its own rules to ensure public access as quaranteed by the Constitution, no other provision of this chapter applies to the Alabama Legislature.

"(2) Any governmental body with statewide jurisdiction shall submit notice of its meeting to the Secretary of State. The Secretary of State shall post the notice on the Internet for at least seven calendar days prior to the day of the meeting. The Secretary of State shall also

send electronic mail notifications to anyone who has registered with the Secretary of State to receive notification of meetings. The Secretary of State may promulgate reasonable rules and regulations necessary for the uniform receipt and posting of notice and of registration for electronic mail notification. The Secretary of State shall provide during regular office hours a computer terminal at a place convenient to the public in the office of the Secretary of State that members of the public may use to view notices of meetings posted by the Secretary of State. Any governmental body with less than statewide jurisdiction may also submit notice to the Secretary of State for posting on the website. Nothing shall prevent a governmental body subject to this subsection from posting notice in any additional manner.

"(3) A municipal governmental body shall post notice of each meeting on a bulletin board at a place convenient to the public in the city hall, provided, however, that a corporation a majority of whose governing board is appointed or elected by a municipality and that has a principal office separate from the city hall may, in lieu of posting notice in the city hall, post notice of each meeting on a bulletin board at a place convenient to the public in the principal office of the corporation or other instrumentality.

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

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

"(6) If practicable, a governmental body other than those with statewide jurisdiction, in addition to the posting requirements, shall provide direct notification of a meeting, as defined in Section 36-25A-2(6)a., to any member of the public or news media covering that governmental body who has registered with the governmental body to receive notification of meetings. A governmental body may promulgate reasonable rules and regulations necessary for the uniform registration and payment for direct notice and for the distribution of the notices. The governmental body may choose to transmit a notice using electronic mail, telephone, facsimile, the United States Postal Service, or any other method reasonably likely to provide the requested notice. The actual cost of issuing notices, if there is one, may be required to be paid in advance by the person requesting notice by the governmental

body. Direct notice to persons who have registered with the governmental body shall, at a minimum, contain the time, date, and place of the meeting.

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

"(c) Posted notice pursuant to this section shall include the time, date, and place of meeting. If a preliminary agenda is created, it shall be posted as soon as practicable in the same location or manner as the notice given pursuant to this section. A governmental body may discuss at a meeting additional matters not included in the preliminary agenda. If

1	a preliminary agenda is not available, the posted notice shall
2	include a general description of the nature and purpose of the
3	meeting.

- "(d) County commissions which provide proper notice in conformance with Section 11-3-8 shall not be required to comply with subsections (a), (b), and (c) of this section, nor shall committees or subcommittees of such commissions so long as the committees also comply with the notice procedures applicable to the full commission in Section 11-3-8.
- "(e) Governmental bodies may give, but shall not be required to give, notice of quasi-judicial or contested case hearings which could properly be conducted as an executive session under this chapter or existing state law.
- "(f) A governmental body is authorized, but not required, to provide notice in addition to that specified in this section and to provide notice for gatherings which are not meetings as defined in Section 36-25A-2(6).

18 "\$36-25A-9.

"(a) Enforcement This chapter is designed and intended to hold members of governmental bodies, and the bodies themselves, accountable to the public for violations of this chapter. Therefore, enforcement of this chapter, except a violation of Section 26-25A-3(a)(1), may be sought by civil action brought in the county where the governmental body's primary office is located by any media organization, any

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

L	to the	speedies	t pos	ssible	dete	ermir	nation	of	the	cause
2	consist	ent with	the	rights	of	the	partie	es.		

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- "(b) In the preliminary hearing on the complaint, the plaintiff shall establish by a preponderance of the evidence that a meeting of the governmental body occurred and that each defendant attended the meeting. Additionally, to establish a prima facie case the plaintiff must present substantial evidence of one or more of the following claims:
- "(1) That the defendants disregarded the requirements for proper notice of the meeting pursuant to the applicable methods set forth in Section 36-25A-3.
- "(2) That the defendants disregarded the provisions of this chapter during a meeting, other than during an executive session.
- "(3) That the defendants voted to go into executive session and while in executive session the defendants discussed matters other than those subjects included in the motion to convene an executive session as required by Section 36-25A-7 (b).
- "(4) That, other than a claim under subdivisions (1) through (3), the defendants intentionally violated other provisions of this chapter.
- "(c) If the court finds that the plaintiff has met its initial burden of proof as required in subsection (b) at the preliminary hearing, the court shall establish a schedule

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for discovery and set the matter for a hearing on the merits. If, at the preliminary hearing, the plaintiff has presented its prima facie case that an executive session appears to have been improperly conducted as set out in subsection (b)(3), the defendants shall bear the burden of proof at the hearing on the merits to prove by a preponderance of the evidence that the discussions during the executive session were limited to matters related to the subjects included in the motion to convene an executive session required in Section 36-25A-7(a).

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

"(e) Upon proof by a preponderance of the evidence of a defendant's violation of this chapter, the circuit court shall issue an appropriate final order including, if appropriate, a declaratory judgment or injunction. Prior to a final determination of the merits, temporary restraining orders or preliminary injunctions may be issued upon proper motion and proof as provided and required in the Alabama Rules

of Civil Procedure. A final order on the merits shall be issued within 60 days after the preliminary hearing unless a longer period is consented to by all parties and the court.

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"(f) The court may invalidate the action or actions taken during a meeting held in violation of this chapter, provided that the complaint is filed within 21 days of the date when the action is made public, the violation was not the result of mistake, inadvertence, or excusable neglect, and invalidation of the governmental action taken would not unduly prejudice third parties who have changed their position or taken action in good faith reliance upon the challenged action of the governmental body; provided further, however, that any action taken at an open meeting conducted in a manner consistent with this chapter shall not be invalidated because of a violation of this chapter which occurred prior to such meeting.

"(g) A final order issued against a defendant shall state specifically upon which claim or claims in subdivisions (1) through (4) the ruling is based. For each meeting proven to be held in violation of this chapter for one or more reasons, the court shall impose a civil penalty payable to the plaintiff(s). The maximum penalty for each meeting shall not exceed one thousand dollars (\$1,000) or one half of the defendant's monthly salary for service on the governmental body, whichever is less. The minimum penalty shall be one

dollar (\$1). With regard to claims related to improper 1 2 discussions during executive sessions, monetary penalties may 3 only be assessed against defendant members of a governmental body who voted to go into an executive session and who 4 5 remained in the executive session during a discussion 6 determined by the court not to have been authorized by this chapter. Penalties imposed against a member of a governmental 7 8 body found to have acted in violation of this chapter shall 9 not be paid by nor reimbursed to the member by the 10 governmental body he or she serves. If more than one cause of 11 action is filed pursuant to this chapter, all causes of action 12 based on or arising out of the same alleged violation or 13 violations shall be consolidated into the action that was 14 first filed and any party may intervene into the consolidated 15 action pursuant to the Alabama Rules of Civil Procedure, and 16 no member found to have acted in violation of this chapter by 17 a final court order and assessed a penalty as authorized 18 herein shall be subject to further liability or penalty to the 19 same or different plaintiffs in separate causes of action for 20 the same violation or violations." 2.1 "(h) A governmental body is authorized to pay for or 22 provide for the legal expenses of present or former members of 23 the body named as defendants in a proceeding under this

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chapter."

1		Section 2.	This act	shall become	effective on the
2	first day	of the thi:	cd month	following its	passage and
3	approval b	y the Gove	nor, or	its otherwise	becoming law.

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4		President and Presiding Officer of the Senate
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6		Speaker of the House of Representatives
7 8 9 10 11 12 13 14	SB21 Senate 1 I hereby the Sena	certify that the within Act originated in and passed
16 17 18 19		Representatives and passed <mark>02-JUN-15</mark>
20 21 22	Senate c	oncurred in House amendment (03-JUN-15)
23 24	By: Sena	tor Ward