SB101

71732-5

By Senators Little (Z), Mitchell, Mitchem, Butler, Holley, Escott, Smitheman, Little (T), Roberts, Denton, Waggoner, Penn, Sanders, Myers, French, Smith, Dial, Means, and Dixon

RFD: Governmental Affairs

First Read: 01-FEB-05
ENROLLED, An Act,

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. (a) 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.

(b) This act shall be known and may be cited as the "Alabama Open Meetings Act."
Section 2. As used in and for determining the applicability of this act, the following words shall have the following meanings solely for the purposes of this act:

(1) DELIBERATION. 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.

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

(3) 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.

(4) GOVERNMENTAL BODY. All boards, bodies, and commissions of the executive and legislative departments of the state or its political subdivisions or municipalities which expend or appropriate public funds; all multimember governing bodies of departments, agencies, institutions, and instrumentalities of the executive and legislative departments of the state or its political subdivisions or municipalities, including, without limitation, all corporations and other
instrumentalities whose governing boards are comprised of a
majority of members who are appointed or elected by the state
or its political subdivisions, counties or municipalities; and
all quasi-judicial bodies of the executive and legislative
departments of the state and all standing, special, or
advisory committees or subcommittees of, or appointed by, the
body. The term "governmental body" does not include any of the
following:

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.

(5) JOB PERFORMANCE. The observed conduct or actions
of a public employee or public official while on the job in
furtherance of his or her assigned duties. Job performance
includes whether a person is meeting, exceeding, or failing to
meet job requirements or whether formal employment actions
should be taken by the governmental body. "Job performance"
does not include the general reputation and character of the
person being discussed.
(6) MEETING. a. Subject to the limitations herein, the term "meeting" shall only apply to the following:

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

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

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

b. The term "meeting" shall not include:

1. Occasions when a quorum of a governmental body, committee or subcommittee attends social gatherings, conventions, conferences, training programs, press conferences, media events, or otherwise gathers so long as the governmental body does not deliberate specific matters that,
at the time of the exchange, the participating members expect
to come before the governmental body at a later date.

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

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

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

(9) PUBLIC EMPLOYEE. Any person employed at the
state, county, or municipal levels of government or their
instrumentalities, including governmental corporations and authorities, who is paid in whole or in part from state, county or municipal funds. A public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income.

(10) PUBLIC FUNDS. Taxes or fees charged or collected by a governmental body or from the sale of public property including, but not limited to, matching funds from the federal government or income derived from the investment of taxes or fees.

(11) PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal levels of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal levels of government or their instrumentalities, including governmental corporations.

(12) QUORUM. Unless otherwise provided by law, a "quorum" is a majority of the voting members of a governmental 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.

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

(1) The respective houses of the Alabama Legislature
shall develop rules consistent with the Constitution of
Alabama of 1901, providing for access to and prior notice of
all sessions and standing committee and standing subcommittee
meetings and all meetings of permanent and joint legislative
committees.
(2) Any governmental body with statewide jurisdiction shall submit notice of its meeting to the Secretary of State. The Secretary of State shall post the notice on the Internet for at least seven calendar days prior to the day of the meeting. The Secretary of State shall also send electronic mail notifications to anyone who has registered with the Secretary of State to receive notification of meetings. The Secretary of State may promulgate reasonable rules and regulations necessary for the uniform receipt and posting of notice and of registration for electronic mail notification. The Secretary of State shall provide during regular office hours a computer terminal at a place convenient to the public in the office of the Secretary of State that members of the public may use to view notices of meetings posted by the Secretary of State. Any governmental body with less than statewide jurisdiction may also submit notice to the Secretary of State for posting on the website. Nothing shall prevent a governmental body subject to this subsection from posting notice in any additional manner.

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

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

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

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

(b) Unless otherwise specified by law directly
applicable to the governmental body, notice of a meeting, as
defined in Section 2(6)a.2. and 3. as well as meetings called
pursuant to Section 11-43-50, Code of Alabama 1975, shall be
posted as soon as practicable after the meeting is called and
in no event less than 24 hours before the meeting is scheduled
to begin, unless such notice (i) is prevented by emergency
circumstances requiring immediate action to avoid physical
injury to persons or damage to property; or (ii) relates to a
meeting to be held solely to accept the resignation of a
public official or employee. In such situations, notice shall
be given as soon as practical, but in no case less than one
hour before the meeting is to begin. At the same time general
notice is given, special notice shall be directed to any
person who has registered to receive direct notices pursuant
to the provisions of subsection (a)(6) of this section.

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

(d) 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.

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

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

Section 4. A governmental body shall maintain accurate records of its meetings, excluding executive sessions, setting forth the date, time, place, members present or absent, and action taken at each meeting. Except as
otherwise provided by law, the records of each meeting shall become a public record and be made available to the public as soon as practicable after approval.

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

(b) Unless otherwise permitted by this act or directed by provisions in the Constitution of Alabama of 1901, or other existing state law applicable to the governmental body, all votes on matters before a governmental body, including, but not limited to, votes to appropriate or to authorize a governmental body's designated employee, within limits prescribed by the governmental body without further authorization of the governmental body, to spend public funds, to levy taxes or fees, to forgive debts to the governmental body, or to grant tax abatements, shall be made during the open or public portion of a meeting for which notice has been provided pursuant to this act. Voice votes may be allowed. Unless permitted by this act, existing statute or constitutional amendment, no votes shall be taken in executive sessions. Unless otherwise directed by provisions in the Constitution of Alabama of 1901, or other existing state law applicable to a governmental body, a governmental body may not vote by secret ballot.
Section 6. A meeting of a governmental body, except while in executive session, may be openly recorded by any person in attendance by means of a tape recorder or any other means of sonic, photographic, or video reproduction provided the recording does not disrupt the conduct of the meeting. The governmental body may adopt reasonable rules for the implementation of this section.

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

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

(2) When expressly allowed by federal law or state
law, 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, or an
individual, corporation, partnership, or other legal entity
subject to the regulation of the governmental body.

(3) To discuss with their attorney the legal
ramifications of and legal options for pending litigation,
controversies not yet being litigated but imminently likely to
be litigated or imminently likely to be litigated if the
governmental body pursues a proposed course of action or to
meet or confer with a mediator or arbitrator with respect to
any litigation or decision concerning matters within the
jurisdiction of the governmental body involving another party,
group, or body. Prior to voting to convene an executive
session under this exception the governmental body shall
receive a written opinion or oral declaration reflected in the
minutes from an attorney licensed to practice law in Alabama
that this exception is applicable to the planned discussion.

Such declaration shall not otherwise constitute a waiver of
the attorney-client privilege. Notwithstanding the foregoing,
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.

(4) To discuss security plans, procedures,
assessments, measures, or systems, or the security or safety
of persons, structures, facilities, or other infrastructures,
including, without limitation, information concerning critical
infrastructure, as defined by federal law, and critical energy
infrastructure information, as defined by federal law, the
public disclosures of which could reasonably be expected to be
detrimental to public safety or welfare. Provided, however,
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.

(5) To discuss information that would disclose the
identity of an undercover law enforcement agent or informer or
to discuss the criminal investigation of a person who is not a
public official in which allegations or charges of specific
criminal misconduct have been made or to discuss whether or
not to file a criminal complaint. Provided, however, that
prior to such discussions a law enforcement officer with
authority to make an arrest or a district or assistant
district attorney or the attorney general or assistant
Attorney General shall advise the governmental body in writing
or by oral declaration entered into the minutes that the
discussions would imperil effective law enforcement if
disclosed outside of an executive session.

(6) 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. Provided, however, 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. If an executive session is utilized
pursuant to this exception in addition to the members of the
governmental body, only persons representing the interests of
the governmental body in the transaction may be present during
the executive session. This real property discussion exception
shall not apply if:

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

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

(7) 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
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governmental bodies in Alabama or in other states or foreign
nations or to discuss matters or information of the character
defined or described in the Alabama Trade Secrets Act.
Provided, however, that prior to such discussions a person
involved in the recruitment or retention effort or who has
personal knowledge that the discussion will involve matter or
information of the character defined or described in the
Alabama Trade Secrets Act advises the governmental body in
writing or by oral declaration entered into the minutes that
the discussions would have a detrimental effect upon the
competitive position of a party to the negotiations or 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 would disclose information protected by the
Alabama Trade Secrets Act.

(8) To discuss strategy in preparation for
negotiations between the governmental body and a group of
public employees. Provided, however, that prior to such
discussions a person representing the interests of a
governmental body involved in such negotiations advises the
governmental body in writing or by oral declaration entered
into the minutes that the discussions would have a detrimental
effect upon the negotiating position of the governmental body
if disclosed outside of an executive session.
(9) To deliberate and discuss evidence or testimony presented during a public or contested case hearing and vote upon the outcome of the proceeding or hearing if the governmental body is acting in the capacity of a quasi-judicial body, and either votes upon its decision in an open meeting or issues a written decision which may be appealed to a hearing officer, an administrative board, court, or other body which has the authority to conduct a hearing or appeal of the matter which is open to the public.

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

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

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

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

(4) Prior to calling the executive session to order, the presiding officer shall state whether the governmental
body will reconvene after the executive session and, if so, the approximate time the body expects to reconvene.

Section 8. 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.

Section 9. (a) Enforcement of this act may be sought by civil action brought in the county where the governmental body’s primary office is located by any media organization, any Alabama citizen, the Attorney General, or the district attorney for the circuit in which the governmental body is located; provided, however, that no member of a governmental body may serve as a plaintiff in an action brought against another member of the same governmental body for an alleged violation of this act. The complaint shall be verified, shall state specifically the applicable ground or grounds for the complaint as set out in subsections (b)(1) through (4) of Section 9, and shall name in their official capacity all members of the governmental body remaining in attendance at the alleged meeting held in violation of this act. Members of a governmental body who are named as a defendant in a complaint under this act shall serve an initial response to the complaint within seven business days of personal service
of the complaint. A preliminary hearing on the complaint filed
shall be held no later than 10 business days after the date of
the filing of the defendant or defendants initial response to
the complaint or, if no response is filed, no later than 17
business days after the filing of the complaint, or on the
nearest day thereafter as the court shall fix, having regard
to the speediest possible determination of the cause
consistent with the rights of the parties.

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

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

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

(3) That the defendants voted to go into executive
session and while in executive session the defendants
discussed matters other than those subjects included in the
motion to convene an executive session as required by Section
7(b).
(4) That, other than a claim under subsections (1) through (3), the defendants intentionally violated other provisions of this act.

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

(d) During a proceeding involving claims brought under subsection (b)(3), the court shall conduct an in camera proceeding or adopt another procedure as necessary to protect the confidentiality of the matters discussed during the executive session, and if there is a determination that the executive session was authorized by this act, the matters shall not be disclosed or utilized in any other legal proceeding by any individual or attorney who attends the in camera portion of the proceedings.
(e) Upon proof by a preponderance of the evidence of a defendant’s violation of this act, the circuit court shall issue an appropriate final order including, if appropriate, a declaratory judgment or injunction. Prior to a final determination of the merits, temporary restraining orders or preliminary injunctions may be issued upon proper motion and proof as provided and required in the Alabama Rules of Civil Procedure. A final order on the merits shall be issued within 60 days after the preliminary hearing unless a longer period is consented to by all parties and the court.

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

(g) A final order issued against a defendant shall state specifically upon which claim or claims in Section 9(b)(1) through (4) the ruling is based. For each meeting
1 proven to be held in violation of this act for one or more
2 reasons, the court shall impose a civil penalty. The maximum
3 penalty for each meeting shall not exceed one thousand dollars
4 ($1,000) or one half of the defendant's monthly salary for
5 service on the governmental body, whichever is less. With
6 regard to claims related to improper discussions during
7 executive sessions, monetary penalties may only be assessed
8 against defendant members of a governmental body who voted to
9 go into an executive session and who remained in the executive
10 session during a discussion determined by the court not to
11 have been authorized by this act. Penalties imposed against a
12 member of a governmental body found to have acted in violation
13 of this act shall not be paid by nor reimbursed to the member
14 by the governmental body he or she serves.
15
16 (h) A governmental body is authorized to pay for or
17 provide for the legal expenses of present or former members of
18 the body named as defendants in a proceeding under this act.
19
20 Section 10. Section 13A-14-2, Code of Alabama 1975,
21 is repealed. All specific references in the Code of Alabama
22 1975 to Section 13A-14-2 shall be considered a reference to
23 this act and where expressly excluded or included from
24 application of Section 13A-14-2, Code of Alabama 1975, the
25 exclusion or inclusion from application shall remain as it
26 applies to these new sections. The Code Commissioner, when
27 appropriate, shall implement these changes in the Code of
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Alabama 1975. Nothing in this act shall be construed to repeal or amend any portion of the Code of Alabama 1975, in effect on the effective date of this act except as expressly provided herein.

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

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

Section 13. This act shall become effective on October 1, 2005, following its passage and approval by the Governor, or its otherwise becoming law.
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Legay Bailey
President and Presiding Officer of the Senate

Speaker of the House of Representatives

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

McDowell Lee
Secretary

House of Representatives
Amended and passed 08-MAR-05

Senate concurred in House amendment 10-MAR-05

By: Senator Little (Z)

APPROVED 03/15/05
TIME 2:05 p.m.
GOVERNOR

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