

1 SB101  
2 71732-5  
3 By Senators Little (Z), Mitchell, Mitchem, Butler, Holley,  
4 Escott, Smitherman, Little (T), Roberts, Denton, Waggoner,  
5 Penn, Sanders, Myers, French, Smith, Dial, Means, and Dixon  
6 RFD: Governmental Affairs  
7 First Read: 01-FEB-05

1 SB101

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3  
4 ENROLLED, An Act,

5 Relating to meetings of governmental bodies; to  
6 require all meetings held by a governmental body to be open to  
7 the public with certain exceptions; to provide for civil  
8 penalties; and to repeal Section 13A-14-2, Code of Alabama  
9 1975, prohibiting certain agencies and other governmental  
10 bodies from meeting in executive or secret sessions.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. (a) It is the policy of this state that  
13 the deliberative process of governmental bodies shall be open  
14 to the public during meetings as defined in Section 2(6) of  
15 this act. Except for executive sessions permitted in Section  
16 7(a) of this act or as otherwise expressly provided by other  
17 federal or state statutes, all meetings of a governmental body  
18 shall be open to the public and no meetings of a governmental  
19 body may be held without providing notice pursuant to the  
20 requirements of Section 3. No executive sessions are required  
21 by this act to be held under any circumstances. Electronic  
22 communications shall not be utilized to circumvent any of the  
23 provisions of this act.

24 (b) This act shall be known and may be cited as the  
25 "Alabama Open Meetings Act."

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

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

11           (2) EXECUTIVE SESSION. That portion of a meeting of  
12 a governmental body from which the public is excluded for one  
13 or more of the reasons prescribed in Section 7(a) of this act.

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

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

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

9 a. Legislative party caucuses or coalitions.

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

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

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

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

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

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

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

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

21           1. Occasions when a quorum of a governmental body,  
22 committee or subcommittee attends social gatherings,  
23 conventions, conferences, training programs, press  
24 conferences, media events, or otherwise gathers so long as the  
25 governmental body does not deliberate specific matters that,

1 at the time of the exchange, the participating members expect  
2 to come before the governmental body at a later date.

3 2. Occasions when a quorum of a governmental body  
4 gathers, in person or by electronic communication, with state  
5 or federal officials for the purpose of reporting or obtaining  
6 information or seeking support for issues of importance to the  
7 governmental body.

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

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

24 (9) PUBLIC EMPLOYEE. Any person employed at the  
25 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 Section 2(6)a.1.  
24 between the date of election of members and the date such  
25 members take office, any person elected to serve on a

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

11 Section 3. (a) Unless otherwise specified by law and  
12 as provided herein, any governmental body subject to this act,  
13 except for an advisory board, advisory commission, advisory  
14 committee, task force, or other advisory body created solely  
15 to make recommendations on public policy issues and composed  
16 of persons who do not receive compensation for their service  
17 from public funds, shall post notice of all meetings, as  
18 defined in Section 2(6)a.1., at least seven calendar days  
19 prior to the meeting as follows:

20 (1) The respective houses of the Alabama Legislature  
21 shall develop rules consistent with the Constitution of  
22 Alabama of 1901, providing for access to and prior notice of  
23 all sessions and standing committee and standing subcommittee  
24 meetings and all meetings of permanent and joint legislative  
25 committees.

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

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

1 the city hall, post notice of each meeting on a bulletin board  
2 at a place convenient to the public in the principal office of  
3 the corporation or other instrumentality.

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

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

14 (6) If practicable, a governmental body other than  
15 those with statewide jurisdiction, in addition to the posting  
16 requirements, shall provide direct notification of a meeting,  
17 as defined in Section 2(6)a., to any member of the public or  
18 news media covering that governmental body who has registered  
19 with the governmental body to receive notification of  
20 meetings. A governmental body may promulgate reasonable rules  
21 and regulations necessary for the uniform registration and  
22 payment for direct notice and for the distribution of the  
23 notices. The governmental body may choose to transmit a notice  
24 using electronic mail, telephone, facsimile, the United States  
25 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 2(6)a.2. and 3. as well as meetings called  
10 pursuant to Section 11-43-50, Code of Alabama 1975, shall be  
11 posted as soon as practicable after the meeting is called and  
12 in no event less than 24 hours before the meeting is scheduled  
13 to begin, unless such notice (i) is prevented by emergency  
14 circumstances requiring immediate action to avoid physical  
15 injury to persons or damage to property; or (ii) relates to a  
16 meeting to be held solely to accept the resignation of a  
17 public official or employee. In such situations, notice shall  
18 be given as soon as practical, but in no case less than one  
19 hour before the meeting is to begin. At the same time general  
20 notice is given, special notice shall be directed to any  
21 person who has registered to receive direct notices pursuant  
22 to the provisions of subsection (a)(6) of this section.

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

1 in the same location or manner as the notice given pursuant to  
2 this section. A governmental body may discuss at a meeting  
3 additional matters not included in the preliminary agenda. If  
4 a preliminary agenda is not available, the posted notice shall  
5 include a general description of the nature and purpose of the  
6 meeting.

7 (d) County commissions which provide proper notice  
8 in conformance with Section 11-3-8, Code of Alabama 1975,  
9 shall not be required to comply with subsections (a), (b), and  
10 (c) of this section, nor shall committees or subcommittees of  
11 such commissions so long as the committees also comply with  
12 the notice procedures applicable to the full commission in  
13 Section 11-3-8, Code of Alabama 1975.

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

18 (f) A governmental body is authorized, but not  
19 required, to provide notice in addition to that specified in  
20 this section and to provide notice for gatherings which are  
21 not "meetings" as defined in Section 2(6) of this act.

22 Section 4. A governmental body shall maintain  
23 accurate records of its meetings, excluding executive  
24 sessions, setting forth the date, time, place, members present  
25 or absent, and action taken at each meeting. Except as

1 otherwise provided by law, the records of each meeting shall  
2 become a public record and be made available to the public as  
3 soon as practicable after approval.

4 Section 5. (a) Unless otherwise provided by law,  
5 meetings shall be conducted pursuant to the governing body's  
6 adopted rules of parliamentary procedure not in conflict with  
7 laws applicable to the governmental body.

8 (b) Unless otherwise permitted by this act or  
9 directed by provisions in the Constitution of Alabama of 1901,  
10 or other existing state law applicable to the governmental  
11 body, all votes on matters before a governmental body,  
12 including, but not limited to, votes to appropriate or to  
13 authorize a governmental body's designated employee, within  
14 limits prescribed by the governmental body without further  
15 authorization of the governmental body, to spend public funds,  
16 to levy taxes or fees, to forgive debts to the governmental  
17 body, or to grant tax abatements, shall be made during the  
18 open or public portion of a meeting for which notice has been  
19 provided pursuant to this act. Voice votes may be allowed.  
20 Unless permitted by this act, existing statute or  
21 constitutional amendment, no votes shall be taken in executive  
22 sessions. Unless otherwise directed by provisions in the  
23 Constitution of Alabama of 1901, or other existing state law  
24 applicable to a governmental body, a governmental body may not  
25 vote by secret ballot.

1           Section 6. A meeting of a governmental body, except  
2 while in executive session, may be openly recorded by any  
3 person in attendance by means of a tape recorder or any other  
4 means of sonic, photographic, or video reproduction provided  
5 the recording does not disrupt the conduct of the meeting. The  
6 governmental body may adopt reasonable rules for the  
7 implementation of this section.

8           Section 7. (a) Executive sessions are not required  
9 by this act, but may be held by a governmental body only for  
10 the following purposes:

11           (1) To discuss the general reputation and character,  
12 physical condition, professional competence or mental health  
13 of individuals, or, subject to the limitations set out herein,  
14 to discuss the job performance of certain public employees.  
15 However, except as provided elsewhere in this section,  
16 discussions of the job performance of specific public  
17 officials or specific public employees may not be discussed in  
18 executive session if the person is an elected or appointed  
19 public official, an appointed member of a state or local board  
20 or commission, or a public employee who is one of the  
21 classification of public employees required to file a  
22 Statement of Economic Interests with the Alabama Ethics  
23 Commission pursuant to Section 36-25-14, Code of Alabama 1975.  
24 Except as provided elsewhere in this section, the salary,  
25 compensation, and job benefits of specific public officials or

1 specific public employees may not be discussed in executive  
2 session.

3 (2) When expressly allowed by federal law or state  
4 law, to consider the discipline or dismissal of, or to hear  
5 formal written complaints or charges brought against a public  
6 employee, a student at a public school or college, or an  
7 individual, corporation, partnership, or other legal entity  
8 subject to the regulation of the governmental body.

9 (3) To discuss with their attorney the legal  
10 ramifications of and legal options for pending litigation,  
11 controversies not yet being litigated but imminently likely to  
12 be litigated or imminently likely to be litigated if the  
13 governmental body pursues a proposed course of action or to  
14 meet or confer with a mediator or arbitrator with respect to  
15 any litigation or decision concerning matters within the  
16 jurisdiction of the governmental body involving another party,  
17 group, or body. Prior to voting to convene an executive  
18 session under this exception the governmental body shall  
19 receive a written opinion or oral declaration reflected in the  
20 minutes from an attorney licensed to practice law in Alabama  
21 that this exception is applicable to the planned discussion.  
22 Such declaration shall not otherwise constitute a waiver of  
23 the attorney-client privilege. Notwithstanding the foregoing,  
24 if any deliberation begins among the members of the  
25 governmental body regarding what action to take relating to

1 pending or threatened litigation based upon the advice of  
2 counsel the executive session shall be concluded and the  
3 deliberation shall be conducted in the open portion of the  
4 meeting or the deliberation shall cease.

5 (4) To discuss security plans, procedures,  
6 assessments, measures, or systems, or the security or safety  
7 of persons, structures, facilities, or other infrastructures,  
8 including, without limitation, information concerning critical  
9 infrastructure, as defined by federal law, and critical energy  
10 infrastructure information, as defined by federal law, the  
11 public disclosures of which could reasonably be expected to be  
12 detrimental to public safety or welfare. Provided, however,  
13 that when the discussion involves critical infrastructure or  
14 critical energy infrastructure information, the owners and  
15 operators of such infrastructure shall be given notice and an  
16 opportunity to attend the session.

17 (5) To discuss information that would disclose the  
18 identity of an undercover law enforcement agent or informer or  
19 to discuss the criminal investigation of a person who is not a  
20 public official in which allegations or charges of specific  
21 criminal misconduct have been made or to discuss whether or  
22 not to file a criminal complaint. Provided, however, that  
23 prior to such discussions a law enforcement officer with  
24 authority to make an arrest or a district or assistant  
25 district attorney or the attorney general or assistant

1 Attorney General shall advise the governmental body in writing  
2 or by oral declaration entered into the minutes that the  
3 discussions would imperil effective law enforcement if  
4 disclosed outside of an executive session.

5 (6) To discuss the consideration the governmental  
6 body is willing to offer or accept when considering the  
7 purchase, sale, exchange, lease, or market value of real  
8 property. Provided, however, that the material terms of any  
9 contract to purchase, exchange, or lease real property shall  
10 be disclosed in the public portion of a meeting prior to the  
11 execution of the contract. If an executive session is utilized  
12 pursuant to this exception in addition to the members of the  
13 governmental body, only persons representing the interests of  
14 the governmental body in the transaction may be present during  
15 the executive session. This real property discussion exception  
16 shall not apply if:

17 a. Any member of the governmental body involved in  
18 the transaction has a personal interest in the transaction and  
19 attends or participates in the executive session concerning  
20 the real property.

21 b. A condemnation action has been filed to acquire  
22 the real property involved in the discussion.

23 (7) To discuss preliminary negotiations involving  
24 matters of trade or commerce in which the governmental body is  
25 in competition with private individuals or entities or other

1 governmental bodies in Alabama or in other states or foreign  
2 nations or to discuss matters or information of the character  
3 defined or described in the Alabama Trade Secrets Act.

4 Provided, however, that prior to such discussions a person  
5 involved in the recruitment or retention effort or who has  
6 personal knowledge that the discussion will involve matter or  
7 information of the character defined or described in the  
8 Alabama Trade Secrets Act advises the governmental body in  
9 writing or by oral declaration entered into the minutes that  
10 the discussions would have a detrimental effect upon the  
11 competitive position of a party to the negotiations or upon  
12 the location, retention, expansion, or upgrading of a public  
13 employee or business entity in the area served by the  
14 governmental body if disclosed outside of an executive  
15 session, or would disclose information protected by the  
16 Alabama Trade Secrets Act.

17 (8) To discuss strategy in preparation for  
18 negotiations between the governmental body and a group of  
19 public employees. Provided, however, that prior to such  
20 discussions a person representing the interests of a  
21 governmental body involved in such negotiations advises the  
22 governmental body in writing or by oral declaration entered  
23 into the minutes that the discussions would have a detrimental  
24 effect upon the negotiating position of the governmental body  
25 if disclosed outside of an executive session.

1           (9) To deliberate and discuss evidence or testimony  
2 presented during a public or contested case hearing and vote  
3 upon the outcome of the proceeding or hearing if the  
4 governmental body is acting in the capacity of a  
5 quasi-judicial body, and either votes upon its decision in an  
6 open meeting or issues a written decision which may be  
7 appealed to a hearing officer, an administrative board, court,  
8 or other body which has the authority to conduct a hearing or  
9 appeal of the matter which is open to the public.

10           (b) A governmental body desiring to convene an  
11 executive session, other than to conduct a quasi-judicial or  
12 contested case hearing, shall utilize the following procedure:

13           (1) A quorum of governmental body must first convene  
14 a meeting as defined in Sections 2(6)a.1 and 2.

15           (2) A majority of the members of the governmental  
16 body present must adopt, by recorded vote, a motion calling  
17 for the executive session and setting out the purpose of the  
18 executive session, as provided in subsection (a). If  
19 subsection (a) requires an oral or written declaration before  
20 the executive session can begin, such oral or written  
21 declaration shall be made, prior to the vote.

22           (3) The vote of each member shall be recorded in the  
23 minutes.

24           (4) Prior to calling the executive session to order,  
25 the presiding officer shall state whether the governmental

1 body will reconvene after the executive session and, if so,  
2 the approximate time the body expects to reconvene.

3 Section 8. In addition to any existing applicable  
4 immunity, members of a governmental body and any of its  
5 employees participating in a meeting conducted in conformance  
6 with this act shall have an absolute privilege and immunity  
7 from suit for any statement made during the meeting which  
8 relates to an action pending before the governmental body.

9 Section 9. (a) Enforcement of this act may be sought  
10 by civil action brought in the county where the governmental  
11 body's primary office is located by any media organization,  
12 any Alabama citizen, the Attorney General, or the district  
13 attorney for the circuit in which the governmental body is  
14 located; provided, however, that no member of a governmental  
15 body may serve as a plaintiff in an action brought against  
16 another member of the same governmental body for an alleged  
17 violation of this act. The complaint shall be verified, shall  
18 state specifically the applicable ground or grounds for the  
19 complaint as set out in subsections (b)(1) through (4) of  
20 Section 9, and shall name in their official capacity all  
21 members of the governmental body remaining in attendance at  
22 the alleged meeting held in violation of this act. Members of  
23 a governmental body who are named as a defendant in a  
24 complaint under this act shall serve an initial response to  
25 the complaint within seven business days of personal service

1 of the complaint. A preliminary hearing on the complaint filed  
2 shall be held no later than 10 business days after the date of  
3 the filing of the defendant or defendants initial response to  
4 the complaint or, if no response is filed, no later than 17  
5 business days after the filing of the complaint, or on the  
6 nearest day thereafter as the court shall fix, having regard  
7 to the speediest possible determination of the cause  
8 consistent with the rights of the parties.

9 (b) In the preliminary hearing on the complaint, the  
10 plaintiff shall establish by a preponderance of the evidence  
11 that a meeting of the governmental body occurred and that each  
12 defendant attended the meeting. Additionally, to establish a  
13 prima facie case the plaintiff must present substantial  
14 evidence of one or more of the following claims:

15 (1) That the defendants disregarded the requirements  
16 for proper notice of the meeting pursuant to the applicable  
17 methods set forth in Section 3 of this act.

18 (2) That the defendants disregarded the provisions  
19 of this act during a meeting, other than during an executive  
20 session.

21 (3) That the defendants voted to go into executive  
22 session and while in executive session the defendants  
23 discussed matters other than those subjects included in the  
24 motion to convene an executive session as required by Section  
25 7(b).

1           (4) That, other than a claim under subsections (1)  
2 through (3), the defendants intentionally violated other  
3 provisions of this act.

4           (c) If the court finds that the plaintiff has met  
5 its initial burden of proof as required in subsection (b) of  
6 this section at the preliminary hearing, the court shall  
7 establish a schedule for discovery and set the matter for a  
8 hearing on the merits. If, at the preliminary hearing, the  
9 plaintiff has presented its prima facie case that an executive  
10 session appears to have been improperly conducted as set out  
11 in subsection (b) (3), the defendants shall bear the burden of  
12 proof at the hearing on the merits to prove by a preponderance  
13 of the evidence that the discussions during the executive  
14 session were limited to matters related to the subjects  
15 included in the motion to convene an executive session  
16 required in Section 7(a) of this act.

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

1           (e) Upon proof by a preponderance of the evidence of  
2 a defendant's violation of this act, the circuit court shall  
3 issue an appropriate final order including, if appropriate, a  
4 declaratory judgment or injunction. Prior to a final  
5 determination of the merits, temporary restraining orders or  
6 preliminary injunctions may be issued upon proper motion and  
7 proof as provided and required in the Alabama Rules of Civil  
8 Procedure. A final order on the merits shall be issued within  
9 60 days after the preliminary hearing unless a longer period  
10 is consented to by all parties and the court.

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

23           (g) A final order issued against a defendant shall  
24 state specifically upon which claim or claims in Section  
25 9(b)(1) through (4) the ruling is based. For each meeting

1 proven to be held in violation of this act for one or more  
2 reasons, the court shall impose a civil penalty. The maximum  
3 penalty for each meeting shall not exceed one thousand dollars  
4 (\$1,000) or one half of the defendant's monthly salary for  
5 service on the governmental body, whichever is less. With  
6 regard to claims related to improper discussions during  
7 executive sessions, monetary penalties may only be assessed  
8 against defendant members of a governmental body who voted to  
9 go into an executive session and who remained in the executive  
10 session during a discussion determined by the court not to  
11 have been authorized by this act. Penalties imposed against a  
12 member of a governmental body found to have acted in violation  
13 of this act shall not be paid by nor reimbursed to the member  
14 by the governmental body he or she serves.

15 (h) A governmental body is authorized to pay for or  
16 provide for the legal expenses of present or former members of  
17 the body named as defendants in a proceeding under this act.

18 Section 10. Section 13A-14-2, Code of Alabama 1975,  
19 is repealed. All specific references in the Code of Alabama  
20 1975 to Section 13A-14-2 shall be considered a reference to  
21 this act and where expressly excluded or included from  
22 application of Section 13A-14-2, Code of Alabama 1975, the  
23 exclusion or inclusion from application shall remain as it  
24 applies to these new sections. The Code Commissioner, when  
25 appropriate, shall implement these changes in the Code of

1 Alabama 1975. Nothing in this act shall be construed to repeal  
2 or amend any portion of the Code of Alabama 1975, in effect on  
3 the effective date of this act except as expressly provided  
4 herein.

5 Section 11. An action under this act must be brought  
6 within 60 days of the date that the plaintiff knew or should  
7 have known of the alleged act which brings rise to the cause  
8 of action; provided, however, that any action under this act  
9 must be brought within two years of the alleged act which  
10 brings rise to the cause of action.

11 Section 12. The provisions of this act are  
12 severable. If any part of this act is declared invalid or  
13 unconstitutional, that declaration shall not affect the part  
14 which remains.

15 Section 13. This act shall become effective on  
16 October 1, 2005, following its passage and approval by the  
17 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

SB101  
Senate 15-FEB-05  
I hereby certify that the within Act originated in and passed  
the Senate.

McDowell Lee  
Secretary

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House of Representatives  
Amended and passed 08-MAR-05

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Senate concurred in House amendment 10-MAR-05

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By: Senator Little (Z)