

Open Meetings Manual for Alabama Counties

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Section 1

Meeting and Deliberation Handout

“MEETINGS” AND “DELIBERATION” UNDER ALABAMA’S OPEN MEETINGS LAW

The new open meetings act (Act 2005-40) is designed to bring some clarification to an almost century-long debate between public officials and the news media. Alabama’s current open meetings law, which is repealed effective Oct. 1, 2005, has no definition of “meeting.” Because there has been no direct legal pronouncement regarding what is and what is not a meeting, public officials and the news media have clashed when trying to determine whether informal “gatherings” of public officials constitute “meetings” and, therefore, must conform to the requirements of the open meetings act.

The new statute recognizes that there are a variety of circumstances during which public officials may “deliberate” on the public’s business. The act also goes to great length to ensure that all such occasions are open to the public and are conducted **ONLY** after the body has provided notice to the public. The opening section of the new law states:

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

While the existing law is written very broadly, the new statute that is effective Oct. 1, 2005 includes very detailed rules governing every aspect of a meeting conducted by governmental bodies in Alabama. The new law includes important definitions to assist in understanding how the new provisions will be applied. It is essential that public officials recognize that the definitions utilized in this act apply **ONLY** to this act. For example, a “gathering” of county commissioners may be a “meeting” as defined in and for the purposes of this act. However, that does not mean the county commission can conduct public “business” at such a gathering.

The act also prohibits the utilization of “electronic communications” to “circumvent any of the provisions” of the new act. Efforts by public officials to use the telephone, e-mail or even internet chat rooms to avoid compliance with the act will constitute a violation and will likely gain statewide media attention and criticism.

WHAT IS A “MEETING”?

For the purposes of this act, there are three separate circumstances which will constitute a meeting of the county commission (or a committee or subcommittee of the commission). Once any one of these conditions is met and the existence of a meeting is established, the county commission is required to comply with the provisions of the act – including the posting of notice.

1. A pre-arranged gathering of a quorum of the commission required by law;
 - This will be the “regular” county commission meeting

2. A pre-arranged gathering of a quorum of the commission where the body is authorized by law to exercise its powers;
 - This will be any special or emergency meeting called under the procedures set out in Code of Alabama 1975, § 11-3-8 (as amended by Act No. 2004-384)
 - This section could also apply to the administrative or agenda-setting meeting, if the county commission routinely takes action during these meetings. Otherwise, these administrative meetings are more likely to fall under category 3 as explained below.

3. Any other gathering of a quorum of the commission (whether or not it was pre-arranged) where the body will deliberate on specific matters which the body believes it will vote on, either immediately following the gathering or at a later time.
 - This will be any administrative or agenda-setting meeting at which the body does not take action but only deliberates the agenda for the upcoming regular commission meeting.
 - This will also be any informal session or occasion during which commissioners deliberate how they will vote on a specific issue that they expect to be addressed at a meeting of the body

The new act specifically provides that a meeting is **not** any of the following

- Social or other gatherings attended by a quorum of the body provided the members do not deliberate on matters the members believe the body will act on later
- Conventions, conferences, media events, and trainings attended by a quorum of the body provided the members do not deliberate on matters the members believe the body will act on later

- Gatherings of a quorum to meet with state or federal officials, such as legislators and state agency heads
- Gatherings of less than a quorum

The question of “deliberation” is the key to determining whether or not a “gathering” of the body becomes a “meeting” of the body. It is the clear intent of the law to draw a distinction between those occasions when members of the body gather to discuss matters and those occasions when the members of the body gather and “deliberate” on matters that are expected to come before the body for action at a future date.

Should members of a public body begin “deliberation” during these information gatherings, the gatherings will (by operation of law) become “meetings” for the purpose of this act. When such deliberation begins, the public officials involved will have committed a violation of the open meetings law if no “notice” of the meeting was given by the governing body. Because the members of the commission do not intend these informal gatherings to be actual “meetings” for the purpose of taking votes on public matters, there will be no “notice” of the time and place of the informal gathering. Without this notice, the members who move from discussion to “deliberation” will have committed an easy-to-prove violation of the new statute.

WHAT IS “DELIBERATION”?

Because the issue of “deliberation” is at the heart of determining when social or other “gatherings” turn into “meetings”, it is important to closely examine the definition of “deliberation” in the new act:

“An exchange of information or ideas among a quorum of members of a governmental body intended to arrive at or influence a decision as to how the 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 body immediately following the discussion or at a later time. “ (Emphasis added)

Deliberation does *not* include every conversation between members of the county commission regarding an issue which may or may not come before the body. Deliberation takes place when a number of members of the body constituting a quorum exchange information on how they intend to vote on a specific matter, and/or the appropriate action to take on a specific issue that is expected to come before the body.

County officials must be careful in their communication to ensure that, when a quorum is present, they do not “exchange” information about how they intend to vote or that they do not “exchange” information intended to influence how another member of the body will

vote. The determination of whether or not “deliberation” has occurred will, in the end, be a decision which can only be made by a judge. However, county officials should be careful and avoid the obvious situations in which they are being asked how they will vote on a specific matter.

WHAT IS A “QUORUM”?

A “meeting”(as defined in this act) that results from the act of “deliberation” between members of a public body can occur only when a quorum of the body is involved. The act includes its own definition of a quorum:

“Unless otherwise provided by law, a "quorum" is a majority of the voting members of a governmental body. Except where a governmental body is prohibited from holding a non-emergency meeting as defined in Section 2(6)a.1. between the date of election of members and the date such members take office, any person elected to serve on a governmental body shall be counted in the determination of whether a quorum of that governmental body is present, except for any meeting as defined in Sections 2(6)a.1. and 2., beginning on the date of certification of the results of the general election. In the case of appointment to a governmental body, any person shall be counted in the determination of whether a quorum of that governmental body is present, except for any meeting as defined in Sections 2(6)a.1. and 2., from the date that the appointment is made or issued whether or not the appointment is effective on that date.” (Emphasis added)

In most circumstances, a quorum of a county commission as defined under this act will be the number of members representing a quorum of the commission. Commissions which include the Judge of Probate or county-wide elected chairman as the presiding officer, should include such presiding officer in the number of commission members when determining the number of persons necessary to constitute a quorum for the purposes of this act.

The definition of quorum also establishes a procedure that includes persons who have been elected or appointed to public positions but have not yet taken office. County commissions are exempted from this requirement, but other public bodies associated with county government are not exempted. For example, this provision would mean that persons who have been elected to the local school board but have not yet taken office cannot “deliberate” with other members of the body or others who have been elected to the school board without triggering the open meeting statute.

WHAT IS A “GOVERNMENTAL BODY”?

The act says governmental bodies must comply with the open meeting requirements. Although county commissions and their committees and sub-committees are included within this definition, members of other local groups should review the definition closely

to determine whether or not the group is a “governmental body” and therefore subject to the act:

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:

- 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, counties, municipalities, or their instrumentalities which have not been delegated any legislative or executive functions by the Legislature or Governor.

It is also important to note that any boards or commissions which are exempt from the old open meetings law (such as solid waste authorities and health care authorities) will also be exempt from the new statute that is effective on Oct. 1, 2005.

Section 2

Notice Handout

NOTICE REQUIREMENTS

Establishment of Meeting Dates

Section 11-3-8 requires County Commissions to establish their regular meeting dates during the first meeting in November following the election of any of the members of the commission.

This meeting date, time and location must be posted in the courthouse and the members of the news media who have filed a written request must be advised of the regular meeting date when it is established.

It is not necessary to contact members of the media in advance of your regular commission meeting once the regular date has been established and the media has been initially notified.

Holidays

When the regular meeting date falls on a holiday, the county commission may meet “on any day” of that week or on another date or time established by the commission. As required in Section 11-3-8, this substitute meeting date must be posted in the courthouse at least five days before the meeting. The commission must notify the members of the media who have filed a written request with the commission for such notification.

Special Meetings

Special meetings of the commission can be called with five days notice upon written request of a majority of the members of the county commission. As required in Section 11-3-8, the time, date and location of the special meeting along with the “purpose for and agenda of the meeting” must be posted in the courthouse at least five days before the meeting. The commission must notify the members of the media who have filed a written request with the commission for such notification.

Items that are not listed on the agenda may not be considered during the special meeting.

Emergency Meetings

The commission chairman may call an emergency meeting. The five day notice requirement does not apply. However, the meeting time, date and location should be posted in the courthouse, as required in Section 11-3-8. The commission must notify the members of the media who have filed a written request with the commission for such notification.

Items that are not part of the “emergency” resulting in the calling of the meeting may not be added to the agenda for action during the emergency meeting.

Meetings of Commission Committees or Sub-Committees

The county commission may establish committees and sub-committees. Act 2005-40 specifically applies to meetings of such committees and sub-committees. Therefore, notice of the meetings must also be given in the same fashion as regular commission meetings.

Once the meeting time, location and date of a committee or sub-committee meeting is established, it must be posted in the courthouse. This posting should occur at least five days before the meeting, unless the meeting is an emergency. The commission must also notify the members of the media who have filed with the commission a written request for such notification.

Complying with Notice Requirements in the Open Meetings Law

Act 2005-40 includes a detailed notice requirement for other public bodies. The notice procedure outlined in the open meetings law DOES NOT apply to county commissions, if the commissions follow the requirements of Section 11-3-8, as outlined above.

Specifically, the new open meetings law includes the following language:

“County commissions which provide proper notice in conformance with Section 11-3-8, Code of Alabama 1975, 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, Code of Alabama 1975.”

Media Requests for Notification

Section 11-3-8 requires that the commission notify those local media outlets that have made a written request for notification of commission meeting dates, times and locations. Counties that receive oral requests for notification should advise the media that such requests should be made in writing. The written requests should be kept on file in the commission office.

Record Keeping

Although Act 2005-40 does not require county commissions to keep records of the posting of notice or its communication with representatives of the media, such records will be very important in the courtroom.

Once the county commission establishes its regular commission meeting, the commission is encouraged to confirm that the notice is posted in the courthouse once each week. This confirmation should be recorded on the attached form and retained by the county commission.

Likewise, should the commission alter its meeting dates, call a special meeting or otherwise make changes to the posted notice, such actions should be recorded on the attached form.

To ensure that the commission can document that it has complied with the requirements to notify those media outlets who have requested notification concerning commission meetings, the commission is encouraged to utilize the attached form to record contacts to representatives of the news media.

Section 3

Executive Session Handout

EXECUTIVE SESSION UNDER ALABAMA'S OPEN MEETINGS LAW

WHAT IS AN EXECUTIVE SESSION?

An executive session is a meeting by the governmental body held in private “behind closed doors” to discuss a confidential matter under circumstances authorized by Alabama’ new open meetings law (Act No. 2005-40). Act No. 2005-40 defines “executive session” as, “That portion of the meeting of a governmental body from which the public is excluded for one or more reasons prescribed in Section 7(a) of this act.” A detailed description of these “reasons” is set out below.

When a governmental body meets in executive session, all members of the press, all members of the public, and all employees except those participating in the discussion are cleared from the meeting chambers so that the meeting can be held in private. Alternatively, the governmental body may vacate the meeting chambers and move to a room where the discussion can take place in private.

WHEN CAN AN EXECUTIVE SESSION BE CONVENED?

An executive session can only be convened during a meeting of the governmental body in which notice of the meeting has been properly given to the public and the media as required by law. In other words, an executive session can only be convened at a prearranged gathering of a quorum at a time and place which is set by law or operation of law (the “regular” county commission meeting) or at which the governmental body is authorized to exercise its powers (a special meeting scheduled under the procedures set out in *Code of Alabama 1975, § 11-3-8*).

The definition of “meeting” found in Act No. 2005-40 includes circumstances other than a regular or special meeting where a quorum of the body gathers to deliberate matters expected to come before the body at a later date. However, this is *not* a meeting at which the body can take any official action or properly vote on any issue including whether or not to convene an executive session. Therefore, the body cannot properly convene an executive session during such a gathering.

HOW DOES THE GOVERNMENTAL BODY CONVENE AN EXECUTIVE SESSION?

Act No. 2005-40 sets out detailed steps for convening an executive session, which are outlined below.

Noticed Meeting Called to Order

First of all, as discussed above, the decision to convene an executive session can only be made while a quorum of the body is in session at a meeting where it is authorized by law to take official action.

Motion to Convene

Once a quorum is present for conducting business, a motion to convene an executive session must be made. The motion must state the purpose for executive session and must identify with specificity which of the nine permissible grounds for the calling the executive session applies. The nine permissible grounds are explained below.

Recorded Vote

There must be a recorded vote to convene the executive session, and the motion must pass by a majority of the members of the body present. The vote of each member must be recorded in the minutes. Therefore, this motion cannot be adopted by voice vote.

Statement of Applicability

There are four circumstances under which the law sets out a special requirement that the governmental body be advised, *prior to convening the executive session*, that the executive session is necessary and/or proper to protect confidential information. This advice must be provided in writing or by an oral declaration made on the record and included in the minutes of the meeting. (Sample statements for this purpose are attached). Each of these circumstances will be discussed below in connection with the proper grounds for convening an executive session. In brief, however, the circumstances and specific requirements are as follows:

(1) Pending or Threatened Litigation

The governmental body must be advised by an attorney licensed in Alabama that an executive session is authorized for the planned discussion

(2) Criminal Investigations or Revealing Undercover Agents

The governmental body must be advised that the discussion would “imperil effective law enforcement” if disclosed outside of an executive session. The statement must come from:

- A law enforcement officer with arrest powers,
- A district attorney or assistant district attorney, or
- The attorney general or an assistant attorney general

(3) Matters of Commerce or Trade

The governmental body must be advised that, if not held in executive session, the discussions:

- (a) Would have a detrimental effect upon the competitive position of a party to the negotiations or the location, retention, expansion, or upgrading of a public employee or business entity in the area or
- (b) Would disclose information protected by the Alabama Trade Secrets Act.

This advice must be provided by a person who is involved in the recruitment or retention effort or who has personal knowledge that the discussion will involve information protected by the Alabama Trade Secrets Act.

(4) Public Employee Negotiation Strategy

The governmental body must be advised by a person representing the interests of the governmental body in the negotiations that the discussions would have a detrimental effect on the negotiating position of the governmental body if disclosed outside of an executive session.

Statement on Reconvening “Open” Portion of the Meeting

Prior to calling the executive session to order, the chairperson shall state on the record whether the governmental body will reconvene after the executive session and, if so, the approximate time the body expects to reconvene.

WHO CAN PARTICIPATE IN AN EXECUTIVE SESSION?

With a few exceptions, Act No. 2005-40 does not directly address who can be present during an executive session of the governmental body. However, the attorney general has issued opinions on this issue under the current law, which will likely apply under the new Act as well.

The general rule, at least with regard to discussions of “good name and character”, has been that only persons whose presence is needed in “an official capacity” should be present in an executive session. *See, e.g., AG’s Opinion # 99-247 and # 89-011.* There are exceptions, such as where due process requires that the person whose good name and character is at issue be given notice of the meeting and an opportunity to be heard. *See, e.g., AG’s Opinion # 89-190 and # 99-247.* This would generally apply in the case of a personnel proceeding where the person’s employment or position is at risk.

Therefore, when the governmental body conducts an executive session, all media and all members of the public shall be excluded from the meeting. Additionally, all employees and any other interested parties are excluded, unless their presence is essential to provide information to the body related to the issue being discussed. In this instance, the person providing information should only attend the portion of the executive session wherein he or she is providing information, and when his or “role” in the meeting is completed, he or she should leave the meeting.

Current law only authorizes executive session for discussion of “good name and character” and pending or threatened litigation, so there are no cases or opinions addressing the other circumstances where executive session will be appropriate under the new Act. However, it seems likely that the same principles applied in the above-referenced opinions will be controlling under Act No. 2005-40. Therefore, only those persons essential to the discussion should be permitted to participate in the executive session.

There are a few specific references in the Act to who should be present in an executive session convened for a particular purpose.

- Where the discussion involves pending or threatened litigation, the attorney representing the governmental body in the legal matter at issue *must* be present
- Where the discussion involves the sale or purchase of property, only the person representing the interests of the governmental body in the transaction may be present during the executive session
- If a member of the governmental body has a personal interest in a real estate transaction wherein the price will be discussed in executive session, he or she cannot attend or participate in the executive session concerning that transaction
- Where the discussion of security matters involves critical infrastructure or critical energy infrastructure information, the owners and operators of such infrastructure must be given notice of the meeting and an opportunity to attend the executive session

HOW DOES THE GOVERNMENTAL BODY CONDUCT ITSELF DURING THE EXECUTIVE SESSION?

Under the Act, with the one limited exception related to administrative hearings, no deliberation and no votes can take place during the executive session. The executive session is for discussion and information-gathering purposes *only*, and must be concluded before the body begins to deliberate or make decisions about its course of action.

Deliberation

It is important to understand the difference between “discussion” and “deliberation” to understand what conduct is appropriate in an executive session. The Act defines “*deliberation*” as:

“An exchange of information or ideas among a quorum of members of a governmental body intended to arrive at or influence a decision as to how the 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 body immediately following the discussion or at a later time.”

Simply put, this means that when the body is ready to vote – or ready to debate how it should vote – the executive session must come to an end. Decisions *cannot* be made during the executive session. The body also cannot poll members on how they intend to vote or attempt to persuade them on how they should vote.

Proper Discussion

When an executive session is properly convened, the discussion held by the governmental body must be limited to the subject matter for which the closed meeting is convened, even if there are other issues for which an executive session could properly be convened. As set out above, as part of the motion for convening the executive session, the specific ground for convening the closed meeting must be stated on the record before

the executive session is convened. Therefore, the body cannot decide once it is in the session that it wishes to discuss other matters which were not included in the motion to convene the session. Moreover, the body can never discuss in executive session any issue which is not covered by one of the nine grounds set out in the Act.

Keep in mind also that, while an issue may fall within one of the grounds for executive session, as will be discussed in the section detailing the grounds for executive session, the discussion authorized by the Act may be limited. For example, it is not proper to discuss any aspect of a proposed plan to purchase or sell property. The law only allows a closed door session to discuss the purchase or sale price. Discussion about whether the property is appropriate for its suggested purpose, whether the location is convenient, or whether there are alternatives to the purchase or sale of property must all be discussed in the “open” portion of the meeting.

Terminating Executive Session

When the discussion authorized to be held in executive session has concluded and the body is ready to debate or vote on the issue, or to table any action, the executive session must be adjourned. If the governmental body is reconvening the “open” portion of the meeting, the chairperson shall call the open meeting back into order and the media and public shall be allowed to return for the remainder of the meeting. If the body has moved to a different location for the executive session, it shall return to the body’s original meeting location for the remainder of the meeting.

If the chairperson announced prior to convening the executive session that the body would not reconvene the open meeting upon conclusion of the executive session, the meeting of the governmental body will be adjourned once the “closed door” discussion is completed. The body cannot change its mind and reconvene the open meeting if the media and the public have been advised that the body would not return to the open portion of the meeting following the executive session.

HOW CAN MEMBERS OF THE GOVERNMENTAL BODY PROTECT AGAINST BEING SUED OR FINED?

There are several ways that a member of a governmental body can be sued and/or fined for violating the executive session provisions of the new Act. Some examples are:

- Voting to go into executive session *and* remaining in the executive session during a discussion on a subject not included in the motion to convene the executive session
- Intentionally violating the prohibition against deliberation or voting during the executive session
- Intentionally participating in an executive session on a subject for which there is no authority to convene an executive session
- Failing to follow the proper procedures for convening an executive session

To protect against being sued or having to pay any fine for violating the Act, each member of the body must consider carefully each of the following:

- Whether or not to vote for the body to convene an executive session
- Whether or not to participate in an executive session
- Whether or not to remain in the executive session once convened

The law states that each member of a governmental body who remains in attendance at an alleged “illegal” meeting shall be named in a lawsuit filed over the alleged violation. Therefore, if a member believes that the governmental body is *intentionally* violating the law with regard to executive sessions, such as by deliberating or voting in an executive session, he or she should leave the meeting.

Furthermore, remember that the law says that, to be fined for discussing a subject other than the subject covered in the motion to convene the executive session, the member must have both voted for executive session *and* remained in the closed door session during the “illegal” discussion. Therefore, if the member voted to convene the executive session on proper grounds, but following the proper discussion, the governmental body begins to discuss another issue, the member should leave the meeting. However, if the member did not vote for the executive session, he or she may “legally” remain in the closed door meeting and should not be subject to assessment of fines for discussing subjects not covered by the motion.

WHAT ARE THE GROUNDS FOR EXECUTIVE SESSION?

There are nine grounds for convening an executive session under the Act. Each is written as narrowly as possible to ensure that an executive session is only allowed in very limited circumstances. It is important to become familiar with each ground, and to understand the limited applicability in each area. It is also important to keep in mind that an executive session is never required, but is simply authorized under the limited circumstances set out below.

The nine grounds, each of which is discussed separately below, are as follows:

1. General Reputation and Character
2. Employee Disciplinary Matters
3. Pending or Threatened Litigation and Mediation/Arbitration
4. Security Matters
5. Criminal Investigations
6. Purchase or Sale of Property
7. Matters of Commerce or Trade
8. Public Employee Negotiations Strategy
9. Administrative Hearing Matters

General Reputation and Character/Job Performance

A governmental body may convene an executive session to discuss:

- The general reputation and character of an individual
- The physical condition of an individual
- The professional competence of an individual
- The mental health of an individual
- The job performance of a public employee who is not required by Alabama law to file a Statement of Economic Interests

To understand the scope of this authority for executive session, it is important to fully understand the definitions of terms set out in the Act. Those definitions are as follows:

- General reputation and character -- “Characteristics or actions of a person directly involving good or bad ethical conduct, moral turpitude, or suspected criminal activity, not including job performance.”
- 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. [It] 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. [It] does not include the general reputation and character of the person being discussed.”
- 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.”

Although the definition of “general reputation and character” specifically excludes job performance, with important exceptions noted below, the Act does authorize an executive session to discuss the job performance of public employees. However, the job performance of the following persons *cannot* be discussed in an executive session:

- Any elected or appointed public official
- Any appointed member of a state or local board or commission
- Any public employee required to file a Statement of Economic Interests with the Alabama Ethics Commission pursuant to *Code of Alabama 1975, § 36-25-14*

Additionally, the governing body cannot generally discuss the salary, compensation, and job benefits of these public officials and public employees in executive session.

Although an executive session is generally prohibited to discuss the job performance of public employees required to file a Statement of Economic Interests, such discussion may be allowed in executive session if it fits into one of the other categories for executive session. For example, if the “job performance” discussion involves “professional competence” as that term is defined, an executive session of that aspect of the job performance is permitted. Additionally, if the job performance circumstances to be discussed are the subject of a pending or threatened lawsuit or a personnel hearing where the body is serving in a quasi-judicial capacity, the discussion in executive session would likely be appropriate despite this prohibition.

Clearly, this is a limited exception to the prohibition against closed door meetings involving these specific employees, and the general rule is that the job performance of these individuals cannot be discussed in executive session. It is also important to note that this exception applies *only* to the specific employees named above. There are no circumstances under which the job performance of public officials can be discussed in executive session.

Employee Disciplinary Matters

When expressly allowed by federal or state law, a governmental body may convene an executive session to consider the discipline or dismissal of, or to hear formal written complaints or charges brought against:

- A public employee
- A student at a public school or college
- An individual, corporation, partnership, or other legal entity subject to the regulation of the governmental body

This ground for executive session will have very limited applicability for county government. There must be a specific federal or state law allowing for a “closed-door” meeting in order for this to apply.

Pending or Threatened Litigation/Mediation and Arbitration

A governmental body may convene an executive session:

- To discuss with their attorney the legal ramifications of and legal options regarding pending litigation,
- To discuss with their attorney controversies where litigation is imminently likely if the body pursues a proposed course of action, or
- To meet or confer with a mediator or arbitrator regarding any litigation or decision concerning matters within the jurisdiction of the governmental body involving another party, group, or body.

Before convening an executive session under this ground, the governmental body must be advised by an Alabama attorney that the planned discussion fits into this category. This can be a written opinion or an oral declaration entered into the minutes of the meeting. A sample opinion letter is attached.

The executive session is authorized for discussion *only*. The body may meet with the attorney in private, wherein he or she can explain things like the status of the case, the legal issues involved, and the applicable laws at play. The body can ask the attorney questions about the case and the likely or possible consequences of taking certain actions. However, the body *cannot* deliberate while in executive session. This means that the body cannot vote on any matter, poll the members on how they intend to vote, attempt to persuade other members of the commission, grant settlement authority, or otherwise instruct the attorney on how to proceed with the case.

The act states specifically that “if any deliberation begins among the members of the governmental body regarding what action to take relating to pending or threatened litigation based upon the advice of counsel *the executive session shall be concluded* and the deliberation shall be conducted in the open portion of the meeting or the deliberation shall cease.”

It is also important to keep in mind that this provision only authorizes the executive session to discuss legal ramifications or options *with the body's attorney*. The law does not allow members of the body to meet alone in executive session to discuss legal matters, or to meet with other parties involved or with members of the county commission staff.

**SAMPLE “OPINION LETTER” REGARDING EXECUTIVE SESSION ON A
LEGAL MATTER**

ATTORNEY LETTERHEAD

(Insert Date)

Members of the _____ County Commission
(Insert Address)

RE: Opinion on Applicability of Executive Session

Dear _____ County Commission Members:

This is to advise the members of the _____ County Commission that I have reviewed the matter on which the County Commission is considering convening an executive session for discussion with legal counsel regarding a legal matter or to meet or confer with a mediator or arbitrator, and have determined that, in my legal opinion, this matter is appropriate for executive session under Section 7(a)(3) of Act No. 2005-40

Pursuant to Section 7(a)(3) of Act No. 2005-40, a copy of this letter should be attached to the minutes of the County Commission meeting wherein the body considers a motion to convene an executive session to discuss this matter.

Sincerely,

County Attorney (Alabama Bar No. _____)*

** The attorney should include his or her Bar Number as proof that he or she is licensed to practice in the State of Alabama as required in Section 7(a)(3) of Act No. 2005-40.*

Security Matters

A governmental body may convene an executive session to discuss each of the following security matters if public disclosure could reasonably be expected to be detrimental to public safety or welfare:

- Security plans, procedures, assessments, measures, or systems
- The security or safety of persons, structures, facilities, or other infrastructures
- Critical energy infrastructure information, as defined by federal law

The only specific requirement for use of an executive session under this provision is that, when the discussion involves critical infrastructure or critical energy infrastructure information, the owners and operators of such infrastructure shall be given notice and an opportunity to attend the session.

The authority to convene an executive session to discuss security matters was actually enacted into Alabama law during the 2004 legislative session. The provision in Act No. 2005-40 is virtually identical to the authority enacted in 2004.

Criminal Investigations

A governmental body may convene an executive session related to criminal investigations under the following circumstances:

- To discuss information that would disclose the identity of an undercover law enforcement agent or informer
- To discuss a criminal investigation of someone who is not a public official where there are allegations or charges of specific criminal misconduct
- To discuss whether or not to file a criminal complaint

Before convening an executive session under this ground, the governmental body must be advised that the discussions would imperil effective law enforcement if disclosed outside of an executive session from one of the following:

- A law enforcement officer with authority to make an arrest
- A district attorney or assistant district attorney
- The attorney general or an assistant attorney general

This statement can be given either in writing or by oral declaration entered into the minutes of the meeting. A sample statement is attached.

**SAMPLE “OPINION LETTER” REGARDING EXECUTIVE SESSION ON
A CRIMINAL INVESTIGATION**

LETTERHEAD OF PERSON OR ENTITY GIVING ADVICE

(Insert Date)

Members of the _____ County Commission
(Insert Address)

RE: Opinion on Applicability of Executive Session

Dear _____ County Commission Members:

I have been advised that the _____ County Commission proposes to discuss matters related to a criminal investigation and/or matters which may reveal the identity of an undercover law enforcement agent or informer. I am writing to advise the _____ County Commission that this discussion would imperil effective law enforcement if conducted outside of executive session, and that under authority granted under Section 7(a)(5) of Act No. 2005-40, this body may convene an executive session for this discussion.

Pursuant to Section 7(a)(5) of Act No. 2005-40, a copy of this letter should be attached to the minutes of the County Commission meeting wherein the body considers a motion to convene an executive session to discuss this matter.

Sincerely,

Attorney General/Assistant Attorney General/District
Attorney/Assistant District Attorney/Law Enforcement
Officer with arrest powers*

** This letter must be signed by one of these persons.*

Purchase or Sale of Property

A governmental body may convene an executive session to discuss the consideration the governmental body is willing to offer or accept when considering the purchase, sale, exchange, lease, or market value of real property. Only persons representing the interests of the governmental body in the transaction may be present during the executive session.

The act specifically states that this provision authorizing an executive session shall not apply if:

- Any member of the governmental body has a personal interest in the transaction and attends or participates in the executive session
- A condemnation action has been filed to acquire the real property involved in the discussion

This closed door session may only be held for discussion of the price to offer or accept. The Act states that, “the material terms of any contract to purchase, exchange, or lease real property shall be disclosed in the public portion of a meeting prior to the execution of the contract.” This means that the governmental body cannot execute the contract while in the executive session. The governmental body must make all decisions related to the real estate transaction in an open meeting, and all terms of the contract it intends to enter into must be disclosed in an open meeting before the contract is signed.

Matters of Commerce or Trade

A governmental body may convene an executive session to discuss “preliminary negotiations” involving matters of trade or commerce in which the governmental body is in competition with private individuals or entities or other governmental bodies, either in Alabama, in other states, or in foreign nations. The Act does not define “preliminary negotiations”.

An executive session may also be convened to discuss matters or information as defined or described in the Alabama Trade Secrets Act (Code of Alabama 1975, § 8-27-1 et seq.). Under Code of Alabama 1975, § 8-27-2, a “trade secret” is defined as information that:

- a. Is used or intended for use in a trade or business;
- b. Is included or embodied in a formula, pattern, compilation, computer software, drawing, device, method, technique, or process;
- c. Is not publicly known and is not generally known in the trade or business of the person asserting that it is a trade secret;
- d. Cannot be readily ascertained or derived from publicly available information;
- e. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and
- f. Has significant economic value.

Before convening an executive session under this ground, the governmental body must be advised that the discussions:

- Would have a detrimental effect upon the competitive position of a party to the negotiations if disclosed outside of an executive session, or
- Would have a detrimental effect upon the location, retention, expansion, or upgrading of a public employee or business entity in the area served by the governmental body if disclosed outside of an executive session, or
- Will involve matters or information of the character defined or described in the Alabama Trade Secrets Act

This statement must come from a person who is involved in the recruitment or retention effort or who has personal knowledge that the discussions would disclose information protected by the Alabama Trade Secrets Act. It can be given either in writing or by oral declaration entered into the minutes of the meeting. A sample statement is attached.

**SAMPLE "OPINION LETTER" REGARDING EXECUTIVE SESSION ON
NEGOTIATIONS RELATED TO TRADE OR COMMERCE**

LETTERHEAD OF PERSON OR ENTITY GIVING ADVICE

(Insert Date)

Members of the _____ County Commission
(Insert Address)

RE: Opinion on Applicability of Executive Session

Dear _____ County Commission Members:

Please be advised that I have reviewed the commerce or trade matter which the _____ County Commission proposes to discuss in executive session. It is my opinion that an executive session is authorized for this discussion under Section 7(a)(7) of Act No. 2005-40, and that it will have a detrimental effect upon the competitive position of the _____ County Commission or will reveal information protected by the Alabama Trade Secrets Act if the discussion is conducted outside of executive session.

Pursuant to Section 7(a)(7) of Act No. 2005-40, a copy of this letter should be attached to the minutes of the County Commission meeting wherein the body considers a motion to convene an executive session to discuss this matter.

Sincerely,

_____*

** This letter must be signed by a person involved in the recruitment effort or, if the ground is that the information is protected by the Alabama Trade Secrets Act, by someone with personal knowledge that the discussion regards information covered by the Alabama Trade Secrets Act.*

Public Employee Negotiation Strategy

A governmental body may convene an executive session to discuss strategy in preparation for negotiations between the governmental body and a group of public employees.

This would generally apply where the governmental body is negotiating with a union or other employee interest group, and as such, will have limited applicability for county government.

Before convening an executive session under this ground, the governmental body must be advised from a person representing the interests of the governmental body in such negotiations that the discussions would have a detrimental effect upon the negotiating position of the governmental body if disclosed outside of an executive session. This statement can be given either in writing or by oral declaration entered into the minutes of the meeting. A sample statement is attached.

**SAMPLE "OPINION LETTER" REGARDING EXECUTIVE SESSION ON
PUBLIC EMPLOYEE NEGOTIATIONS**

LETTERHEAD OF PERSON GIVING ADVICE

(Insert Date)

Members of the _____ County Commission
(Insert Address)

RE: Opinion on Applicability of Executive Session

Dear _____ County Commission Members:

This is to advise the members of the _____ County Commission that, as the person representing the interests of the county commission in pending negotiations with a group of county employees, it is my opinion that under Section 7(a)(8) of Act No. 2005-40, the _____ County Commission may properly convene an executive session for this discussion, and that there would be a detrimental effect upon the negotiating position of the _____ County Commission if discussion of these matters was conducted outside of an executive session.

Pursuant to Section 7(a)(8) of Act No. 2005-40, a copy of this letter should be attached to the minutes of the County Commission meeting wherein the body considers a motion to convene an executive session to discuss this matter.

Sincerely,

Person representing County Commission in
negotiations with employees

Administrative Hearing Matters

If the governmental body is acting as a “quasi-judicial body”, the body may convene an executive session to deliberate and discuss evidence or testimony presented during a public or contested case hearing, provided that the body either:

- Votes upon its decision in an open meeting or
- Issues a written decision which may be appealed to a body which has the authority to conduct a hearing or appeal which is open to the public

There is no clear definition of what a “quasi-judicial body” is, but in essence, it means that the governmental body is making judicial decisions, such as in the case of a personnel hearing conducted by or before the governmental body or a committee created by the body. This provision would apply to any state agency conducting administrative hearings on matters governed by the agency, and will likely have limited applicability for county governments. However, this provision would apply in any instance where the county commission conducts an administrative hearing regarding disciplinary or other personnel issues. It would also apply to any personnel board created by the county commission or pursuant to local law.

This provision differs from the other eight grounds for executive session in that it does allow the body to deliberate in the closed session provided that the body will vote in open session or issue a written decision which could be appealed to a body which would conduct an open hearing. In fact, the governmental body acting as a quasi-judicial body can actually vote in the executive session if there will be a written appealable decision.

Section 4

Enforcement Handout

ENFORCEMENT OF ALABAMA'S OPEN MEETINGS LAW

What Kind of Action Will Be Brought for Violation of the Act?

The current open meetings law is a criminal statute. Act No. 2005-40, on the other hand, is a civil statute, with civil penalties imposed for violation of its provisions. The party or parties bringing the suit against members of a governmental body may seek any of the following remedies:

- Monetary penalties against each member found to have violated the Act
- A preliminary injunction or temporary restraining order preventing the body from proceeding with certain meeting(s) or activities pending final outcome of the case
- A declaratory judgment whereby the court will issue an order regarding whether or not the conduct or action(s) of the body is proper under the Act
- A permanent injunction prohibiting the governmental body from certain conduct or action(s)

Who Can Bring the Action?

The lawsuit can be filed in the circuit court of the county where the governmental body is located by any of the following:

- The attorney general
- The district attorney
- Any media organization
- Any Alabama citizen

The Act specifically provides that suit *cannot* be brought by a member of the governmental body against other members of the body on which he or she serves. This would not prevent a member of the governmental body from testifying against other members regarding an alleged violation. However, as shown below, if a member of the body participates in the alleged illegal activity, he or she must be named in the lawsuit, and may be subject to payment of the fines in the event that the alleged violation is proven in court.

Who Gets Sued?

The Act requires that the lawsuit be filed against all members of the governmental body who are alleged to have participated or remained in attendance at an alleged meeting held in violation of the Act.

- The lawsuit is brought against the members in their official capacity
- There is no provision for bring action against employees or other participants in the meeting

What are the Grounds for Bringing Suit?

There are four possible grounds for bringing suit, and the Act requires that a person filing the lawsuit include in the initial complaint the specific violation or violations alleged to have taken place. This will ensure that the members of the governmental body sued will know from the beginning what they are charged with, so that they can properly prepare the defense.

Additionally, the final order from the court must state with specificity the ground or grounds upon which the ruling is based, which, among other things, will assist the members and the county attorney in determining whether there are grounds for appeal.

The grounds for filing suit against members of the governmental body are set out below.

1. The members of the governmental body named in the lawsuit “disregarded the requirements for proper notice of the meeting” as required by the Act.

This would cover the circumstance where the governmental body set a meeting but did not post the notice as required by law or did not provide notice to members of the media who had filed a written request for notice of all meetings. This would not include the situation where an employee failed to follow the governmental body’s instructions to give notice or where a posted notice had been removed from the bulletin board without the knowledge of the governmental body.

In essence, to prevail on this violation, the plaintiff would have to show that the members of the governmental body knew or should have known that they were required by law to post notice and either intentionally failed to give the notice required or failed to take reasonable steps to ensure that notice was properly given.

Counties can easily protect themselves against most lawsuits on these ground if they establish standard procedures for providing notice and keep written documents and records of when and how notice of all meetings is given.

2. The members of the governmental body named in the lawsuit “disregarded provisions of the Act” during the open portion of the meeting”.

This would cover any claims that the public officials disregarded specific provisions of the Act, such as:

- Voting by secret ballot
- Refusing to allow a member of the press or general public to record the meeting under reasonable circumstances

- Failing to conduct the meeting pursuant to the body’s rules of procedure
- Failing to follow the procedures for convening an executive session

This provision does *not* cover any activity which takes place during an executive session. Actions claiming violations of the executive session portions of the Act must be proved as explained below.

3. The members of the governmental body named in the lawsuit “voted to go into executive session and while in executive session discussed matters other than those subjects included in the motion for executive session”.

This violation would occur if the body went into executive session to discuss one issue, and while in executive session discussed subjects other than those covered by the motion to convene the executive session. For example, if an executive session is convened to discuss pending litigation, the governmental body cannot also discuss whether or not to fire the county engineer while in the executive session. This would apply even if there are other issues for which executive session is proper. If the motion to convene only addressed one of those issues proper for executive session, only that issue can be discussed. If there are several “executive session items” to be discussed, there must be a proper motion and affirmative vote to convene the closed door session for each separate subject – even if they will all be discussed in the same executive session.

However, this provision would *not* cover the circumstance where the body deliberated during an executive session. That circumstance is covered by the fourth possible ground for suit, which is set out below.

4. The members of the governmental body named in the lawsuit “intentionally” violated a provision of the Act not covered by one of the other three grounds.

This ground would apply where the governmental body intentionally failed to take certain action required by the Act, such as:

- Refusing to adopt parliamentary rules of procedure
- Refusing to maintain an accurate record of the meeting
- Refusing to include in the record of the meeting, the date, time, place, members present or absent, and action taken at the meeting
- Refusing to make the record of the meeting available to the public as soon as practicable after approval of the minutes
- Knowingly deliberating or voting during an executive session
- Using electronic communications to circumvent the law

The “failure to act” involved here must be intentional. While this will likely be an issue for the court to decide, this would not cover a circumstance where the governmental body

was acting in good faith, but did not realize what was required or did not realize that the requirements had not been met.

What Should Members of the Governmental Body do if they are sued?

The law requires that the defendants (the members of the governmental body sued) file their initial response within seven business days of personal service of the lawsuit. Therefore, when a member of the governmental body is served with legal papers, he or she must contact the county attorney and the county's insurance carrier *immediately*. In the event that service is made to the county commission office, and the members of the body named are not present at the office, the county administrator should contact each member as soon as possible and forward the legal papers to the county attorney immediately upon receipt.

The law also provides that a preliminary hearing on the lawsuit must be held no later than 10 business days after the defendants' initial response, or if no initial response is filed, no later than 17 business days after the lawsuit is filed. The purpose of this hearing is for the plaintiff to convince the court that there is enough evidence to proceed with a trial on the allegations made in the lawsuit. Therefore, the members of the governmental body must be prepared to defend their actions early in the case.

This lawsuit is complicated and is designed to move very quickly, so the county attorney must be involved from the outset. Unless a longer period is agreed to by the parties and the court, a final order on the merits of the case must be issued by the court within 60 days after the preliminary hearing. Therefore, each member of the county commission, and the county attorney, must move quickly to prepare the county's defense.

What are the Penalties if the Court determines that there has been a Violation of the Act?

The new law sets out monetary penalties to be paid where the court determines that there has been a violation of the open meetings law. Under the Act, each member of the governmental body found to have violated the Act can be assessed a penalty of up to \$1000 or one-half of his or her monthly salary for service on the body, whichever is less. Fines can be assessed for each separate violation of the Act.

Any penalties must be paid personally by each member of the governing body found to have violated the law. This means that the county commission cannot pay the fine on behalf of the members and cannot reimburse the members for any fines paid.

Where the violations are related to improper discussion during an executive session, the monetary penalties can *only* be assessed against members who voted to go into executive session *and* remained in the executive session during a discussion determined by the court not to have been authorized by the Act. Therefore, when considering an executive session, each member of the body must carefully consider each of the following:

- Whether or not to vote for the body to convene an executive session

- Whether or not to participate in an executive session
- Whether or not to remain in the executive session once convened

Who Pays the Legal Fees?

The new Act states that a governmental body may pay or provide for the legal expenses of present or former members of the body named as defendants in a lawsuit filed for violation of the Act.

However, the Act does not have any provision requiring the members of the governmental body to pay the attorney's fees of the person or entity filing suit alleging violation of the Act. It also does not make any provision allowing the governmental body or the members sued to be reimbursed their legal fees from the plaintiff in the event the Court finds that there was no violation.

What Happens to the Actions Taken at a Meeting in the Event the Court Finds that there was a Violation of the Act?

Act No. 2005-40 provides that the court may invalidate any action taken during a meeting held in violation of the Act if:

- The lawsuit 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
- Invalidating the action taken will not unduly prejudice third parties who have acted in good faith reliance upon the challenged action of the governmental body

However, the court cannot invalidate any action taken at an open meeting conducted in a manner consistent with the Act because of a violation which occurred prior to the meeting, which would include the failure to post notice or take other actions required under the law before the meeting.

Is there any Immunity Protection under the Act?

Act No. 2005-40 does include limited immunity protection for statements made during a meeting conducted in compliance with the Act by members of the governmental body *or* by employees of that body. The Act states that:

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

This means that a person cannot sue any member of the governmental body or any governmental employee for statements made during a meeting of the body, if those statements are made during a matter pending before the body. For example, if the county commission is considering whether or not to award a bid to a local contractor, and a member of the commission states that the contractor is not reliable or not honest, the commissioner making that statement is protected against any lawsuit brought by the local contractor for the statements made.

The immunity protection granted *only* applies to statements made during a meeting which relate to a matter pending before the governmental body at the time the statement is made. This immunity does *not* authorize members of the county commission or county employees to use the county commission meeting as a protected forum to make inappropriate or unkind statements about other members of the body or any other persons. It is only intended to provide protection in the event that the open discussion required by the law may include sensitive or unflattering statements to be made about some person or entity, where the discussion is directly related to the subject “on the table” in the meeting.

IS THERE A TIME LIMIT FOR BRINGING SUIT?

The new Act states that the a lawsuit alleging a violation of the law must be brought within sixty (60) days of the date that the person or entity bringing suit knew or should have known of the activity which is believed to have been a violation of the Act.

Additionally, the law provides that the lawsuit must be filed no later than within two years of the alleged violation.

Section 5

Rules of Order

Rules of Procedure

_____ County Commission

I. Scope of Rules.

A. The following Rules of Procedures were duly adopted by the _____ County Commission as required by the Alabama Open Meetings Act (Act 2005-40) and shall govern the conduct of the meetings of the County Commission beginning on the ____ day of _____, 200_.

B. The following Rules of Procedure may be amended by affirmative vote of a majority of the members of the Commission. Provided; however, such changes in the Rules of Procedure shall not take affect until the next regular meeting of the Commission following the adoption of such change.

II. Access to Meeting Facilities.

A. Meetings Open to Public. All regular meetings of the Commission shall be open to the public as required by the Alabama Open Meetings Act (Act 2005-40).

B. Accessibility. All regular meetings of the Commission will be conducted in a building which is open to the public.

C. Signs, Placards, Banners. For public safety purposes, no signs or placards mounted on sticks, posts, poles or similar structures shall be allowed in County Commission meeting rooms. Other signs, placards, and banners shall not disrupt meetings or interfere with others' ability to observe the meeting.

D. Weapons. For public safety purposes, the County Commission may establish rules for the removal of weapons from inside the meeting chamber.

III. Quorum.

A. Quorum. A majority of the members of the Commission shall constitute a quorum. No ordinance, resolution, policy, or motion shall be voted on and approved by the Commission unless a quorum is present in the meeting chamber while the vote is taken and the matter is approved by an affirmative vote of the majority of the members present and voting, unless otherwise required by Alabama law.

B. Remaining in Chamber. During a Commission meeting, Commissioners should remain in the chambers at all times unless an emergency or illness should occur. A member of the Commission who leaves the meeting chamber shall not be included in the determination of quorum.

C. Abstaining from Voting. Any member of the Commission who is present in the meeting chamber may, when he or she determines it to be necessary, abstain from voting

or otherwise participating in the proceedings related to a particular matter. Such commissioner who abstains but remains in the chamber shall be deemed to be present for the purpose of constituting a quorum but he or she shall not be deemed to be “present and voting” for the purpose of determining whether a motion has received an adequate number of affirmative votes for passage.

D. Loss of Quorum. In the event that a Commissioner departs a Commission meeting prior to adjournment, and the departure causes a loss of quorum, no further official action may be taken until or unless a quorum is restored, except to vote on a motion to adjourn. If, after a reasonable time not to exceed 15 minutes, the commission still lacks a quorum of its members, the meeting shall be automatically adjourned.

E. Failure to Obtain Quorum. Should no quorum attend within 30 minutes after the time appointed for the beginning of the meeting of the Commission, the Chair or the Vice Chair, or in their absence, another Commissioner, in order of seniority, shall announce that no quorum was present and that the meeting is cancelled. The names of the members present for the meeting shall be recorded in the minutes of the next meeting of the commission.

IV. Presiding Officer.

A. Chair. The Presiding Officer is the Chair of the County Commission. The Chair presides at all meetings of the Commission. The Chair’s responsibilities shall include, but not be solely limited to:

1. Open the meeting, ascertain that a quorum is present at the appropriate time and call the meeting to order, if a quorum is present.
2. Announce the business to come before the Commission, in accordance with the prescribed order of business.
3. Recognize all Commissioners, the County Administrator, the County Engineer and the County Attorney, who seek the floor pursuant to these procedures. All questions and comments are to be directed through the Chair and restated by him or her. The Chair shall repeat every motion and state every question coming before the Commission, call for the vote and announce the decision of the Commission on all matters coming before it.
4. Preserve decorum and order, and in case of disturbance or disorderly conduct in the Commission chambers, may cause the same to be cleared or cause any disruptive individual to be removed.
5. Call to order any member of the Commission who violates any of these procedures.
6. Expedite business in every way compatible with the rights of the members.

7. Remain objective. The Chair must remain objective and may only make a motion, second a motion or vote as provided in these Rules of Procedures.

8. Declare the meeting adjourned when the Commission so votes, when a quorum is no longer present or at any time in the event of an emergency affecting the safety of those present.

B. Vice Chair. In the absence of the Chair or in the event of the Chair's inability to serve, the Vice Chair (or other member designated by local law) shall perform the duties and functions of the Chair until the Chair's return. The Commission shall establish its own procedures for the election of a Vice Chair, provided that any such election of a new Vice Chair shall not take affect until the next regular meeting of the Commission.

V. Order of Business.

A. Official Agenda. There shall be an official agenda for every meeting of the Commission, including special and emergency meetings. As required by Alabama law, the official agenda for special and emergency meetings shall include only those items necessitating the holding of the special or emergency meeting.

The agenda for regularly-scheduled meetings shall identify the items to be considered and determine the order of business to be conducted at the meeting. All proceedings and the order of business at all meetings of the Commission shall be conducted in accordance with the official agenda. This agenda shall be established prior to each meeting under procedures to be adopted by the County Commission. Such procedures may include the conducting of an "administrative" or "agenda-setting" meeting prior to the Commission's regular meeting. These procedures may be amended or altered by the County Commission, but such changes shall not take effect until the next regularly-scheduled meeting of the County Commission.

B. Agenda Format for Regularly-Scheduled Meetings. The official agenda for a regularly-scheduled Commission meeting shall be in substantially the form as set forth below:

1. Call to Order, Welcome
2. Public Comment from Citizens. Such comment shall be limited to 3-minutes per speaker and no more than two speakers may be heard on the same subject as provided elsewhere in the Rules of Procedure.
3. Public Comment from Other Elected Officials.
4. Call of Roll to Establish Quorum, Invocation and Pledge of Allegiance
5. Awards and Presentations
6. Consent Agenda

7. New Business

8. Reports from Staff:

- a. County Administrator
- b. County Engineers
- c. County Attorney
- d. Other

9. Old Business

10. Any Scheduled Public Hearings

11. Discussion Items by Commissioners. Discussion items may only be acted upon by affirmative vote of all commissioners in attendance.

12. Adjourn

C. Consent Agenda. On the portion of the agenda designated as "Consent," all items contained therein may be voted on with one motion. Consent items are only those items considered to be routine in nature, non-controversial and that do not deviate from past Commission direction or policy. However, any member of the Commission, including the Chair, may withdraw an item from the consent agenda, provided that such withdrawal is declared at least one (1) hour before the beginning time of the meeting. An item removed from the "Consent" agenda as provided herein shall be moved to the "New Business" portion of the agenda and it shall then be considered individually.

D. Public Comment from Citizens and Other Elected Officials. Citizens and other elected officials who wish to be heard by the Commission shall be afforded such opportunity during the portion of the meeting so designated. The comment shall conform to the requirements of decorum and order that apply to the members of the commission and the Chair shall take whatever steps are necessary (including the removal of any citizen or other elected official) to preserve such decorum and order. Comments shall be addressed to the County Commission and shall not include any personal or other comments addressed at any member of the County Commission or commission employee. There shall be no debate and no action by the County Commission during this portion of the agenda.

E. New Business. New Business items are items of a general nature that require Commission action or pertain to Commission policy. Items of New Business that are neither approved or defeated by action of the Commission shall be considered under Old Business at the next regular meeting of the Commission.

F. Reports from Staff. The senior staff members shall make reports to the County Commission as directed by the Chair or by majority vote of the commission. The Commission may, by majority vote of those members in attendance at the meeting, take action on any items contained in the report of the staff members.

G. Old Business. Any item which was included on the "New Business" portion of the previous meeting, but was not approved, defeated or tabled by majority vote of the

members of the County Commission present and voting. Motions postponed or carried over to a day certain shall be included on the agenda under “Old Business” on the next regular meeting following the conclusion of the time for which the motion was postponed or carried over.

H. Scheduled Public Hearings. The County Commission may conduct any public hearings during this portion of the commission meeting. Any notice required by law prior to the conduct of the public hearing shall be given by the County Commission.

Individual speakers are required to adhere to a three (3) minute time limit when speaking on issues scheduled for public hearing. The Commission may, by majority vote, either extend or reduce time limits, based on the number of speakers. The comment shall conform to the requirements of decorum and order that apply to the members of the commission and the Chair shall take whatever steps are necessary (including the removal of any citizen or other elected official) to preserve such decorum and order. Comments shall be addressed to the County Commission and shall not include any personal or other comments addressed at any member of the County Commission or commission employee.

I. Discussion Items by Commissioners. On the portion of the agenda designated as “Discussion Items by Commissioners,” no assignments shall be given to the County Administrator, County Engineer, County Attorney or other staff members without the affirmative vote of the majority of the members of the Commission present and voting. The Commission shall take no action on an item raised during this discussion portion of the agenda unless such is accomplished through a motion adopted by an affirmative vote of all members of the Commission present at the meeting.

J. Departure from Order of Business. Any departure from the order of business set forth in the official agenda shall be made only upon affirmative vote of all the members of the Commission present at the meeting.

L. Additions, Deletions, or Technical Corrections to Agenda. Deletions or technical corrections to the agenda may be considered by the Commission and adopted by the passage of a single motion approved by majority vote of those members in attendance at the meeting. Additions to the agenda shall only be made by affirmative vote of all the members of the Commission present at the meeting.

M. Announcing Agenda Items. The Chair shall announce each item on the agenda. The County Administrator, County Engineer, County Attorney or other appropriate staff member shall then be called to present the item to the Commission, when appropriate.

VI. Rules of Debate.

A. Decorum.

1. Every Commissioner desiring to speak should address the Chair, and upon said recognition by the Chair, should confine discussion to the question under debate, avoiding all personalities and unprofessional language.

2. Commissioners shall refrain from: attacking a member's motives; speaking on a prior motion not pending; speaking while the Chair or other Commission members are speaking; speaking against their own motions; and disturbing the Commission.

3. A member once recognized should not be interrupted when speaking unless said member is being called to order. The member should then cease speaking until the question of order is determined, without debate, by the Chair. If in order, said member shall be at liberty to proceed.

4. A member shall be deemed to have yielded the floor when he or she has finished speaking. A member may claim the floor only when recognized by the Chair.

B. Motions.

1. A motion and a second to the motion is to precede any action or debate on an agenda matter unless there are speakers (who are not members of the Commission) to be heard on the agenda matter.

2. All motions shall be made and seconded before debate may proceed.

3. When a motion is presented and seconded, it is under consideration and no other motion shall be received thereafter, except motions to adjourn, to lay on the table, to postpone, to carry over, to substitute, or to amend which shall have preference in the order in which they are listed.

4. Motions to "lay on the table" are made to end debate on a matter and to "remove" it from consideration by the body. The adoption of a motion to "lay on the table" has the affect of defeating the original motion and that item shall not be considered again during the same meeting unless a motion to "reconsider" is adopted as provided herein.

5. Motions to "postpone" or "carry over" must be made by stating the date or time for which the item shall be postponed or carried over. Should such a motion be adopted, the matter will be back before the commission under "Old Business" at the first regular meeting of the Commission following the expiration of the time for which it was postponed or carried over.

6. Motions to "substitute" or "amend" a motion are used to make changes or revisions in the original motion. Such motions are made only after the original motion has received a second but prior to the adoption of the original motion. If the motion to "substitute" or "amend" is approved, the Commission then must the take a second vote to approve the motion "as substituted" or "as amended", as the case may be.

7. Any Commissioner may move to close, or end, debate and "move the question" on the motion being considered. This motion to "move the question" shall be

non-debatable. A successful vote on the motion to “move the question” will end discussion of the item and a vote on all pending motions shall be taken immediately without the offering of any other motions. The Commissioner moving the adoption of the original motion shall have the privilege of making closing remarks (of not more than one minute) before the vote on the motion to “move the question” is taken.

8. Presiding officers who serve by virtue of holding the office of Judge or Probate or County Commission Chair, may not make or second a motion unless specifically authorized by law. Only those persons who represent a district on the Commission and hold the position of presiding officer by virtue of election by the Commission or because of a rotating system may make a motion or offer a second. If such a presiding officer wishes to put forth or second a motion, he or she shall relinquish the chair to the Vice Chair until the main motion, which he or she “moved” or “seconded”, has been disposed.

If a motion or second is made by the Chair as authorized above, the gavel shall be relinquished in the following order:

- (a) to the Vice Chair; or
- (b) in the absence of the Vice Chair to the next Commissioner based upon seniority.

A presiding officer who relinquishes the chair for the purpose of making a motion shall not return to it until the pending main question has been disposed of, since he or she has shown himself or herself to be partisan as far as that particular matter is concerned.

9. The following motions are not debatable and must be voted upon without debate: to adjourn; to lay on the table; and to move the question.

C. Motions to Amend

An amendment to a motion must be germane, that is, it must relate to the substance of the main motion. An amendment may not introduce an independent question, and an amendment may not serve as the equivalent of rejecting the original motion. A Commissioner may amend the main motion in either of the following two ways:

1. By Consent of the Members. The Chair, or another Commissioner through the Chair, may ask for certain changes to be made to the main motion. If there are no objections from the maker of the motion, the motion shall stand as amended.
2. Formal Amendment. An amendment may be presented formally by moving to amend the motion in some way. If it is in the form of a formal motion to amend, a second shall be required and discussion shall follow on the amendment. If an amendment passes, the main motion shall be the

motion as amended. If it fails, the motion shall be the motion as it was before the amendment was presented.

D. Motions to Reconsider

A motion to reconsider any vote or proceeding of the Commission may only be made and seconded by a Commission Member who had previously voted on the prevailing side. Such motion must be made before the conclusion of the meeting during which the original motion was made and approved. A motion to reconsider must be adopted by a majority of those members of the Commission present and voting.

VII. Voting.

A. Voice Vote; Secret Ballots. Unless otherwise directed by the Chair or requested by a member of the Commission, all votes shall be taken by voice and the result shall be announced by the Chair, whose decision shall be final. Such ruling may not be appealed. No vote may be taken by secret or paper ballot.

B. Tabulating the Vote. Should a roll call vote be directed by the Chair or requested by a member of the Commission, the person designated by the Chair shall call the Commissioners, in numerical order of their district numbers, for the purpose of each Commissioner announcing his or her vote. The Chair shall announce the results. Upon any roll call, there shall be no discussion by any Commissioner after the roll call has begun.

C. Voting. Every member in the Commission meeting room or chamber when the question is put must give his or her vote, unless the member has publicly stated that he or she is abstaining. A Commissioner who is serving as Chair by virtue of his or her being elected by the members of the commission or by virtue of a rotating procedure shall vote when his or her district number is called. Such Chair shall only vote once on each motion and shall not cast an additional vote to make or break a tie vote.

D. Voting by Chair. Unless otherwise authorized by law, Probate Judge Chairs and officials holding the office of County Commission Chair who do not represent a district shall only vote in those cases when his or her vote would break a tie vote. Commissioners who represent a district and also serve as Chair shall be entitled to one vote on all questions but shall not cast a second vote to break a tie vote.

D. Absent for Vote; Changing Vote. Any Commissioner absent for a vote on a particular item may record his or her vote, and any Commissioner may change his or her vote before the next item is called for consideration, or before a recess or adjournment is called, whichever occurs first, but not thereafter, except with the consent of all the Commissioners who voted thereon.

E. Majority Vote; Extraordinary Majority Vote; Tie Vote. The passage of any motion, policy, ordinance or resolution shall require the affirmative vote of at least the majority of the members of the Commission who are present and voting. If an extraordinary majority

vote is required by Alabama law, this shall require the affirmative vote of an extraordinary majority of the members of the Commission who are present and eligible to vote. In the case of a tie in votes on any proposal, the proposal fails.

VIII. Public Input: Addressing the County Commission.

A. Public Input. The Commission recognizes the importance of allowing citizens, including other elected officials, to express their opinions on the operation of County government and encourage public participation in the local government process. The Commission also recognizes the necessity for conducting orderly and efficient meetings in order to complete County business in a timely manner. Public Input during the Commission meeting, from both citizens and other elected officials, shall only be given during the time provided in the agenda and only within the procedures set out herein. Citizens or other elected officials shall not address the commission at any time other than as specifically provided in the agenda unless authorized by unanimous consent.

B. Procedure for Public Input

1. At regularly scheduled County Commission meetings, the Commission provides comment periods for citizens and other elected officials to speak and to offer input and comments on items pending before the commission as well as items that are of concern to the public. The remarks of each speaker shall be limited to no more than three (3) minutes, unless the Chair extends the time, and no more than two (2) speakers may be heard on each subject unless authorized by affirmative vote of all members of the commission who are present.
2. A form will be provided for those citizens who wish to make comments. Each person wishing to speak must sign this form prior to the beginning of the Public Comment portion of the agenda.
3. Any citizens wishing to make written comments may provide those to the County Administrator before the conclusion of the meeting. A copy of the written comments will then be provided to the members of the commission.
4. Members of the public are encouraged to communicate directly with their Commissioner prior to or after the commission meeting.

C. Addressing the Commission.

1. When the person's name is called, the person shall step up to the speaker's lectern and shall give the following information in an audible tone of voice for the minutes:
 - (a) name;
 - (b) place of residence or business address;
 - (c) if requested by the Chair, the person may be required to state whether the person speaks for a group of persons or a third party, if the person represents an organization, whether the view expressed by the person

represents an established policy or position approved by the organization, and whether the person is being compensated by the organization.

2. All remarks shall be addressed to the Commission as a body and not to any member thereof.

3. No person, other than a member of the Commission, and the person having the floor, may be permitted to enter into any discussion, either directly or through a member of the Commission, without permission of the Chair. No question may be asked except through the Chair.

4. Speakers should make their comments concise and to the point, and present any data or evidence they wish the Commission to consider. No person may speak more than once on the same subject unless specifically granted permission by the Chair.

D. Decorum.

1. Order must be preserved. No person shall, by speech or otherwise, delay or interrupt the proceedings or the peace of the Commission, or disturb any person having the floor. No person shall refuse to obey the orders of the Chair or the Commission. Any person making irrelevant, impertinent, or slanderous remarks or who becomes boisterous while addressing the Commission shall not be considered orderly or decorous. Any person who becomes disorderly or who fails to confine remarks to the identified subject or business at hand shall be cautioned by the Chair and given the opportunity to conclude remarks on the subject in a decorous manner and within the designated time limit. Any person failing to comply as cautioned shall be barred from making any additional comments during the meeting by the Chair, unless permission to continue or again address the Commission is granted by the majority of the Commission members present.

2. If the Chair declares an individual out of order, he or she will be requested to relinquish the podium. If the person does not do so, he or she is subject to removal from the Commission Chamber or other meeting room.

3. Any person who becomes disruptive or interferes with the orderly business of the Commission may be removed from the Commission Chambers or other meeting room for the remainder of the meeting.

X. Executive Session.

The Commission is authorized to enter into executive session as provided in The Alabama Open Meetings Act (Act 2005-40).

XI. Committees.

The Chair, with the consent of the Commission, may appoint committees as may be needed to assist in the business of the Commission. The meetings of the Committees shall be governed by the Rules of Procedures. All such committees shall be provided a formal charge and shall report to the Commission its findings and recommendations, unless otherwise directed. The Chair shall designate the Chair for each committee appointed. Agendas for committee meetings shall be furnished to all members of the Commission.

XII. Adjournment.

No meeting should be permitted to continue if a quorum is not present. The commission may adjourn by majority vote.

Section 6

Recording Policy

POLICY FOR RECORDING PROCEEDINGS OF THE _____ COUNTY COMMISSION

In order to maintain the proper decorum required for conducting the business of the county while, at the same time allowing members of the media or general public to record the proceedings of the county commission, the _____ County Commission hereby adopts the following policy for the recording of any such proceedings:

The use of audio or video recording equipment shall be allowed during any county commission meeting provided that the use of such equipment does not disrupt or disturb the proceedings or interfere with the ability of others in attendance to observe and understand the proceedings. All equipment shall be in proper working condition, and if any malfunction of equipment causes disruption to the proceedings, use of the equipment shall be immediately discontinued. Any persons desiring to record the proceedings shall do so openly and shall sign in with the county commission at the outset of the proceedings.

Video recording shall only be allowed to the extent that there is adequate space in the meeting facilities to accommodate the recording equipment without disturbing or inconveniencing the members of the county commission or those in attendance at the proceedings. The chairperson may limit or prohibit the use of tripods or other video recording accessories if space limitations warrant such restrictions. Unless the equipment can be operated from a seat without unduly disrupting or disturbing the proceedings or others in attendance, all video recording shall take place in the area along the back or side of the room designated for that purpose. No one will be allowed to obstruct the view of others in attendance.

Persons who are video recording the proceedings may leave the meeting room with their equipment during the proceedings provided there is no undue disruption. However, such persons shall only be allowed to return and resume recording if this can be accomplished without disrupting the proceedings or disturbing those in attendance.

If any set up of equipment is required, the set up shall be completed prior to the beginning of the proceedings or during a recess. Persons may be allowed to dismantle the equipment during the proceedings only if done without disruption to the proceedings and without interfering with the ability of others in attendance to observe and hear the proceedings.

Any persons desiring to place microphones or recording devices at the commission table, at the podium, or at any other location within the meeting room shall obtain permission from the chairperson prior to the beginning of the proceedings, and shall make arrangements with the county administrator or other designated county personnel for placement of all equipment. The microphones or recording devices cannot be removed during the proceedings, unless there is a recess of the proceedings called by the chairperson, and the equipment can be removed within the time frame of that recess.

No audio or video recording equipment shall be allowed during any executive session proceedings.

All persons or organizations, including any media organization, shall fully comply with these procedures at all times. Any person or organization violating this policy or otherwise causing undue disruption to the proceedings shall be instructed by the chairperson to discontinue the use of the recording equipment, and any person or organization that refuses to cooperate will be instructed to vacate the proceedings. Failure to comply with instructions to leave may result in removal by law enforcement personnel.

Section 7

Appendix

Copy of Act 2005-40

Copy of Section 11-3-8

Copy of AG Overview of Open Meetings Law