

ACAA WEBINAR

June 17, 2015

10:30 a.m.

AGENDA

I. Welcome Back

*Mary Pons, ACCA Association Counsel
Steve Golsan, ACAA President*

II. Legislative Report

- Open Meetings Law Changes
- Prison Reform
- Bid Preferences
- County Modernization

Mary Pons, ACCA Association Counsel

III. New Deferred Compensation Program Law – Act 2015-83

Mary Pons, ACCA Association Counsel

IV. Update on Special Session Plans

- Advertising Local Bills for Special Session

Mary Pons, ACCA Association Counsel

V. ACCA Convention – August 18-20, 2015

Donna Key, ACCA Director of Events and Education

VI. Questions?

VIII. Next Meeting – July 15, 2015

Changes to the Open Meetings Law

Act 2015-340

The Alabama Legislature passed legislation during the 2015 Regular Session to amend certain aspects of the Open Meetings Law, original enacted in 2015. This is the first time this law has been amended – and most of the amendments are aimed at clarifying the original intent of the law made murky by recent rulings from the Supreme Court of Alabama.

Many of the amendments are positive for local government, providing a little more latitude in the area of economic development discussions and interviewing for department head positions. Additionally, the changes clarify that committees created by a governmental body are subject to the Open Meetings Law and that governmental bodies cannot hold “serial meetings” to avoid the open meeting requirements of the law.

The following is an overview of the major changes in the law pursuant to Act 2015-340.

Committees and Subcommittees

The Act amends the definition of “meeting” to include the following as a fourth “gathering” that constitutes a “meeting”:

The gathering, whether or not it was prearranged, of a quorum of a committee or subcommittee of a governmental body during which the members of the committee or subcommittee deliberate specific matters relating to the purpose of the committee or subcommittee that, at the time of the exchange, the participating members expect to come before the full governmental body, committee, or subcommittee at a later date.

Committees and subcommittees are also now included in the list of circumstances that do not constitute a meeting, such as attending social gatherings or conferences and/or meeting with state or federal officials.

Economic Development Gatherings

The Act amends the section setting out what circumstances do not constitute a meeting to allow for “on-site inspections or meetings with applicants for economic incentives or assistance from the governmental body” as long as there is ***no deliberation***.

Additionally, occasions where a quorum of a body, committee, or subcommittee gathers to discuss an economic, industrial, or commercial prospect or incentive is not considered a meeting provided the discussion does not include conclusions “as to recommendations, policy, decisions or final action” – i.e., there is ***no deliberation***.

Two Member Gatherings

The Act clarifies that two members of a governmental body can talk together at any time as long as they do not deliberate – and specifically applies this provision to “two members of a full governmental body having only three members”.

Serial Meetings

One of the major components of Act 2015-340 is specific language to define – and prohibit – serial meetings. The new Act sets out in detail when a serial meeting occurs and the circumstances under which these gatherings violate the law.

A serial meeting occurs when there is a series of gatherings of two or more members of a governmental body if each of the following applies:

- There is less than a quorum of the body present at each individual gathering and at least one member attends one or more other gatherings in the series.
- The total number of members attending two or more of the series of gatherings collectively constitutes a quorum.
- There is no notice or opportunity for the public to attend as provided in the law.
- The participating members deliberate specific matters they expect to come before the body at a later date.
- The series of gatherings was held for the purpose of circumventing the law.
- At least one of the gatherings in the series occurs within seven calendar days of a vote on any of the matters deliberated.

It is important to note that the law requires proof that the gatherings were held for the purpose of circumventing the law.

The Act provides that “gatherings” are not considered serial meetings if:

- There is no deliberation
- The sole purpose of the gathering was to exchange background and education information with members on specific issues.
- The gatherings are related to a search to fill a position for persons required to file a Statement of Economic Interests until the search has been narrowed to three or fewer persons under consideration.
- The gatherings only involve a single member of a governmental body.

There are a few other “exceptions” that do not generally apply to local government.

Enforcement

One of the cases recently decided by Alabama's Supreme Court dealt with who had "standing" to bring an action for violation of the Open Meetings Law and who was entitled to receive penalties paid in the event of such violation. The new Act addresses these two issues in the following manner:

1. Only citizens who have been "impacted by the alleged violation to an extent which is greater than the impact on the public at large" can bring action under the law, and his or her petition must state specifically how he or she is or will be impacted to a greater extent than the general public.
 - This is actually more limiting than the original law which allowed for actions by *any* Alabama citizen
 - Actions can still be brought by any media organization, the attorney general, or the district attorney
2. Any civil penalties ordered by the court shall be payable to the plaintiff(s).
3. There shall be a minimum penalty of one dollar (\$1.00).

In addition to these "clarifications", the Act also requires that all causes of action based on or arising out of the same alleged violations shall be consolidated into one action.

- No member of a body shall be subject to further liability following a final order related to the same alleged violations.
- Clearly this is another plus for local government.

These amendments to the Open Meetings Law take effect on September 1, 2015.

This new law will be discussed in much more detail at the ACCA Annual Convention in August.

Local Preference under Alabama's Bid Law Act 2015-293

Act 2015-293 makes small changes to Alabama's Competitive Bid Law that could provide significant benefits to county government and their local businesses.

Preference for Local Businesses

Currently, counties can apply a "local preference" for a local business whose bid comes within three percent (3%) of the lowest responsible bidder on items of personal property. Act 2015-293 amends this current provision of law in two ways:

- It increases the preference to five percent (5%)
- It adds services to the list of items for which the local preference can be granted

The local preference continues to be optional and granted only at the discretion of the county commission.

Preferences when Lowest Bidder is "Foreign Entity"

Act 2015-293 provides several "in-state" preferences when the lowest responsible bidder is a "foreign entity", meaning that the business does not have a place of business within the state.

1. The county may award the contract to a local business responsible bidder if his or her bid is within ten percent (10%) of the foreign entity's bid.
2. The county may also award the contract to any of the following in-state responsible bidders that are within ten percent of the foreign entity lowest bidder
 - A woman-owned enterprise
 - A small business enterprise
 - A minority-owned business enterprise
 - A veteran-owned business enterprise
 - A disadvantaged-owned business enterprise

As with the other local preference, this new preference applies to purchases of personal property **and** services.

Act 2015-293 takes effect on August 1, 2015.

County Modernization III

Act 2015-53

Act 2015-53 (ACCA's third "county modernization" effort) revises several outdated sections of Alabama law, and clarifies existing language related to county government. Specifically, the new Act makes the following changes in "county" law:

- **Allow counties general authority to contract with municipalities**
 - Current law allows counties to contract with federal, state, and other county governments. Act 2015-53 amends the law to also allow counties general contracting authority with municipalities in the state.

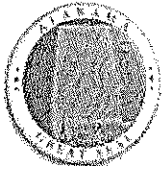
- **Clarify Alabama's law related to county commissioner conflicts of interest**
 - The Act clarifies when conflicts exist for county commissioners, making it consistent with other conflict provisions in Alabama law.
 - There is a limited exception for local businesses where items have been competitively bid.

- **Authorize counties to create a self-funded property insurance program**
 - Currently, two or more counties may enter agreements to self-fund liability and workers' compensation insurance. This Act authorize counties to also enter into agreements to self-fund property insurance.
 - ACCA staff will begin work soon to incorporate property insurance into the ACCA Liability Self-Insurance Fund in the coming months.

- **Clarify bonding requirements for 9-1-1 Board members and employees**
 - This act clarifies which employees and officials are required to be bonded, and provides guidance on the bond amount.
 - It allows county commissions serving as the 911 Board to obtain one bond that covers both functions.

- **Prevent annexing of county-maintained roads along emergency evacuation routes**
 - The new Act protects the new Baldwin Beach Express, a county-maintained road used for emergency evacuation route, against annexation that could result in significant congestion on the route.

Act 2015-53 takes effect on July 1, 2015.



Jackie Graham
State Personnel Director
Alice Ann Bynne
Deputy Director

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State Personnel Board
Joe Dickson
Faye Nelson
John Carroll
Mark Williams
Liane Kelly

Dear Plan Administrator:

I am writing to make you aware of recent legislation which, for the first time, allows municipalities to participate in the State of Alabama 457(b) Deferred Compensation Plan administered by the Alabama State Personnel Board.

The State of Alabama 457(b) Deferred Compensation Plan is a tax deferred savings plan that is offered to State employees. This important benefit has now been extended to employees of municipalities that choose to adopt the Plan. The mission of the State Deferred Compensation Plan is to help Alabama's public employees save and invest for a financially secure retirement. Other goals of the Deferred Compensation Plan are:

- to educate Alabama public employees about the importance of saving and investing for retirement;
- to educate participants about how to invest, so that they can develop an appropriate long-term investment plan;
- to offer a broad array of quality investment options;
- to provide accurate, timely, and efficient plan administration, including clear, helpful communication with participants; and
- to minimize the administrative and investment management costs to employers and participants.

The State's Deferred Compensation Plan offers the experience and expertise of a dedicated field staff provided by Empower Retirement and oversight by the Plan's governing body, the Alabama State Personnel Board. In order to ensure state of the art services for Plan participants, the State Personnel Board hired Empower Retirement to serve as the Plan record keeper.


Attached you will find a brochure with information about the State's Deferred Compensation Plan for your review and consideration. If you are interested in partnering with the State by adopting the Plan as an option for your organization and employees, please contact Jennifer S. Leonard of Empower Retirement at (334) 240-0057 or (205) 873-3753.

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Plan Administrator
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As you review the benefits offered to your employees, please consider the State's Deferred Compensation Plan as an option to help your employees plan for their retirement dreams.

Sincerely,


Jackie Graham
State Personnel Director

State Deferred Compensation Program

Act 2015-83

Ala. Code §36-26-14.

(a) The personnel board may adopt, establish, and maintain a deferred compensation plan or plans, except under Internal Revenue Code Section 403 (b), for the employees of the State of Alabama or any city, town, county, or public entity or corporation organized pursuant to the laws of this state. **Notwithstanding the foregoing, prior to the employees of a county or political subdivision of the county participating in a plan, the employing county or political subdivision of the county shall approve participation in the plan.** The personnel board may include in any such plan any provision that does not cause the plan to fail to qualify for its tax-favored treatment under the United States Internal Revenue Code, including, but not limited to, participant loans, unforeseeable emergency or hardship distributions, Roth deferrals, rollovers, transfers to purchase service credit, and distributions to purchase a retired public safety officer's health insurance.

(b) The State of Alabama Personnel Board may adopt and arrange for consolidated billing and efficient investment, trustee, administrative, and professional services in order that any such plans adopted shall operate without cost to or contribution from the State of Alabama except for incidental expenses associated with administering any such plan, the payroll salary-reductions and the remittance thereof to the trustee or custodian of the plan or plans.

(c) Alabama state employees, or the employees of any city, town, county, or public entity or corporation organized pursuant to the laws of this state may participate in these plans on a voluntary basis by authorizing in writing to their employer a reduction in their cash remuneration to be placed in the plan or plans.

(d) The Finance Director, Comptroller, or other appropriate official is hereby authorized and directed to initiate payroll deductions for the plans as directed by each employee.

(e) Participants who are receiving monthly benefits from the Employees' Retirement System of Alabama, the Judicial Retirement Fund of Alabama, the Teachers' Retirement System of Alabama, or any other public retirement plan may opt to have the cost of their retiree health insurance deducted from their deferred compensation distribution in accordance with the guidelines of the United States Internal Revenue Service.

(f) It is expressly provided that any benefits under the provisions of this section shall be in addition to any other benefits provided by law for any employees of the State of Alabama, and this section is specifically made supplemental to and shall be construed in pari materia with the provisions of the employees' retirement law of Alabama.

(g) Except as otherwise required under the Internal Revenue Code, each such deferred compensation plan and its trust shall be established and maintained for the exclusive benefit, as defined by law of the plan's participants and their beneficiaries, and all assets of any such plan shall be held for the exclusive benefit of the plan's participants and their beneficiaries. For the purposes and within the meaning of Section 19-3B-102, each such plan is declared to be a trust created by statute and is therefore required to be administered in the manner of an express trust.

2015 Convention Agenda

ACCA 87th Annual Convention

August 18-20, 2015

Perdido Beach Resort, Orange Beach, Ala.



Monday, August 17

1 p.m.

Golf Tournament (*Lunch at Noon*)

Gulf Shores Golf Club

1 - 7 p.m.

Fishing Expedition

Reel Surprise Charter Docks

Tuesday, August 18

9 a.m. - 5 p.m.

Affiliate Meetings

- 9 a.m.
ACEA Board Meeting
- 10 a.m.
ACEA Membership Meeting
- 1 p.m.
ACAA Membership Meeting
- 3 p.m.
AAND Membership Meeting
- 4 p.m.
AAEM Membership Meeting

11 a.m. - 5 p.m.

Registration Desk Open

11 a.m. - 7 p.m.

Exhibit Showcase

11 a.m. - Noon

ACCA Board of Directors Meeting

12 - 1 p.m.

Strolling Lunch in the Exhibit Hall

1 - 5 p.m.

CROAA Education Meeting

- **Municipal Authority in Police Jurisdictions**, *ACCA Staff*
- **Marketplace Fairness Update**

- **Legislative Recap**, *ACCA Staff* (what passed and what might be back; revisions to One Spot)
- **Business Session**

2 - 3 p.m.

ACCA Workers Compensation and Liability Insurance Funds Meeting

3 - 4 p.m.

Minority Issues Committee Meeting

5 - 6:30 p.m.

Opening Reception in the Exhibit Hall

Wednesday, August 19

7:30 - 8:30 a.m.

Convention Breakfast

7:45 - 8:30 a.m.

Nominating Committee Meeting
Resolutions Committee Meeting

8 - 11:30 a.m.

Registration Desk Open

8:30 a.m. - 12 p.m.

Opening General Session

- **Fuel Up for a New Day: Prison Reform in Alabama**, *Andy Barbee, Research Specialist, The Council of State Governments Justice Center*
- **Fuel Up for a New Day: Alabama's New Prison Commissioner**, *Jeff Dunn, Commissioner, Alabama Department of Corrections*
- **Fuel Up for a New Day: Economic Development Incentives for Alabama**, *Greg Canfield, Director, Alabama Development Office (invited)*

- **Fuel Up for a New Day: 2035 in Alabama**
- **Fuel Up for a New Day: Changes to Alabama's Gun Laws**, *Rep. Chris England (invited)*
- Report of the ACCA Nominating Committee

12 - 1:15 p.m.

County Agents Kitchen Lunch

1:30 - 5:00 p.m.

Afternoon General Session

- **Fuel Up for a New Day: Road Projects and Transportation**
- **Fuel Up for a New Day: The Future of the Local Government Health Insurance Plan**, *William Ashmore, CEO, Alabama State Employees Insurance Board (invited)*
- **Fuel Up for a New Day: The Supreme Court Ruling on Marriage Definition**, *Ken Webb, Attorney, Webb & Eley, P.C.*
- **Fuel Up for a New Day: Storm Shelters in Alabama**, *Art Faulkner, Director, Alabama Emergency Management Agency*
- **Fuel Up for a New Day: Insuring County Property**, *Sonny Brasfield, ACCA Executive Director*

Thursday, August 20

7:45 - 8:45 a.m.

County Agents Kitchen Breakfast

2015 Convention Agenda

ACCA 87th Annual Convention

August 18-20, 2015

Perdido Beach Resort, Orange Beach, Ala.



8:45 a.m. - 12 p.m.

Breakout Sessions

Commissioners Breakout Session

- Saving Money Through Reappraisal, *Don Armstrong, Shelby County Property Tax Commissioner*
- Important Relationships with Utilities, *Mike Arms, Executive Director, Association of Tennessee Valley Governments*
- Report from North Jackson, *Sonny Brasfield, ACCA Executive Director*
- A County's Cyber Security Scare, *Kellie Graff, St. Clair County Administrator*
- Simplified Sellers Use Tax (Amazon Bill), *ACCA Staff*
- Changes to the Open Meetings Act, *Mary Pons, Association Counsel*
- Income Tax Set Off Program, *Sonny Brasfield, ACCA Executive Director*

Engineers Breakout Session

- The Risks of Distracted Driving, *Mike Miyaji, Director of Training, Baldwin County Sheriff's Office*
- Procedural Requirements for Force Account Work on Federal or State Projects, *Brian Aaron, ALDOT Mobile*
- Effective Signage and Stripping for Rural 2-lane Horizontal Curves, *Tim Barnett, ALDOT*
- Operation and Maintenance Agreements for Aging Dams, *Diane Guthrie, State Conservation Engineer, Alabama NRCS*
- Fatality Accident Investigations on

County Roads, *Craig Dillard, Webb & Eley, PC*

Administrators Breakout Session

(Before the break)

- Drop in Revenue in Court Costs, *Rich Hopson, Administrative Office of the Courts*
- Examiners Report, *James Hall, Dept. of Examiners*
- Local Bid Preference, *ACCA Staff*

Administrators (Combined with Commissioners and CROAA after the break)

- A County's Cyber Security Scare, *Kellie Graff, St. Clair County Administrator*
- Simplified Sellers Use Tax (Amazon Bill), *ACCA Staff*
- Changes to the Open Meetings Act, *Mary Pons, Association Counsel*
- Income Tax Set Off Program, *Sonny Brasfield, ACCA Executive Director*

AAEM Breakout Session

- Update from the Emergency Management Advisory Council
- Public/Private Partnerships

AAND Breakout Session

- Refining our 911 Legislation
- Five Years Later: Release of 9-1-1 Tapes Legislation
- Bond Requirements for 9-1-1 Directors and Boards, *James Hall, Dept. of Examiners*

CROAA Breakout Session (Before the break)

- ATLAS Alabama
- Alabama Taxpayer Identity Protection Program

CROAA (Combined with Commissioners and Administrators after the break)

- A County's Cyber Security Scare, *Kellie Graff, St. Clair County Administrator*
 - Simplified Sellers Use Tax (Amazon Bill), *ACCA Staff*
 - Changes to the Open Meetings Act, *Mary Pons, Association Counsel*
- Income Tax Set Off Program, *Sonny Brasfield, ACCA Executive Director*

12 - 1:15 p.m.

Convention Luncheon Honoring 2014-2015 President Merceria Ludgood

1:30 - 4:45 p.m.

Afternoon General Session

- Fuel Up for a New Day: ACCA's Future and Team 2021
- Fuel Up for a New Day: ACCA Affiliate Reports
- Awards Ceremony
- ACCA Business Session
- District Caucuses

6:30 p.m.

President's Banquet Honoring 2015-2016 President-Elect Ray Long

8 p.m.

President's Inaugural Celebration Dance, *Featuring The Grand Band*