RESOURCE MANUAL

for

ALABAMA REGULATORY
BOARDS and COMMISSIONS

Department of Examiners of Public Accounts

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Seventeenth Edition, January 2020

Introduction

Thank you for your service to the people of Alabama. Among our most precious resources is time, which you give unselfishly as you serve. A position on a State board, commission or authority requires the highest level of responsibility, accountability and trust. Whether your service is long standing or just beginning, I am pleased to provide this edition of the Resource Manual for Alabama Regulatory Boards and Commissions to assist to you conduct more efficient meetings, produce reasonable policies, represent the interests of the people of this great State and otherwise conduct the duties of your position.

Recognizing the critical role of our State's regulatory agencies, the Sunset Committee of the Alabama Legislature directed us to develop training assisting State regulatory agencies in conducting their operations appropriately and in accordance with state laws. Our goal is to promote a better understanding of the roles and responsibilities of board members and their staffs, to outline legal requirements, and to share information we think is beneficial.

This manual is intended as a general reference work providing an overview of the responsibilities and requirements imposed on regulatory boards and commissions. It is not intended to replace the advice of legal counsel.

I trust the manual is a valuable reference in conducting your operations.

The manual is also found in the Board Training section of our Internet website at www.examiners.alabama.gov.

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Section One: Regulatory Entities Generally

Important Reasons for the Existence of Regulatory Entities

There are many reasons for regulatory entities to exist. The most important is public protection. The unregulated practice of a profession or occupation can pose a danger to the health, safety, and well-being of the public.

Protection of the public is accomplished as follows:

- Requiring qualifications/requirements of persons or entities before providing service to the public.
- Monitoring the practice of a profession or business to see it is done in a competent manner according to accepted standards.
- Taking appropriate action when requirements are not met.

NOTE: These items are discussed in greater detail in *Section Nine*.

Additional reasons for the regulation of professions and occupations include:

- Public Acceptance – If the public is aware of an oversight/regulatory entity for a specific profession or occupation, the public may feel more secure in using the services of that profession or occupation. The public may also gain an authoritative entity to which questions and concerns may be posed and from which to seek redress.
- Professional Integrity – A profession or occupation existing without an oversight entity may be perceived with less respect and trust. Incompetent practice can discredit a profession. An oversight entity may help combat incompetent practices and increase public trust.

Regulatory Entities and State Government

Alabama government is divided into three branches: the judicial, the legislative, and the executive branches. Each branch plays a role in the regulation of professions and occupations. Regulatory entities are primarily an administrative function of the executive branch of government.

1. *Judicial Branch*

   The actions of regulatory entities are appealed to the judicial branch, thereby making them accountable for their actions. Alternatively, the judicial branch is called upon to enforce the orders of regulatory entities.

2. *Legislative Branch*

   The legislative branch adds the weight of State law to the regulation of professions and occupations in Alabama by enacting regulatory legislation and by monitoring its implementation. Some entities of the legislative branch are:

   - *Legislative Reference Service* **–** Prepares legislation and conducts legal research for the various committees and members of the legislature. The Administrative Procedure

Division provides public access to regulatory rules and administers the process that creates those rules.

- *Legislative Fiscal Office* **–** The Legislative Fiscal Office researches and reports to the legislature on fiscal matters, including the budgets of State government entities.

- *Examiners of Public Accounts* **–** The Examiners of Public Accounts provide legislative oversight of compliance with State laws by State agencies and acceptable practices in the conduct of State business through audits and evaluations.

- *Sunset Committee* **–** The Sunset Committee consists of legislative members from the Senate and the House of Representatives who are tasked with reviewing the operations of State agencies. The Examiners of Public Accounts act as agents for the Sunset Committee by conducting on-site evaluations of agency operations and reporting the results to the committee.

- *Law Institute* – The purpose of the Alabama Law Institute is to clarify and simplify the laws of Alabama, to revise laws that are out-of-date and to fill gaps in the law where there exists legal confusion.

3. *Executive Branch*

The executive branch is responsible for the day-to-day operation of State government in accordance with the laws established by the legislative branch, subject to review by the judicial branch. The governor is the chief executive officer of the State. Other constitutional offices included in the executive branch are:

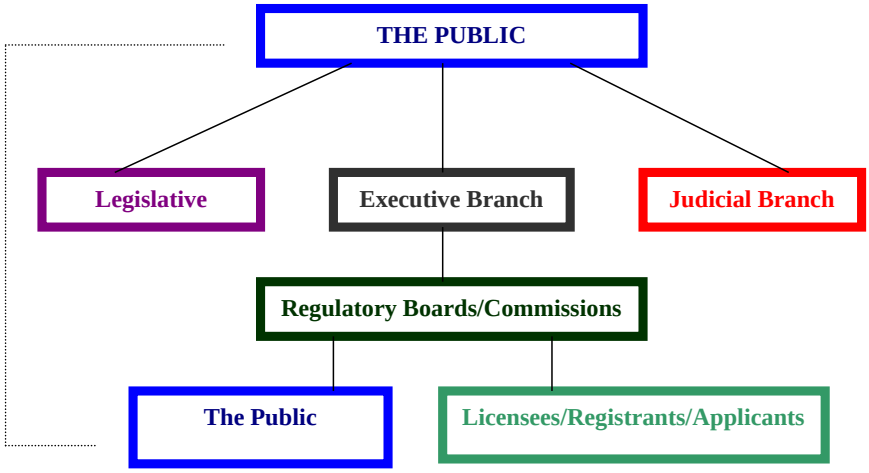
- *State Treasurer* **–** The State Treasurer acts as custodian of State funds.

- *State Auditor* **–** The State Auditor is charged with auditing all receipts and disbursements of the State Treasurer and Department of Finance, and acts as caretaker of all of the State's nonconsumable personal property (equipment, furnishings, and fixtures).

- *Attorney General* **–** The Attorney General is the legal counsel for State governmental entities and controls the use of attorneys by State agencies.

- *Secretary of State* **–** The Secretary of State accomplishes a 1,000 plus duties, mostly dealing with the filing of public records, including acts of the legislature; acting as the official notary to the governor; overseeing elections; and performing business duties related to lands and trademarks, corporations, and the Uniform Commercial Code (UCC) filings. The Secretary of State also acts as the repository for all filings of public notice of meetings for all governmental entities required to comply with the Open Meetings Act, as presented later in this manual, as well as board/commission membership and vacancy notices.

Organization Chart



Section Two: Generally Applicable to All

Regulatory practice in the name of the State cannot exist without specific authority granted in State law. Usually, a licensing law is created when persons seeking the establishment of licensing for a profession or occupation convince the legislature that the unregulated practice harms or endangers the public health, safety, and welfare. Licensing and regulatory entities in Alabama are subject to many laws, rules and regulations, policies, and procedures, in addition to the provisions of their own enabling law. Some are detailed as follows:

Federal Laws

- U.S. Constitution
- U.S. Code

State Laws

State laws restate or clarify federal laws or provide original law where federal law defers to the state or does not address the issue.

- *Constitution of Alabama 1901*, as amended
- ***Code of Alabama 1975***, as amended, includes licensing/regulatory enabling laws and other general laws that are applicable, such as laws governing:
  - Travel Expenses
  - Personnel (State Merit System)
  - Administrative Procedures (Rule-Making)
  - Disciplinary Procedures (Due Process)
  - Ethics/Conflict of Interest
  - State Holidays
  - Accounts Against the State to be Itemized
  - Competitive Bid Law/Request for Proposals
  - Review of Contracts by Legislative Contract Review Committee
  - Legal Services Contract Must be Reviewed
  - Requirements for Posting of Meetings
- [Legislative] Acts of Alabama - Some are incorporated permanently into the ***Code of Alabama 1975,*** and some are not. Your agency's enabling laws were incorporated into ***Code of Alabama 1975***. Annual appropriations, which give agencies the authority to spend public funds, are not.

Administrative Rules and Regulations

Rules and regulations are created by State agencies to explain and clarify laws where the laws are not sufficiently specific.

Federal Rules

Code of Federal Regulations

www.gpoaccess.gov/ecfr/

State Rules

- *Legislative Reference Service - Administrative Procedure Division Rules and Regulations* – The Division provides instructions on how to propose, adopt, amend, etc. rules and

regulations subject to the State's Administrative Procedure Act. The Alabama Administrative Code is a compendium of State agency-specific rules and regulations affecting or potentially affecting Alabama citizens. The rules are found at www.alabamaadministrativecode.state.al.us. Contact the Administrative Procedure Division of the Legislative Reference Service as indicated in the contact list accompanying this manual.

- *Personnel Department Rules and Regulations (Employment of Personnel)* – The *Personnel Department Rules and Regulations* and *Personnel Department Procedures Manual* contain information on personnel laws, rules, and regulations. Personnel Department rules and regulations, by law, attain the full force and effect of law, once approved by the governor. *Personnel Department Rules and Regulations* and the *Personnel Procedures Manual* are not available on the Personnel Department's web site, www.personnel.Alabama.gov; however, they are available by contacting the State Personnel Department as indicated in the contact list accompanying this manual.

- *Department of Finance Rules and Regulations* – The *Department of Finance Fiscal Policy and Procedures Manual* addresses processing and recording financial transactions (receipts, disbursements, investments, purchasing, contracting, etc.). The manual is a regulation of the Department of Finance, which holds the full force and effect of law. The *Fiscal Policy and Procedures Manual* is available at the Procedures tab of the State Comptroller's web site, www.comptroller.alabama.gov, or by contacting the State Department of Finance as indicated in the contact list accompanying this manual.

- *State Auditor's Office, Property Inventory Control Division Rules and Regulations* – The Property Inventory Control Division publishes a property manual with instructions for the proper treatment of transactions involving the acquisition and disposition of nonconsumable personal property (equipment, furniture, etc.). The manual is available on the State Auditor's web site, www.auditor.alabama.gov under the Resources tab.

Reports to the Secretary of State

Act No. 630, ***Acts of Alabama 2006*** (codified as Section 36-14-17) requires the chair of an existing board, commission, committee, or task force with statewide or regional jurisdiction or application to provide the Secretary of State certain information in electronic format. The information required includes the following:

- Name, mailing address, telephone number, and e-mail address of the board
- Name, date of appointment, term of appointment, and expiration date of term of each appointee to the board
- Name and position of the appointing authority

This information is updated and posted to the secretary of state's website by January 4th of each year. The chair of the board/commission/committee/task force shall notify the Secretary of State by electronic means of vacancies, which is published weekly by the Secretary of State on the website. The chair of an existing board must notify the Secretary of State at least 45 days before the expiration of a member's term occurs via electronic

means. The appointing authority for a newly created board and/or the chair of an existing board with a newly created position or with an unexpected vacancy (such as resignation or death) shall give electronic notification within 15 days after the creation of the board or the date of the unexpected vacancy or newly created position.

Opinions
Opinions interpret laws, rules, and regulations when their meaning is not sufficiently clear.

- *Attorney General's Office* – The Attorney General's Office, when asked in writing, offers opinions on the legality of proposed actions or activities when the laws or rules and regulations addressing the action or activity are unclear or appear in conflict. A formal Attorney General's Opinion is not law, but will protect the entity requesting the opinion from prosecution in the event the opinion is later proven incorrect in a court of law. An opinion obtained after completing the act(s) or action(s) in question does not offer this protection. Attorney General Opinions issued since 1979 are available on the Attorney General's Office web site, www.ago.alabama.gov, or by contacting the Attorney General's Office as indicated in the contact list accompanying this manual. Opinions issued prior to 1979 are obtained by contacting the Attorney General's Office.

- *Ethics Commission* – The Ethics Commission rules on matters involving questions concerning conflicts of interest and violations of State ethics laws. Individuals can ask for the commission's opinion on the propriety of *proposed* actions. Ethics commission opinions can be researched at the commission's web site, www.ethics.alabama.gov, or by contacting the Commission as indicated in the contact list accompanying this manual.

- *Department of Examiners of Public Accounts* – When asked in writing, the Chief Examiner will respond to questions regarding the proper conduct of audit-related matters. Following the opinion offers no legal protection, but will prevent an audit finding. Copies of recent reports issued by the Department of Examiners of Public Accounts are available at the department's web site, www.examiners.alabama.gov, or by contacting the Examiners of Public Accounts as indicated in the contact list accompanying this manual.

- *Courts* – Courts do not make law. However, the courts do offer binding interpretation of laws, rules, and regulations, and rule on matters of law. Courts are also the final place for appeals of regulatory entity actions.

Executive Orders
Executive orders are directives issued by the governor, usually to address a specific problem until adequate legislation is enacted or until the problem ceases to exist. Executive orders are numbered sequentially beginning at number one for each governor's administration. Executive orders remain in effect until repealed or superseded. State law takes precedence over executive orders. Executive orders for the current administration are filed with and are obtained from the Secretary of State's Office, Public Information Division, at (334) 242-7224, or by fax at (334) 353-8993, or by visiting the governor's website, www.governor.alabama.gov. There is no charge for copies to State agencies. At the beginning of each new administration, the executive

orders of the prior administration are archived at the Department of Archives and History. ***NOTE***: *Staff at the Secretary of State's Office wishes to receive requests by fax.* Example:

- Executive Order Number 5, dated May 25, 1993, by Governor Jim Folsom, citing the State's excessive cost of legal fees, set the hourly rate for attorneys employed by contract at no more than $85.00 per hour; however, those attorneys who are employed because they possess an expertise in a particular filed of law may negotiate for a higher rate, not to exceed $100.
- Executive Order Number 2, dated January 13, 1995, by Governor Fob James, Jr., removed the $100.00 maximum for attorneys, with payments in excess of $85.00 for attorney services subject to the approval of the governor through his legal office for good cause shown.
- Executive Order 51, dated August 12, 2010, by Governor Bob Riley, sets the legal fees at a maximum of $195 per hour unless it falls within an exception named within the executive order.

Miscellaneous

- *Food*
  Normally, State agencies are not authorized to expend State funds to provide meals or refreshments to employees not in travel status. In instances where meals or refreshments are allowed, the employee is not entitled to also make a claim for travel per diem allowances.

  - Several Attorney General Opinions address the issue of providing meals. Opinion 2001-168, to Robert L. Childree, dated April 26, 2001, states "A State agency may not provide refreshments at a break during a meeting that does not extend through lunch or a mealtime. The opinion to Honorable Tommy Flowers, AGO No. 2001-102, is modified to the extent that it conflicts with this opinion."
  - Opinion 2000-044 and Opinion 2000-045, dated December 14, 1999, to Dr. Melissa M. Galvin, Executive Director of the Commission on Aging, states "The Senior Citizens Hall of Fame Commission may use public funds to pay for a reception and/or banquet where the banquet furthers the public purposes for which the Commission was established." Also, "… [If] the meals are incidental to the meeting, it is appropriate for public funds to be used to finance such a meeting…In order for the meals to be an incidental part of the meeting, the primary purpose of the gathering must be an official meeting at which business is conducted, not a social gathering at which food is provided."
  - Opinion 2001-102 to Tommy Flowers, dated February 27, 2001, states "The State Personnel Department may provide meals and/or refreshments at job analysis meetings, day-long examinations, and consent decree compliance meetings where the meals and/or refreshments are merely incidental to the meetings."

- *Recycling*
  Since April 19, 1990, all State agencies are required to develop an approved plan for recycling. The ***Code of Alabama 1975***, Section 22-22B-3, addresses specific

requirements, as well as the development of an annual recycling plan and of reporting requirements. For assistance with a recycling plan, see the contact list in this manual.

- *Use of Internet*
  Use of computers and the Internet to conduct business requires agencies to review laws and policies pertaining to Internet usage, including e-mail and records retention. Every agency should develop policies for the use of the Internet by employees. The policies should address such issues as appropriate use during office hours, virus prevention, and consequences if policies are ignored.

- *Retention of E-Mail Records*
  E-mail messages are agency records subject to the same retention requirements as the same type of record in another format. The ***Code of Alabama 1975***, Sections 41-13-21 and 41-13-23, prohibits a public official from destroying any public record without the approval of state or local government records commissions.

  Public records, including e-mail messages, are retained for one of three different classification periods, depending on the value of the records to the agency.

- Transitory Records – are records of no meaningful value to an agency for documenting its work, and may be destroyed as soon as no longer needed. An example is a note sent to a co-worker coordinating lunchtimes.
- Temporary Records – are records of documentary value but are not retained permanently. An example is a public inquiry about the services of an agency.
- Permanent Records – are programmatic records of the agency having historical value because they document the function and duties of the agency. An example of this is complaints to the agency.

  NOTE: For more information on record retention, the Department of Archives and History can be found in the contact list in this manual.

- *Alternative Distribution and Publication of Materials Supplied to the Legislature, Per the **Code of Alabama 1975**, Section 29-1-25*
  After August 1, 2001, reports and other documentation normally provided to members of the legislature on paper are provided to the membership on the Internet. More specifically, any State agency, State department, or public agency required to supply paper copies of annual reports and other documents and materials to members of the legislature shall develop and implement an alternative method of distribution and publication.

  The alternative method must include each of the following components:

- Notice provided to each member of the legislature after August 1, 2001, and at the beginning of each subsequent legislative term the State agency, State department, or public agency intends to display or post the report, document, or other material on the

Internet. The notice shall include an explanation of how the information is accessed and copied from the Internet.

- Display of the report, document, or material on the Internet for at least 90 days.
- A written offer to each member of the legislature after August 1, 2001, and at the beginning of each subsequent legislative term, of the opportunity to receive a paper copy of the material. If a member, at the time the notice is received or any other time, requests a paper copy of the material, the material shall be promptly provided.

Each State agency, State department, or public agency may promulgate necessary rules and regulations to implement this section. One example of reporting to the legislature via the Internet is the Department of Examiners of Public Accounts publishing all of its audit reports on the Internet. https://www.examiners.alabama.gov/

Section Three: Agency Specific Statutes

Each agency is created by enabling statutes. The statutes for the agency define the legislative intent for the creation of the agency. The statutes establish qualifications and compensation for members of the agency as well as its purpose, powers, and duties. The statutes state fees, qualifications, and continuing education required for licensure. The law will be either explicit when stating qualifications for licensure or may give the agency the privilege of creating rules based upon law. These rules may not exceed or diminish the agency's law. The enabling statutes may also set fines and/or penalties for non-compliance with the licensure law as well as disciplinary proceedings. The law normally states how the monies collected are deposited, expended and the disposition of funds at year end. Some agencies must report annually to designated officials or receive annual audits. Below is a definition of the duties, powers, and entitlements of State agencies by law:

- A *duty* is an act or course of action required by position, social custom, law, or religion.
- A *power* is the ability or official capacity to exercise control or authority.
- An *entitlement* is a right or claim to something.

Election of Officers

All regulatory agencies are required (a duty) to elect officers, usually annually. Electing officers allows for leadership at meetings and assists parliamentary procedure. Election of officers is important because the chairperson/president and the recording secretary are expected to sign the minutes of meetings.

> "The board shall elect annually a chair and a vice chair." (***Code of Alabama 1975***, Section 34-17A-7(b) [Board of Marriage and Family Therapy])

Annual Report

Many State agencies are required to produce an annual report detailing the activities of the agency for the year covered. Such reports should be made in a timely manner; however, unless specified in enabling statutes, there is no date requirement for the submission of the reports. The governor is the person most commonly provided the report, but the legislature and the secretary of state are also frequently-listed recipients. *The* ***Code of Alabama 1975****, Section 29-1-25, requires that any State agency that is to provide an annual report to the legislature must develop an alternative means for providing the report on the Internet***.** Further requirements for displaying and providing paper copies of the report to the legislature are included in the ***Code*** section. Examples of statutes mandating annual reports include:

- "Keep a record of its proceedings and make an annual report thereon to the Governor and the Legislature." (***Code of Alabama 1975***, Section 34-15C-5(7) [Licensure Board for Interior Designers])
- "The board shall annually submit to the Governor a report of its transactions for the preceding year. The board shall file with the Secretary of State a copy of the report submitted to the Governor." (***Code of Alabama 1975***, Section 34-14A-10 [Home Builders Licensure Board])

Required Location of Office
Some State agencies are required by enabling statutes to manage all or part of their operations in a specific city. For example:

- "The commission shall establish and maintain its principal office in Jasper, Alabama, and establish and maintain such field offices in other coal producing counties as it may consider necessary for the proper discharge of its duties." (***Code of Alabama 1975***, Section 9-16-73(h) [Surface Mining Commission])
- "The legal office of the board shall be located in the City of Montgomery." (***Code of Alabama 1975***, Section 34-11-34 [Licensing Board for Engineers and Land Surveyors])

Roster of Licensees
Frequently, maintaining a roster of licensees is a duty set by the enabling statutes of a State licensing or permitting agency. If this requirement is included in your agency's statutes, it becomes a record your agency must maintain. It is also a public record and must be maintained in a form accessible by the public. Some agencies maintain their rosters of licensees on their websites, as well as in a printable form for copying for which a fee is charged to recover costs.

- "Maintain an official roster of registered interior designers including, but not limited to, information required by the board for enforcement of this chapter." (***Code of Alabama 1975***, Section 34-15C-5(9) [Licensing Board for Interior Designers])
- "Publish, on a quarterly basis, all minutes, except minutes of executive sessions, financial reports, schedules of meetings, including anticipated executive sessions and other pertinent information on the board's website no later than 90 days following the date of occurrence. In addition, publish or post annually the rules and regulations promulgated by the board, a copy of the Dental Practice Act, and a list of all persons licensed to practice under this chapter." (***Code of Alabama 1975***, Section 34-9-43(11) [Board of Dental Examiners])

Subpoena of Witnesses and Records
Administering Oaths and Issuing Subpoenas

Subpoena power cannot be acquired through an agency's administrative rules. It is granted specifically by law. The power to administer oaths and issue subpoenas for the production of witnesses and documents by the State agency is usually found in the agency's enabling statutes. Carefully review the words granting subpoena power to ensure that both the compelling of witnesses and the production of documents and other evidentiary matter is included.

- "The board, or any committee thereof, shall be entitled to the services of the Attorney General in connection with the affairs of the board, and the board shall have the power to compel attendance of witnesses, to require production of documents, to administer oaths and to take testimony and proof concerning all matters within its jurisdiction." (***Code of Alabama 1975,*** Section 34-2-39(b) [Board for Registration of Architects])
- "In carrying into effect the provisions of this chapter, the board may, under the hand of its chairman and the seal of the board, subpoena witnesses and compel their

attendance and may also require them to produce books, papers, maps or documents. Any member of the board may administer oaths of affirmation to witnesses appearing before the board." (***Code of Alabama 1975***, Section 34-12-35 [Board of Registration for Foresters])

The State's Administrative Procedure Act grants limited subpoena authority to the State agencies that are subject to the Act, as provided by the ***Code of Alabama 1975***, Section 41-22-12(c). This section grants the officer presiding over a contested case the authority to issue subpoenas, discovery orders related to relevant matters, and protective orders in accordance with the rules of civil procedure.

Fines

Two types of fines exist in the enabling statutes of regulatory agencies: criminal fines and administrative fines. Criminal fines are monetary punishments imposed upon a person convicted of a crime, and is imposed only by the courts. Administrative fines are imposed by State agencies on grounds provided in State law. In order to impose an administrative fine on a licensee, the fine must be authorized by the agency's enabling statutes. If the statutes are silent on administrative fines, they may not be imposed. Like fees and penalties, administrative fines are imposed only upon conditions specified by law and only in amounts authorized by law. When the law names the grounds for charging an administrative fine, a fine cannot be charged on any other grounds.

- Criminal Fine - "Any person who practices, maintains a school or shop, or acts in any capacity without a license when one is required pursuant to this chapter, or who otherwise violates this chapter, shall be guilty of a misdemeanor and fined five hundred dollars ($500) or imprisoned for no more than 30 days, or both. Any corporation which violates this chapter shall be punished by a fine of no more than one thousand dollars ($1,000)." (***Code of Alabama 1975***, Section 34-7B-7(a) [Board of Cosmetology])
- Administrative Fine - "The board may levy and collect an administrative fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) for any violation of any provision of this chapter or the rules and regulations of the board." (***Code of Alabama 1975***, Section 34-8-4(a) [General Contractors Licensing Board])

Penalties

A penalty is a sum of money the law exacts as punishment for doing some act that is prohibited, or for not doing some act that is required. The authority to charge a penalty must be specifically given in the law. Most State agencies are given the power to charge penalties as a part of their licensing and disciplinary authority. Again, only the type of penalty or amount allowed by law may be charged. If the law is silent regarding penalty fees, then none may be collected. If a penalty is set in the law, the conditions under which it may be charged cannot deviate from the conditions specified by law. For example, if a late renewal fee is set at $20, the agency, by rule-making authority, may not impose a $20 fee for being up to 30 days late, another $20 fee for being up to 60 days late, and another $20 fee for being up to 90 days late. A penalty may only be imposed as allowed by law.

"If a licensee fails to renew his or her license within 90 days following expiration of the previous license, a late penalty of fifty dollars ($50) shall be collected, upon renewal, in addition to the renewal fee." (***Code of Alabama 1975***, Section 34-8-2(a) [General Contractors Licensing Board])

Board Member Compensation

Compensation to board or commission members for days spent conducting the business of the board or commission must be specifically granted in an agency's enabling statutes. If the enabling statutes of a board or commission are silent as to compensation, then none may be paid. Compensation of this type only applies to members of the board or commission, not to staff. Compensation of board or commission members is a separate entitlement from travel expense allowances, and is paid in addition to travel expense allowances. In some statutes, compensation of board or commission members is also called "per diem." "Per diem" and "per day" are synonymous terms. Compensation and travel expense allowances are both termed "per diem" only because they are both paid on a per day basis. Language in the statutes may set compensation at a specific amount or may give the board or commission the authority to set compensation. If the board or commission is allowed to set compensation, it may be limited by conditions specified in the statute. Examples showing the different conditions under which compensation may be paid are as follows:

- "…and, in addition thereto, they shall receive the sum of $50 per diem for every day not to exceed 20 days per year actually spent by the member upon the business of the board." (***Code of Alabama 1975***, Section 34-13-23(c) [Board of Funeral Service])
- "Each member of the board shall receive a per diem fee of not less than fifty dollars ($50) nor more than one hundred dollars ($100) to be determined by the board for the time spent in the performance of official duties…In setting the per diem fee, the board shall give due consideration to funds which are available for that purpose." (***Code of Alabama 1975***, Section 34-20-4(h) [Board of Examiners of Nursing Home Administrators])
- "…in addition to any daily compensation or allowance, if any, as may be provided by the board, in such amount as may be determined by the board…" (***Code of Alabama 1975***, Section 34-21-2(m) [Board of Nursing])

Normally, if compensation is due to a board member, it must be paid unless formally declined by the board member. However, Attorney General Opinion 2008-038 opines a member of a board, who is also a State employee, cannot be paid compensation for both positions. State employees who serve on State boards are only entitled to receive compensation for the highest paid office, position, or employment. The public official or employee is entitled to paid travel expenses while on duty for their normal salaried position. Persons employed by State educational institutions may not receive compensation either if their regular salary is higher than the compensation. ***Attorney General Opinion*** 2010-061 states, "A person appointed to serve on the Board of Funeral Service, who is employed as a faculty member in a state junior college system, does not hold two offices of profit. Although a person may serve in the stated positions simultaneously, that person may only receive compensation at the rate named for the highest paying position."

Section Four: Internal Controls

Internal controls are procedures designed to provide reasonable assurance transactions are properly processed and assets are appropriately protected.

Control Measures

It is the agency's responsibility to safeguard its assets and to execute management instructions and to meet legal requirements. While there is no statutory requirement to implement control procedures, management neglects its job unless there are measures in place to protect the agency's assets and to ensure compliance with instructions and legal requirements. Ultimately, the board or commission or head of an agency is responsible and should work with agency's staff to put effective control measures in place, integrated into the day-to-day operations of the agency, and to monitor compliance with the measures.

A control deficiency exists when procedures in place do not allow management or employees in the normal course of accomplishing their duties to prevent or detect improper transactions or improper disposition of assets. The deficiency could be caused by inadequately designed procedures or lack of adherence to procedures. Loss of assets through fraud or theft is usually traced to control deficiencies.

Controls must fit the agency's activities, but some common controls are as follows:

Cash or Near Cash

- Prohibit checks made payable to "cash" and signing of blank checks
- Bank accounts balances should be reconciled to transactions on a regular basis by someone other than the persons who handle money or make deposits
- Minimize cash transactions because of the ease by which cash can be lost, stolen, or misused.
- Prohibit journal entries without approval or review.
- Reconcile all amounts received to deposits.

Controls over Property

- Equipment is properly marked or tagged to identify the ownership of the property promptly when received and before it is placed in use.
- Furniture, fixtures and equipment is physically inventoried on a regular schedule and compared with records of furniture, fixtures, and equipment on hand

Controls over Expenditures

- Require and document preapproval of purchases.
- Someone other than the person making purchases should compare what is received with what is invoiced and paid for.
- Institute procedures to make sure you do not pay for goods or services without ensuring the goods or services were actually received.
- Only authorized person(s) should sign vouchers.
- Double signatures are required for bank checks.
- Blank checks are physically secured.

- Audit statements/invoices against prepared vouchers by someone who did not prepare the vouchers to verify accuracy before payment
- A person collecting and depositing receipts do not approve vouchers or checks for payment of invoices.
- Original invoices are paid in a timely manner. See Attorney General's Opinions 83-432, 92-074, and 93-266 for more information.

Controls over Receipts

Control procedures are designed to ensure all funds due are received and deposited. Controls are designed so missing funds are detected within the normal course of work. Some examples of appropriate controls are listed below:

- Revenues/receipts are promptly deposited, at least weekly
- Checks are restrictively endorsed immediately upon receipt.
- A record of all receipts are kept and regularly reconciled (at least monthly) to amounts deposited.
- Duties are separated as much as possible so one person cannot both perpetrate and conceal theft or misuse of funds. For instance, one person should not receive the funds from unopened mail, record the receipt, complete the deposit slip, make the deposit, and reconcile the monthly statement.

Personnel and Payroll

- The record keeping function is separated from the payroll process. Record keeping involves maintaining the names, addresses and bank routing and account numbers of every person on the payroll. The person responsible for collecting and maintaining this information does not prepare payrolls. This procedure prevents a payroll clerk from creating a non-existent employee and receiving the employee's paycheck.
- Official time records and leave records are maintained by designated personnel other than the employee submitting the original timesheet or taking leave.
- Leave is entered into the state's Government Human Resources System (GHRS) each pay period. Incorrect balances in the state's system due to unrecorded leave transactions can result in improper taking of leave, improper leave carryover, or improper payroll amounts.
- Prior state service is verified for new employees, even if this information was transferred from another State agency. Length of service can affect payroll amounts.
- No one person should oversee hiring, supervising, approving and reviewing payments for, and maintaining records of employees. Segregating these duties to the extent possible is a good internal control.

Section Five: Membership – Ambassadors of the State

Board or commission members become public officials upon appointment and are responsible for ensuring the proper operation of the agencies they control. They are considered officers of the State. All of the resources they control and their actions as members are subject to public accountability. Funds under their direction are public funds subject to the legal restrictions placed upon public funds.

When the legislature enacts laws authorizing the creation of an entity for regulation of a profession or occupation, they establish requirements for the composition of the regulatory entity's controlling board or commission. This composition is unique to the board or commission. Legal requirements are inherent in all board/commission membership composition. These requirements must be met at the commencement of the member's term of office and must continue during the entire occupancy of the office. See Attorney General's opinion 2011-016 and the Alabama Supreme Court decision in State Ex rel Graddick v. Rampey, 407 So. 2d 823 (Ala. 1981).

Here are some examples of legal requirements:

- *Mandated Residency*
  - Must be an Alabama resident
  - Must be a resident of a specific congressional district
    "(c) The board shall consist of nine members to be appointed by the Governor. One member shall be appointed from each congressional district, and there shall be two at-large members who shall be appointed from within the state." (***Code of Alabama 1975***, Section 34-36-4(c)) [Electrical Contractors Board]
  - Must reside in the State for a specific period of time prior to serving
    "…consisting of …members who shall be citizens of the United States and residents of the state for at least two years prior to appointment…." (***Code of Alabama 1975***, Section 34-25-4(a)) [Polygraph Examiners Board]

- *Mandated Professional Qualifications*
  Professional members must usually meet education and experience requirements.
  "…all of whom shall have been engaged for a period of four consecutive years in their profession as polygraph examiners prior to appointment to the board and engaged at the time of appointment as an active polygraph examiner…" (***Code of Alabama 1975***, Section 34-25-4(a)) [Polygraph Examiners Board]
  "…a graduate of a chartered chiropractic school or college, which required actual attendance in the school as a prerequisite to graduation; currently engaged in the clinical practice of chiropractic and has been engaged in the clinical practice in this state for at least five immediately preceding years; …" (***Code of Alabama 1975***, Section 34-24-140(a)) [Board of Chiropractic Examiners]

- *Mandated Consumer Qualifications/Restrictions*
  "One member of the board shall be a consumer member… Neither the consumer member, nor his or her spouse, shall be a chiropractor. The consumer member shall not be an

immediate family member of a chiropractor, nor shall he or she be employed in the chiropractic field." (***Code of Alabama 1975***, Section 34-24-140(b)) [Board of Chiropractic Examiners]

- *Mandated Nomination/Election and Appointment*
  - Nomination by professional association(s)
    "There is hereby created an Alabama Board of Examiners in Counseling to consist of seven members who shall be citizens of this state and appointed by the Governor… the Executive Committee of the Alabama Counseling Association, or its successor organization, shall submit to the Governor a list of qualified candidates for the board." (***Code of Alabama 1975***, Section 34-8A-4(a) and (b)) [Board of Examiners in Counseling]
  - Nomination by body of licensees
    "The board shall consist of six dentists who shall be selected in the method set forth herein all of whom having been actively engaged in the practice of dentistry in the State of Alabama for at least five years next preceding the date of their election and one dental hygienist elected at-large as provided in subsection (b). Each member of the board shall be a citizen of this state. No member of the board shall be a member of the faculty of any dental school, dental college, dental hygiene school, or dental hygiene college or receive any financial benefits for teaching in any dental school, dental college, dental hygiene school, or dental hygiene college or have a financial interest in a commercial dental laboratory or a dental supply business. One member, who is qualified as provided herein, shall be selected by the Alabama Dental Society every five years. As for all elections of members, any group of 10 or more licensed dentists, residing and practicing dentistry in the state, may nominate a candidate for the position of board member by submitting a petition bearing their signatures to the secretary of the board to be postmarked no later than the first day of July in the year of the election." (***Code of Alabama 1975***, Section 34-9-40(a)) [Dental Examiners Board]
  - Election by district or at large
    "Five districts shall be created: Northern, Central, Western, Eastern, and Southern. One practicing registered interior designer shall be appointed from each district. … The statewide nominating committee shall be composed of one person from each of the five districts listed in subsection (e). … The statewide nominating committee shall select and submit the names of at least two registered interior designers to the Governor…" (***Code of Alabama 1975***, Section 34-15C-4) [Interior Designers Registration Board]
  - Appointment of selected nominee by the appointing authority (usually the governor)
    "There is created the Alabama Board of Examiners of Landscape Architects which shall consist of three members. The board shall be appointed by the Governor with the advice and consent of the Senate. (***Code of Alabama 1975***, Section 34-17-2(a)) [Board of Examiners of Landscape Architects]

- *Senate Confirmation*
  Appointments subject to Senate confirmation are not effective until confirmation occurs, unless the agency's specific law provides otherwise. If a legislative session ends without confirmation, the appointment is considered rejected.

- *Terms and Succession*

Appointments are normally to unexpired terms of a specific number of years. The terms end on specific, predetermined dates without regard to the date of appointment, unless otherwise provided in the agency's law. See Attorney General's Opinion 2005-066 for more information regarding unexpired terms. Additionally, Attorney General's Opinion 2006-110 explains terms of office of new board members beginning upon the expiration of the previous members' terms of office.

Appointments are normally staggered so the positions are not all filled at once with new members. The staggering of appointments is created by law and intended to ensure a sufficient level of experience among board members in conducting board business.

On some boards, the number of consecutive terms is limited. Attorney General's Opinion 2005-040 opines a member of a board may not resign from the board and then be reappointed to another full term if the member is resigning for the purpose of circumventing the consecutive term limitations.

Unless otherwise provided in the agency's law, a member may continue to serve past the end of a term until a replacement is appointed and confirmed [if required]. See Attorney General's Opinion 2005-070

Attorney General's Opinion 95-169, regarding the appointment of members to fill positions vacated prior to their original term of office, provides that replacements must be appointed to the unexpired portion of the term in question, it is the legislature's intent terms continue to expire in accordance with whatever staggering scheme is incorporated in the entity's enabling laws.

- Member A's term runs from October 1, 2011 through September 30, 2015, four years later. Member A resigns January 1, 2014. The term of the individual replacing Member A ends September 30, 2015, which is the original end-of-term date.
- Member A's term runs from October 1, 2011 through September 30, 2015, four years later. As of September 30, 2015, Member A was not reappointed nor was a replacement appointed. Member A, if willing and statutes allow, continues to serve, waiting for replacement. A replacement is appointed January 20, 2016. The replacement's term must expire on September 30, 2019, four years from the expiration date of the previous term, rather than on January 19, 2020, four years from the individual's appointment.

- *Mandated Composition*

Composed of a certain number of persons

Composed of a specific number or type of professionals and/or consumers. Attorney General's Opinion 2006-114 explains board members who no longer fulfill the professional requirements of their position on the board must be removed so new members who meet the requirements may be appointed.

Composed of a membership that is representative of the state population or licensed professionals

> "…Three of the board members shall be qualified polygraph examiners of a governmental law enforcement agency, and two of the board members shall be qualified polygraph examiners and Alabama residents in the commercial field (***Code of Alabama 1975***, Section 34-25-4(a)) [Polygraph Examiners Board]

> "The board shall consist of two citizens from the general public, two counselor educators, and three counselors in private practice." (***Code of Alabama 1975***, Section 34-8A-4(b)) [Board of Examiners in Counseling]

Removal of Members
The board/commission's enabling statutes may or may not dictate how and why members are removed. Removal may occur if a member, while in office, fails to meet the requirements for membership. For instance, if there is a congressional district residency requirement and a member moves to another district or out-of-state, that person is no longer entitled to hold that membership position. Attorney General's Opinion 92-204, dated March 9, 1992, states, "A member of a state board or commission, who is required to be a resident of Alabama, vacates his position on such board or commission when he moves outside the state with the intent of establishing a new residence and abandoning his former one." Attorney General's Opinion 2006-114 gives further guidance on the need for board or commission members to meet all eligibility requirements for continued inclusion on the board.

Removal of disqualified members normally does not occur automatically. If an unqualified member does not resign and there is no specific authority, such as the governor, named in the law to remove the member, he or she can usually be removed only by a specific type of court action known as "quo warranto".

- *Immunity for Official Actions* – The law normally grants immunity from litigation for good-faith actions made in one's official capacity. However, a member or employee may be personally liable for acting outside of official capacity.

  If it can be proven a member, acting on personal bias (i.e. doesn't like the school an applicant graduated from), denies an applicant licensure who meets all statutory requirements, the member acted outside his or her official capacity.

- *Resignation and Rescinding a Resignation* – Membership on a regulatory board or commission can be resigned at any time, for any reason. However, rescinding such a resignation can only be done prior to the resignation actually taking effect. Should a member resign and the resignation become effective, the member cannot be reinstated and is subjected to the regular process for becoming a new member. Attorney General's Opinion 95-00182 discusses this matter in greater detail.

Ethics
The state's Ethics Law is found in the ***Code of Alabama 1975***, Sections 36-25-1 through 36-25-30. This law addresses many aspects of conduct by regulatory entity members and employees.

- *Conflict of Interest and Personal Gain*
  The ***Code of Alabama 1975***, Section 36-25-1(8), defines conflict of interest as "A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust." While a member of a regulatory board, you may be in a position to vote for a regulatory proposal that will affect

your private business. The ***Code of Alabama 1975***, Section 36-25-5(a), states, "A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs."

The ***Code of Alabama 1975***, Section 36-25-5(c), states "No public official or public employee shall use…equipment, facilities, time, materials, human labor, or other public property…for the private benefit or business benefit of the public official, public employee, any other person,…which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy." For instance: As a board member, you recommend and vote to purchase insurance from an insurance business owned by a family member who is also your dependent.

- *Disclosure of Confidential Information Prohibited*
  Section 36-25-8 states "No public official, public employee, former public official or former public employee…shall *use or disclose confidential information* gained in the course of or by reason of his or her position or employment in any way that could result in financial gain other than his or her regular salary..."

- *Revolving Door Law*
  Section 36-25-13(d) states "No public official or public employee who personally participates in the direct regulation, audit, or investigation of a private business… or individual shall within two years of his or her departure from such employment solicit or accept employment with such private business… or individual."
  Act No. 128, ***Acts of Alabama 2016*** amended this section to read as follows: "Except as specifically set out in this section, no public official, director, assistant director, department or division chief, purchasing or procurement agent having the authority to make purchases, or any person who participates in the negotiation or approval of contracts, grants, or awards or any person who negotiates or approves contracts, grants, or awards shall enter into, solicit, or negotiate a contract, grant, or award with the governmental agency of which the person was a member or employee for a period of two years after he or she leaves the membership or employment of such governmental agency. Notwithstanding the prohibition in this subsection, a person serving full-time as the director or a department or division chief who has retired from a governmental agency may enter into a contract with the governmental agency of which the person was an employee for the specific purpose of providing assistance to the governmental agency during the transitional period following retirement, but only if all of the following conditions are met:
  (1) The contract does not extend for more than three months following the date of retirement.
  (2) The retiree is at all times in compliance with Section 36-27-8.2.
  (3) The compensation paid to the retiree through the contract, when combined with the monthly retirement compensation paid to the retiree, does not exceed the gross monthly compensation paid to the retiree on the date of retirement.

(4) The contract is submitted to and approved by the Director of the Ethics Commission as satisfying the above conditions prior to the date the retiree begins work under the contract."

- *Notice of Representation for Fee*
  The ***Code of Alabama 1975***, Section 36-25-10, states, "If a public official or public employee *...represents a client or constituent for a fee* before any…*regulatory body…notice* of the representation shall be given *within 10 days* after the first day of the appearance. Notice shall be filed with the commission in the manner prescribed by it…"

- *Notice of Contract*
  The ***Code of Alabama 1975***, Section 36-25-11, states, "Unless exempt pursuant to Alabama competitive bid laws … no public official or public employee, … shall enter into any contract to provide goods… unless the contract has been awarded through a process of competitive bidding … All such contract awards shall be made as a result of original bid takings… *A copy of each contract, regardless of the amount … shall be filed with the commission within 10 days after the contract has been entered into."*

- *Bribes and Solicitations*
  The ***Code of Alabama 1975***, Section 36-25-12, states, "No person shall offer or give to a member or employee of a governmental agency, board, or commission … and no member or employee of a regulatory body, shall solicit or accept a thing of value … other than in the ordinary course of business…"

- *Statements of Economic Interest*
  The ***Code of Alabama 1975***, Section 36-25-14, provides for the filing of a statement of economic interest by certain persons no later than April 30 of each year covering the period of the preceding calendar year. The statement of Economic Interest forms are available and may be filed on-line at the State Ethics Commission's website http://ethics.alabama.gov/soei.aspx.

  Who Must File – Several classifications of people must file statements of economic interest. The following is a partial list of those required to file. See Section 36-25-14 for further details.

- Any appointed public official and public employee whose base pay is $75,000 or more annually
- Members of the Alabama Ethics Commission
- Appointed members of boards and commissions having statewide jurisdiction (but excluding members of solely advisory boards)
- All full-time, non-merit employees, other than those employed in maintenance, clerical, secretarial, or other similar positions
- Purchasing or procurement agents with authority to make any purchase
- Directors and assistant directors of State agencies
- Chief financial and accounting directors

What General Information Must Be Reported – The statement of economic interest must contain the following information on the person making the filing:

- Name, residential address, business
- Name, address, and business of living spouse and dependents
- Name of living adult children
- Name of parents and siblings
- Name of living parents of spouse.

What Financial Information Must Be Reported – The statement of economic interest must include a list of occupations to which one third or more of working time was given during the previous reporting year by the public official, public employee, or his or her spouse. Financial information is reported in two groups:

- Income
- Indebtedness

Failure to File – Section 36-25-14(d) states, in part, "If the information is not filed as required, the commission shall notify the [person] concerned…that he or she has 10 days to file the report…The commission may, in its discretion, assess a fine of ten dollars ($10) a day, not to exceed one thousand dollars ($1,000), for failure to file timely."

Filing Inaccurate Information (Intentionally) – A person who *intentionally* violates any financial disclosure filing requirement of this chapter shall be subject to administrative fines imposed by the commission, or shall, upon conviction, be guilty of a Class A misdemeanor, or both.

Filing Inaccurate Information (Unintentionally) – Any person who *unintentionally* neglects to include any information relating to the financial disclosure filing requirements of this chapter shall have 90 days to file an amended statement of economic interest without penalty.

Employment by Regulated Person/Business

The ***Code of Alabama 1975***, Section 36-25-9(a), states, unless expressly provided otherwise by law, no person shall serve as a member or employee of a state, county, or municipal regulatory board or commission or other body *that regulates any business with which he is associated***.** The section continues:

"Nothing herein shall prohibit real estate brokers, agents, developers, appraisers, mortgage bankers, or other persons in the real estate field, or other state-licensed professionals, from serving on any planning boards or commissions, housing authorities, zoning board, board of adjustment, code enforcement board, industrial board, utilities board, state board, or commission."

Please note this section provides an exemption for members of State boards. No such exemption is provided for employees of the boards. According to Attorney General's Opinion 2006-061, it is a conflict of interest for a board member to be employed by his or

her board. A board member may handle the administrative duties of the board without compensation other than as allowed by law.

"Business with Which Associated" Defined
The ***Code of Alabama 1975***, Section 36-25-1(2), defines "business with which he is associated" as, "Any business of which the person *or a member of his family* is an officer, owner, partner, board of director member, *employee* or holder of more than five percent of the fair market value of the business."

For example, an employee of a board licensing a business with a spouse working for that business - there is a potential violation of the Ethics Law.

The Ethics Law should also be reviewed for the definition of "family". It changes depending on position in state government.

*NOTE***:** The State Ethics Commission offers specific training on the State Ethics Law and should be contacted as indicated on the contact list.

Attorney General's Opinion 2006-061 gives further guidance on board of commission members being hired by the board or commission to perform work other than his or her board member duties.

Reporting
If you become aware of a possible ethics violation, there are specific reporting requirements to follow, subject to a charge of violation of the Ethics Law. The ***Code of Alabama 1975***, Section 36-25-17(a), requires every governmental agency head to file a report with the Ethics Commission within 10 days on any matters coming to his or her attention in his or her official capacity which constitute a violation of the state Ethics Law. Subsection (b) further requires all governmental agency heads to cooperate in every possible manner in connection with any investigation or hearing, public or private, which may be conducted by the commission.

NOTE: There is a Unites States Constitutional 5th Amendment exception to reporting a violation, if such reporting would result in self-incrimination.

Ethics Session Attendance
Executive Order Number 58, dated August 23, 2001, signed by Governor Don Siegelman, orders all departmental and cabinet-level officials and appointed agency directors to attend an "Ethics and Public Service Continuing Education" session every two years, for a minimum of two hours, beginning in the year 2002. Notification of upcoming training sessions are found on the Ethics Commission website, which is included in the contact list in this manual.

Ethics training is required for public officials and public employees who file statement of Economic Interest forms. Under new legislation passed during the 2010 Special Session, training must be completed by April 30, 2011 for current public officials and public

employees. This is an on-line educational review of the Alabama Ethics Law provided on the website of the Ethics Commission. After this date, the training should be completed within 90 days of appointment or hire date.

Section Six: Administrative Procedures

Adoption of Rules
Rules are adopted to make the law practically functional. The power to adopt rules must be specifically given before a State agency can adopt administrative rules, normally known as rules and regulations. This power is bestowed on most State agencies in the powers and duties section of the agency's enabling statutes. Once the authority is granted, and unless specifically exempted, State agencies must conform to the Administrative Procedure Act (***Code of Alabama 1975***, Sections 41-22-1 through 41-22-27) with regard to the creation and adoption of its administrative rules. ***Act No. 139, Acts of Alabama 2018*** requires the notice of intended action published prior to the adoption, amendment, or repeal of a rule to contain a statement whether the proposed rule relates to or affects any litigation to which the agency is a party.

- *Administrative Procedure Act (APA) Compliance*
  The APA is intended to provide a minimum procedural code for the operation of all State agencies when they take action affecting the rights and duties of the public.

- The APA defines "agency" as every board, bureau, commission, department, officer, or other administrative office or unit of the State, including the Alabama Department of Environmental Management, other than the Legislature and its agencies, the Alabama State Port Authority, the courts, the Alabama Public Service Commission, or the State Banking Department, whose administrative procedures are governed by Sections 5-2A-8 and 5-2A-9.
- The APA defines a "rule" as each regulation, standard, or statement of general applicability which implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule or by federal statute or by federal rule or regulation; provided, however, all forms shall be filed with the secretary of the agency and with the Legislative Reference Service and all forms, except intergovernmental, interagency, and intra-agency forms which do not affect the rights of the public and emergency forms adopted pursuant to Section 41-22-5, shall be published in the Agency Administrative Code.
- The requirement for creation and the method of adoption for rules is detailed in the Act. The process embodied in the law must be followed exactly or the rule is invalid and cannot be enforced. For detailed instruction, consult the Administrative Procedure Division of the Legislative Reference Service.
- The State agency is required to designate a secretary and to file in the secretary's office a certified copy of each rule adopted. The agency is also required to make available for public inspection and copying, at cost, all rules and other written statements of policy used in the discharge of the agency's functions.
- Agencies must, in addition, make available for public inspection and copying, at cost, an index by name and subject of all final orders, decisions, and opinions which are issued after October 1, 1982, except those expressly made confidential or privileged by statute or order of court.

- *Cannot Exceed Law*
  Attorney General's Opinions maintain a State agency may not exceed in its rules the authority granted to it by the agency's enabling statutes. The area most frequently prone to improper enlargement is fees. An agency may only charge fees specifically allowed by law. If no specific authority is granted, then the agency may not charge a fee. Also, an agency may not add to or upgrade requirements for licensure through its rule-making authority.

  The enabling statutes of the Alabama Furniture Movers Board mandate licensing master, journeyman, and apprentice furniture movers. Apprentice furniture movers must pass an examination to work as furniture movers. Higher levels of licensure are achieved through subsequent experience. The board adopts a rule requiring a permit for furniture movers who take the examination and are awaiting notification of passing or failing. In this way, the movers are hired and begin working in anticipation of passing the exam and becoming licensed. This rule exceeds the authority granted in the board's enabling statutes and is not legal. Since the law requires passing an examination as a prerequisite to working as an apprentice, the board cannot by rule legally authorize practice before the candidate officially passes the examination.

Setting Fees
In their enabling statutes, State agencies are generally granted the authority to collect fees for licensing and regulatory activities, but for most, there are limits embodied in the law. Absent specific statutory authority, no fee can be charged. The following discussion addresses some of the conditions placed upon the charging of fees by language in the law.

- *Fees Set by Administrative Action*
  In this circumstance, the enabling statutes grant the State agency the authority to set fees. Frequently, the authority only applies to the amount of fees charged. The types of fees the agency can collect are usually specified in the statutes. The fee amounts are set by official action of the State agency and can be changed or affirmed each year. State agencies are to include a fee schedule as a part of their administrative code. The rule-making process as outlined in the Administrative Procedure Act must be completely followed when setting and changing the fees. Examples of fees set by State agency action include:

- "Any person desiring a license to practice Veterinary Medicine in this state shall make written application in the English language to the board. The application shall show that the applicant is at least 21 years old, is a graduate of an accredited Veterinary School, is a citizen of the United States or, if not a citizen of the United States, is legally present in the United States with appropriate documentation from the federal government, and any other information and proof as the board may require pursuant to the administrative code of the board. The application shall be accompanied by application and examination fees in the amounts established and published by the board". (***Code of Alabama 1975***, Section 34-29-72(a) [Board of Veterinary Medical Examiners])

- "(a) The board shall admit to examination for licensure as a nursing home administrator …Each candidate shall also be required, prior to admission to the examination, to pay an examination fee established by the board pursuant to its rule-making authority.

(b) The board may establish an application fee for the internship or administrator in training (AIT) program and a fee for preceptor, certification, and recertification of the administrator in training (AIT) program pursuant to its rule-making authority." (***Code of Alabama 1975***, Section 34-20-9(a)(b) Board of Examiners of [Nursing Home Administrators])

- *Cannot Exceed What is Allowed by Law*
  Numerous Attorney General Opinions maintain where the enabling statutes of an agency do not grant specific authority to set the type or amount of a fee, the agency cannot do so through the rule-making process. If the law is silent on the issue of charging fees for licensing and regulatory functions, then there is no authority for the agency to charge fees.

  The Alabama Board of Frisbee Throwers' enabling statutes mandate an applicant will provide proof of education, a completed application, and an application fee of $80 to be licensed. In addition, the applicant must pass an examination prepared by the board. No fee for the examination is mentioned in the statutes. The board votes to charge a $30 examination fee to cover the costs of preparing, proctoring, and grading the examination. As the examination fee was not included in the board's statutes, it is not legal. Upon discovering the examination fee is illegal, the board votes to increase the application fee by $30 to $110. As the fee is set by law at $80, this rule is also illegal.

- *Negotiated Settlements*
  The ***Code of Alabama 1975***, Section 41-22-12(f), the Administrative Procedure Act, provides, "Unless precluded by statute, informal dispositions may be made of any contested case by stipulation, agreed settlement, consent order, or default or by another method agreed upon by the parties in writing." This section authorizes negotiated settlements as a means of resolving a disciplinary hearing. The amount of the monetary settlement or other conditions agreed upon is not governed by the agency's enabling statutes for penalties and fines, but is set according to conditions the parties to the case agree upon. Funds received by State agencies through negotiated settlements can be deposited in the agencies' operating funds.

Act No. 88, ***Acts of Alabama 2013*** codified as Section 41-22-5.2 requires agencies to review existing rules within 5 years of July 1, 2013 to determine whether rules should continue without change, be amended or rescinded. If the head of the agency determines this is not feasible, the agency shall publish a statement certifying that determination. Any rule adopted after July 1, 2013, must be reviewed every five years in the same manner.

Act No. 291, ***Acts of Alabama 2015*** further clarifies that an emergency rule is strictly construed and not valid except to the extent necessary to prevent, mitigate, or resolve immediate danger to the public health, safety, or welfare. (Section 41-22-5 (b)) The Act also adds language to Section 41-22-5.1 (h), which states "Notwithstanding the provisions of subsection (c) of Section 41-22-6 providing that a rule is effective 45 days after filing with Legislative Reference Service, in any case in which the committee or its successor committee, agency, or service determines that the filing of a business economic impact statement is warranted as provided herein, the effective date of the rule shall be 45 additional

days after the effective date specified in subsection (c) of Section 41-22-6. In all other respects, the remainder of this chapter shall continue to apply to the proposed rule."
To Section 41-22-6, Act No. 291, ***Acts of Alabama 2015*** adds (c)(5), which states "Each rule hereafter adopted is effective 45 days after filling with the Legislative Reference Service unless it is: A rule that takes effect upon adjournment of the next legislative session following completion of the appeal process as set forth in Section 41-22-23, if the Legislature fails to take action to disapprove the rule after approval by the Lieutenant Governor." Section 41-22-22 was rewritten as follows: "The committee shall review all agency rules prior to their adoption. The committee shall have full access to all resources of the legislative department and all agencies thereof when conducting its review." Lastly, there are many changes to Section 41-22-23 regarding the committee and the approval/disapproval and appeal processes. Please review that section of the APA for more information.

Act No. 498, Acts of Alabama 2019 specifies that a rule may not become effective until at least 45 days after notice is published in the Alabama Administrative Monthly that the certified rule was filed with the Legislative Services Agency. This Act also renames the Joint Committee on Administrative Regulation Review as the Joint Committee on Administrative Rule Review. 2019_498 APA.pdf

Section Seven: Meetings

Meetings

- *Mandated Meetings*

  The minimum number of meetings is sometimes mandated by enabling statutes. If so mandated, the agency must meet as required by statute. Other aspects of meetings sometimes mandated by law are the location of the meeting or the purpose of the meeting. Usually, a specification is also set for additional special, or called, meetings. In some enabling statutes, a time period for notice of meetings to agency members is set. Examples of mandated meetings include:

  - "The board shall meet at least four times a year on a quarterly basis with the board designating the months of the meetings for the coming year at its annual organizational meeting. Regular meetings shall be called by the chair who shall designate the time and place of each regular meeting. The chair or a majority of the members of the board may also call a special meeting of the board." (***Code of Alabama 1975***, Section 34-21A-4(b)) [Onsite Waste Water Board])
  - "The board shall meet at least once each calendar quarter to conduct its business. Places of future meetings shall be decided by the vote of the members at meetings." (***Code of Alabama 1975***, Section 34-27A-4 [Real Estate Appraisers Board])

Act No. 340, ***Acts of Alabama 2015*** further defines and prohibits serial meetings as well as further defines "deliberation", "governmental body" and "meeting" to apply to the exchange of information or ideas among a quorum of members of a committee, subcommittee or full governmental body intended to arrive at or influence a decision as to how any members of the governmental body should vote on a specific matter that, at the time of the exchange, the participating members expect to come before the committee, subcommittee, or full governmental body immediately following the discussion or at a later time. It also clarifies that the Legislature is solely governed by the Alabama Constitution which establishes that the doors of each house of the Alabama Legislature shall be open to the public except when secrecy is required under the circumstances and that no other provision of this chapter applies to the Legislature. The Act allows citizens to bring civil actions under the Open Meetings Act and sets minimum penalty of $1 with the prevailing plaintiff receiving any civil penalties awarded against the defendants.

Act No. 474, ***Acts of Alabama 2015*** clarifies the term "meeting" by adding (3) to 36-25A-2(6)(b), which states "Notwithstanding subparagraph 1., occasions when two members of a governmental body, including two members of a governmental body which has three members, gather for the sole purpose of exchanging background and education information or for the sole purpose of discussing an economic, industrial, or commercial prospect or incentive that does not include a conclusion as to recommendations, policy, decision or final action on the terms or request or an offer of public financial resources."

- *Minutes*

  Minutes should record the official actions of the agency. The Department of Archives and History provides procedural leaflet on its website, which is a useful guide for producing

minutes and making them available to the public. This leaflet is the guideline used for reviewing meeting minutes during a compliance examination.

Open Meetings Act Compliance

The Open Meetings Act of 2005 effective as of October 1, 2005 is codified as Section 36-25A-1 et seq. in the ***Code of Alabama 1975***. Under this law, all boards, bodies, and commissions of the executive and legislative branches of the state, including political subdivisions and municipalities, which expend or appropriate public funds; all multi-member governing bodies of the executive and legislative branches of the state, including political subdivisions and municipalities; all quasi-judicial bodies of the executive and legislative branches of the state; and all standing, special, or advisory committees or subcommittees, are to comply. Therefore, all committees and subcommittees of a governmental body are subject to this law. Only legislative party caucuses or coalitions, the Alabama appellate or trial courts, and voluntary membership associations which are not delegated any legislative or executive functions by the legislature or governor are not affected.

- *Adequate Public Notice*

  A State agency desiring a meeting must give proper notification in order for the public to know of the meeting. Notification must include the time, date, and the nature of the meeting. If a preliminary agenda is available at the time of notification, this shall also be included. If there is no preliminary agenda, a general description of the nature and purpose of the meeting shall accompany the notification. Agencies with statewide jurisdiction must submit a notice to the Secretary of State so it is posted on the website of the Secretary within the Act's stated deadlines. Under Section 36-25A-2 (6)(a)(1), a seven-day notice is required of all pre-arranged meetings stated by law to be held at a certain place or time. For instance, the Licensure Board for General Contractors must meet in January, April, July, and October of each year (Section 34-8-24). Therefore, the Licensure Board for General Contractors must submit notice of the meeting to the Secretary of State several days prior to the seven-day deadline. The Secretary of State formulated a policy by which the agencies are to submit the notification, and it is available at www.sos.alabama.gov.

  Section 36-25A-2 (6)(a)(2) and (3) require a one-day notice be given for pre-arranged meetings to possess or approve the expenditure of funds. They also require a one-day notice of all meetings to discuss business matters of the agency. For instance, if the Licensure Board for General Contractors wanted to meet in December to discuss issues concerning licensees, a one-day notice would be required. Notice must be submitted to the Secretary of State's website with enough time to allow processing and posting of the notice for at least one day prior to the meeting.

  Section 36-25A-3(b) states, "Unless seven days' notice is required, notice for the following meetings 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." "As soon as practicable" means as soon as can be accomplished after the meeting is called. This section does not give the body blanket approval to give 24 hour notice of all of its

meetings. For example, if a body sets its next meeting time and place during the current meeting, the person responsible for notification should post the next meeting as soon as possible. Also, if a body sets its meeting annually (sets dates for all regular meetings its October meeting), the entire schedule should be posted as soon as possible. Amendments may be made as necessary.

At least a one-hour notice is required of emergency meetings. There are only two reasons for less than 24-hours' notice. One exception is the agency requires a meeting in order to avoid immediate physical injury to persons or damage to property. The other exception is a public official or employee is resigning, and the agency wants to accept the resignation. No other business of the agency shall be conducted while accepting a resignation.

The Open Meetings Act also requires direct notification to interested parties when the parties so request. The agency will set reasonable rules for direct notification, and can charge or request advance payment of the cost for direct notification to the requesting party. Any reasonable method of direct notification can be used, such as e-mail, phone, fax, etc.

Meeting Protocol
Each agency should adopt parliamentary procedures to govern meetings. All meetings should be preserved in writing through the minutes. The Act requires the agency record the date, time, place, members present or absent, and any actions taken by the agency during the meeting. The Open Meetings Act allows the media and public to record meetings via tape recorder, video camera, and photo camera. All votes should be taken in the open portion of the meeting. No particular type of voting is required by the Open Meetings Act, but voice vote is allowed. Secret ballots are not allowed; therefore, no secret voting may occur. As a general rule, the records of the meeting are open to public inspection (73 *CJS* 22). Executive or secret sessions are held to keep a person's good name and character from being publicly impugned. Therefore, a recording of such discussions is not made. See Attorney General's Opinion 97-0013 for more information.

Quorum
A quorum is the number of people required present before a meeting can conduct business. The ***Code of Alabama 1975***, Section 41-22-3(8), defines a quorum as no less than a majority of the members of a multimember agency, unless provided otherwise by statute. In Opinion 93-095, the attorney general opined if vacancies occur on a State agency, a majority of the remaining members constitute a quorum. The Open Meetings Act also counts as part of a quorum those individuals not yet officially a member, but who attend a "pre-swearing-in" meeting.

- *Physical Presence of Members Is Necessary to be Counted Toward a Quorum*
  The Supreme Court ruled a quorum must be physically present to do business, and telephoning cannot constitute a quorum. (*Penton v. Brown-Crummer Inv. Co.*, AL Supreme Ct 1/23/1930, 222 Ala. 155, 131So.14.) The attorney general, in an opinion dated 11/6/78 to J. Al Poe, Mayor of Cordova, affirms a quorum consists of persons who are physically

present, and cannot be made of members attending via teleconferencing technology (telephone, video, etc.), nor can a quorum be constituted by proxy or through designees. In the Attorney General Opinion 83-397, the attorney general opined actions taken by a State agency without a quorum present were void. Attorney General Opinion 94-248 states, although there is no ruling from the courts of Alabama regarding voting by telephone conference call, the courts of other states conclude, absent specific legislation, the use of telephone conference calls to cast votes violates the intent of open meeting laws (*Finucane vs. Pennsylvania Milk Marketing Board*, 584 A.2d 1069 (1990), *Babac vs. Pennsylvania Milk Marketing Board*, 584 A.2d 399 (1990)). Attorney General's Opinion 2006-071 also states, to be counted towards establishing a quorum, board members attending meetings that are subject to the Open Meetings Act are required to be physically present. Text messaging also is not an allowable way to include an absent person as present.

Attorney General Opinion 2011-14 opines a quorum of the board of trustees may attend a committee meeting, where notice was properly given for the committee meeting under the Open Meetings Act ("OMA"), without also providing notice of a board meeting, as long as the board does not deliberate matters at the committee meeting that it expects to come before the board at a later date. If a quorum of the board prearranged a board meeting to occur at the committee meeting, the board must provide notice of this meeting under the OMA. A quorum of the board may not hold an impromptu board meeting at the committee meeting, at which it deliberates specific matters expected to come before the board at a later date, such as other board business without violating the OMA.

There are at least two exceptions provided by law to the requirement for the physical presence of members in order to be counted and to vote.

- *The Alabama Port Authority*
  § 33-1-8. Board of directors.
  (d) The board shall meet monthly on the call of the chair, who shall designate the time and place. The chair also may call special meetings. A quorum of the board for any regular or special meeting shall consist of not less than five members. At least two meetings per year shall be held outside the metropolitan Mobile area in a place selected by the chair. Board members shall be given at least 10 days' notice of regular meetings and five days' notice of special meetings, except, if, in the judgment of the chair, urgent business so requires, the chair may give such shorter notice of a meeting as is practicable. *Members of the board or any committee thereof may participate in meetings of the board or such committees by telephone conference or similar communications equipment through which all persons participating in the meeting can hear each other at the same time, and such participation by the members shall constitute presence at a meeting for all purposes*. The director of the port authority shall give notice of any meeting to the media as the board and the director together consider appropriate under the circumstances.

- *State Board of Medical Examiners*
  § 34-24-361. Investigations; reporting offenses; proceedings and actions; privileged information.

(f) The commission shall, temporarily, suspend the license of a physician or osteopath without a hearing simultaneously with the institution of proceedings for a hearing provided under this section on the request of the State Board of Medical Examiners if the board finds that evidence in its possession indicates that the physician's or osteopath's continuation in practice may constitute an immediate danger to his or her patients or to the public. *The commission may meet by telephone conference call to act upon any such request.*

The ***Code of Alabama 1975***, Section 36-25A-5.1 allows members of governmental bodies to participate in meetings and deliberation via electronic communications under certain circumstances. Members of a governmental body, as defined in Section 36-25A-2, which is comprised of members from two or more counties, may participate in a meeting of that governmental body by means of telephone conference, video conference, or other similar communications equipment which allows all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at the meeting for all purposes, except for the establishment of a quorum. Every meeting shall have one physical location available for persons wishing to attend, at which any interested member of the public shall be able to hear all persons who are participating remotely, and the location shall be published in a manner consistent with the OMA.

A majority of a quorum of the members participating in any given meeting shall be physically present at the location noticed and called for the meeting in order to conduct any business or deliberation. Any vote taken at a meeting utilizing the electronic equipment…shall be taken as a roll call vote that allows each participant to vote individually in a manner audible to all persons participating or present at the physical location. No member utilizing this section shall claim any form of reimbursement for expenses, including mileage and per diem. Any governmental body with specific statutory or constitutional authority to meet via electronic means under a procedure different than that set forth in this section may continue to operate under the requirements of that specific authority or may adopt a resolution opting to come under the requirements of OMA. Only those members who are physically present may participate in an executive session of the governmental body.

Some agencies are denied this means of participating in a meeting. Those agencies are

- the Board of Pardons and Paroles
- the Public Service Commission
- standing committees of the Legislature while the Legislature is in session
- a governing board taking any action under the Students First Act of 2011
- any state board or agency acting in any quasi-judicial capacity involving employment actions or the promulgation of rules pursuant to statutory authority
- any state board, agency or other governmental body conducting a hearing which could result in loss of licensure or professional censure
- the Alabama Ethics Commission.

All Voting Must Occur in a Public Meeting

All votes taken in a meeting, including those concerning a matter discussed in executive session, must be made in the public portion of the meeting. Attorney General Opinion 2001-

106 states all votes must be taken at a public meeting with a quorum of members present. The Alabama Supreme Court ruled "[i]t is intended that the whole deliberative process be open to public scrutiny, rather than that there be the mere formal announcement of decisions already made in private." (*Miglionico v. Birmingham News Co.*, 378 So. 2d 677 at 680 (Ala. 1979))

Executive Sessions

The Open Meetings Act specifies and strictly limits the reasons for an executive session. The agency may not enter an executive session without first convening an open meeting. The Act requires the following procedures for holding an executive session:

- Hold an open meeting as defined by Section 36-25A-2(6)(a)(1) and 2(6)(a)(2)
- Motion to enter an executive session and state the reason for the session. A designated person shall certify an executive session is warranted if it is for one of the following:
  - Discussion with the agency's attorney concerning litigation, mediation, or arbitration
  - Discussions disclosing the identity of an undercover informer, or about criminal investigations of non-public officials
  - Discussions concerning competition with private entities in trade or commerce
  - Discussions concerning negotiations between the agency and a group of public employees
- Vote with majority approval on the motion to enter executive session. This vote must be in the open meeting, and each individual member's vote must be recorded in the minutes. Recording as "unanimous" is sufficient if all are in favor. Each present member's name should be recorded as well as their vote in the minutes of the meeting.
- State whether the agency will reconvene after the executive session, and, if so, at about what time it is expected to do so.

There are nine purposes allowed under the Open Meetings Act to hold an executive session. These nine purposes do not preclude reasons as provided by law under other statutes. They are as follows:

- Discussion of general reputation and character, physical condition, professional competence, and mental health
  - Physical condition and mental health are appropriate executive session subjects
  - Discussing a person's general reputation and character <u>outside of job performance</u> is appropriate for an executive session
  - Attorney General Opinion 2006-088 allows an executive session to be called for the purpose of interviewing current public employees for promotion to fill vacant positions when those positions do not require the interviewee to file a Statement of Economic Interests with the Alabama Ethics Commission
  - Discussing certain employee's job performance must be done during the open portion of the meeting
- Discussion of formal written complaints or charges against an individual or legal entity
- Discussions with an agency's attorney
- Discussions of security plans, procedures, assessments, measures or systems or the security or safety of persons, structures, facilities or other infrastructures

- Discussions which will disclose the identity of an undercover law enforcement agent or informant; or discussion of a criminal investigation
- Discussion of real property purchase, sale exchange, lease or market value
- Discussions of preliminary negotiations involving matters of trace or commerce
- Discussions of public employee negotiations
- Deliberations and discussions of evidence or testimony

The following topics of executive sessions are discussed in more detail:

- Pending litigation
- Controversies not currently being litigated, but likely to be if the agency takes a proposed course of action
- Meetings with an arbitrator or mediator due to litigation or any decision concerning matters within the jurisdiction of the agency involving another party, group, or body
- Deliberations of the attorney's advice must be held in open session
- Before voting to enter executive session, the agency must receive a "written opinion or oral declaration" from an attorney that the executive session discussion is warranted, and the declaration must be reflected in the minutes
- Discussions of security plans and safety measures
- Discussion must regard critical infrastructure and critical energy infrastructure as defined by federal law
- Discussion must be determined as detrimental to public safety or welfare
- The owner or operator of the critical infrastructure and/or critical energy infrastructure shall be notified of the meeting in advance to allow that individual or company to attend the executive session
- Discussions of criminal investigation and undercover agent or informer identity
- Discussion of criminal investigations of an individual who is not a public official is proper for executive session
- Before voting to enter executive session, a declaration made by a law enforcement official, district attorney, assistant district attorney, attorney general, or assistant attorney general must be recorded in the minutes, and must state open discussions would "imperil effective law enforcement"
- Discussions of negotiations to buy/sell/lease real property
- Discussion of what the agency is willing to offer when considering buying, selling, leasing, or exchanging real property, or when considering the market value of real property
  - The agency cannot discuss this in executive session if the real property being considered is owned by a member of the agency participating in the executive session, or if the property was condemned
  - The terms of the contract must be openly discussed before executing the contract
- Discussion of preliminary negotiations in trade competition and trade secrets
- Discussion of competition with private individuals or entities, other Alabama government bodies, or other states or foreign nations
    - Before voting to enter executive session, a declaration must be made by a person involved in the recruitment or retention effort, or possessing personal knowledge the discussion will involve matters or information covered under the Alabama Trade Secrets Act. The declaration would state an open discussion will detrimentally effect the competitive position of the

agency; or upon the location, retention, expansion, or upgrading of a public employee or business entity; or discussion would disclose information protected by the Alabama Trade Secrets Act. This declaration must be entered into the minutes of the agency

- Discussion of negotiation between the agency and a group of public employees
- Discussions of labor negotiations are generally covered
    - Before voting to enter executive session, a declaration must be made by a person representing the interests of the agency involved in such negotiations, and the declaration must be recorded in the minutes. The declaration will certify "the discussions would have a detrimental effect upon the negotiating position of the agency if discussed openly"
- Discussion of a public or contested case hearing
- Discussions and deliberations of evidence and/or testimony of a public or contested case hearing *and* a vote upon the outcome are allowed if the agency is acting in its "quasi-judicial" role
- The requirements of the outcome are the agency must either vote upon the decision in an open meeting or must issue a written decision, which can be reviewed by a hearing officer, an administrative board, court, or other body capable of conducting a hearing or an appeal of the matter

Attorney General Opinion 99-00247 instructs only State agency members, the person being discussed – *if circumstances dictate, such as the necessity of providing due process* – and *any other person needed in an official capacity* should be present during an executive session. The names of the persons present at the executive session should be disclosed in the minutes of the regular meeting (Attorney General Opinion 2004-151).

Attorney General Opinion 2010-011 reviews the discussion of the general reputation and character of an individual. The opinion states "This Office has explained that "[s]ection 36-25A-7(a) states nine instances when an executive session is permissible. More particularly, section 36-25A-7(a)(1) states that an executive session is permissible to discuss the general reputation and character . . . of individuals." Opinion to Honorable William T. Musgrove, III, Attorney, City of Florence, dated April 17, 2006, A.G. No. 2006-088, at 6-7. Section 36-25A-2(3) defines "general reputation and character" as "[c]haracteristics or actions of a person directly involving good or bad ethical conduct, moral turpitude, or suspected criminal activity, not including job performance." Ala. Code § 36-25A-2(3) (Supp. 2009).

Section 36-25A-2(2) defines "executive session" as "[t]hat ***portion*** of a meeting of a governmental body from which the public is excluded for one or more of the reasons prescribed in Section 36-25A-7(a)." Ala. Code § 36-25A-2(2) (Supp. 2009) (emphasis added). The OMA generally precludes voting in executive session. Ala. Code § 36-25A-5(b) (Supp. 2009). Therefore, the *Musgrove* opinion further observed a governmental body may convene an "executive session to the extent that the topics discussed . . . are expressly limited to the general reputation and character" of the individual. *Id*. at 9. Furthermore, in concluding that the Alabama Board of Pardons and Paroles could deliberate statutorily privileged portions of its files in executive session, this Office emphasized that "[t]hereafter, the Board would be required to complete its deliberate process in a reconvened open meeting." Opinion to

Honorable William C. Segrest, Executive Director, State of Alabama, Pardons and Paroles, dated May 9, 2005, A.G. No. 2005-125, at 3-4. "The Board, however, in convening an executive session, should follow the procedures as set forth in section 36-25A-7(b) of the Code." *Musgrove*, at 9."

Please note votes do not occur during an executive session. All votes are made in the public portion of the meeting (*Miglionico v. Birmingham News Co.*, 378 So.2d 677 at 680 (Ala. 1979)). After the executive session discussion is complete, the members reconvene in the regular or special meeting. Then, voting occurs in the open portion of the meeting. **NOTE**: We noticed some boards are recording a vote in the executive session to reconvene. What should occur is the agency initially votes to go into executive session for a valid stated reason and also state the expected time the public meeting will reconvene.

SIMPLIFIED ASPECTS OF THE LAW REGARDING MEETINGS

- All meetings in which governmental bodies meet to deliberate must be open to the public.
- Under the OMA, the only exception to the open meeting law is an 'executive session.'
- No meeting – even an emergency meeting – can be properly held under the OMA without proper notice.
- Electronic communications, such as teleconferencing, cannot be used to circumvent the OMA.
- Executive Sessions
  - Convene an open meeting and record the following:
  - Motion – state the reason for the executive session
  - Written or oral declaration
  - Open voting to enter executive session
  - Statement concerning reconvention (if and when approximately)

Meeting Follow-up

The agency must ensure the open portion of the meeting is properly recorded and made available to the public "as soon as practicable after approval." At the conclusion of the meeting, the agency should know the date of its next meeting. The Open Meetings Act provides deadlines for posting notice of meetings, but it also encourages the posting of such notice as soon as practicable. There is no penalty for posting early, but there is for posting late or not posting at all.

Violations and Penalties of the Open Meetings Act

- The following are violations of the Open Meetings Act:
  - Not giving proper notice of an agency meeting
  - Not adhering to the Open Meetings Act during an open meeting
  - Going into executive session and discussing business other than what was openly voted on in the open meeting to discuss
  - Holding secret meetings
  - Any other violation not mentioned above
- Civil action against the agency may result in the following penalties:

- A maximum penalty for each member of the agency for each violation, which is the lesser of $1,000 or one-half the defendant's monthly salary for serving on the agency
- Temporary restraining orders
- Invalidation of the meeting's actions

Meals during meetings
Attorney General Opinion 2010-75 opines monies may be used to provide food for staff meetings, committee meetings, and educational sessions that require attendance if the meals are offered so business may be conducted during a mealtime. In an opinion to Honorable N. Genelle Lee, Executive Officer, Alabama Board of Nursing, dated May 6, 2003, A.G. No. 2003-137, this Office stated as follows:

[P]ublic funds may be used to pay for meals and/or refreshments served at business meetings when the meals are directly related to the business of the entity, and the meals and refreshments are incidental to the meeting. In order for meals to be an incidental part of the meeting, the primary purpose of the gathering must be to have an official meeting at which business is conducted, not a social gathering at which food is provided.

Meals and refreshments may be provided when a meeting lasts all day and participants work through lunch or when an examination lasts all day and participants are not allowed to leave the area. Meals are also allowed in instances where meetings include out-of-state consultants and due to shortness of time the meetings continue through lunch. This Office previously stated State agencies may not provide refreshments at a break during a meeting that does not extend through lunch or a mealtime.

Section Eight: Public Records

Record-Keeping

- *Public Records*

  The ***Code of Alabama 1975***, Section 36-12-40, grants citizens the right to inspect and copy public writings, with the exception of public library registration and circulation records. Each request for disclosure will be considered on its own merits, with public policy generally favoring disclosure.

  A "public writing" is a record that is reasonably necessary to record the business and activities required or completed by a public officer so the citizens can know the status and condition of such business and activities. The ***Code of Alabama 1975***, Section 41-13-1, states, "…the term 'public records' shall include all written, typed or printed books, papers, letters, documents and maps made or received in pursuance of law by the public officers of the state, counties, municipalities and other subdivisions of government in the transactions of public business and shall also include any record authorized to be made by any law of this state belonging or pertaining to any court of record or any other public record authorized by law or any paper, pleading, exhibit or other writing filed with, in or by any such court, office or officer."

The rule of reason must be applied when determining which records the public can view, how the viewing will occur, and when. The State agency maintains the right to promulgate reasonable rules defining the scope of the inspection process. For example, the agency could require record viewing by appointment, and the citizen complete and submit a request form detailing the record or records desired. Rules providing for the convenience of staff, which must locate and retrieve records during the records inspection process, are considered reasonable. Attorney General Opinion 2007-001 states, "Because a State agency may regulate the manner in which public records are produced, inspected, and copied, a State agency, to be in compliance with Sections 36-12-40 and 36-12-41, is not required to distribute public records in the manner that a requestor specifies."

Some records, although certainly created by public officials and employees, are deemed sensitive and can be exempted from public inspection. Recorded information received by a public officer in confidence; sensitive personnel records; pending criminal investigations; and records, the disclosure of which would be detrimental to the best interests of the public, need not be disclosed. (*Blankenship v. City of Hoover*, 590 So. 2d 245, 248 (Ala. 1991)) Attorney General Opinion 2007-031 gives guidance on additional types of writings not considered public records. **Attorney General Opinion 2008-030 states "The criminal complaint supporting an unexecuted arrest warrant is not subject to disclosure under the Open Records Act. Once the warrant has been executed, the complaint supporting the same becomes public record. Attorney General Opinion 2008-073 states "…(Commission) must make available, for inspection and copy, time sheets of employees…Certain sensitive information, however, that may be contained in those records, such as doctor's excuses or time off taken for medical reasons or personal vacation time, is not public record. Other information that may be contained in the records requested, such as medical history, confidential recommendations for**

employment, drug or alcohol testing results, home addresses, telephone numbers, social security numbers, and marital status of public employees, are not public records and are not subject to disclosure. The custodian of records responding to these requests for public records should ensure that the aforementioned sensitive personnel information is redacted from any publicly disclosed records."

Attorney General Opinion 2013-046 states, "Although email addresses of the citizens of the Town of Pike Road ("Town") are public records pursuant to section 36-12-40 of the Code of Alabama, they are exempt from disclosure."

Attorney General Opinion 98-00161 states, "A custodian of public records may recoup reasonable costs incurred in providing public documents to a citizen, including, where necessary, costs for preparation of the records, and the actual cost of copying the records, but may not recoup the cost of attorney's fees incurred in determining whether the public writings are subject to an exception that would prevent their release to the public." Other opinions indicate fees charged for providing copies of public records must be based upon the actual incremental cost incurred by the agency, and not upon the recipient's use of the records or the agency's need for additional funds.

Attorney General Opinion 2009-076 states, "The regular copy fee may not be assessed if individuals use personal cameras or other electronic devices to make a copy of a public record."

- *Records Responsibilities*

  Every agency is obligated to create and maintain records to adequately document the business of their agency. These documents record evidence of agency operations and serve as a mechanism of accountability. Effective record-keeping also helps to ensure documents are legally admissible in court.

The following ***Code of Alabama 1975*** statutes charge public officials to meet these obligations:

- Section 36-12-2 requires officials to create and maintain records that provide full and detailed information regarding the office's business and activities
- Section 36-12-2 requires officials to protect and preserve records from mutilation, loss, or destruction
- Section 36-12-4 requires officials to transfer all current records pertaining to agency business affairs or transactions to any successors in office
- Section 36-12-5 requires officials to contact the Alabama Department of Archives and History when records pertaining to the conduct of office business cease to be current
- Section 41-5-23 requires officials to keep the office's books, records, and accounts, and to make reports in accordance with procedures and forms prescribed by the Chief Examiner of Pubic Accounts for audit purposes

Additional requirements may be set forth in other provisions, including an agency's enabling statutes, legislative acts, or oversight authorities.

Public records encompass records in all types of media, including electronic format. The Department of Archives and History posted technical guidance on determining what constitutes a record and how to preserve it on its website. Click "Records Storage" on the "Publications" page.

- *Administrative Procedure Act Index of Formal Orders*
  The ***Code of Alabama 1975***, Section 41-22-4(a)(4), requires all agencies to comply with the State's Administrative Procedure Act to make available for public inspection and copying, at cost, an index by name and subject of all final orders, decisions, and opinions which are issued after October 1, 1982, except those expressly made confidential or privileged by statute or order of the court.

Records Disposition Authority
The ***Code of Alabama 1975***, Section 41-13-21, states, "No state officer or agency head shall cause any state record to be destroyed or otherwise disposed of without first obtaining approval of the State Records Commission…" Section 41-13-1 defines "public record" as "all written, typed or printed books, papers, letters, documents and maps made or received in pursuance of law by the public officers of the state, counties, municipalities and other subdivisions of government in the transactions of public business ...." To ensure State records are appropriately preserved, the State Records Commission requires State agencies to prepare, adopt, and approve a records disposition authority, or RDA. The RDA will list all records of the agency and detail a destruction schedule for them, depending on the sensitive/historic/relevant nature of the records. The Department of Archives and History must be contacted to assist agencies in beginning the RDA creation process. Once an agency receives an RDA approved by the State Records Commission, the agency is required to submit an annual report to the Commission. The Commission publishes compliance with their requirement on the website of the Department of Archives and History. The examiners use this posting during the compliance examinations it performs of State agencies, boards, and commissions.

Please note the confirmation e-mails from the Secretary of State's website detailing posting of the public notice of board meetings are included in recent RDAs. Standards set by the Department of Archives and History require retention of these e-mail confirmations for at least three years, or until an examination or audit of that time period is completed, whichever is longer.

Off-Site Storage and Back-Up Information
The ***Code of Alabama 1975***, Section 36-12-2, requires State agencies to protect and preserve records from mutilation, loss, or destruction. Please refer to your agency's Records Disposition Authority, as it may reference a requirement for off-site storage and back-up information. The events of September 11, 2001, as well as the loss suffered due to Hurricane Katrina, demonstrate the importance of backing up information and storing information off-site. Many companies lost valuable information in the attack and hurricane due to inadequate back-up and storage procedures. Information vital to the operation of your agency should be backed up, and the back-up records should be safeguarded, tested, and available for recovery. Licensing information, disciplinary information, State agency decisions/processes/actions, grant applications, or any information necessary to your agency that is not backed up elsewhere

should be captured, updated periodically, tested, and stored off-site in a secure, climate-controlled area. Back-ups or updates to the back-ups should be made frequently. Recovery plans for disasters should be a part of your agency's procedures, and responsibility should be assigned to a member of agency personnel. A disaster, which destroys records, need not be as profound as the September 11th attack or Hurricane Katrina. A broken water pipe or a fire can destroy paper records and computer files making recovery of the information a long and costly process.

Section Nine: Public Protection Responsibilities

Registration, certification, and licensure, as defined below, are different in meaning, but are often used by regulatory agencies interchangeably to describe operations.

- *Registration*
  Registration is a recording of individuals in a like classification, profession, or occupation with no determination of one's qualification and no regulatory activity included. (i.e., a register of all tattoo artists in the State of Alabama).

- *Certification*
  Certification is the process by which recognition of competence is granted to an individual who meets pre-determined qualifications specified by an agency or association (i.e., the certification of a person as a mine foreman or fire boss). No on-going regulatory activity or renewal of certification occurs.

- *Licensure*
  Licensing is the issuing of a permit or license to engage in a certain profession or occupation. Licensing is often done on more than one level in a given profession, such as the licensing at the apprenticeship level through the master level. Licensing also includes a regulatory aspect. A person cannot legally practice his or her profession unless he or she is licensed and agrees to follow the law and the licensing board's regulations, with the understanding that failure to do so may result in disciplinary action. Licenses must be renewed periodically, often conditioned upon a certain amount of continuing education. On-going regulatory activity, such as inspections or complaint investigation resulting in disciplinary actions, normally occurs.

  The primary reason to create laws requiring licensure of individuals practicing a profession or engaging in an occupation is to protect the public. This is accomplished by requiring individuals to be properly qualified before engaging in a particular profession or occupation, and by providing a method for ensuring licensees provide services to the public in a competent manner according to accepted standards.

Licensing Issues

Only as Authorized by Law
There is no authority for a State agency to adopt; therefore, cannot enforce different standards for licensure than those required by the agency's enabling statutes, nor may a board or commission institute a fee structure different from that established by statutes.

- A regulatory agency may not promulgate a rule requiring a higher level of education of applicants for licensure than the minimum requirements stated in the enabling statutes. For example, an agency cannot require a four-year degree when the agency's enabling statutes require only a high-school diploma or equivalent. Attorney General Opinion

2002-088 states, "An administrative agency cannot make a rule instituting requirements higher than the minimum requirements stated in the ***Code.***"

- If an agency's enabling statutes set a maximum amount to be charged for a license, the board or commission cannot adopt rules that set the license fee above the maximum level. In other words, an agency may not promulgate rules setting the licensing fee at $150 if the enabling statutes establish the maximum fee for licensing at $100.
- If an agency's enabling statutes set a specific amount to be charged for a license, the agency cannot adopt rules to collect a lesser fee. An agency may not adopt a rule to prorate a license fee at less than the statutory amount, if the license will not be in effect for a full licensing period before renewal, unless statutes specifically authorize the agency to do so.
- If an agency is required by law to collect a fee, the fee cannot be waived without specific exemption authorized in the law. A license fee, active or inactive, cannot be waived for a public official or employee, or for reasons of advanced age, unless specifically authorized by law.

Attorney General Opinion 87-00222 states, "Where the legislature has established a sufficiently definite policy, standard or rule, an administrative agency may be empowered to deal with the issuing of a license or permit and to fix reasonable fees for such issuance; where the legislature has not established such a sufficiently definite policy, rule or standard, the administrative agency may not be empowered to deal with such issuing of licensing or permits or establishing of fees."

No Restraint of Trade

No State agency may participate in any action that is in conflict with Section 103 of the *Constitution of Alabama of 1901*, which prohibits the establishment of monopolies through the restraint of trade. The constitution provides as follows:

"The Legislature shall provide by law for the regulation, prohibition, or reasonable restraint of common carriers, partnerships, associations, trusts, monopolies, and combinations of capital, so as to prevent them or any of them from making scarce articles of necessity, trade or commerce, or from increasing unreasonably the cost thereof to the consumer, or preventing reasonable competition in the calling, trade, or business."

There are instances when business practices of industries are limited by legislation of regulated monopolies because it is not practical to have competing businesses for the same customers, such as generating and providing electricity.

Section 103 prohibits the legislature from establishing monopolies or adopting statutes which *unreasonably* limit competition in the marketplace.

A State agency may not require an applicant to be a resident of Alabama or a citizen of the United States, nor may the agency give applicants who are licensed in other states a different and separate examination than resident applicants or charge different fees. State law echoes the 14th Amendment of the United States Constitution in this respect. Most state licensing

agencies require applicants to be a citizen of the United States or legally present in the United States, which is a requirement added to the agency's statutes in recent years.

- Attorney General Opinion 83-00010 states, "…The clear language of Section 34-27-32(f) is that a person submitting an application to take the examination shall also submit evidence that he is a resident of this state. However, similar provisions or similar laws have been held unconstitutional as inconsistent with Article 4, Section 2, and the 14th Amendment of the United States Constitution. State v. Rose, 122 So. 225 at 238; but see dissent, State v. Rose, supra, at 239."
- Attorney General Opinion 81-00450 states, "…We find, however, no provision which would permit the Board to administer a separate and different examination to licensees of other states. In addition to there being no statutory authorization for such a separate examination, it is quite likely that such an examination would violate the Due Process and Equal Protection clauses of the United States and Alabama constitutions."
- From the Board of Polygraph Examiners: Section 34-25-21 states "(a) A person is qualified to receive a license as an examiner: (1) Who is at least 21 years of age; (2) ***Who is a citizen of the United States or, if not a citizen of the United States, who is a person who is legally present in the United States with appropriate documentation from the federal government;***"

<u>*Initial Licensing*</u>

- *Creating Standards, Forms, and Procedures*
  A State board or commission should adopt, impose, and enforce standards for licensure within the authority and limits specified by law. These standards should be designed to ensure licensees are suitable and qualified to practice. A State board or commission should also develop standard forms for application for licensure, renewal of licenses, and for other information to be gathered from licensees. Additionally, appropriate techniques and procedures, including examinations and investigations, for determining whether an individual meets the required standards should be developed and applied.

- *Social Security Number on Forms*
  Federal law and the ***Code of Alabama 1975*** require all applicants for the issuance or renewal of a license, certificate, or permit to provide their social security numbers to the licensing agency. The ***Code of Alabama 1975***, Section 30-3-194, states, "Any agency charged with the administration of any law concerning the issuance of a license, certificate, permit … to engage in a profession, occupation, … shall require all applicants for issuance of the license, certificate, permit, or other authorization to provide the applicant's Social Security number…" These requirements are mandated by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193).

In addition, Attorney General Opinion 2004-22 opines an agency must obtain the social security number of any individual or individuals of a corporation, partnership, or limited liability company who are responsible for providing an application for that entity.

Attorney General Opinion 2010-74 opines the plain language of section 30-3-194(a) of the Code requires collection of Social Security numbers from all applicants seeking a new license. In addition, this Office previously concluded if a Social Security number is not given, then the license application is not in conformity with the statutes, and no license may be issued. Opinion to Honorable Tish P. Spencer, Executive Director, Home Builders Licensure Board, dated January 5, 1998, A.G. No. 98-00066. Therefore, the Board of Licensure for Professional Engineers and Land Surveyors is required to obtain the entire Social Security number for each new or renewal license application. Pursuant to Section 41-13-6 of the ***Code of Alabama 1975***, the Board may not publish an individual's complete, nine-digit Social Security number on public records. When, however, a number is needed for identification purposes, the last four digits of a Social Security number may be used. Act No. 362, Acts of Alabama 2012 amended the ***Code of Alabama 1975***, Section 30-3-194 by repealing the requirement of providing the Social Security number for license renewals.

Examinations

- *Agency-Created Examination*
  A licensing board or commission, if authorized in enabling statutes, may create and administer examinations for applicants. The agency determines the subject, scope, content and format of the examinations, which must be the same for all candidates. The examination of the applicant should demonstrate the applicant's professional proficiency and understanding of the laws, rules, and regulations that apply. Security of testing materials is an important issue and a responsibility of the agency. This type of examination is declining, as the availability of nationally recognized examinations proliferates.

- *National Examination*
  Many licensing boards and commissions use national examinations developed by professional associations or testing services. Some agencies are now opting to also use testing accomplished by independent testing services. The licensing agency may require the applicant to pay an examination fee directly to the testing company, as discussed in Attorney General Opinion 86-088, but may not establish a lower fee for applicants who take national board examinations. See Attorney General Opinion 87-242 for more information.

Renewal of License

- *License Renewal, Expiration, and Grace Period*
  The Administrative Procedure Act, ***Code of Alabama 1975***, Section 41-22-19(b), states, "When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court."

  - Renewal Date – The license renewal date is normally set by statute and is the due date for receiving applications for renewal. Renewal is normally considered delinquent after that date.

- Grace Period – A grace period specified in the enabling statutes may provide an amount of time elapsing after the renewal date during which a license can be renewed. If grace periods are not authorized by statute, a board or commission may not set them. Renewal during a grace period normally includes a monetary penalty which is authorized in the enabling statutes. The grace period for renewal does not automatically provide a grace period to practice after license expiration.
- Expiration Date – The license expiration date is normally set by statute. If the date is not named, expiration occurs at the ending date of the period for which the license was issued. A person with an expired license maintains no authority to practice the profession after the license expiration date, even though the grace period for license renewal is not expired. A person with an expired license must either apply for a license as a new applicant or request license reinstatement. Reinstatement cannot occur unless reinstatement is specifically authorized in the enabling statutes. Reinstatement must occur according to the terms specified in the enabling statutes. ***Note***: A condition may occur in which the license expiration date falls within the license renewal grace period. Under such conditions, renewing within the grace period reinstates the license.

- *Continuing Education*

  A board or commission cannot mandate continuing education for its licensees unless it is authorized in the enabling statutes. If statutes authorize the establishment of mandatory continuing education, it must be done according to the terms of the statute. If statutes mandate continuing education as a prerequisite for licensure, a board or commission is not authorized to waive the requirement, unless the law authorizes the waiver.

  Reviewing, approving, and certifying continuing education courses and providers is a task sometimes assigned by law to a regulatory board or commission. This task is not assigned to all agencies. If it is not in the agency's statutes, it is not required or allowed.

  Attorney General's Opinion 96-099, in response to questions asked by the Board of Cosmetology, stated, "The statutory requirements for renewal of all licenses issued by the Board of Cosmetology, including instructors' licenses, is set out in ***Code of Alabama 1975***, Section 34-7-19. This section allows renewal upon application and payment of the applicable renewal fee provided under Section 34-7-11. Neither Section 34-7-19 nor any other provision of Sections 34-7-1, *et seq*., authorizes the imposition of a continuing education requirement for renewal.

  "For this reason, this office previously opined, in its opinion to Ms. Billie Jehle, dated March 16, 1979, No. 79-00333, the Alabama Board of Cosmetology has no authority to require continuing education for renewal of a cosmetologist license or a managing cosmetologist license. The same rationale should apply to an instructor license. To the extent that the Attorney General opinion to Ms. E. Elaine Wiggins, dated March 23, 1984, No. 84-00214, suggests to the contrary, it is hereby overruled."

- *Reciprocity*
  Reciprocity is the practice of issuing a license to an applicant who is licensed in another state. Upon complying with the provisions of licensure and paying a fee established by the regulatory agency, a reciprocal license is issued.

  Normally, statutes provide, in order for reciprocity to occur, the reciprocal state must maintain a system and standards of qualification and examinations that were substantially equivalent to those required in Alabama at the time the reciprocal license was issued. The reciprocal state may be required to extend similar treatment to Alabama licensees applying for licensure there. As always, the terms of reciprocity must follow the terms specified in the enabling statutes. If the statutes do not provide for reciprocity, a board or commission cannot issue reciprocal licenses as such. However, the board may find the applicant met some or all of Alabama's requirements during the process of becoming licensed in the other state.

  - The ***Code of Alabama 1975***, Section 34-12-11, for the State Board of Registration for Foresters states, "(a) A person not a resident of, and having no established place of business in Alabama, or who has recently become a resident thereof, may use the title of registered forester and practice forestry provided: (1) Such person is legally licensed as a registered forester in his or her own state or country and has submitted evidence to the board he or she is so licensed; (2) The state or country in which he or she is so licensed: a.) Has standards for licensing comparable to Alabama and acceptable to the board; and b.) Observes these same rules of reciprocity in regard to persons licensed under the provisions of this chapter."
  - The ***Code of Alabama 1975***, Section 34-16-8, for the Alabama Licensure Board for Interpreters and Transliterators states, "a) The board may enter into a reciprocal agreement with any state, agency, or other organization that licenses, certifies, or registers professional interpreters or transliterators, or both, if the board finds that the state, agency, or organization has substantially the same requirements or more stringent requirements. (b) The reciprocity agreement shall provide that the board shall license anyone who is currently licensed, certified, or registered in that state or by that agency or other organization if that state, agency, or other organization agrees to license, certify, or register any practitioners who are currently licensed pursuant to this chapter. (c) The board shall set by regulation the fees appropriate in processing reciprocity."

The Military Family Jobs Opportunity Act
Effective April 6, 2018, the ***Code of Alabama 1975***, Section 31-1-6 was amended by Act No. 540, ***Acts of Alabama 2018***. This section of law relates to the issuance of professional licenses and certificates to the spouses of active duty military personnel and requires adoption of rules implementing said section. The law states:

"(b) Except as provided in subsection (h), and notwithstanding other provisions of law, this section shall apply to any board, agency, commission, or other entity providing professional licenses or certificates, or both, for the purpose of employment in the State of Alabama. On or before January 1, 2019, each board, commission, or agency shall promulgate rules in

conformity with this section for the purpose of implementing its requirements. The rules shall provide a method of accomplishing both of the following:

(1) The issuance of a license or certificate to an eligible individual if the requirements for certification or licensure of the original issuing state or governing body are substantially equivalent to that required in the state, as provided in subsection (d).

(2) A procedure for authorizing an eligible individual to perform professional services regulated by the board, agency, or commission in this state pursuant to a temporary permit, effective for at least 180 days, while the eligible individual completes the specific requirements of the board, agency, or commission to obtain a license or certificate in this state that were not required in the original issuing state.

(c) For the purposes of this section, an eligible individual is any individual who satisfies all of the following:

(1) Is the spouse of an active duty reserve, or transitioning member of the United States Armed Forces, including the National Guard, or a surviving spouse of a service member who, at the time of his or her death, was serving on active duty, who is relocated and stationed in the State of Alabama under official military orders. For the purposes of this section, a transitioning service member is a member of the United States Armed Forces, including the National Guard, on active duty status or on separation leave who is within 24 months of retirement.

(2) Has not committed or participated in an act that would constitute grounds for refusal, suspension, or revocation of a professional license or certificate.

(3) Has not been disciplined by an authorized entity or under investigation, in any jurisdiction, in relation to a professional license or certificate.

(d) Any eligible individual under subsection (c) who possesses a valid license or certificate in another state, district, or territory of the United States, or in any branch of the United States Armed Forces, including the National Guard, with licensing or certification requirements greater than or substantially similar to the licensing or certification requirements of the appropriate board, commission, or agency in the State of Alabama shall be approved to continue to work in his or her profession upon relocation to the State of Alabama for such time as normally allotted with receipt of a license or certificate from the appropriate board, commission or agency. Upon completion of an application that documents compliance with the receiving agency's requirements for a certificate or license, an authorized board, commission, or agency shall expedite the application according to statute, promulgated rules, or if applicable, at the next scheduled licensure proceeding for an eligible individual under subsection (c).

(e) Any board, commission, or agency in the State of Alabama may establish reciprocity with other states for military spouse professional licensing and certification.

(f) Any board, agency, commission, or other entity providing professional licenses or certificates, or both, for the purpose of employment in this state, that is created after the effective date of the act adding this amendatory language shall adopt the rules required by this section within one year after the date of its initial organizational meeting.

(g) Any board, agency, commission, or other entity providing professional licenses or certificates, or both, for the purpose of employment in the state, shall waive the initial licensing fee for the eligible individual in a manner prescribed by the board, agency, commission, or other entity. The board, agency, commission, or other entity shall process an application for a fee waiver within 30 days after receiving the application.

(h) This section does not apply to the practice of law or the regulation of attorneys, any license or registration issued by the Securities Commission under the Alabama Securities Act, any certification issued by the Alabama Peace Officers' Standards and Training Commission, or the practice of any profession regulated by the Alabama State Board of Pharmacy, Board of Dental Examiners, State Board of Chiropractic Examiners, Alabama Liquefied Petroleum Gas Board, or State Board of Medical Examiners."

Code of Professional Standards or Ethics

Some administrative agencies statutory authority require development, implementation, and enforcement of a code of professional conduct including, but not limited to, regulations establishing ethical standards of practice. In such case, these codes of conduct or ethical practice must be adopted by administrative rule, in accordance with the Administrative Procedure Act. Following their adoption, these rules must be enforced equally upon all licensees. If enabling statutes are silent on this matter, then no enforceable codes of conduct or ethical standards can be adopted by rule.

Complaints

Licensing boards are normally tasked with ensuring licensing and professional practice is accomplished according to the requirements of the licensing law. To achieve this task, a licensing board or commission must develop a formal mechanism for identifying and disciplining persons who do not adhere to requirements for the practice of the licensed profession. An important part of this mechanism is a system for receiving and resolving complaints.

Any person can file a complaint, including board or commission members. Common reasons for filing complaints are negligence, incompetence, dishonest practice, other misconduct, failure to adhere to the license law, failure to adhere to administrative rules, and unlicensed practice.

A board or commission may not be able to act on all complaints due to the limitations of its authority, but it can investigate all complaints to the extent it determines the complaint is merited and within its authority to resolve.

- *Record of Complaints*
  To do its job properly, a board or commission should maintain records from which it can determine the status of any complaint at any time. Effective management cannot take place without such records. To enable effective tracking, a record should be kept of each complaint received and the steps taken during its resolution. An adequate record should include ***at least*** the following:

  - The date the complaint was received
  - How the complaint was received (letter, telephone, e-mail, etc.)
  - The name and address of the complainant
  - The nature of the complaint
  - Against whom the complaint is lodged (respondent)
  - Actions taken

- Resolution of complaint
- Date of resolution of the complaint
- Date(s) complainant/respondent notified of complaint status

- *Anonymous Complaints*
  Action on anonymous complaints, though not precluded by law, is typically not looked upon favorably by the Joint Legislative Sunset Review Committee and will be reported as an item of significance by the Examiners of Public Accounts during the sunset review process. The assumption is every licensee upon whom a complaint is filed is entitled to face his accuser, should disciplinary proceedings arise from the complaint.

- *Communication with Complainants*
  Complainants should be kept informed of the progress and final disposition of their complaints. A frequent condition reported to the Sunset Committee by the Examiners of Public Accounts is complainants do not receive any information about their complaint's status/resolution after they are made.

- *Non-Licensed Practitioner*

  - In Alabama, actions against non-licensed practitioners are normally reserved for the courts, not the regulatory boards. However, the regulatory boards can bring the matter to the courts. The ***Code of Alabama 1975***, Section 6-6-503 states, "The unauthorized or unlawful practice of any profession, occupation or calling by any person, firm, or corporation may be enjoined by any court of competent jurisdiction on complaint brought in the name of any public body or officer having authority conferred by statute to regulate or to license the activity engaged in by such person, firm, or corporation." Enabling statutes normally include prohibition of unlicensed practice, with attached criminal penalties. These penalties are reserved for the courts upon a finding of guilt.
  - Negotiated settlement is a method used by regulatory boards as an alternative to bringing action in the courts against unlicensed practitioners. The unlicensed practitioner may agree to discontinue practice and/or pay a monetary amount or such other penalty as the board or commission and the unlicensed practitioner agree upon. Should the unlicensed practitioner not agree to settlement, the regulatory board or commission can only take action through the courts.

Investigations

- *Timeliness of Investigations*
  The investigative process, unless there are mitigating circumstances, should begin promptly. The proper conduct of an investigation can be a time-consuming process, and it may be several months before the investigation is completed.

- *Hiring Qualified Investigators*
  When hiring investigators, several factors should be considered:

- Ideally, investigators should be knowledgeable in gathering, analyzing, and presenting evidence, and knowledgeable concerning the profession and the requirements necessary for professional practice in Alabama.
- If your agency is required to employ investigators with arrest powers, they must be sworn peace officers authorized to use police powers and must meet the minimum requirements of the Peace Officers Standards and Training Commission (POST). The ***Code of Alabama 1975***, Section 36-21-46, sets the minimum standards for peace officers, while Section 36-21-53 sets the continuing education requirements.
- The Alabama Peace Officers Standards and Training Commission sets the education requirements for certification of law enforcement officers, which may be found in the Alabama Administrative Code, Section 650-X-4-.01. Section 650-X-8-.04 names the classifications of officers not required to satisfy these requirements.

Discipline

Sanctions against licensees or registrants by regulatory entities are primarily designed to protect the health and welfare of the public from practitioners who do not meet the standards of practice. Discipline against practitioners who behave negligently and/or fraudulently, or who are unqualified and/or impaired by drugs or alcohol is done to protect the reputation of the profession and to encourage consumers to use the services of the licensees with confidence.

- *Due Process*

  Due process is extremely important when administering discipline or sanctions. Agencies must ensure due process is followed. The 14th Amendment of the U.S. Constitution states, "…No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

  The Alabama Administrative Procedure Act, found in the ***Code of Alabama 1975***, Sections 41-22-1 *et seq*., addresses administrative due process for boards and commissions.

  Procedural due process, broadly speaking, is fair play, whether in a court or an administrative authority, which includes a fair and open hearing before a legally constituted court or other authority, with notice and opportunity to present evidence and argument; representation by counsel, if desired; and information as to the claims of the opposing party, with reasonable opportunity to controvert them. (*Pike v. Southern Bell Tel. & Tel. Co.*, 263 Ala. 59, 81 So.2d 254 (Ala.1955)).

  - *Using Board Members in Investigation and Hearing Process*

    A board or commission member may be involved in the investigation process, but to maintain the impartiality of the ruling body, the member should recuse himself from the disciplinary hearing process in any capacity other than as a witness. At a hearing, the board or commission members must act in an impartial manner. To include a member who investigated the matter being heard is to increase the risk that bias will be brought into the process. All of the investigative work could be nullified if a

licensee appealed a board decision and demonstrated a board member's decision was not impartial.

- *Using an Administrative Hearing Officer*
  The Administrative Hearing Division of the Attorney General's Office can provide a hearing officer for a regulatory agency. The ***Code of Alabama 1975***, Section 41-22-12(c), authorizes hearings officers who preside over hearings and may issue subpoenas, discover orders related to relevant matters, and protective orders in accordance with the rules of civil procedure.

  The hearing officer provides a summary of findings of facts and conclusions of law, along with a recommendation to the board or commission, who will then vote to accept, modify, or reject the hearing officer's summary and recommendation.

  At times, boards or commissions contract with private persons for hearing officer services also known as Administrative Law Judges (ALJ).

- *Disciplinary Actions*

  - *Options*
    Disciplinary actions by a board may include both actions authorized in the law and those agreed upon by the board and the disciplined person in a negotiated settlement. Should a violator not agree to a negotiated settlement, the board is limited to actions authorized in the law. Actions authorized by law may include administrative fines, and usually include some limitation of practice due to suspension or revocation of license. In addition, the agency can bring the matter before the courts.

  - *Grounds For Action*
    Disciplinary actions are based upon the grounds for disciplinary action authorized by law. Usually, statutes provide a board can bring disciplinary actions based upon any violations of the board's enabling statutes; however, if the statutes provide specific grounds for disciplinary action, the board cannot bring disciplinary actions based upon any other grounds.

  - *Notification of Suspension or Revocation of License*
    Alabama's Administrative Procedure Act in the ***Code of Alabama 1975***, Section 41-22-19(c), states, "No revocation, suspension, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by certified mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license."

  - *Negotiated Settlements and Consent Orders*
    Although negotiated settlements are not an option normally provided in a board's enabling statutes, the state's Administrative Procedure Act in the ***Code of Alabama 1975***, Section 41-22-12(f), states, "Unless precluded by statute, informal dispositions

may be made of any contested case by stipulation, agreed settlement, consent order, or default or by another method agreed upon by the parties in writing." What this means is the board can offer a disciplinary measure to an offender in lieu of taking specific disciplinary action provided in the board's enabling statutes. If the offender agrees, the conditions of the settlement become binding and enforceable.

Attorney General Opinion 2001-44 states, "…the State Oil and Gas Board of Alabama may enter into informal settlement agreements with persons who violate the Alabama oil and gas laws and the Board's regulations. The use of settlement agreements to dispose of disputes is supported by the Alabama Administrative Code and encouraged by the Alabama judiciary, as well as the United States Supreme Court. In this instance, once the Attorney General approves a proposed settlement agreement, the Board may make a settlement agreement to enforce the laws and rules of the Board and to accept money to recover the investigative costs and administrative costs of the Board."

The court further offered an excellent summary of Alabama law regarding settlement agreements:

"Generally, the substantive law of Alabama governs the interpretation and effect of [a] settlement agreement. See generally, 15A Am. Jur. 2d Compromise and Settlement (1976). In Alabama the substantive law of settlement agreements is well established. 'When parties who are sui juris make a final settlement between themselves, such settlement is as binding on them in many respects as a decree of a court. Such an agreement may only be opened for fraud, accident, or mistake.' Burks v. Parker, 192 Ala. 250, 68 So. 271, 272 (1915), citing, Scheuer v. Berringer, 102 Ala. 216, 14 So. 640 (1894); Brocato v. Brocato, 332 So.2d 722, 723-24 (Ala. 1976); O'Rear v. Sutton, 215 Ala. 630, 112 So. 159 (1927); Nero v. Chastang, 358 So.2d 740, 741, 743 (Ala.Civ.App. 1978)."

Alabama's Child Support Law and Licensure

The ***Code of Alabama 1975***, Section 30-3-174, states in part:

"(a) Upon receipt of a notice from the Department of Human Resources or its agent to withhold, restrict use of, suspend, or revoke a license, a licensing authority shall implement the withholding, restricted use, suspension, or revocation of the license by doing the following:

(1) Determining it has issued a license to the obligor whose name appears on the notice.

(2) Entering the suspension or revocation on the appropriate records.

(3) If required by law, demanding surrender of the suspended or revoked license.

(b) A notice issued by the department or its agent to withhold, restrict use of, suspend, or revoke a license shall be processed by the licensing authority without any additional review or hearing by the licensing authority. The licensing authority shall have no jurisdiction to modify, reword, reverse, vacate, or stay the decision of the department or its agent.

(c) Any decision issued by the department or its agent to withhold, restrict use of, suspend, or revoke a license continues until the department or its agent advises the licensing authority that the decision to withhold, restrict use of, suspend, or revoke has been stayed

or is no longer in effect. While the department's decision is in effect, the licensing authority may not issue, reissue, or renew the obligor's license.
(d) The licensing authority is exempt from any liability to the licensee for activities conducted in compliance with this article."

Impaired Professionals
An impaired professional is defined as a professional having an inability to practice with reasonable skill and safety towards patients by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance, or as a result of any mental or physical condition. Remedy of this condition through mandated intervention is an alternative to disciplinary action.

For example, the boards licensing veterinarians, dentists, and pharmacists possess the statutory authority to enter into an agreement with a non-profit corporation, health provider, or professional association for:

- Contracting with providers of treatment programs
- Receiving and evaluating reports of suspected impairment from any source
- Intervening in cases of verified impairment
- Referring impaired professional to treatment programs
- Monitoring the treatment and rehabilitation of impaired professionals
- Providing post-treatment monitoring and support of rehabilitated impaired professionals
- Performing such other activities as agreed upon by the respective boards

Section Ten: Personnel

Staffing and Personnel
State agencies with funds in the State Treasury use the Government Human Resource System (GHRS). GHRS is an integrated payroll/personnel system for the State of Alabama, operated jointly by the State Personnel Department and the State Comptroller's Office. The Personnel Department assigns a GHRS payroll assistant to aid State agencies in the payroll process. Many of the agencies are on-line, or connected by computer, with the State Personnel Department and submit payroll information electronically. The employees of these agencies are paid via the State Comptroller's Office by state warrant or electronic transfer. For more information, refer to the *State Personnel Manual*, the *State Personnel Board Rules and Regulations*, and/or the *Fiscal Policy and Procedures Manual*. Payroll is only one aspect of the GHRS System. GHRS also maintains other pertinent information regarding length-of-service entitlement to various employee benefits, such as leave accrual and use, and longevity pay.

Agencies operating from checking accounts do not process payrolls through the State Personnel Department or the State Comptroller's office for payment. Employees are paid by check according to the rules and regulations of the agency, which must ensure compliance with applicable Federal and State laws regarding employment and related benefits.

One important duty of a regulatory entity is employing sufficient, competent staff to meet responsibilities. The State's Merit System Act, which governs the hiring of employees in State service, is found in the ***Code of Alabama 1975***, Title 36, Chapter 26, which also creates the State Personnel Board and the State Personnel Department to administer the State's hiring. Unless specific statutory authority is granted to hire outside of the merit system, State agencies must comply with the Merit System Act and with State Personnel Board's rules and policies, detailed in the State Personnel Department's Personnel Procedures Manual. These rules and policies include detailed procedures necessary to remain in compliance with Federal and State laws regarding hiring, promotion, non-discrimination, benefits, and termination.

In the merit system, positions of service are divided into three categories:

- *Exempt Service*
  These positions are completely exempt from the requirements of the merit system law, the State Personnel Department's policies, and the rules of the State Personnel Board. The positions include, among others, officers elected by the vote of the people; officers and employees of the legislature; all employees of a district attorney's office; members of boards and commissions, whether appointed or self-perpetuating; and heads of departments required by law to be appointed by the governor or by boards or commissions with the approval of the governor; the governor's private secretary, legal advisor, recording secretary, and those employees of the governor's office paid exclusively out of the Governor's Emergency or Contingent Funds. Act No. 478, ***Acts of Alabama 2015*** adds (b)(10) to Section 36-26-10, which states, "For each agency, up to two employees in addition to any other exempt positions as otherwise allowed by law; provided these positions may not be occupied by the head of an agency."

- *Unclassified Service*
  These positions are subject to the same rules and regulations as classified employees except as to their appointment and dismissal. The positions include one confidential assistant or secretary for each board, commission, and elected officer, and, when requested by the governor, for each department head appointed by the governor; and all employees of the governor's office not defined as exempted employees. The positions in the unclassified service may, at the request of the appointing authority, be filled by classified employees. Each of the employees thus appointed shall, at the conclusion of his or her occupancy of such position, resume his or her previous status in the classified service.

- *Classified Service*
  These positions include all other officers and positions in the state service. They must comply fully with the requirements of the merit system law, the State Personnel Department's policies, and the rules of the State Personnel Board.

Under the classified service, there is a special classification for hiring retired state employees. To continue to draw retirement benefits while employed by a State agency, a retired state employee must work in a part-time position and must not earn more than $32,000 for 2020. ers_member_handbook_t1_bookmarked.pdf The amount is upgraded periodically and can be found on the Retirement System website, as included in the contact list at the back of this manual. If either condition is breached, the employee's retirement benefits will be suspended. **It is the responsibility of the employer and the employee to notify the Retirement System if the employee earns more than the annual amount or becomes a full-time employee.**

Retired state employees can also be re-hired under their original classification on the re-hire list. However, they still must comply with the restrictions on hours worked and on wages earned as required by the Retirement System. Regardless of whether the State agency must hire within the merit system or is allowed to hire without regard to the merit system, retired state employees who are re-hired must meet wage and hour requirements.

If specific authority to hire outside the merit system is granted in an agency's law, the agency incurs additional responsibility to ensure compliance with Federal and State laws concerning hiring, promotion, non-discrimination, benefits, and termination that are not part of the State's merit system. The agency can accomplish this by creating and adopting its own policies and procedures, or by adopting the State Personnel Board's policies and procedures. A strong argument is made for State agencies granted the authority to hire outside the merit system to adopt State Personnel Board polices and rules, because the policies and rules regarding hiring, employment, and termination were created by the State Personnel Board to ensure compliance with existing laws.

> "The executive director and other employees of the board shall not be subject to or governed by the provisions of the state Merit System law but shall be entitled to all benefits accruing to Merit System employees including, but not limited to, the right to accumulate leave, participate in the Employees' Retirement System, and participate in the State Employees' Health Insurance Plan." (***Code of Alabama 1975***, Section 34-1-3(l)) [Board of Public Accountancy]

Act No. 309, ***Acts of Alabama 2015***, codified as Section 36-6-6, was amended to provide that the salaries of cabinet members, assistant cabinet members, assistant department heads and other officers and employees appointed in the exempt service shall be fixed in accordance with recommendations by the State Personnel Board of appropriate pay ranges within the State pay plan.

Appointment of Executive Officer and Assignment of Duties

- *Power to Appoint an Executive Officer Granted by Agency's Enabling Statutes*
  Most, but not all, State agencies are granted the authority, by statue, to appoint a person to serve as executive officer. This authority is generally found in the part of the law defining the composition of the agency or the powers and duties of the agency. Unless authority to hire outside the merit system is granted by law, the agency is obligated to hire the executive officer through the merit system. If the enabling statutes of an agency are completely silent on the hiring of an executive officer, the merit system law is in force. However, the merit system law itself provides an exemption from the merit system law for executive officers of boards and commissions appointed by the governor, or by boards or commissions with the approval of the governor. The executive officers of other regulatory boards or commissions must be employed in the unclassified service of the merit system.

  The ***Code of Alabama 1975***, Section 36-26-10 (c)(1), states, "The unclassified service shall include: One confidential assistant or secretary for each board, commission and elected officer and, when requested by the Governor, for each department head appointed by the Governor; …" Persons in the unclassified service can be terminated without cause, but are subject to all other benefits and restrictions applying to regular, classified merit system employees.

  The initial compensation of an executive officer must be approved by the Personnel Board. The ***Code of Alabama 1975,*** Section 36-6-6, states, "(b) Where some authority other than the Governor appoints such an officer or employee, the salary shall be fixed by the appointing authority with the approval of the Governor and the State Personnel Board". Therefore, when appointing an executive officer, sufficient time must be allowed for the approval by the Personnel Board and the governor of the appointment and salary. Until that happens, the executive officer cannot receive a salary.

  Please note the merit system law is a general law that is automatically in force, unless there is a specific exemption from it in other law.

  Examples of necessity to hire under the merit system:

  - "To hire the executive director of the board and an executive assistant if needed to fulfill the requirements of this chapter. … and may employ, subject to the approval of the board, other staff members, consultants, or service contractors as are necessary to discharge the board's duties and administer this chapter." (***Code of Alabama 1975***, Section 34-27A-5(11) [Real Estate Appraisers])

- "The board may fix the number of its full-time employees, who shall be employed pursuant Merit System." (***Code of Alabama 1975***, Section 34-25-4(b) [Polygraph Examiners])

If the power to appoint an executive officer outside the merit system is granted, it falls upon the board or commission to ensure the hiring process complies with Federal and State laws regarding employment practices, which is discussed below. Non-merit employees are frequently hired by contract, in which case the scope of employment, compensation, benefits, and termination issues are defined by the terms of the contract. Hiring by contract is discussed later.

Examples of authority to hire outside the merit system:

- "Appoint and employ a qualified person, not subject to the State Merit System, who shall not be a member of the board, to serve as executive officer." (***Code of Alabama 1975***, Section 34-21-2 (j)(13)) [Board of Nursing])
- "The commission may employ an executive director and an assistant executive director, both of whom shall be exempted from the classified service under the general laws of the state, and other staff members necessary to discharge its duties and administer this chapter. The executive director and assistant executive director shall be employed on the basis of their education, experience, and skills in administration and management. The commission shall advertise to seek quality applicants possessing the qualifications and shall conduct interviews of the top applicants. The assistant executive director shall act as and have authority of the executive director in his or her absence." (***Code of Alabama 1975***, Section 34-27-7 (h) [Real Estate Commission])

- *Hiring an Executive Officer by Contract with or without Other Facilities or Services Included*

  If there is statutory authority to hire an executive officer without regard to the merit system, the agency may do so by hiring a consultant under contract. Frequently, administrative staff, equipment, and facilities are included in the contract. Attorney General Opinion 2002-078, dated December 3, 2001, to the Honorable Jimmy Warren, opined since the consultant provided primarily administrative and clerical skills, and all final policy decisions must be made by the State agency, the consultant is not required any specific training or degree. The opinion stated executive directors, therefore, do not fit the definition for "professionals", as defined by the competitive bid law. Consequently, State agencies wishing to use consultants to provide administrative services cannot use the request for proposal procedures (***Code of Alabama 1975,*** Section 41-16-70, *et seq*.) reserved in the law for employment of professionals, and must hire them through a formal competitive bid process (***Code of Alabama 1975,*** Section 41-16-20, *et seq*.). At present, neither formal bids nor requests for proposals are necessary to hire employees (not consultants) to perform administrative services, including persons employed as executive directors. There is little guidance available for consultant contracts for the services of executive directors, with or without additional administrative services, facilities, and equipment. The State Purchasing

Department of the Department of Finance will likely be the best source of information on procurement of executive director services and other administrative services. If your agency operates from the State Treasury, the State Purchasing Department will process formal bids for executive director services and associated administrative services. The Department of Finance's *Fiscal Policy and Procedures Manual* and the State Personnel Department's policies and procedures provide information concerning employment contracts.

The five-year term limit for contracts is in place when contracting for executive director services.

- *Assigning Duties to the Executive Officer*
  The statutes giving authority to specifically appoint an executive officer normally give the regulating agency the authority to set the salary of the executive officer and assign duties to that officer. For example:

  - "Define the duties and fix the compensation for the executive officer." (***Code of Alabama 1975***, Section 34-21-2 (j)(14) [Board of Nursing])
  - "…The commission shall determine the duties and fix the compensation of the executive director, assistant executive director, and other staff members, subject to the general laws of the state." (***Code of Alabama 1975***, Section 34-27-7 (h) [Real Estate Commission])

  The assignment of duties in the law is as diverse as the number of State agencies existing. Commonly, executive officers are assigned hiring of personnel and managing the day-to-day operations of the agency. The board or commission monitors operations through reports from the executive officer or staff. This is a preferable course of action for a State agency as maintaining day-to-day operations is not a board or commission's central purpose. The purpose of a regulatory board or commission is the protection of the public good through regulation and discipline. Normally, board or commission members meet infrequently and are engaged in doing business as private citizens. Maintaining a State office in compliance with State laws is usually better done by a competent executive officer.

Hiring other Staff
Frequently, this function is assigned to the executive officer with final approval reserved by the board or commission. The authority to hire staff is usually included in the powers and duties section of the agency's enabling statutes. For example:

- "Employ or contract for necessary personnel, including a director, and provide necessary offices, supplies, and equipment to fulfill the requirements of this chapter." (***Code of Alabama 1975***, Section 34-1A-3(14) [Electronic Security Board])
- "Employ full-time or part-time personnel, including an executive director as previously provided, professional, clerical, or special personnel as necessary to effectuate this article and to purchase or rent necessary office space, equipment, and supplies." (***Code of Alabama 1975***, Section 34-29-69(5) [Board of Veterinary Medical Examiners])

In order to accomplish the provisions of enabling and governing statutes, State agencies may hire employees. However, unless specific authority to hire outside the merit system is granted in an agency's enabling statutes, or if no guidance is given, the merit system law, a law of general applicability, is considered in force.

Please notice within the merit system, it is possible to hire both full-time and part-time employees. Part-time merit employees earn leave and longevity pay at a percentage rate equaling the percentage of full-time work for which they are employed. If a part-time employee works 20 hours and full-time work is 40 hours (50%), then employee earns 50% of the leave and longevity. Also, if a part-time employee is regularly scheduled to work on a holiday, the part-time employee receives the holiday with pay. The schedule of days and hours to be worked by part-time employees should be documented, with the information kept in the employee's file.

For non-merit system employees, the employees receive only the benefits agreed to and voted upon by the regulatory board. If an employment contract is used, the benefits are limited to those included in the contract. Documentation of schedule, ratio of hours, and benefits for non-merit full- and part-time employees is important for maintaining an accurate disbursement of payroll and benefits.

- *Contract Hiring of Employees, Including Executive Officers Hired as Employees*
  Employees of State agencies are hired through the State's merit system, by contract, or at will without a contract, depending on circumstances. For State agencies operating through the State Treasury but granted authority to hire without regard to the merit system, the guidance found in the Department of Finance's *Fiscal Policy and Procedures Manual* will assist in the creation of contracts for contract employees. While compliance with the *Fiscal Policy and Procedures Manual* is not mandatory for those State agencies operating through checking accounts, the guidelines for contracts in the manual and in the Personnel Department's policies and procedures manual will assist in preparing contracts for employees. Other laws may also apply to employees hired by contract, such as mandatory review by the Permanent Joint Legislative Contract Review Oversight Committee (***Code of Alabama 1975***, Sections 29-2-40 through 29-2-41.3). If the agency must hire through the merit system, the law found at the ***Code of Alabama 1975***, Sections 36-26-1 through 36-26-108, applies. State Personnel Board rules, and State Personnel Department policies and procedures, also apply. In addition, the governor must sign all contracts, whether or not the agency operates through the State Treasury. Two types of contracts exist for procurement of employees: the personal service contract and the professional service contract.

  - *Personal Service Contracts*
    Generally, a personal service contract is for non-professional employment. For example, proctors for examinations or data entry personnel for a short-term project could be hired under personal service contracts. However, professional employees can be hired as employees under personal service contracts, if merit system employment either is not required or is not possible. At times, federal grant

programs provide funds to hire employees to support the grant program only for the duration, and a permanent, classified merit system employee would not be appropriate. In a personal service contract, an employer-employee relationship exists. The employee works under the supervision of the employer with all space, equipment, and supplies provided by the employer, who directs work activities. For an agency hiring through the merit system, the State Personnel Department must determine whether the job could be filled by merit system employment, either full- or part-time, and whether the rate of pay is commensurate with the qualifications of the individual and appropriate for the work required. Contract hiring cannot be used to circumvent the merit system, and personal service contracts are closely reviewed.

- *Professional Service Contracts*
  The services of a professional, where specific training and/or unique talent are required to perform the work, are obtained through a professional service contract. For example, architects, actuaries, and calligraphers are professionals whose services would be contracted. The Personnel Department does not review professional service contracts, although all other reviewing agencies do. In a professional service contract, an independent contractor relationship should exist. The State agency defines, through the terms of the contract, expectations and outcomes. The independent contractor works without supervision and provides his or her own equipment, space, and supplies to perform the agreed-upon service. The Internal Revenue Service created a list of questions to help employers determine whether an independent contractor or employee/employer relationship exists. The list is also published in the Comptroller's *Fiscal Policy and Procedures Manual*. It is important to know whether or not an independent contractor relationship exists, as the State agency must withhold and submit payroll withholding taxes on an employee, but not an independent contractor, as defined by the Internal Revenue Service. Also, at year-end, the employer needs to know whether to prepare a form W-2 or 1099 MISC.

  In 2001, the competitive bid law was updated to require a competitive selection process for professional service contracts. To hire a professional, an agency must first obtain a list of interested parties. There are four sources for lists named in the law:

  - For attorneys for litigation, contact the Attorney General's Office
  - For non-litigation attorneys, contact the Governor's Legal Advisor
  - For physicians, contact the Medical Licensure Commission
  - For all other professions, contact the Purchasing Division of the Department of Finance.

  Additional names may be added to the list of interested parties. Once the list is obtained and updated as necessary, prepare specifications for the job and selection criteria or evaluation objectives for the proposal selection process. When the job specifications are completed, a request for proposal plus a copy of the specifications

must be sent to *all* interested parties. Evaluate all returned proposals and choose one based on the selection criteria established. Once the proposal is selected, a contract is prepared, signed, and approved.

If a proposal is chosen in which the fee is 10% more than the lowest ***responsible*** proposal, a written statement must be prepared explaining why a more costly proposal was chosen, and the statement must be kept as part of the documentation for the proposal.

Poorly-written contracts are a common pitfall in the hiring of contract personnel. A poorly-written contract is difficult to enforce. For example, it is difficult to recover funds expended in a breach of contract situation if the contract is not clearly written and the expected outcomes are not sufficiently detailed and understandable. A contract for personal or professional services should include, among other things:

- A statement identifying the parties of the contract
- The scope of work, including a complete description of the work to be performed, the qualifications of the person contracted with, and that person's social security number
- The period of agreement, which must begin after Personnel Board approval and review by the Permanent Joint Legislative Contract Review Oversight Committee, if applicable *(the personnel director/board cannot approve retroactive contracts and neither can the Contract Committee)*
- The compensation for the services performed, including a statement of the dollar amount compensation will not exceed
- The expenses to be paid, including a dollar limit expenses will not exceed
- The total amount of the contract
- A termination clause with a specified number of days
- A statement of merit system exclusion so the contractor understands he or she is not eligible for merit system benefits
- The following required language: "It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this contract shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this contract, be enacted, then that conflicting provision in the contract shall be deemed null and void. The contractor's sole remedy for the settlement of any and all disputes arising under the terms of this agreement shall be limited to the filing of a claim with the Board of Adjustment for the State of Alabama. In the event of the proration of the fund from which payment under this contract is to be made, the contract will be subject to termination."

Further details concerning components of a contract are discussed in the Department of Finance's *Fiscal Policy and Procedures Manual* and the State Personnel Board's policies and procedures.

Finally, payments under a contract should be monitored closely to ensure payments do not exceed the total of the contract. Without a monitoring system, a greater risk exists the contract will be overpaid.

Employee Issues

While board or commission members are not expected to verify the agency's compliance with the following requirements, members are expected to hire competent personnel who will ensure and monitor compliance. Please be aware if the authority is granted to hire without regard to the merit system, the agency will need to create its own personnel policies and procedures ensuring compliance with Federal and State laws governing discrimination in hiring, promoting, compensating, and terminating employees. The State agency can vote to adopt the State Personnel Board's policies and procedures as they are organized to ensure compliance with employment requirements. All of the employment issues discussed below apply, whether or not an agency hires through the merit system. Two issues, retirement and State employee health insurance, apply to agencies operating through the State Treasury. Some employment issues regulated by law include:

Discrimination in Hiring, Promoting, and Terminating

For State agencies not required to use and choose not to adopt the Personnel Board's policies, rules, and regulations, the agency must ensure the hiring, promoting, and termination practices are non-discriminatory and comply with federal law. Federal laws, such as the *Equal Pay Act of 1963;* Title VII of the *Civil Rights Act of 1964;* the *Age Discrimination in Employment Act of 1967;* the *Rehabilitation Act of 1973*, Sections 501 and 505; and the *Americans with Disabilities Act of 1990*, Titles I and V, all affect the hiring practices employers use. Remember these laws when preparing employment policies. Information web links and contact information are provided in the contact list accompanying this manual.

Family Medical Leave Act

29 *United States Code* 2601, and 25 *Code of Federal Regulations* 825 – This act requires employers to provide an employee up to twelve weeks of leave, without losing his or her job, to care for a family member or to seek medical treatment.

Fair Labor Standards Act

29 *United States Code* 201 – This act addresses minimum wage, child labor provisions, and the payment of overtime. It requires an employment relationship to exist between employer and employee. Employees in the service of the state usually receive compensatory time rather than payment of overtime. Compensatory time is calculated the same as overtime.

Immigration Reform and Control Act of 1986

This act is codified in several sections of the US Code, so a single cite is not available. It requires employers to verify the resident status of persons hired, and to ensure they are not hiring illegal aliens. A standard Form I-9 is completed and retained for each employee.

Selective Service Act

50 *United States Code* App 453, and ***Code of Alabama 1975***, Section 36-26-15.1 – This act requires no eligible person is enrolled in post-secondary education, hired, or promoted who is not registered with the Selective Service Administration. Eligible persons are citizen and non-citizen males between the ages of 18 and 25. The Alabama ***Code*** requires agencies to obtain a certification from persons employed that the person registered or registration did not apply (in the case of males who were born from 3/29/57 through 12/31/59 and all females). Beginning October 1, 2001 in Alabama, any person, who is required to register with Selective Service under federal law and who applies for a State driver's license or renewal, permit, or State ID card, is automatically registered with the Selective Service System. Registration is verified at the Selective Service Administration's website, www.sss.gov

New Hire Act

In response to the Federal Welfare Reform Act of 1996, the ***Code of Alabama 1975***, Sections 25-11-1 through 17, require providing specific information on each newly hired or recalled employee to the Department of Industrial Relations within seven days from the date of hire or rehire. For the purposes of this legislation, "employee" is defined as an individual in the employ of another who performs a service for hire and receives wages. "Employer" is defined as a person or agency, including a state or local government agency or labor organization, which employs an individual to perform a service for hire and pays wages directly to the individual. Information regarding this requirement may be found on the website of the Department of Industrial Relations at http://www.labor.alabama.gov/nh/

State Holidays

Official State holidays are enumerated in the ***Code of Alabama 1975***, Section 1-3-8. The holidays apply to all State employees and all State offices. The section requires the holidays to be observed by closing all State offices. This law is not part of the merit system law and applies whether the State agency is authorized to hire without regard to the merit system or not. If personnel work on an official holiday, the law requires that they are provided a day of compensatory time in lieu of the holiday. This section was amended by Act No. 527, ***Acts of Alabama 2018*** to include December 1 designated as Mrs. Rosa L Parks Day. Note, this is not an official holiday with State office closure.

Payroll Withholding Taxes

Employers must comply with Federal and State Social Security, Medicare, Unemployment Compensation, and Income Tax laws. If an agency operates outside the State Treasury, it is responsible for computing and submitting the employee and employer portions of payroll withholding taxes. The Internal Revenue Service provides guidance for tax withholdings in its Circular E. In addition, the agency is responsible for preparing forms W-2 or 1099 MISC at year-end. Form W-2 is prepared for employees, while form 1099 MISC is prepared for independent contractors. If a contractor submits a social security number for tax identification purposes, the contractor receives a W-2. Corporations typically do not

receive a 1099 MISC, unless they provided medical or legal services. Timely submission of employees' income tax withholdings according to the IRS schedule is required.

Military Leave

38 *United States Code*, Chapter 43, is the Uniformed Services Employment and Reemployment Rights Act. 38 *United States Code* 4311 states in pertinent part, "A person who is a member of, applies to be a member of, performs, has performed, applies to perform or is obligated to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service or obligation." The ***Code of Alabama 1975***, Section 31-12-13, guarantees employees up to 168 hours per calendar year of paid leave for qualifying federal military service and an additional 168 hours per calendar year for active duty called by the governor in service of the State. The section entitles employees to military leaves of absence from civil duties and occupations on all days engaged in field or coast defense or other training or service ordered under the National Defense Act, or federal laws governing the United States reserves, without loss of pay, time, efficiency rating, annual vacation, or sick leave. The ***Code of Alabama 1975***, Section 36-26-31, states, "Upon the application in writing of any such person, which application shall be directed to and filed with the state director of personnel, the state personnel board shall enter upon its minutes an order or memorandum granting to such applicant an indefinite leave of absence for such length of time as such applicant shall honorably serve in any of the armed forces of the United States." Therefore, if an employee is on continuous active duty status for more than 168 hours, on January 1 of each year, the employee is entitled to an additional 168 hours of military leave. The employee need not return to the job to be entitled to the leave. While caps are placed on pay for leave at 168 hours, it does not cap the benefits provided to an employee while on active duty. Benefits not requiring the employee to be in a pay status, such as insurance and longevity pay, are not waived while the employee is on active duty. State agencies may not enact personnel policies which conflict with the law in amount of pay provided, number of hours of leave provided, or any other matter. Attorney General Opinion 2003-070 addresses the carry-over of more than 480 hours per calendar year of annual leave earned by returning military personnel. The State Personnel Department provided guidelines for the carry-over and use of restored annual leave for military personnel. Attorney General Opinion 2004-29 opines the use of sick leave while on military leave is prohibited by the rules of the State Personnel Board.

- Attorney General Opinions 2006-135, 2002-090, 96-207, 96-188, and 84-289 expand on the items discussed above.
- Additional information on the impact of the federal law is obtained from the Employer Support of the Guard and Reserve (ESGR), an agency within the office of the Assistant Secretary of Defense for Reserve Affairs, at 1-800-336-4590, or on line at www.esgr.org.

Act No. 258, ***Acts of Alabama 2017*** amended the ***Code of Alabama 1975***, Section 31-12-2 to read as follows: "(a) Whenever any active member of the Alabama National Guard, or a member of the national guard of another state who is employed in this state, in time of war,

armed conflict, or emergency proclaimed by the Governor or by the President of the United States, shall be called or ordered to state active duty or federally funded duty for other than training, the provisions of the federal Servicemembers Civil Relief Act (SCRA) and the federal Uniformed Services Employment and Reemployment Rights Act shall apply.
(b) Those active members as defined in subsection (a) called or ordered to active duty for a period of 30 consecutive days or more shall be eligible for military differential pay pursuant to Section 31-12-5 and restoration of annual or sick leave pursuant to Section 31-12-8."

Longevity Pay

The ***Code of Alabama 1975***, Sections 36-6-11, 36-6-12, and 36-21-3, govern longevity pay for State employees. Please note 36-6-11(a) states, "Each person employed by the State of Alabama, and all legislative personnel, officers or employees, including but not limited to Legislative Reference Service personnel, whether subject to the state Merit System or not, shall be entitled to and receive in a lump sum the first pay day of December each year…".

The pay amount begins at $300 and increases by $100 at the end of each subsequent five-year period of service, to a maximum of $700. Beginning October 1, 2006, and continuing each fiscal year thereafter in which an employee does not receive a cost-of-living increase in compensation, each per annum amount provided in this subsection shall be increased by one hundred dollars ($100) per year to a maximum amount of one thousand dollars ($1000) for 25 years of total service as long as the employee remains in service. The longevity pay statutes apply to any permanent full-time or permanent part-time person employed by the State of Alabama, including hourly workers. Longevity pay eligibility is not limited to merit system employees. The comptroller's office, through the *Fiscal Policy and Procedures Manual*, State longevity pay does not apply to independent contractors. Attorney General Opinions 88-061, 88-062, 88-066, 88-067, 88-198, 88-241, 88-271, 90-111, 92-083, and 92-195 discuss various issues surrounding longevity pay.

Beginning fiscal year 2012, the longevity pay remains at the following levels:

Fiscal year	5 Years	10 Years	15 Years	20 Years	25 Years
2012 *paid 12/11 and thereafter*	$600	$700	$800	$900	$1,000

Retirement

The ***Code of Alabama 1975***, Sections 36-27-1 through 36-27-161, establishes the State Employees Retirement System. Sections 36-27-1(2) and (3) define "employee" as one in State service who is paid by State warrant, and define "employer" as the State of Alabama or any department, commission, institution, or any other agency of and within the State by which an employee is paid.

- An "employee" is defined as being paid by a State warrant. Employees of State agencies operating from a checking account are not included in the regular employees' retirement system, unless specifically authorized by law.
- A State agency operating from a checking account can elect, with the approval of the Retirement System Board of Control, to enter the employees' retirement system as a separate account apart from the regular system, and with its own separate benefits and contributions package.

According to the ***Code of Alabama 1975***, Section 36-21-8, certain law enforcement officers shall receive, without cost, his or her badge and pistol as part of his or her retirement benefit. Agencies include the Department of Conservation and Natural Resources, Alcoholic Beverage Control Board, Forestry Commission, Alabama Criminal Justice Information Center, Department of Public Safety, Capitol Police, and other agencies employing officers who are required to be Peace Officers Standards and Training Commission-certified.

State Employee Health Insurance

The ***Code of Alabama 1975***, Sections 36-29-1 through 36-29-30, establishes the State Employees' Health Insurance Plan. Section 36-29-1(3) defines "employee" as "a person who works full time for the State of Alabama or for a county health department and who receives his full compensation on a monthly basis through means of a State warrant drawn upon the State Treasury…and any person employed part time by the State of Alabama on a wage and hourly basis, excluding fee compensation and other like arrangements, shall be included in the definition of employee as defined in this chapter provided such person shall agree to have deducted from his or her hourly wage, as stipulated, a pro rata portion of the premium cost of a full time employee based on the percentage of time such person is employed by the State according to rules and regulations established by the State Employees' Insurance Board." Due to this definition, employees of State agencies operating from a checking account cannot participate in the State employees' insurance plan, unless otherwise specifically authorized by law.

Nepotism Law

The ***Code of Alabama 1975***, Section 41-1-5, requires no person with hiring authority may hire any person within four degrees of affinity (marriage) or consanguinity (genetic kinship). The chart shows the four degrees:

Table of Consanguinity and Affinity			
Within 4 Degrees Of Relationship			**Great Grandparents (3 degrees)**
		Grand Parents (2 degrees)	**Great Uncles & Aunts (4 degrees)**
	Parents (1 degree)	**Uncles & Aunts (3 degrees)**	
Office Holder	**Brothers & Sisters (2 degrees)**	**First Cousins (4 degrees)**	
Children (1 degree)	**Nephews & Nieces (3 degrees)**		
Grand Children (two degrees)	**Grand Nephews & Nieces (4 degrees)**		
Great Grand Children (3 degrees)			

Controversy in the Workplace

Controversy opening a State agency to litigation, such as sexual harassment, intolerance, and violence in the workplace, is more commonplace. While there are no federal or State laws or regulations requiring a State agency to provide training on sexual harassment, intolerance, or violence, sound personnel practices include providing employees with training on recognizing, reporting, and controlling sexual harassment, intolerance, and violence in the workplace. The State Personnel Department developed training classes to help employers and employees understand the laws governing non-discrimination and safe work environments, and to recognize and deal with controversial work environment issues. Information, Internet links, and contact numbers are provided in the contact list accompanying this manual.

Suspensions

Act No. 127, Acts of Alabama 2019 amended the Code of Alabama 1975, Section 36-26-28 relating to suspensions without pay and clarified the total time of suspension. The total time of suspension may not exceed 30 business day in any year of service. The Act also provides that the state employee has 10 business days to accept the suspension or request a suspension hearing. 2019_127 state employee suspension.pdf

Terminating Employees

Unclassified employees in the merit system, including the executive officer, serve at the pleasure of the appointing authority and can be dismissed by that authority without cause. Classified, merit system employees must be suspended or dismissed according to rules promulgated by the State Personnel Board. Contract employees are terminated according to the terms of the contract. Non-contract employees who are not merit system employees may be terminated by the appointing authority according to conditions of employment set by the appointing authority. Federal laws governing discrimination in hiring also govern discrimination in termination. State agencies hiring outside the merit system should review terminations and termination policies to determine compliance with federal law.

Lump Sum Merit Reward Payment

Act No. 397 of Acts of Alabama 2019 added Section 36-26-48 to the ***Code of Alabama 1975***. This Act authorizes a lump sum merit reward payment to certain full-time state employees who have reached the maximum of their assigned pay ranges under certain conditions; provides for the amount of the payments; and specifies exemptions. 2019_397 meritpay.pdf

Subsistence Payments for Law Enforcement Officers (LEOs)

Act No. 451 of Acts of Alabama 2019 amended Section 36-21-2 to the ***Code of Alabama 1975***. This Act defines a work day as working four or more hours within a consecutive 24-hour period of time. The named LEOs shall receive a subsistence allowance of $12 for each working day of a pay period while engaged in the performance of the duties as a law enforcement officer. This pay is not subject to taxation by the State. The LEOs affected by this section include the following

- ALEA

- Department of Conservation and Natural Resources
- Department of Forensic Sciences
- Alabama Liquefied Petroleum Gas Board
- APOST Commission
- Alabama Securities Commission
- State Port Authority
- Board of Pardons and Paroles (probation & parole officers)
- Department of Insurance (fire marshals)
- Alabama Ethics Commission (investigators)
- District Attorney offices (full-time investigators)
- Attorney General (investigators)
- State appellate courts (marshal or deputy marshals)
- Department of Corrections (correctional officers)

2019_451 LEOsubsistence.pdf

Acquiring Legal Counsel/Representation

The ***Code of Alabama 1975***, Section 36-15-1, states, "...no attorney shall represent the State of Alabama, or any agency, department, or instrumentality of the state in any litigation in any court or tribunal unless the attorney has been appointed as a deputy attorney general or assistant attorney general."

- *Attorney General's Office*
  The attorney general (AG) is the legal counsel for the state. Among other duties, all litigation concerning the State, or any agency of the State, is under the direction and control of the attorney general. He also gives his opinion, in writing, on any question of law connected with the interests of the State or with the duties of the agencies. Most State agencies are assigned a representative of the AG's office to provide legal counsel. In many instances, there is an agreement by which the agency pays for the services of the AG's attorney. If your agency is involved in litigation, an attorney other than the one assigned to assist you with routine legal matters can be appointed by the attorney general with the approval of the governor for your particular litigation (***Code of Alabama 1975***, Section 36-15-21).

- *Private Attorneys Hired by Contract*
  When necessary, additional legal counsel may be obtained. An attorney's services come under the definition of "professional services" in the competitive bid law and are, therefore, exempt from the competitive bid law requirements. Outside attorneys retained to represent the State in litigation must be appointed by the attorney general in consultation with the governor from a list of attorneys maintained by the attorney general. Fees are negotiated between the agency and the attorney and are approved by the governor in consultation with the attorney general. Maximum fees paid for legal representation may be established by executive order of the governor (currently $195 per hour-Executive Order 51 of Governor Bob Riley).

Section Eleven: Appropriations and Budgets

An agency, in order to finance its operations, will need to receive and spend money. Agencies operating through the State Treasury deposit and spend monies through a separate account known as a fund. A fund is similar to a checking account, in that monies are deposited into and expended from a central account. All expenditures of agencies operating through the State Treasury are budgeted and authorized by the legislature through an appropriation, or the treasury and the comptroller will not disburse funds.

Appropriation Authority

An agency operating through the State Treasury is bound by a multitude of requirements, the first being money is not spent without an appropriation from the State Legislature. An appropriation is loosely defined as permission to spend or obligate money. This requirement applies equally to money collected as fees by State licensing boards and money in the State's General Fund. State agencies may not spend more than the amount appropriated by the legislature.

- *Requires Legislative Action*
  The *Alabama Constitution of 1901*, Article IV Section 72, states, "no money shall be paid out of the treasury except upon appropriations made by law, and on warrant (State check) drawn by the proper officer in pursuance thereof; … The funds are required to be appropriated by the legislature of which power cannot be transferred or delegated."

- *Budget Requirement*
  Each year, State agencies request an appropriation, the aggregation of which becomes the budget submitted by the governor to the legislature. The annual appropriation request is initiated by submitting information to the Executive Budget Office (EBO).

  Normally, a licensing board's appropriation is based on their projected receipts and any balance of funds available from previous years. In the event an agency does not possess sufficient cash to finance its operations, the legislature may make an appropriation to the agency from the State's General Fund (supplemental appropriations), or money may be obtained from the Governor's Departmental Emergency Fund.

- *Year-End Balance*
  Optimally, receipts should meet operational needs, including a reserve for unexpected costs. Some money must be retained at the end of the fiscal year to fund the first quarter of the next year's operations and to meet contingencies such as litigation. Some agencies are required by law to transfer all or part of their remaining fund balances at year-end to the State's General Fund or other fund as stated by law. This transfer is not optional and should be made shortly after obligations of prior year appropriated funds are paid.

- *Treasury Funds and Checking Accounts*
  All receipts collected in the name of the State are State funds. Most agencies are required to operate through a fund within the State Treasury and to comply with the

State Comptroller's *Fiscal Policy and Procedure Manual*. However, some agencies are allowed to operate outside of the State Treasury through a bank checking account. Note, to operate from a checking account, an agency is specifically authorized in its enabling statutes. The ***Code of Alabama 1975***, Section 41-4-92, states, "All fees, receipts and income collected or received by any department, board, bureau, commission, agency or office or institution of the state shall be paid into the state treasury or deposited in an approved state depository." Some examples are listed below, where agencies are allowed to maintain a checking account.

- "…All money received by the board under this chapter shall be paid to and received by the secretary-treasurer of the board. The secretary-treasurer shall deposit to the credit of the board all funds paid to the board in a bank selected by its members…"(***Code of Alabama 1975***, Section 34-9-41[Board of Dental Examiners])
- "All funds received by the board shall be deposited to the credit of the board in a federally insured bank selected by the board…"(***Code of Alabama 1975***, Section 34-24-258 [Board of Podiatry])

Budgeting

- *Budget Management Act*

  Formulation of the budget begins with the preparation of estimates of expenditures for the next fiscal year by the administrative head of each budgeted agency. These estimates are submitted annually to the Executive Budget Office on or before each regular session of the legislature. Annually, the EBO provides to the agencies a set of instructions and forms for preparing a budget request. The budget is prepared for each fund, appropriation unit, and activity by major object of expenditure in accordance with the State-level chart of accounts.

  A detailed statement showing actual agency revenue for the preceding year and estimated revenue for the current and the next fiscal year must be submitted by each agency. Each budgeted agency is also required to submit a performance statement that includes a list of annual agency performance indicators for the preceding year, and estimated agency performance indicators for the current and next fiscal years. Additionally, the agency is required to provide a personnel classification budget request form showing employees (full-time equivalents) and amounts by classification. The information must be filed by November 1st each year.

Section Twelve: Cash, Investments, Receipts

Cash and Near Cash

- *Petty Cash*
  A petty cash fund is cash on hand to pay incidental expenses. Petty cash funds are not allowed unless specific authority is granted to the agency. Petty cash should be reconciled on a regular basis (monthly) by someone other than the custodian. All expenditures should be supported by documents, such as receipts.

- *Investments*
  Only agencies specifically authorized to invest their funds may do so. The *Constitution of Alabama 1901*, Amendment No. 450, states agencies may invest their funds in the following:

  - Interest-bearing demand deposits in federally insured banks, and interest-bearing deposits, whether or not evidenced by certificates of deposit, in federally insured banks
  - Bonds, notes, and other evidences of indebtedness that are direct obligations of the United States of America or are unconditionally guaranteed as to both principal and interest by the United States of America
  - Bonds, debentures, notes, or other evidences of indebtedness issued or guaranteed by any federal agencies or government-sponsored enterprises authorized to issue their own debt instruments
  - Repurchase agreements with federally-insured banks or with government bond dealers reporting to and trading with the Federal Reserve Bank of New York
  - Interest-bearing time deposits (whether or not evidenced by certificates of deposit) in savings and loan associations, following certain restrictions
  - Corporate securities, following certain restrictions.

- *Collateralization and Security for Alabama Funds Enhancement Program (SAFE)*
  Funds deposited and held in accounts outside of the State Treasury must be sufficiently protected, or collateralized, with securities provided by the depository. For each depository, if it is a member of the Federal Deposit Insurance Corporation (FDIC), the total of accounts of each ownership category for each depositor will be insured up to $250,000 (2019 limit). All funds in the accounts over $250,000 in each ownership category must be protected with collateralized securities pledged by the depository. A discussion of the FDIC and its deposit insurance can be found on the Internet at www.fdic.gov. Prior to January 1, 2001, each State agency was responsible for ensuring its funds were fully protected, either with FDIC coverage or collateralized securities. With the passage of the SAFE Act, this responsibility is entrusted to the Board of Directors of the SAFE program. The ***Code of Alabama 1975***, Section 41-14A-3(2), requires all public depositors to place their public deposits with one or more qualified public depositories. If your agency operates outside the State treasury, you can access the Treasurer's website at www.treasury.alabama.gov to determine if your agency's bank is a qualified public depository.

All State agencies not operating from the State Treasury must deposit their funds into a qualified public depository. The Examiners of Public Accounts will ask for documentation of agency compliance with the SAFE program. This request can be met by having a Public Deposit Identification and Acknowledgement Form in your files. The form is signed by the bank and department representatives and contains the bank balance in the upper right hand corner of the form. Your bank statement should exhibit wording such as "Public Funds" or "SAFE Deposit" or "Government Funds". We encountered several instances where the wording "not for profit" was used. This may or may not mean compliance with the SAFE program. When in doubt, verify with the bank in writing. If the Public Deposit Identification and Acknowledgement Form is properly signed and on file, the wording, or lack of wording, on the bank statement is not important. The most important point is the bank is aware the accounts in question are public funds and are covered under the SAFE program.

Receipts

- *Treasurer's Office*
  Absent specific authority to operate from a checking account, all fees, receipts, and income collected or received by any State department or agency is deposited into the State Treasury or an approved State depository to the credit of a special fund as required by law. All fees collected in the name of a State agency are State funds. As evidence, *Attorney General Opinion 2002-349, dated 9/26/2002, opines the Alabama Board of Auctioneers is not exempt from the provisions of Section 41-16-70, et seq., of the* ***Code of Alabama****, as the agency does receive State funds. Any funds collected by the board are collected under the authority and direction of the State. These funds are State funds and must be deposited in the appropriate account in the Office of the State Treasury.* The State Comptroller's Office, Division of Control and Accounts, is charged with controlling and recording all payments in and out of the State Treasury.

- *Bad Check Fee*
  The ***Code of Alabama 1975***, Section 8-8-15, allows agencies to assess a fee for checks returned for non-payment due to insufficient funds, etc. The maximum bad check charge is $30. An agency is not allowed to collect more than $30. The agency must adopt a rule regarding the amount of the fee the agency intends to charge.

  There are procedures an agency must follow to collect bad checks. Section 13A-9-13.1 gives a ten-day period of written notice for the maker of a bad check to make payment to the holder of the bad check, along with a service charge. If the notice of the bad check is mailed by certified or registered mail and returned undeliverable, it is evidence the maker of the check intended to not honor the check. This section also states, "negotiating a worthless negotiable instrument is a Class A misdemeanor." Section 13A-9-13.2 gives the form of the notice to be sent to the maker of a bad check. After an agency follows the procedures in Section 13A-9-13.1, a complaint to the Worthless Check Unit of the District Attorney's Office may be presented.

- *Payment of Fee as Part of Qualifications*
  Payment of fees is part of the qualification to be licensed. If the fee is not received, the payer is not qualified to be licensed. Also, an agency cannot receive partial payment, as it is not constitutional for an agency to extend credit.

- *Credit Card Receipts*
  Below is a brief statement covering the acceptance of credits cards for payment of fees by agencies. The acceptance of credit cards allows persons to apply for an original license and for licensees to renew via the Internet. For further information on credit card receipts, refer to the complete section in the ***Code of Alabama 1975***, Section 41-1-60 - Acceptance of credit card payments.

  > "…Any officer or unit of state government required or authorized to receive or collect any payments to state government may accept a credit card payment of the amount that is due. This section shall only apply to departments, agencies, boards, bureaus, commissions, and authorities which are units of state government, and shall not apply to any departments, agencies, boards, bureaus, commissions, or authorities which are units of county or municipal government and come under the provisions of Chapter 103 of Title 11."

  If your agency decides to accept credit cards, then your agency must adopt reasonable policies, rules, or regulations governing the acceptance of credit card payments, which are not in conflict with the law. The State contracted with a third party, Alabama Interactive, to process transactions between the State and its citizens over the Internet, including credit card processing, application development, integration with the agency's existing systems, security, application hosting, application support, and management reporting.

- *Type and Amount of Fees Stated in the Agency's Enabling Statutes*
  In this instance, the enabling statutes themselves specifically state what type fees are charged and amount of the fees. Sometimes the fees are discretionary within a range, such as "not to exceed $500." At other times specific amounts are named. When fees are set by law, they cannot be changed, except within the range specified, without a change to the enabling statutes. The prohibition against change applies not only to the amount, but also to the type of fee. If the law allows you to charge only an application fee, you cannot later decide by the rule-making process to charge an additional license issuance fee. Legislation is needed to effect a change. Examples of mandated fees include:

  - "…the Board of Social Work Examiners shall receive applications from individuals, such applications being duly notarized and sworn, which outline the applicant's eligibility for licensure under the criteria specified in either subdivision (1), (2) or (3) of this section, accompanied by an initial application fee of $50.00 in the form of a certified check made payable to the Alabama State Board of Social Work Examiners…" (***Code of Alabama 1975***, Section 34-30-23 [Board of Social Work Examiners])

- The fees prescribed by this chapter shall be in the following amounts:
  (1) The fee for application to the board is seventy-five dollars ($75).
  (2) The fee for examination or reexamination shall be in an amount as established by the board in order to cover all costs of examination, but in no event shall the fee exceed the actual cost of preparing and administering the examination.
  (3) The fee for an original certificate is fifty dollars ($50).
  (4) The fee for a duplicate certificate is fifty dollars ($50).
  (5) The annual license fee is one hundred fifty dollars ($150).
  (6) The penalty fee is fifty dollars ($50), as provided in Section 34-17-24.
  (***Code of Alabama 1975***, Section 34-17-25 [Board of Examiners of Landscape Architects])

- *Fees Are Not Refundable*
  If the enabling statutes of a State agency specify fees are not refundable to an applicant, then the agency is not allowed to return the fees. However, if an amount in excess of the correct fee is received, the difference is refunded, as the agency's authority to collect more than the correct amount is nonexistent.

  "The sum or fee of three hundred dollars ($300) accompanying original applications and sum or fee of two hundred dollars ($200) accompanying applications for renewals under this section are for the administration and enforcement of this chapter and shall not be refunded to the applicant." (***Code of Alabama 1975***, Section 34-8-2(c) [Licensing Board for General Contractors])

- *Cost Recovery*
  State agencies are allowed to recover reasonable amounts for the cost of providing services and information. If a roster of licensees is to be maintained and provided to the public on demand, the agency is allowed recovery the cost of providing a copy to members of the public. Cost recovery must be based on reasonable estimates of the amount it actually cost to provide the copy, and may not be used as a revenue-generating mechanism.

- *Fee vs. Fees*
  If the law specifies the board may charge a fee, the board is only given the authority to set one amount, that fee is charged in all circumstances. If the board is given the authority to charge fees, then it may charge graduated amounts, depending on circumstances. This issue is discussed in Attorney General Opinion 2002-302.

- *Increasing Fees*
  The ***Code of Alabama 1975***, Section 41-1-11 allows State agencies wishing to increase fees must do so in accordance with the Consumer Price Index. A careful reading of this statute maximizes the increase to two percent per year from the last time an increase occurred. The agency may only go back ten years to apply the initial increase. Once the agency increases the fees, every five years the agency may repeat the process using the Consumer Price Index for the previous five years forward to the date of the requested

change. Any change in a fee must follow the requirements of the Alabama Administrative Procedure Act. Any increase adopted must be used to fund the agency's operations or programs under the control of the agency.

This statute does not apply to the Alabama Public Service Commission, the State Parks Division of the Department of Conservation and Natural Resources, and the State Banking Department.

Section Thirteen: Contracts

Contracts
The preparation of contracts involving public funds is one of the most involved procedures covered in the law. The sole responsibility for full compliance with the law lies within the agency.

Statutory Requirements

- *Governor's Approval of Contracts*
  All contracts for personal or professional services with private entities or with individuals must be approved in writing by the governor. See Governor Folsom's Executive Order, August 28, 1957 and Attorney General Opinion, June 9, 1948, to McFarland for more information.

- *Review by the Legislative Contract Review Oversight Committee*
  The Oversight Committee must review all contracts for personal and professional services within a reasonable time, not to exceed 45 days after the contract is submitted by the agency (***Code of Alabama 1975***, Section 29-2-41, as amended). Review is not required for contracts not paid with State warrants, except all legal service contracts are reviewed by the committee.

- *Disclosure Requirements*
  Act No. 955, ***Acts of Alabama 2001***, now incorporated into State law as the ***Code of Alabama 1975***, Sections 41-16-80 through 41-16-88, requires a disclosure statement from the vendor revealing any family relationship of the vendor to public officials or employees or their family members. The disclosure statement is completed and filed for all proposals, bids, contracts, or grant proposals to the State of Alabama in excess of $5,000. The disclosure statement is not required for contracts for gas, water, and electric services where no competition exists, or where law or ordinance fixes rates.

  A copy of the disclosure statement must be filed with the awarding agency, with the Department of Examiners of Public Accounts, and with the Contract Review Permanent Legislative Oversight Committee if the contract is required to be submitted to the Committee. The disclosure form is found on the Examiners of Public Accounts Internet website under *Resources* then select *Publications and Other Information*.

  There is an exemption from this Act for agencies not receiving State funds. However, the Attorney General rendered his Opinion 2002-178 to the Alabama Port authority that all funds received by a State agency are State funds for purposes of Act No. 955, ***Acts of Alabama 2002***.

  Note: It is the responsibility of the agency to notify the vendor of the need to file and to provide the disclosure form, but it is the responsibility of the vendor to file.

The disclosure statement should identify the specific contract, proposal, bid, or grant proposal to which the statement is related.

Contracts for the purchase of personal property or contractual services shall be let for periods not greater than five years (***Code of Alabama 1975***, Section 41-16-27(d), as amended). ***NOTE***: This restriction only applies to publically bid contracts. Contracts made with two-year or four-year colleges and universities are let for periods not to exceed ten years.

Bid law

The following information addresses only contracts open for public bidding. All purchases of $15,000 not exempted from the bid law are required to be bid. In some cases, the State Purchasing Division of the Department of Finance accepts bids in advance, resulting in contracts with the State by which State agencies can purchase goods or services at a predetermined price. Listings of goods or services under contract are available at the State Purchasing Division. For agencies operating through the State Treasury, the State Purchasing Division processes bids for goods or services not on contract. Agencies operating from checking accounts process bids on their own in accordance with the bid law. An Attorney General Opinion dated March 14, 1978, states, "Competitive bids must be taken in spite of past purchase from a particular vendor."

- *Contracts Requiring Competitive Bidding*
  The ***Code of Alabama 1975***, Section 41-16-20, is known as the competitive bid law. The bid law requires, with the exception of contracts for public works for which competitive bidding requirements are governed exclusively by Title 39, all contracts of whatever nature for labor, services, work, or for the purchase or lease of materials, equipment, supplies, or other personal property, involving $15,000 or more, made by or on behalf of any State department, board, bureau, commission, committee, institution, corporation, authority, or office shall, except as otherwise provided in this article, be let by free and open competitive bidding, on sealed bids, to the lowest responsible bidder.

Requests for Proposals

Contracts Do Not Requiring Competitive Bidding (Professional Services)

Act No. 986, ***Acts of Alabama 2001*** modified the ***Code of Alabama 1975***, Section 41-16-21, and created Sections 41-16-70 through 41-16-79. The Act addresses contracts for which competitive bidding is not required. Some relevant points of the Act are:

- Attorneys retained to represent the State in litigation must be appointed by the attorney general in consultation with the governor from a listing of attorneys maintained by the attorney general. Fees must be negotiated and approved by the governor in consultation with the attorney general.
- Attorneys retained for non-litigation services must be selected from a listing of attorneys maintained by the legal advisor to the governor. Fees must be negotiated by the entity

purchasing the services of the attorney (not to exceed $195 per hour) and are subject to the review and approval of the governor or the director of finance, if so designated by the governor.

- Physicians retained to provide medical services must be selected from a list of physicians maintained by the Medical Licensure Commission.
- The services of professionals are not required to be bid, but must be procured through other competitive procedures, as described by law. Notice of the need for these services must be widely distributed to the professional community in a full and open manner. The Director of Finance, through the Division of Purchasing, must establish and maintain lists of professional service providers from which to select. The purchasing department, board, agency, etc., must solicit proposals from providers desiring to receive requests for proposals from a list of registered suppliers. The Division of Purchasing provides the list to the agency upon request. If the fees paid to a selected provider exceed by 10 percent the professional service fee offered by the lowest qualified proposal, the reasons for selection must be justified in writing and signed by the director of the department, board, agency, etc. This writing must be made a part of the selection record. Once a provider is chosen through the request for proposal process, the appropriate business contract is crafted, detailing all pertinent aspects of the services expected and payment requirements. Contracts for personal or professional services in the amount of $1,500 or greater must go before the Legislative Contract Review Oversight Committee before the effective date of the contract. All awards arising from the request for proposal process are subject to the ***Code of Alabama 1975***, Sections 29-2-40 through 29-2-41.3. Attorney General's Opinion 2006-086 gives guidance for the purchase of airtime on radio and television stations, versus purchase of assistance in procuring such airtime.
- Services provided by a sole source do not require a request for proposals, as only one vendor provides these services. However, the contract must be approved by the purchasing director.
- Emergency contracts are another special contracts area. In order to contract under emergency situations, the director of an agency must make a written declaration of a state of emergency to the governor and the attorney general. The emergency contract drawn as a result of the emergency situation is valid for 60 days only. This time period allows the emergency situation to resolve, or allows the director of the agency to write a normal contract and send it through the appropriate review process. The request for proposal for the emergency contract should contain all the terms and conditions for the work in question, as is usually necessary for the particular agency; however, a scope of work section should be included in the emergency contract, completely defining the emergency problem to be resolved. Note, the Department of Finance thoroughly reviews the situations detailed in emergency contracts. Declaring a state of emergency so that an agency may hire an employee to take the place of one who retired is *not* allowed.
- Effective January 1, 2013 a statewide database for posting requests for proposal is required by State law. The State Comptroller posts the information on its website. See http://rfp.alabama.gov/Login.aspx and http://comptroller.alabama.gov/rfp-database/ The Examiners audit for use of the database.

Act No. 312, ***Acts of Alabama 2016*** added to the ***Code of Alabama 1975***, Section 41-16-5
Public contracts with entities engaging in certain boycotting activities.
(a) For the purposes of this section, the following terms shall have the following meanings:
(1) BOYCOTT. To blacklist, divest from, or otherwise refuse to deal with a person or business entity when the action is based on race, color, religion, gender, or national origin of the targeted person or entity or is based on the fact that the boycotted person or entity is doing business in a jurisdiction with which this State can enjoy open trade and with which the targeted person or entity is doing business.
(2) BUSINESS ENTITY. A corporation, partnership, limited liability company, organization, or other legal entity conducting or operating any trade or business in Alabama or a corporation, organization, or other legal entity operating in Alabama that is exempt from taxation under Section 501(c)(3) or (4) of the Internal Revenue Code.
(3) GOVERNMENTAL ENTITY. The State or any political subdivision thereof, or any department, agency, board, commission, or authority of the State, or any political subdivision, or any public corporation, authority, agency, board, commission, State college, or university, municipality, or other governmental entity controlled by the State or any political subdivision.
(4) JURISDICTION WITH WHICH THIS STATE CAN ENJOY OPEN TRADE. Includes World Trade Organization members and those with which the United States has free trade or other agreements aimed at ensuring open and nondiscriminatory trade relations.
(b) Subject to subsection (c), a governmental entity may not enter into a contract governed by Title 39 or Chapter 16, Title 41, with a business entity unless the contract includes a representation that the business entity is not currently engaged in, and an agreement that the business entity will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this State can enjoy open trade.
(c)(1) This section does not apply if a business fails to meet the requirements of subsection (b) but offers to provide the goods or services for at least 20 percent less than the lowest certifying business entity.
(2) This section does not apply to contracts with a total potential value of less than fifteen thousand dollars ($15,000).
(d) Nothing in this section requires a business entity or individual to do business with any other particular business entity or individual in order to enter into a contract with a governmental entity.

Section Fourteen: Disbursements

Laws

Laws Governing Expenditures (Sufficient Documentation, Etc.)

Statutory requirements must be met before honoring a claim or an account against the State. The State Comptroller determines sufficient funds and budgetary or appropriation authority exists in order to pay a vendor. When a request for payment is received from an agency, the required documentation is audited by the comptroller's office for completeness to determine the claim is legal and accurate. Checking account agencies are exempt from the rules of the Finance Department, which are embodied in the Department of Finance's *Fiscal Policy and Procedures Manual*; however, some of these rules are based upon State law applying to all State agencies. A checking account agency should either implement its own control procedures to ensure expenditures are appropriate and in accordance with the law, or adopt applicable procedures and requirements of Finance Department's *Fiscal Policy and Procedures Manual*. Specific ***Code*** sections follow which address legal requirements for specific types of payments.

- Comptroller Duties, Section 41-4-50
- Accounts Against State To Be Itemized, Section 41-4-54
- Purchasing Procedures, Section 41-4-113
- Governor's Approval, Section 41-4-55
- Allotment Of Appropriated Funds, Section 41-4-90
- Travel Expense, Sections 36-7-20 through 36-7-24, Section 41-4-57
- Public Contracts, Sections 41-16-20, 21, 50
- Property Tax Exemption, *Alabama Constitution 1901*, Article IV, Section 91
- Sales Tax Exemption, Section 40-23-4(a)(11)

Purchasing

Authority And Responsibility

The Division of Purchasing in the Department of Finance is, by law, responsible for the purchase of all personal property, except alcoholic beverages, for all State departments, boards, bureaus, commissions, agencies, offices, and institutions.

Purchases made on the behalf of State agencies by the Division of State Purchasing are categorized into two basic categories: those requiring a purchase order and those not requiring a purchase order.

Payment for Goods and Services Purchased Without a Purchase Order (Agencies Operating Through the State Treasury)

- Purchases of $999.99 or less – The State Purchasing Division delegated its authority to individual State agencies to purchase goods and services of an emergency or non-recurring nature of $999.99 or less.
- Purchases from $1,000 up to, and including, $14,999.99 – Prior approval is obtained from the State Purchasing Division to purchase goods or services in this range. The agency must contact the State Purchasing Division buyer responsible

for purchases of the goods. The buyer can provide approval as a telephone authorization in an emergency.

- Purchases in excess of $14,999.99 – These purchases must comply with the requirements of the State's bid law. The State Purchasing Division will transact the bid process for the agency.

NOTE: State agencies are exempt from paying sales taxes on purchases, per ***Code of Alabama 1975***, Section 40-23-4(11). However, Act No. 557, ***Acts of Alabama 2006*** adds Section 41-4-116 to the ***Code of Alabama 1975***. This Act requires State agencies get certification of registration with the Department of Revenue to ***collect*** and ***remit*** sales, use, and lease taxes. Attorney General Opinion 2008-036 states "…gift shop sales are not exempt from Alabama sales tax in accordance with Section 40-23-2(1) of the ***Code of Alabama***…Section 41-9-256 corresponds with Section 4-23-4(a)(15), which indicates State agencies are exempt from payment of sales tax. Section 41-9-256, however, does not preclude the Commission from the collection of sales taxes to be remitted to the State of Alabama, counties, or municipalities."

NOTE: State agencies are exempt from paying privilege and license taxes, per the ***Code of Alabama 1975***, Section 40-12-222(6).

Lease of Office Space

Before an agency leases office space, contact the Office of Lease Management within the Department of Finance for leasing options. Lease Management adopted uniform standards for allocation of facilities owned or leased by the State. Lease Management also investigates all requests for additional facilities needed by all State agencies and makes recommendations concerning the need for and the best method of allocating or acquiring such facilities. The Office of Lease Management is noted in the contact list in this manual.

Travel Expenses FPPM-07272017-Final-11.6.18.pdf

Travel expense reimbursement is addressed by the ***Code of Alabama 1975***, Sections 36-7-20 through 36-7-22. Any person traveling in the service of the State is entitled to reimbursement of travel expenses.

In-state travel statutes provide a specific daily allowance, called per diem, and a payment of mileage at a specified rate. Payment of per diem and mileage allowances are made in lieu of actual expenses. Out-of-state travel is reimbursed at actual expenses. For some agencies, the enabling statutes provide for actual expense reimbursement for all travel. There is no discretion in this matter. Travel expense reimbursements are made as specified by law. As travel expense reimbursement is an entitlement, an agency cannot refuse payment to travelers for expenses resulting from authorized travel. Travelers can, if they desire, waive payment of expenses. If he or she chooses to do so, the traveler should provide a written statement to the executive officer stating the waiver. Retain the statement in the agency's records. Anyone traveling in the service of the State is entitled to payment of travel expenses. Travel expenses are divided into two basic categories and then into further sub-categories.

- *In-State Travel*

  - *Per Diem*
    Reimbursement for daily expenses (meals and lodging) during travel away from home or base is made through daily allowances rather than through reimbursement for actual expenses. Under no circumstances will an employee be paid an overnight travel allowance at the official station or base or primary residence. For travel related expenses, base is defined as a city or town. No meal allowance is paid if the traveler remains in the city of residence or base.

    Effective July 1, 2018

Travel time	Entitlement
6 hours or less	No per diem (per day) allowance
6 to 12 Hours	$12.75 (1 meal allowance at 15% of a per diem allowance of $75)
More than 12 hours but not over-night	$34 (1 meal allowance plus ¼ of the daily per diem rate of $85)
Over-night; one night stay	$85 per day
Over-night; 2+ nights	$100 per day

    - Montgomery (base) to Birmingham and back from 8 A.M. to 3 P.M. 7 hours would be $12.75 (one meal allowance)
    - Montgomery (base) to Huntsville and back from 8 A.M. to 9 P.M. 13 hours would be $34.00 (one meal allowance + ¼ per diem)
    - Montgomery (base) to Mobile for a two-day meeting leaving at 8 A.M. on Monday and returning anytime Tuesday would be $170.00 ($85.00 for each day of travel)
    - Montgomery (base) to Mobile for a four-day conference/workshop leaving at 8 A.M. on Monday and returning anytime Thursday would be $400.00 ($100.00 for each day of travel)

  - *Mileage*
    Mileage is reimbursable at the federal rate. As of January 1, 2019, this amount is xx.x cents per mile and is payable for any mileage traveled in the course of business. The rate is subject to change. Mileage is paid for the shorter distance between your base or home and your destination. (***Code of Alabama 1975***, Section 36-7-22)

    For example, if your base is Montgomery but your home is in Clanton, and you traveled from home to Birmingham, you would only be allowed to claim mileage from Clanton to Birmingham and back to Clanton. However, if your trip were to Mobile and back, you would be allowed the mileage from Montgomery to Mobile and back to Montgomery. See Attorney General Opinions 80-144 and 81-345 for more information.

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- *Motor Pool Vehicle Requirements*
  State employees who are based in Montgomery and required to travel by automobile on official business must use State Motor Pool vehicles, unless a vehicle is not available at the time of travel or an exemption to the use of the motor pool is granted by the director of finance. The comptroller will not reimburse a traveler for the use of a privately-owned vehicle without a motor pool non-availability certificate or a properly approved exemption letter. Motor pool exemptions are granted sparingly, and only for good cause shown. Exemption requests must be approved by the agency or department director prior to submission to the director of finance, and must be based upon a legitimate need. Motor pool exemption letters are for the time frame of one fiscal year (October 1, - September 30). An exception to obtaining an exemption letter applies when the traveler will be away from base a maximum of 50 miles away (one-way).

- *Actual Expenses for National Conferences In-State and All Out-of-State Travel*

General guidance from the Fiscal Policy and Procedures manual states "The guiding principle behind the policies and procedures governing travel is to travel responsibly. The word 'responsibly' means that the traveler exercises the same care in incurring expenses for travel in service of the State that a prudent person would exercise if traveling at personal expense."

Act No. 203, ***Acts of Alabama 2018*** amended the ***Code of Alabama 1975***, Section 36-7-21(a), to state, "Persons traveling in the service of the state or any of its departments, institutions, boards, bureaus, commissions, councils, committees, or other agencies outside the State of Alabama, or within the State of Alabama for purposes of attending or assisting in hosting a convention, conference, seminar, or other meeting of a state, regional, or national organization of which the state or individual is a dues-paying member that is held within the state, shall be allowed all of their actual and necessary expenses in addition to the actual expenses for transportation. In-state travel authorized under this section is subject to the same documentation requirements as out-of-state travel."

The *Fiscal Policy and Procedures Manual* requires travelers to obtain authorization and any required certifications from the head of the agency prior to travel. Agency heads must obtain authorization from the Governor prior to their departure. Only reasonable and necessary expenses are to be incurred by the traveler. The traveler should only seek reimbursement for qualifying expenses as detailed in the *Fiscal Policy and Procedures Manual*. Use the out-of-state travel website (https://oos.alabama.gov/) for all travel pre-authorizations and reimbursement requests. Guidance is found in the *Fiscal Policy and Procedures Manual*. **Remember**, travel related expenses other than meals and incidental expenses require a receipt for reimbursement of actual expenses.

Note*: When an agency employs persons by contract, the travel amount in the contract must not exceed the amount provided by State law for payment of travel expenses. Reference Attorney General Opinion 2002-219 for more information.*

The words *actual* and *necessary* are taken literally. The traveler must actually incur the expense and it must be necessary to accomplish the travel. Sight-seeing expenses are not necessary expenses for the accomplishment of State business. Attorney General Opinion dated September 9, 1975 to Betty Frink, State Auditor, states, "Any person traveling on state business outside of Alabama must travel on tourist-class ticket unless tourist-class is not available."

Pre-approvals are obtained online for most travel situations. The out-of-state (OOS) travel website lists those instances where a manual (paper) form is required. Please visit the website as noted previously for the listing. When completing the online or manual form and the expense claim, ensure the name of the traveler matches the eMap name and address exactly. Any differences will delay payment to the traveler. For the most part, the on-line pages are self-filling from drop-down menus.

NOTE*: Alcoholic beverages cannot be claimed. Failure to use the least costly method of travel may result in an audit finding.*

- *Documentation*
  Claims for reimbursement of travel expenses should be accompanied by documentation sufficient to reveal the nature and extent of expenses actually incurred by the traveler, such as itemized receipts for lodging, transportation and miscellaneous expenses. Receipts must indicate the date, name, and location of the vendor, with an itemized listing of goods or services rendered. For audit purposes, retain a copy of the conference itinerary.

  The Department of Finance's *Fiscal Policy and Procedures Manual* mandates the documentation necessary for travel expense reimbursement, based on federal guidelines found in IRS Publications 463. This manual, available for download on the comptroller's website, carries the force of law for agencies operating through the State Treasury, and provides guidance for agencies operating from checking accounts. Failure to provide the documentation mandated by the manual can result in audit findings and demand for the return of funds from the traveler.

NOTE**:** *There are numerous Attorney General Opinions regarding travel. Search the Attorney General's opinions website for "travel". It is likely one of the opinions will address the issue in question.*

Reimbursements
Sometimes it is necessary for an employee or board/commission member to purchase items for official use while traveling. For instance, an inspector may need to obtain file folders while in the field. For such purchases, an original receipt is obtained and submitted to the agency prior to reimbursement. State agencies are not required to pay sales tax. Normally, when a purchase is made outside of normal venues, sales tax is paid.

If a checking account agency uses a credit card to make purchases, all original receipts should be maintained and retained for audit as well as a copy of the monthly statement. Once the

monthly billing is received, receipts should be checked against the statement for accuracy and completeness. Accountability of the purchases should be maintained. For instance: Purchases of supply inventories should be traceable and normally the quantity purchased does not vary noticeably year to year. A sharp increase in supply purchases but low inventory could indicate pilfering.

For group travel or pre-paid travel expenses, please refer to the *Fiscal Policy and Procedures Manual*, 6-5 Payment Types, G and H.

Section Fifteen: Property

Personal Property

- *State Auditor's Office, Property Inventory Control Division (PIC)*
  The State Auditor's Office is responsible for enforcing laws regarding non-consumable property held by State agencies. In meeting this requirement, the State Auditor's Office, through the Property Inventory Control Division (PIC), devised rules, regulations and conducts periodic 100% audits for each agency's property. Property that is unaccounted for is reported to the Attorney General's Office, as required by ***Code of Alabama 1975***, Section 36-16-9. The State Auditor's Office uses a computer application, Asset Works, to manage the State's property.

- *Mandated Controls Include PIC's Biannual Inventory*
  Biannually, the Property Inventory Control Division of the State Auditor's Office shall conduct an inventory of all such state personal property. The ***Code of Alabama 1975***, Section 36-16-8(4), authorizes the biannual inventory.

  - *Appointment of Property Manager*
    The head of each State agency shall designate one of its employees as property manager, as mandated by the ***Code of Alabama 1975***, Section 36-16-8(1). The head of the agency assumes responsibility for the agency's property in the event no property manager is designated. The property manager shall contact the Property Inventory Control Division within five work days to schedule an orientation. A "Designation of Property Manager" form shall be completed and submitted to PIC Division. A copy is retained at the agency for audit purposes. The property manager is responsible for all property, except that for which a written receipt is executed by the person responsible. For example, if an employee or official takes possession of a laptop computer to complete agency work at home, he or she must complete a written receipt, which is kept on file at the agency. This written receipt relieves the property manager of responsibility for that particular property. The property manager ensures no property is entrusted to anyone other than agency employees or officials. Anyone assigned or having possession of personal property is held strictly accountable, regardless of value. See Attorney General Opinion 96-130, dated February 9, 1996, and Opinion 97-035, dated November 5, 1996.

    The property manager maintains property records in accordance with the *Property Manual*. When changes occur, such as additions or deletions, the property records should reflect such changes. Changes are not limited to additions or deletions. When property changes hands or locations, such changes should be made in the property records and submitted to PIC Division. It is up to the property manager to ensure the Property Inventory Control Division maintains up-to-date information. The property manager, upon receipt of property, shall immediately affix a property inventory control number prior to placing the property in use. When leasing property, the property should be labeled "LEASED FROM (give the company name, address and telephone

number)". If state officials or employees bring personally-owned property to the office, such property will be labeled or marked "Personal Property of (owner's name)".

- *State Auditor's Property Records Are the Agency's Official Property Records*
  Attorney General's Opinion 2003-180 states, "The State Auditor may require State agencies to use an electronic inventory control system established or specified by the State Auditor." The records in the State Auditor's **Asset Works** database are the official property inventory records of each agency. Consequently, the Examiners of Public Accounts audits the accuracy and completeness of the records in the database and holds each agency accountable to ensure the records are complete and accurate. The property manager should periodically check the accuracy of the records and make any necessary corrections.

- *Termination of Property Manager Duties*
  Whenever any property manager ceases for any reason to be the property manager of a department or agency, the director of the department or agency shall immediately notify in writing the Property Inventory Control Division. The division shall immediately check the inventories of all property in the department or agency, and the successor to the property manager shall execute a written receipt for all property received by him or her, or coming into his or her custody or control. The last payment of salary due the outgoing property manager is withheld until a complete check of the inventory of the property is made and approved. In the event of any shortages, the property manager is held strictly accountable, per the ***Code of Alabama 1975***, Section 36-16-8(6).

- *Full and Complete Inventory*
  Present law requires the property manager to make a full and complete inventory of all nonconsumable personal property and certain other sensitive items of $500 or more. Sensitive items include weapons, laptops, computers, netbooks, external hard drives, and any other networkable equipment with memory, excluding flash/thumb drives. The inventory shall show the complete description, manufacturer's serial number, cost price, date of purchase, location, custodial agency, responsible officer or employee, and the State property control marking. A copy of the inventory is submitted to the Property Inventory Control Division on October 1 each year. Each inventory shows all property acquired since the date of the last inventory. When any inventory fails to show any property shown on the previous inventory, then a complete explanation accounting for the property or the disposition thereof is attached to the inventory and submitted to the PIC Division. All property managers keep in their files at all times a copy of all inventories submitted to the PIC Division, and the copies are subject to examination by any and all State auditors or employees of the Department of Examiners of Public Accounts, as directed by the ***Code of Alabama 1975***, Section 36-16-8 (1).

  NOTE*: Technology rendered this law partly obsolete. For most State agencies, transactions involving nonconsumable personal property are made directly through the Internet to the State Auditor's* ***Asset Works*** *database by the State agency. Consequently, the agency's records and the State Auditor's records are the same*

*records. Agencies not on-line are required to periodically submit a Microsoft Excel spreadsheet of changes to the State Auditor's PIC Division where they are entered into the **Asset Works** database by the division's personnel.*

- *Written Receipts*
  When any property is entrusted to other employees or officers of the agency, the property manager shall require a written receipt of the property so entrusted. This procedure is outlined in the ***Code of Alabama 1975***, Section 36-16-8(2). Attorney General Opinion 2002-333 to Susan D. Parker, State Auditor, states, "When property is assigned to a specific employee, that employee is to execute a written receipt of the property." A written receipt relieves the property manager of responsibility, and the person signing the written receipt is held strictly accountable for the property entrusted to his or her care. A written receipt is only valid from the time of preparation until the next inventory; therefore, a new written receipt is issued at every inventory. **NOTE**: A notarized affidavit stating a person possesses an item is not a written receipt. No relief of responsibility is given to the property manager through the completion of an affidavit. *The Examiners of Public Accounts reviews written receipts during compliance for annual updates and for accuracy with respect to the location of the receipted equipment.*

- *Surplus Property*
  No property shall be disposed of, transferred, assigned, or entrusted to any other department, agency, or employee thereof without the written permission of the director of the Alabama Department of Economic and Community Affairs or the governor, or the designee of either of them. See the ***Code of Alabama 1975***, Section 36-16-8(3), for more information. All agencies must use AssetWorks to dispose of property, regardless of the property's value. No property may be disposed of without adhering to the procedures specified in the *Property Manual*.

- *Penalties*
  In the event of lost property, the person having custody of the property is responsible for the recovery of the property via the Attorney General Office. If the head of the agency neglects his or her duties in the performance of duties imposed by the ***Code of Alabama 1975***, Sections 36-16-8 through 11, he or she is liable for the sum of $5 a day for as long as the neglect continues, and for any value of lost property due to such neglect.

Real Property

Act No. 133, ***Acts of Alabama 2014*** requires the State to disclose to the public information concerning purchases of real property using public funds within 60 days following the purchase. The required disclosures include appraisal information, contracts, terms of purchase, source of funds and any other related materials. Contact the State Lands Division of the Department of Conservation and Natural Resources to report all land owned by the State.

Section Sixteen: Immigration Act

Citizenship and Legal Presence of Professional Licensees

The Beason-Hammon Alabama Taxpayer and Citizen Protection Act of 2011 (Immigration Act) modified by Act No. 491, ***Acts of Alabama 2012***, is codified as Title 31, Chapter 13 of the ***Code of Alabama 1975.*** The Act requires in Section 7 and again in Section 30 that persons receiving a professional license from a board/commission demonstrate they are either United States citizens or legally present in the United States. Section 7 of the Act is codified as ***Code of Alabama 1975,*** Section 31-13-7. Section 30 of the Act is codified as ***Code of Alabama 1975,*** Section 31-13-29.

Section 7 of the Immigration Act defines professional licensure as a public benefit. **Section 30** of the Immigration Act defines professional licensure as a business transaction. To satisfy the requirements of both Section 7 and 30, applicants who are United States citizens must sign a declaration of citizenship and must also present at least one of the documents named in the ***Code of Alabama 1975***, Section 31-13-29(g). Applicants present in the United States who are not citizens must present at least one of the documents named in the ***Code of Alabama 1975***, Section 31-13-3(10). Boards/Commissions ***must*** verify the lawful presence of non-citizen applicants through the Systematic Alien Verification for Entitlements (SAVE) program.

E-Verify for Agency Employees

E-Verify is an online federal program utilized by employers (public and private), which electronically confirms an employee's eligibility to work in the United States. The E-Verify process is done after the employee completes the Employment Eligibility Verification Form (Form I-9), which is a requirement since the Federal Immigration Reform and Control Act of 1986. In order to utilize E-Verify, an agency must first enroll in E-Verify and obtain a Memorandum of Understanding (MOU), which is produced during enrollment. The MOU explains certain features of the E-Verify program and enumerates specific responsibilities of DHS, the Social Security Administration (SSA), and the employer (State agency). Complete enrollment by contacting the Federal Department of Homeland Security (DHS) online. Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. Section 1324a note).

E-Verify Required for Contractors

The Immigration Act also placed a requirement (effective January 1, 2012) on entities contracting with the State to enroll in E-Verify and furnish documentation of enrollment before the contract is let by the agency. See ***Code of Alabama 1975,*** Sections 31-13-9(a) and (b) and 31-13-25(b). Contracts are defined for this purpose as those competitively bid and those of the type submitted to the Contract Review Permanent Legislative Oversight Committee (personal and professional services contracts). The State Comptroller in a July 5, 2012 memo provided a form (on page 4) to be submitted by contractors as a prerequisite for awarding a contract. See the Comptroller's guidance at http://comptroller.alabama.gov/wp-content/uploads/sites/15/2018/01/Act-2012-491-July-2012-Guidance.pdf. The guidance references the Immigration Act and requires certain language placed in contracts regarding

the contractors' compliance with the Act and a form submission by the contractor as documentation of enrollment in E-Verify. State Purchasing should ensure these requirements are met, **if the contract is let through the competitive bid procedure by agencies operating from the State Treasury and whose accounting records are maintained by the State Comptroller.** However, the agency is responsible for monitoring the contracts and ensuring the requirements are met for contracts let by request for proposal (RFP) or other contracts not processed through State Purchasing. The examiners review the contracts for the required language and that the contract documentation includes either the form provided by the State Comptroller or the contractor's E-Verify Memorandum of Understanding (MOU) and will recommend contracts not be let if the contractor does not comply.

Section Seventeen: Audits, Examinations, Reviews

In addition to the audits performed by the Comptroller's Office, whereby transactions are audited as they are processed; and by the State Auditor's Offices, which complete post audits of transactions the comptroller processed, as well as property audits; the Department of Examiners of Public Accounts performs financial and legal compliance examinations, sunset reviews, and federal Single Audits of the operations of all State agencies. The examiners also audit Alabama's Comprehensive Annual Financial Report (CAFR).

The ***Code of Alabama 1975***, Section 41-5A-12(a), provides for periodic examinations and audits of State and county offices, departments, boards, etc., by the Examiners of Public Accounts.

> "The books, records, vouchers and accounts of every state and county office, officer, bureau, board, commission, corporation, institution, department and agency shall be examined and audited at least once in every two years and more frequently if deemed necessary by the Chief Examiner. The books, records, vouchers, and accounts of any state and county office, officer, bureau, board, commission, corporation, institution, department, and agency shall be examined and audited upon a request by the Legislative Committee on Public Accounts. notwithstanding, any other law to the contrary, the books, records, vouchers and accounts of municipal boards of education or any state entity holding assets within or outside this state or within or outside the State Treasury may be examined and audited upon request of the committee."

In addition to performing these audits, the Chief Examiner is empowered by law to mandate accounting procedures and forms, where necessary.

The ***Code of Alabama 1975***, Section 41-5A-21 charges financial officers to keep uniform accounts.

> "Every state and county officer shall keep the books, records and accounts and make the reports of his office in accordance with the systems, procedures and forms as may be prescribed by the Chief Examiner pursuant to this chapter. Any officer who fails or willfully refuses willfully comply with this section shall be liable for a penalty of up to two hundred fifty dollars ($250) for each week such failure or refusal continues. Penalties imposed and collected under this section shall be paid into the General Fund."

Information regarding each type of audit, examination, or review follows.

Comprehensive Annual Financial Report (CAFR)

The Office of the State Comptroller prepares the State's Comprehensive Annual Financial Report (CAFR). This report presents financial information on State government as a single entity. It is the responsibility of the Department of Examiners of Public Accounts to issue an opinion on the financial statements of the CAFR based on the Examiners' audit. CAFR information is required from all agencies, including those maintaining checking accounts outside the State Treasury. Production of the CAFR requires the assistance of all agencies,

which are asked to supply accurate financial information at fiscal year-end. Failure of agencies to supply the information by the deadline can result in an audit finding.

A CAFR packet is sent to all agencies around October 1 of each year. The information requested in the packet should be submitted to the comptroller's office by the deadline, which is usually near the end of October. The packet requests all agencies to make adjustments and accruals for accounting events not captured through daily transactions. Items requiring adjustments and accruals include accounts receivable, accounts payable, deferred revenue, depreciation, capital leases, sale of fixed assets, inventory adjustments, investments, and certain balance sheet accounts unique to individual funds. In addition, certain information is requested in order to meet financial statement note disclosure requirements. "Comparative Balance Sheet by Fund" and "General Information" forms are included in the packet. General instructions are included for completing the forms in the packet, in addition to information on who to contact with questions. Additionally, more detailed instructions can be found in Chapter 8 of the Department of Finance's *Fiscal Policy and Procedures Manual*, available on-line. Each form should be completed and returned to the comptroller's office.

Single Audits (Federal Compliance)

Single Audits are audits of agencies spending federal money, usually in the form of grants. Single Audits are performed in accordance with either, the Federal Single Audit Act Amendments of 1996, or OMB Circular A-133, *Audits of State, Local Governments and Non-Profit Organizations.* For federal Single Audit purposes, Alabama is audited on a state-wide basis. Federal Single Audits have the same requirements as financial and legal compliance audits, with the added requirements of determining:

- The effectiveness of internal controls and reasonable assurance the State is managing federal awards in compliance with laws, regulations, contracts, and grants applicable to federal programs
- Compliance with laws, regulations, contracts, and grants, in all material respects, applicable to each of its major federal programs
- Whether the Supplementary Schedule of Expenditures of Federal Awards is fairly presented in all material respects in relation to the financial statements taken as a whole

States, local governments, or non-profit organizations expending less than $300,000 in a fiscal year in federal awards are exempt from the federal audit requirements for that year. However, these agencies are not exempt from other federal requirements, including those to maintain records, concerning federal awards provided to the agency. Such records must be available for review or audit by appropriate officials of a federal and pass-through agency.

Compliance Examinations

The Department of Examiners of Public Accounts conducts examinations of State agencies, including regulatory boards and commissions, to ensure the agencies comply with applicable Federal, State, and local laws, rules and regulations, policies and procedures, entity resolutions, legally adopted motions, sound financial practices, etc. The

examiners also check to ensure control procedures are in place to protect assets. Discussion of some of the compliance areas follows.

- *Meetings*
  In addition to reviewing the minutes of the agency for the legality of official actions, the minutes are reviewed for the presence of a quorum and to determine if the minutes were properly signed. Examiners will also determine if policies were adopted which meet the definition of rules and should be adopted and implemented under the provisions of the Administrative Procedure Act. The examiners ask for proof of reasonable public notice of all meetings, such as the retention of confirmation e-mails for the notice publication from the Secretary of State's website, as well as declarations for the purposes of executive sessions, and other compliance items as required by the Open Meetings Act.

- *Administrative Rules*
  Agency administrative rules are compared to agency statutes to ensure the rules do not exceed board or commission authority and do not enlarge upon the law. The examiners also determine if any forms the agency uses, such as application or renewal forms, request information not required by law or other rules, and any such forms are filed as part of the agency's administrative code as required by Alabama's Administrative Procedure Act. The examiners determine if the agency adopted rules by the process outlined in the Administrative Procedure Act.

- *Enabling and General Statutes*
  Agency operations are compared to the agency's enabling statutes, or the law establishing the entity and grants its powers and duties, and statutes of general applicability in order to determine compliance with the law.

- *Equipment and Other Fixed Assets*
  The examiners determine if records of personal property are maintained as required by ***Code of Alabama 1975***, Section 36-16-8, and if records on other fixed assets are adequate for audit purposes. The form for designated property manager is reviewed. The agency's property records recorded in the State Auditor's AssetWorks database is tested for accuracy. Written receipts for personal property, for which responsibility rests with someone other than the property manager, are reviewed. Inventory is located, and the examiner compares inventory numbers, serial numbers, and descriptions to records maintained by the Property Inventory Control Division of the State Auditor's Office. Reductions to property are reviewed for correct procedure and for indications of theft, loss due to neglect, or abuse. Land filings are compared to filings recorded with the State Lands Division of the Department of Conservation and Natural Resources.

- *Receipts and Revenues*
  Deposits of receipts are reviewed for proper classification, coding, and recording in the proper period. Any missing or voided receipt forms or licenses are investigated. Refunds against disbursements and transfers are reviewed for proper purpose and

process. Licensee files are examined to determine whether fees charged were in accordance with the fees allowed by law, and persons licensed proved eligibility by submitting proper documentation of qualifications. If the agency is assessing fines or penalties, the examiners determine if the agency is authorized by law to do so.

- *Personnel*
  Payroll and personnel records of employees are reviewed for compliance with laws, rules, and regulations addressing employment, termination, compensation, benefit accrual and usage, and documentation of transactions affecting personnel. Noncompliance with the Merit System Law results in a finding, unless the agency is authorized to operate outside the Merit System. If an agency's enabling statutes are silent on the applicability of Merit System Law, then Merit System Law is considered applicable, given that Merit System Law is of general applicability. If an agency does not hire its employees within the Merit System, the agency is responsible for adopting its own personnel policies and procedures.

  Note: Only personnel benefits formally conferred by documented vote of a board or commission or by contract are considered to exist. Deviance from formally conferred benefits can result in audit findings.

- *Disbursements*
  Disbursements and supporting documentation are examined to determine compliance with applicable laws and regulations, such as the bid law, laws and rules governing purchase of goods and services, reimbursement for official travel, contracts, required account coding, etc.

  Note: State law requires "All accounts against the state must be accurately and fully itemized." See the ***Code of Alabama 1975***, Section 41-4-54, for more information.

- *Compliance with General Federal and State Statutes*
  State agencies are examined for compliance with the following areas:

Recycling	Sections 22-22B-1 through 22-22B-5
Records retention	Section 41-13-21
Legal services	Section 36-15-21 and *Fiscal Policy and Procedures Manual*
Appointment of members	Agencies enabling statutes
Public records	Sections 41-13-1 through 44, 36-12-1 through 64
Computer Crime	Sections13A-8-100 through 103
Forgery and Fraudulent Practices	Section 13A-9-1 through 52
Governmental Records	Section 13A-10-1, tampering 13A-10-12
Business Records	Sections 12-21-42 and 43
Competitive Bid Law	Sections 41-16-1 through 125

Public Works Law	Sections 39-1-1 through 5; 39-2-1 through 1; and 39-5-1 through 6
Extra compensation not allowed	Constitution of Alabama Article IV SS68
Holding more than one office of profit	Constitution of Alabama Article XVII Section 280
Revenues and Expenditures	*Fiscal Policy and Procedures Manual*
CAFR (Comprehensive Annual Financial Report)	Sections 41-4-3 and 36-16-1
Minimum wage, overtime compensation	*Federal Fair Labor Standards Act* 29 CFR 785
Personal Property Law	Sections 36-16-1 through 11
Administrative Procedure Act	Sections 41-22-1 through 41-22-27
Open Meetings Act	Sections 36-25A-1 through 11
Travel Law	Sections 36-7 and 41-4-7
Merit System Law	Chapter 36, Title 26

Sunset Reviews

- *Sunset Committee Composition and Selection*
  The Department of Examiners of Public Accounts conducts reviews on behalf of the Joint Legislative Sunset Committee. The twelve members of the committee are equally divided between the Senate and the House of Representatives. Three members are elected from each house and serve during their terms as legislators, or until successors are elected. Two members from each house are appointed by the respective presiding officers of the houses. Two ex officio members, the President Pro Tempore of the Senate and the Speaker Pro Tem of the House of Representatives, serve on the Committee. Finally, a chairman is elected by the Committee members, alternating annually between the Senate and the House of Representatives. If any member is unable to fulfill his or her duties and resigns from the Committee, the presiding officer of the house in which the vacancy occurs chooses another member to fill the vacancy.

  - *Scope of Committee Operations*
    The Sunset Committee must review the operations of State agencies named in the law as subject to the sunset law, or enumerated agencies, and can review the operations of any State agency, or non-enumerated agencies. The Sunset Committee can recommend one of three alternatives for each agency:

    - Continuance without statutory modification
    - Continuance with statutory modification
    - Termination

    The law schedules automatic termination of operations for enumerated agencies. A legislative act to continue enumerated agencies is necessary to prevent termination. For non-enumerated agencies, there is no scheduled termination, and no continuance act is necessary.

The committee's recommendations take the form of bills submitted to the legislative house of which the chairman is a member.

- *Frequency and Timing of Review*
  The frequency of review is every four years for State agencies named in the sunset law in the ***Code of Alabama 1975***, Section 41-20-3. For agencies with sunset provisions in their enabling statutes, the review period is every four years unless a different schedule is provided. The Sunset Committee can review agencies sooner than the schedule prescribed by law. All State agencies, whether enumerated or not, can be reviewed at the discretion of the Committee. Either house of the legislature may, by resolution, require the Sunset Committee to review any agency of the State.

  Review of an enumerated agency is done in the calendar year prior to the regular legislative session preceding the date on which the agency is scheduled by law for termination. For example, agencies scheduled to terminate on October 1, 2019 are reviewed in the 2018 calendar year. Non-enumerated agencies are also reviewed at this time.

- *Committee Procedures Generally*
  The following procedures evolved over time and remained relatively constant from year to year. The ***Code of Alabama 1975***, Section 41-20-6(c), requires agencies under review to provide specified information about their operations and any other information the Committee desires concerning agency operations.

  The Department of Examiners of Public Accounts assists the Committee by acting as its agent to obtain, compile, and evaluate information concerning agency operations. A Sunset Report is produced on the operations of each agency for use by the Committee. These reports become public documents following their presentation to the Sunset Committee. The reports are published at the Examiners of Public Accounts' website.

  The examiners' report to the Sunset Committee will normally include, and the Committee will consider, among other things, the following:

  - Compliance with the State's Open Meetings Act
  - Compliance with the State's Administrative Procedure Act regarding proper adoption of administrative rules
  - Compliance with specific statutory requirements included in the agency's statutes
  - Determination of whether the agency is charging fees not authorized by statute, or is not charging fees it should be charging
  - Determination board/commission minutes are appropriate and record the official actions of the board/commission
  - Identification of significant issues facing the agency and determination of how the agency is dealing or will deal with them
  - Determination of the nature and extent of agency communication with the public and with its clients
  - Determination the agency's rules are not in conflict with State statutes

- Comparison with other states
- Explanation of any large changes or pronounced trends in financial status, both overall and within categories presented on the financial schedule
- Evaluation of the agency's licensing process
- Evaluation of the agency's regulatory and disciplinary process, especially focusing on the handling of complaints
- Evaluation of other agency processes that are not licensing/regulatory in nature
- Development of statistical information necessary for presentation of the report or to support report information
- Determination of the extent of overlapping jurisdiction with other agencies
- Confirmation of statements concerning prior audit findings obtained at the entrance conference to determine if prior audit findings are resolved
- Survey of board members, licensees, and complainants

The Sunset Committee also may consider any other information coming to its members' attention in their capacity as legislators and members of the Sunset Committee.

When reviewing agencies, the Sunset Committee is required by law to hold public hearings and receive testimony from the public as well as all interested parties. The Committee schedules two-day meetings as frequently as necessary to review all of the agencies on its schedule. On the first day, representatives from the Examiners of Public Accounts brief the Committee on their reports and answer any questions of the Committee. On the second day, a public hearing is held. The hearing usually consists of a presentation by the agency head, by other interested parties, and questions by the Sunset Committee.

Sunset Committee meetings begin following the end of the regular legislative session on a schedule adopted by the Committee at its first meeting. In addition to representatives from the Examiners of Public Accounts, an attorney from the Legislative Reference Service is routinely present at Committee meetings.

The Committee normally takes no official action until its final meeting, which is a business meeting to decide the contents of sunset bills, the means by which the Committee makes its recommendations. Once the contents are decided, the Legislative Reference Service prepares the bills. At the discretion of the Sunset Committee chairman, the Examiners of Public Accounts and the Legislative Reference Service produce a narrative report to the legislature, explaining the bills and containing such other information as the chairman desires regarding the actions of the Sunset Committee.

- *Legislative Actions on Sunset Bills*

  The ***Code of Alabama 1975***, Section 41-20-10, describes the conditions of debate and voting on bills submitted by the Sunset Committee. The sunset bills are submitted to the legislative house of which the Committee chairman is a member. On the tenth legislative day of the regular session, one hour after convening of the house of which

the Committee chairman is a member, sunset bills must become the first order of business from day to day until voting is complete. Other business may take precedence by a three-fifths vote of members present and voting.

On the fifth legislative day after passage of sunset bills by the legislative house in which they were introduced, sunset bills must become the first order of business from day to day in the other legislative house until voting is complete. Other business may take precedence by a three-fifths vote of members present and voting. The provisions of Section 41-20-10 limit debate.

Like other bills, sunset bills can be amended or substituted in the legislative committees or on the floor of either legislative house.

- *Cessation of Operations by Terminated Agencies*
  A bill to continue the operations of an enumerated agency reviewed according to the schedule specified by law is necessary to prevent its automatic termination. If a continuation bill does not pass, the agency automatically terminates on October 1 and can engage only in administratively winding up its affairs. The ***Code of Alabama 1975***, Sections 41-20-12 and 41-20-14, address cessation of operations by terminated agencies.

Section Eighteen: Examples of Common Findings

Frequent Non-Compliance Issues

Based on a review of legal compliance reports and sunset review reports, instances of non-compliance have a history of repeating themselves. The following list includes the most common noncompliance issues:

- *Administrative Rules*
  - Rules placed in effect without procedures required by the Alabama Administrative Procedure Act
  - No rules when the law states a rule is required
  - Rules improperly enlarge upon the law
  - Rules in conflict with the law
  - Forms do not accompany published administrative rules
  - Agency not complying with its own rules

"The Board adopted changes for its Administrative Rule 364-X-13-.03; however, the rule change was not processed according to procedures required by the State's Administrative Procedure Act. Consequently, the rule change is not valid and is unenforceable."

"The Board did not set by administrative rule two fees required by statute. The Board's enabling statutes require the Board to set a fee for a copy of a roster of licensed geologists and a fee for the replacement of any license lost, destroyed, or mutilated. The exact amount is not stated in the law. Since the exact amount is not stated in the law, the Board becomes responsible for setting the fee amounts. Setting the fee amounts creates a Board policy, which meets the definition of an administrative rule, which is required to be adopted and executed by the Board in accordance with procedures provided in the State's Administrative Procedure Act in order to be valid and enforceable. The executive assistant stated the charge for producing a paper copy of the roster would be $0.25 per page, but the policy was not adopted as an administrative rule. The ***Code of Alabama 1975***, Section 34-41-16 states, "Copies of this roster shall be made available to the public upon request and payment of a reasonable fee." The ***Code of Alabama 1975***, Section 34-41-12(d) states, "A new license to replace any license lost, destroyed, or mutilated may be issued subject to the rules of the Board and payment of a fee established by the Board."

"The Board's Internet website listed an application request fee for which there is no specific statutory authority or administrative rule that addresses fees. Consequently, the website presented an unauthorized fee. Upon inquiry by the examiner, the Board's executive secretary stated the Board does not collect an application request fee. He further stated the fee would be removed from the Board's website. At the close of this examination, the fee was removed."

"In the prior examination, we found various fees charged by the Board were not within the limits prescribed by law. When fees are named within the law, the Board is prevented from charging additional fees or fees differing from the amounts prescribed by law. Numerous opinions of the attorney general state fees are limited to those specifically authorized by law.

"The following fee charged by the Board continues to be outside statutory limits. Prosthetists and Orthotists Dual Discipline License Fee – The Board's administrative rule 746-X-2-.04(3)(c) and (d) provides for a dual-discipline license fee of $800 and a single-discipline license fee of $500. Since the licensing law does not provide for a dual-discipline license, the board can issue only single discipline licenses, and must charge a separate license fee for each discipline. The ***Code of Alabama 1975***, Section 34-25A-12 provides for a license fee [singular] not to exceed $950 per discipline per term of license. This language requires the Board to set one fee per discipline and to charge it for each discipline licensed. By adopting its administrative rule 746-x-2-.04(3)(c) and (d), which provides for a fee of $500 for a single discipline license and $800 ($400 per discipline) for a person licensed in both disciplines, the Board is providing a discount to dual licensed persons, which is not authorized by law."

"The Board by administrative rule improperly set a quorum different from the quorum provided for by law. The Board's enabling statutes are silent regarding the number of members required to compose a quorum. However, the Board's administrative rule 746-X-1-.07 states "Four (4) licensed prosthetists and/or orthotists or orthotic suppliers who are members of the Board shall constitute a quorum." The ***Code of Alabama 1975***, Section 41-22-3(8) provides "No less than a majority of the members of a multimember agency shall constitute a quorum authorized to act in the name of the agency, unless provided otherwise by statute." Because the Board's enabling statutes are silent as to quorum, the quorum is therefore required to be a majority of the Board members rather than the four-member quorum stated in the Board's rules. The Board currently consists of ten members of which a quorum would be six members. Numerous Attorney General Opinions opine agencies cannot use rules to change law."

"The Board's administrative rules were not amended to reflect changes in the Board's licensing law. Act No. 61, ***Acts of Alabama 2003*** amended the ***Code of Alabama 1975***, Section 34-25-4 to provide diversity in the Board membership and to increase the membership of the Board from three to five members. The Board's administrative rule 740-X-2.01 addresses Board membership and was not amended to include the requirement for diversity and the increase in Board membership. Since we brought this condition to the Board's attention in the last examination, we again recommended the Board update its administrative rules to conform to the amendments to its licensing law provided in Act No. 61, ***Acts of Alabama 2003***. No action was taken, and this condition continued to exist."

"The Board's forms are not included in the Board's administrative rules on file with the Legislative Reference Service's Administrative Procedure Division, as required by law. The ***Code of Alabama 1975***, Section 41-22-3(9) as, "Each agency regulation, standard, or statement of general applicability, which implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule or by federal statute or by federal rule or regulation; provided, however, *all forms shall be filed with the secretary of the agency and with the Legislative Reference Service* and all forms, except intergovernmental, interagency, and intra-agency forms which do not affect the rights of the public and emergency forms adopted pursuant to Section 41-22-5, shall be published in the Agency Administrative Code."

"On four occasions, the Board failed to meet on the dates prescribed by its rules. The Board did not meet on the second Thursday of the months of January, April, July and October as stated in Rule 135-X-3-.01 (1), which was in effect for the last three years. The Board did not meet in January 2006. The Board met on Wednesday, October 19, 2005, on Tuesday, April 18, 2006, and on Friday, July 21, 2006.
The ***Code of Alabama 1975***, Section 34-2A-3 (i) requires the Board to hold four or more meetings a year. The Board's administrative rule 135-X-3-.01 (1) states, "The Board shall hold not less than four meetings each year. The Board shall meet in the conference room of the Board of Examiners' office building at 10:00 a.m. on the second Thursday of the first month of each quarter (January, April, July, and October) unless such date is a federal or state holiday, as posted on the Board of Examiners' website or as notified in the Alabama Administrative Monthly."

"The Public Service Commission's Rules and Regulations are not filed with the Legislative Reference Website as required. The Commission rules are voluminous and diverse causing difficulties in filing them with the Legislative Reference Service."

- *Meetings*
  - Public notice of meetings was not posted on the Secretary of State's website
  - Voting with less than a quorum present
  - Meetings were not held according to the law
  - Executive sessions were held

"The Board did not promptly post notice of its upcoming meetings as required by the State's Open Meetings Act. State law in the ***Code of Alabama 1975***, Section 36-25A-3(b) requires the Board to post notice of its meetings, "as soon as practicable [reasonably capable of being accomplished] after the meeting is called and in no event less than 24 hours before the meeting is scheduled to begin…" The next meeting of the Board is routinely announced at the close of the current meeting. The number of days between announcement and posting of the next meeting ranged from 20 days to 110 days, with an average of 58 days."

"During the period examined, there were 19 instances for which notice of meetings was posted more than a month after the date of the meeting was set, and in two instances no notice was posted. These practices do not conform to the requirements of the State's Open Meetings Act (***Code of Alabama 1975***, Section 36-25A-3(b)), which requires the Board to post prior notice of all of its meetings and to post them on an Internet website maintained for that purpose by the Secretary of State "as soon as practicable [reasonably possible] after the meeting is called."

"The Board held two meetings without a quorum present. Only four members were present for the April 30, 2007 Board meeting, and only five were present at the July 21, 2007 Board meeting. Only ten members were serving at the time of these meetings, of which a quorum is six members. The Alabama Supreme Court stated in Auburn University v. Advertiser Co. (867 So.2d 293), "The attendance of a quorum is a condition precedent to everything. Until then there is an absolute incapacity to consider or act in any way upon any matter. When the body is so legally convened and constituted, it has power to consider what is within its

jurisdiction and authority, and to declare the existence of facts other than the fact of its own existence. Until it comes into existence, it cannot proceed, nor make any record of its proceedings. It has no authority to make a record showing anything. Less than a quorum are without power to act or bind anybody in any manner. Their action, being absolutely void, may be ignored or attacked in any proceeding."

"The ***Code of Alabama 1975***, Section xx-x-x states, "The commissioners shall meet at least once every three months at such time and place as may be by them selected and may meet oftener as business requires." A review of the minutes of the commission meetings revealed on three occasions the board failed to meet within the required three months."

- *Minutes*
  - Minutes of all meetings were not taken
  - Minutes were not signed
  - Minutes did not reflect individual votes
  - Minutes were not approved
  - Minutes do not document all official actions decided by board or commission
  - Executive sessions

"Votes to enter executive session were not individually recorded in the minutes, as required by the State's Open Meetings Act. The ***Code of Alabama 1975***, Section 36-25A-7(b) states, "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:… (3) The vote of each member shall be recorded in the minutes…"

"The State and Local Government Records Commissions' Guidelines for Taking Formal Meeting Minutes provide that official board meeting minutes should be signed by the recording secretary and the presiding officer (chairman). The minutes should be signed once approved. In a review of the minutes of the meetings of the Alabama Public Health Care Authority, there were two instances where the minutes were not approved by the Authority at the following board meeting."

"Contract employees claim they were given benefits not disclosed in their employment contract or the minutes of the board. Since the benefits were not written in the contract or minutes, the official position of the board is not recorded; therefore, the employees are not entitled to such benefits."

"In two instances, the Board held improper discussions in executive session. One was held to discuss personnel evaluations and the other was held "to discuss Board personnel." In both instances, the Board discussed all board personnel, including the executive director. The executive director must file a Statement of Economic Interest, which disqualifies discussion of the executive director during an executive session."

- *Financial Issues*
  - Inadequate separation of duties surrounding custody and accounting for funds

- Inadequate documentation to support receipts and/or disbursements
- Payment for unallowable travel expenses
- Incorrect travel expense reimbursement
- Noncompliance with the Alabama Competitive Bid Law
- Charging fees not authorized by law, most frequently seen enlarging on the law issue (previously covered in Administrative Rules)
- Not charging fees required by law to be charged (Previously covered in Administrative Rules)
- Failure to follow up on bad checks
- Failure to deposit receipts in a timely manner
- Payment twice for same service
- Legal service contracts were not submitted to the Legislative Oversight Committee for review
- Professional services were not procured via request for proposal (RFP) process
- Payment of taxes
- Failure to report unclaimed payments to the Treasurer
- Excessive fees
- Charging fees without making rules
- Failure to maintain a mail receipt log
- Unauthorized signature
- Credit card usage

"Codification of Statements on Auditing Standards, Section 319.06, defines internal control as a process, affected by an entity's board of directors, management, and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the reliability of financial reporting and compliance with applicable laws and regulations. A deficiency was noted in the segregation of duties. The accountant who reconciles the bank accounts is able to create and post journal vouchers to the general ledger and also access the accounts payable module from which signed checks are prepared."

"Internal control procedures are not in place to ensure all accounts are substantiated by adequate supporting documentation. The board did not provide documentation to support prepaid items totaling $198,453.48."

"Information was not made available for audit purposes. Numerous requests, both verbal and written beginning in February 2008, were made regarding this information."

"Of forty-eight claims for travel expenses reviewed, five were in error. The errors included three claims not showing a departure/return time, one claim in which a Board member was paid the incorrect per diem rate, and one claim in which a Board member was paid in-state travel allowances from the location where the Board member crossed the state line into Alabama rather than from the member's base. Attorney General Opinions Number's 89-00288 and 89-00371 state a Board member traveling to a Board meeting from an out of state location where the traveler was on personal business should receive travel allowances from the member's base rather than from the out of state location."

“Travel allowances were not always paid in accordance with State law and regulations. We identified two instances where persons traveling on behalf of the Commission were paid a daily meal allowance when in travel status for less than 6 hours. In 13 instances, one employee was reimbursed for travel on official State business in a privately owned vehicle for mileage in excess of that which was actually traveled. We identified one occurrence for which the employee was reimbursed for approximately ten times the actual mileage traveled. We noted two occurrences in which Montgomery-based employees did not obtain non-availability slip from the State Motor Pool prior to renting a car for travel on official business. The Finance Department's Fiscal Policy and Procedures Manual, Section 6-5F 1 b requires Montgomery-based employees to obtain a non-availability slip from the State Motor Pool as a prerequisite to receiving mileage reimbursement for travel in a private vehicle. As an alternative, a memo from the Finance Director dated 8/28/03 informs State agencies rental cars from a specified vendor may be used in lieu of a private vehicle, but there is no authorization to utilize a rental car as an alternative to seeking a vehicle from the State Motor Pool.”

“Proper internal controls require timely payment of invoices in a timely manner. Some vendor invoices were not paid timely (within 30 days of receipt as stated on the invoice).”

“Proper internal controls require monthly bank reconciliations to be performed for each bank account of the Commission's accounting records. Bank reconciliations were not performed for the entire fiscal year 2007.”

“A lack of necessary procedural controls or the failure to follow prescribed procedures indicated a deficiency in internal control. 1) Procedures were not in place to ensure adequate security of the accounting system. All employees of the business office access the accounting software to prepare and post journal entries to the general ledger without approval or review. The employees reconciling the bank statements are authorized access to the cash receipting module. 2) Procedures were not in place to ensure the security of the check signature stamp. The stamp is maintained in an unlocked office desk drawer easily accessible to unauthorized personnel. 3) Procedures were not in place to ensure the security of the check writing machine. The keys to the check machine are left in the machine in an unlocked room easily accessible to unauthorized personnel. 4) Procedures were not in place to ensure the security of blank checks. Blank checks are left in a box next to the check writing machine in an unlocked room easily accessible to unauthorized personnel.”

“Checks returned for nonsufficient funds were not always posted to the records as returned.”

“Amounts received were not always deposited into the bank in a timely manner. This condition unnecessarily increases the risk of loss or misuse of State funds. In addition, amounts held in the bank were not always promptly certified into State Treasury for use by the Board, thus delaying the availability of funds for use by the Board. In reviewing nine certificates of deposit into the State Treasury, which were composed of multiple bank deposits, 27 bank deposits were certified into the Treasury between 16 and 86 days after the deposit in the bank. A review of deposits disclosed six fees received were held at the Board’s offices between 21 and 62 days before being deposited.”

"An adequate system of internal controls includes policies and procedures to prevent duplicate payments. The Department made a duplicate travel payment to an employee in the amount of $75. We notified the employee and the employee repaid the amount charged."

"During the prior examination, the Board utilized the professional services of three private companies. None were obtained by means of the competitive selection process required by the ***Code of Alabama 1975***, Sections 41-16-70 through 41-16-72. We recommended the Board obtain professional services in accordance with procedures provided in the ***Code of Alabama 1975***, Sections 41-16-70 through 41-16-72 and should maintain such records as are necessary to show compliance with these procedures. In the current period examined, the Board did not comply with Alabama's competitive selection process before signing a contract with New Tech Solutions to provide various IT services. The contract amount is $60 per hour, not to exceed $100,000 over the length of the contract. The Board did not solicit requests for proposal (RFP) or otherwise afford other IT professionals an opportunity to apply for the work contracted with New Tech Solutions. The ***Code of Alabama 1975,*** Section 41-16-72 requires, 'Notice of need for professional services shall be widely disseminated to the professional community in a full and open manner. Procuring state entities shall evaluate such professionals responding to the notice of need based on such state entity's qualification-based selection process criteria. Any such procuring state entity shall then make a good faith effort to negotiate a contract for professional services from the selected professional after first discussing and refining the scope of services for the project with such professional.'"

"We found several instances in which an employee of the Commission's historic sites made personal purchases of minor items needed for maintenance of the site and was reimbursed by the Commission. Sales tax was paid on the purchases and was reimbursed by the Commission. As a State agency, the Commission is exempted from payment of sales tax by the ***Code of Alabama 1975***, Section 40-23-4(a)(11)."

"The Board did not report or forward to the State Treasurer's Unclaimed Property Division checks issued by the Survey remaining uncleared by the bank for more than three years. The Board's Map Fund Account retained six such checks in its account. The Alabama Disposition of Unclaimed Property Act of 2004 (***Code of Alabama 1975***, Sections 35-12-70 through 96) mandates reporting of unclaimed and abandoned personal property to the State of Alabama Treasury Office. Checks in dormancy three years are considered unclaimed and abandoned property."

"The Board is charging excessive fees for licensee mailing lists ($60 for an e-mail file and $70 for a diskette file). Such information is considered a public record for which a copy is required to be furnished to the requestor. Attorney General's opinions indicate amounts charged for copies of public records should be based upon the actual cost of providing the copy"

"Although required by the State's Administrative Procedure Act, the Board did not incorporate into its administrative rules the following policies regarding collection of fees: bad check charge; specifically named fees; and examination/re-examination fees."

"The Board did not consistently maintain its receipts log or reconcile the log to amounts deposited. In order to ensure all amounts received are deposited, a common control practice is maintaining a log of amounts received and reconciling the log to deposits. The Board created such a log but did not properly maintain it or reconcile it to deposits. Consequently, there was in increased risk that amounts received could be lost or misused without detection."

"Two former executive directors remained on the official list of persons with permission to authorize disbursements of Board funds. The list is provided to the State Comptroller's Office. This condition unnecessarily increases the risk of loss or misuse of State funds. The former executive directors were removed from the list of authorized signers when the matter was brought to the attention of staff."

"The Board utilized credit cards but created no policies regarding the use of credit cards. Controls were not in place to assure purchases were for allowable items. Some credit card purchases were not documented with receipts showing what was purchased. One authorized user of the card was an ex-employee who left the Board at the end of January 2007. These conditions unnecessarily increased the risk of loss or misuse of State funds."

"Seven of the twenty-nine payment vouchers associated with out-of-state travel allowances exhibited discrepancies consisting of untimely submission of required forms to support advance payments for travel expenses. The travel form is a notarized affidavit, with supporting receipts or other documentation prepared by the traveler itemizing the claimed amounts. The form was submitted by the travelers 15, 23, 23, 23, 30, 58, and 212 days respectively, after the travel was completed."

"Beginning with the examination for the period October 1, 2001 through September 30, 2003 and in each following examination, there were significant instances of payment for travel expenses not in accordance with State law and/or were not supported with adequate documentation, resulting in both overpayments and underpayments to travelers. These instances included:

• Underpayment of overnight travel allowances
• Expenses paid for traveler's family
• Payment for alcoholic beverages
• Duplicate payments for a meal
• Insufficient documentation to determine eligibility for amount claimed
• Miscalculation
• Payment for overnight travel 10 miles from base
• Payment at incorrect mileage rates.

In each instance, overpayments and underpayments were resolved by reimbursements of overpaid amounts to the Board by the travelers and additional payments to the travelers who were underpaid. Current Status:

During the period covered by this examination, these discrepancies continued. A sample of disbursements disclosed sixteen payments of travel expenses for which there were undocumented claims and net overpayments totaling $3,384.94 to five Board members and the executive director. Claims for reimbursement of travel expenses were not always correctly completed or accompanied by sufficient documentation to reveal the nature and extent of

expenses actually incurred by the traveler. There were also inaccurate calculations within the travel claims. When the Board was notified of the discrepancies, overpayments totaling $1,325.16 were reimbursed to the Board's checking account; and additional documentation necessary to support $2,086.00 of inadequately documented expenses was provided by the travelers. The Board issued checks totaling $26.22 to settle underpayments."

"Records were insufficient to verify all online renewal receipts were deposited. The Board did not retain documentation of transactions provided during processing of online renewals. Consequently, we could not compare online renewal receipts with amounts deposited and could not verify the Board did so."

"The Board expended State funds for unallowable items. On three occasions, the Board purchased coffee, water, and coffee supplies (cups, sugar, creamer, etc.) for use at board meetings. According to Board staff, the purpose of the coffee was to provide refreshment during the meetings. Board meetings are recessed for lunch."

"The Board paid sales tax on some purchases; although, it is exempt from payment of sales taxes. Of 133 invoices selected in a sample, the board paid sales tax of $63.93 on three invoices for supplies."

"The former executive director used her position to make personal purchases totaling $1,443.82 using the Board's credit accounts with three office supply vendors. No sales tax was paid on four of the five purchases. The items purchased during the period examined included a digital photo frame, three computers, a wireless stereo headset, and a Bluetooth ear bud. With one exception, all of the purchases were paid for at the time of purchase. During a property audit by the State Auditor's Office, one computer was not found. Upon inquiry, the former executive director stated it was a personal purchase, and reimbursed the board for the amount of the computer. Because the Board is exempt from payment of sales tax on its purchases, no sales tax was paid on four of the five purchases. According to a letter received from the former executive director, she normally deducted the amount of personal purchases from the invoice before submitting the invoice to the Comptroller's office for payment."

"Controls over vehicle operations were insufficient. Gasoline purchase records, when compared to recorded odometer readings, produced gas mileage for the Board's 2006 Chevrolet Trailblazer ranging from 9 MPG to 41 MPG. There are no fuel purchases between October 22, 2008 and November 30, 2008. However, odometer readings reported on invoices indicate 1,504 miles of travel occurred during this period. This type of discrepancy indicates potential occurrence of improper use of a State-owned vehicle."

"The Board's contract investigator and inspector were not paid mileage allowances in accordance with the terms of their contracts, which resulted in overpayments to the investigator and underpayments to the inspector. Also, motel expenses claimed by the inspector were often not accompanied by either the name of the motel or a motel receipt.

The Board employs an investigator and an inspector under contract. The investigator's contract provides compensation of "$55.00 an hour and state mileage rate…" The inspector's contract provides compensation of "$100 per job plus mileage cost and any expense occurred

if overnight stay is required". The mileage rate payable to both is the mileage rate paid by the State for persons who travel on behalf of the State, which is set by the ***Code of Alabama 1975***, Section 36-7-22 at the amount allowed by the Internal Revenue Code for income tax deductions. The rate is changed at least annually and is communicated to State agencies by the State Comptroller.
Billings from the investigator and the inspector often included mileage billed at incorrect rates. The billings were paid as billed without correction. Consequently, the investigator was overpaid $306.75 for mileage, which he returned to the Board, and the inspector was underpaid $1,137.19 for mileage. When the matter was brought to the Board's attention, the inspector was paid the amount due him. Also, in 12 instances, the inspector submitted a claim and was paid for motel expenses although the claim was not accompanied by either a receipt or the name of the motel."

"An adequate system of internal controls over expenditures should provide reasonable assurance that improper expenditures of funds cannot occur without detection during the normal course of work. During expenditure testing, examiners discovered a payment made to the wrong vendor by the ABC Board. The vendor realized the payment was in error and returned the payment to the Board. This is considered an internal control weakness."

"Examiners identified twenty-two (22) instances where invoices without either a material receipt attached or the signature of a staff member indicating the purchased goods were received or purchased services were performed."

"Twenty-six (26) instances were found for which invoices indicated excessive personal use of a State-supplied cellular telephone by a staff member. Additional audit procedures revealed the staff member was using the State-supplied cell phone in the operation of her privately-owned business. The Commission incurred charges of $938.19 during the period examined for calls exceeding the cellular telephone plan's allotted minutes. The employee reimbursed the Commission $938.19 for the cost of exceeding the allotted minutes. Upon notification of the staff member's usage of the cellular telephone, the Public Service Commission notified the State Ethics Commission of the circumstances. The ***Code of Alabama 1975***, Section 36-25-17 (a) provides, "Every governmental agency head shall within 10 days file reports with the Commission [State Ethics Commission] on any matters that come to his or her attention in his or her official capacity which constitute a violation of this chapter.""

- *Personnel*
  - Inaccurate leave accrual start dates recorded for employees
  - Inaccurate annual, sick, personal, and compensatory leave balances
  - Incorrect computation of overtime
  - Inaccurate computation of longevity
  - Overpayments or underpayments at termination of employment
  - New Hire forms were not in the personnel files of newly hired personnel
  - Improper withholding taxes

"The ***Code of Alabama 1975***, Section 36-6-11 which states in part: "Each person employed by The State of Alabama, and all legislative personnel, officers or employees, including but not

limited to Legislative Reference Service personnel, whether subject to the state Merit System or not, shall be entitled to and receive in a lump sum the first pay day of December each year the sum of three hundred dollars ($300) per annum after such employee served for a total period of five years and shall receive the payment until the tenth year of total service, at which time the payment shall be made in a like manner and at a like time but in the amount of four hundred dollars ($400) per annum until the fifteenth year of total service, at which time the payment shall be made in a like manner and at a like time but in the amount of five hundred dollars ($500) per annum until the twentieth year of total service, at which time the payment shall be made in a like manner and at a like time but in the amount of six hundred dollars ($600) per annum until the twenty-fifth year of total service, at which time the payment shall be made in a like manner and at a like time, but in the amount of seven hundred dollars ($700) as long as the employee remains in service." Out of thirteen employees tested, one employee's longevity counter was incorrect which resulted in an overpayment of one hundred dollars. This was resolved by the Department."

"The Commission incorrectly computed an employee's leave progression start date (LPSD), thereby improperly crediting the employee with two month's additional service time. An inaccurate leave progression start date can result in incorrect computation of leave balances and incorrect payment of amounts due. The error was corrected prior to completion of this examination."

"Compensatory time for Commission employees who are subject to the federal Fair labor Standards Act (FLSA) overtime provisions was awarded at straight time rather than time and one-half, as required by the FLSA. Employees governed by the Fair Labor Standards Act are subject to the provisions of Section 7(o) (1) of the Act, which states "Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section."

"During the prior examination, the leave balances of three employees were in error. This type of error continues. In the current examination, we found errors in the leave balances of three other employees, including an understatement of annual leave of 1 hour, overstatement of annual leave by 4 hours, understatement of sick leave by 8 hours, and overstatement of sick leave by 20 hours. All of the errors occurred at the end of the year, with the errors for two persons consisting of incorrect leave balances brought forward into the new year. In the prior examination, we recommended reporting leave balances to all employees for confirmation at least monthly and immediately prior to payment of unused balances at termination of employment."

"One employee was improperly awarded compensatory time for each day worked in excess of eight hours rather than for hours worked in excess of 40 hours, as provided in the federal Fair Labor Standards Act in 29CFR778.103. Consequently, the employee was incorrectly compensated."

“Two employees used annual leave rather than accumulated compensatory time, a practice not in compliance with Rules of the State Personal Board #670-X-11-.07. Rule 670-X-11-.07 requires use of compensatory time before annual leave is used, unless such use would result in the loss of annual leave balance at the end of the year due to annual leave carryover limits.”

“The ***Code of Alabama 1975***, Section 36-26-26 states "Upon retirement, each employee who acquires sick leave pursuant to the State Merit System shall receive payment of 50 percent of his or her accrued and unused sick leave, not to include escrowed sick leave as provided herein, at the time of his or her retirement, and payments for the sick leave shall be made at the same rate as his or her regular pay, not to exceed 600 hours. In the review of 25 terminated employees during the examination period, there was one instance in which a retired person received more sick leave than the allowed maximum hours. As a result, an overpayment of $439.29 was paid to an employee. Once this error was brought to the attention of the agency, the money was returned by the employee prior to the end of fieldwork.”

“Due to an erroneous payroll entry, an employee was paid $75.84 at termination for overtime hours not worked by the employee. The employee failed to respond to requests for repayment by the board and by the Examiners of Public Accounts.”

“The longevity counter must be recorded correctly in the Governmental Human Resources System (GHRS) in order for annual longevity payments to be made in the correct amount. In a review of 25 personnel files, there was one instance in which the longevity counter was not accurately adjusted to reflect an employee's break in State service. This error resulted in an employee receiving a longevity payment of $300 before he was entitled to receive one. This error was corrected prior to the end of fieldwork.”

“According to State Personnel Rule 670-X-13-.06, upon separation from service an employee shall be paid for the actual number of days annual leave he earned, up to a maximum of sixty days. The computed amount will be based on the daily pay rate at the time of separation multiplied by the number of days leave due. In a review of 25 employees who separated from State service, we noted an error with one person in regards to payment for their ending leave balance. An employee resigned from State service with an annual leave balance of 12 hours and 20 minutes. The computed amount of termination pay for annual leave due was $111.77. After payroll records were carefully searched, it was determined this employee did not receive payment for the final annual leave balance as reconciled to the GHRS. After we informed the Department of this error, it paid this individual the amount they were due.”

“Act No. 228, ***Acts of Alabama 1997***, requires an employer obtain certain information from newly hired, recalled, or rehired individuals and that this information be submitted to the Department of Industrial Relations within seven days. The board maintained no evidence of completing or submitting New Hire Reporting Forms.”

“Procedures were not in place to ensure correct income tax withholdings were deducted. The accuracy of Federal and State withholdings could not be verified because Employee's Withholding Allowance Certificates, Federal Forms W-4 and Alabama Forms A-4, could not be located for twelve of sixty employees tested.”

- *Licensing*
  - Failure to require a Social Security Number on licensee forms
  - Inadequate documentation of each licensee's compliance with requirements necessary to do business in Alabama, including payment of fees
  - Exempting persons not specified in the law as exempted
  - Conditions of licensing not fully met
  - Conditions of licensing different from conditions specified by law
  - Voided forms

"We recommended the Board should ensure all qualifying criteria are met prior to issuing any license and that proof of having met the criteria are documented in the records of each licensee. Of 67 licensees sampled, 12 did not report their social security numbers, 6 without renewal documentation in their files, 24 had no proof of required liability insurance, 4 did not answer criminal background questions, 2 were not notarized, and one did not obtain the required educational hours.

Establishment Licensees

Of 14 licensees sampled, 5 did not include the Social Security number of the person completing the application, 4 lacked proof of insurance, and one application was not notarized.

Of 16 schools sampled, 13 had no renewal documentation, 2 did not submit the required documents for licensure, one listed an instructor who held an expired license, and none of the schools submitted a social security number of the person applying for the license.

None of the schools had documentation of accreditation or licensure from either the State Department of Education (state school) or Postsecondary Education (private school). The examiner was able to locate state education licensure status for all but 4 schools on the Department of Postsecondary Education website. These 4 schools do not appear to be accredited or licensed by the State Department of Education, the Department of Postsecondary Education, or an accreditation commission or agency recognized by the U. S. Department of Education.

Instructor Licensees

Of 13 instructors sampled, none provided their social security numbers, six did not have proof of experience, and one was not a currently licensed massage therapist (LMT).

Licensees Generally

Of 53 insured licensees tested, six were not insured by a company rated "A" or better, as required. The examiner asked the executive director, how the Board checked for the required rating. The executive director stated he did not know it necessary and it is not done. The examiner was able to locate a rating for most of the companies from which licensees acquired insurance.

In the current examination, the discrepancies continued. In a sample of 138 license files, there were ten instances where licenses were renewed without general liability insurance. Six were renewed for more than one license period without proof of insurance (licenses are renewed biennially). The executive director stated the Board directed the license renewals to be issued without requiring proof of general liability insurance of these licensees, a practice for which there is no authority in the board's enabling statutes. There is no exception in the law to the requirement for insurance.

Also, in a sample of seven school licensee files, none of the applications included the Social Security number of the person signing the application for initial licensure. Social Security

numbers are required to be submitted by applicants for original licensure. Attorney General's opinion 2004-022 extends this requirement to the individual or individuals in a corporation, partnership, or limited liability company required to make application for a license."

"The Board purchases and issues pre-numbered preprinted licenses but does not retain voided license forms for audit. This creates an unnecessary risk of misuse of license forms without detection."

"The Board did not charge the correct fee to issue a funeral director or embalmer license by reciprocity. The Board is charging $50.00 rather than the $100.00 fee required by law."

"The last examination revealed the Board's administrative rules required all of its licenses to expire on August 31 of each year although State law requires the licenses to expire on the anniversary date of original issuance. The Board's administrative rules in Chapter 473-X-3-.01 (9) state, "all licenses expire on August 31st of each year. If not renewed within sixty (60) days of the expiration date, the license is considered expired…" The administrative rules in Chapter 473-X-8-.01 (1) repeat the licenses expire on August 31st of each year.
These rules are in conflict with State law, which provides in the ***Code of Alabama 1975***, Section 34-14C-4(d), "Licenses issued pursuant to this chapter expire on the anniversary date of the original license unless renewed".
We recommended Board should amend its rules to comply with the law.
The current examination revealed the Board did not amend its rules and continues to cause its licenses to expire on August 31 of each year. No bill was filed to amend the law to require licenses to expire on August 31."

"The ***Code of Alabama 1975***, Section 28-3A-21(a) (12) requires the Alabama Alcoholic Beverage Control Board (ABC) to levy an annual license fee of one hundred fifty dollars ($150) for a retail beer license for off-premises consumption. During the examination period, ABC levied only one hundred dollars ($100) for a retail beer license for off-premises consumption."

- *Public Records*
  - Failure to obtain and implement a State Records Commission-approved Records Disposition Authority (RDA)
  - Failure to report annually the disposition of records destruction
  - Charging fees in excess of reasonable cost of copying public records

"The Board did not obtain an approved Records Disposition Authority (RDA). The Board's retention of all records resulted in a records storage problem. The ***Code of Alabama 1975***, Section 41-13-21 provides for the State Records Commission to make a determination as to which State records to be preserved or destroyed and requires State officers not to cause the destruction of State records without prior approval of the Commission. To implement this requirement, State agencies consult with the Department of Archives and History, Records Division to develop a plan of records disposition for approval by the State Records Commission. Since we brought this condition to the Board's attention in the last examination, we again recommended the Board contact the Records Division of the Department of Archives and

History for consultation and development of an approved RDA. No action was taken, and this condition continued to exist."

"The Board did not submit to the State Records Commission a required annual report of records management activity for the 2006 fiscal year. The Board's Records Disposition Authority, a document approved by the State Records Commission, which is required of all agencies and which provides for retention periods for various types of records states on page 3-5, "One condition of this authorization is that the agency submit an annual Records Disposition Authority (RDA) Implementation Report on agency records management activities, including documentation of records destruction, to the State Records Commission in October of each year." The Board's executive secretary stated that no report was filed because no reportable activity occurred."

"Public records were shredded, placed in bags, and transported in an employee's personal vehicle. No record was maintained of what was shredded."

"During the last examination, we found the Board charged excessive fees for lists of its licensees. The Board charged $100 for a list of its licensees with addresses, and $125 for the same list on labels. According to the Board's executive director, the fees are based on the cost of maintaining the records from which the list is produced. The ***Code*** requires the Board to keep a record of licensees along with their addresses as a part of its duties, and the law authorizes the Board to collect licensing and regulatory fees to carry out this and other duties. It is improper for the Board to impose a charge for providing a copy of the names and addresses of licensees, which includes the cost of maintaining the record, because the law already provided funds to maintain the record. The only appropriate charge for a copy of the names and addresses of licensees is the incremental actual cost of extracting the information and conveying it to the requestor, without regard to the cost of maintaining the record. The Attorney General in his opinion 2004-108 reiterates fees charged for copies of public records must be based upon actual cost, cannot be imposed to restrict public access, and that copies are available to businesses to the same extent as to private individuals.
We recommended the Board should limit the fees it charges for copies of the names and addresses of its licensees to the incremental actual cost of producing the copies, without regard to the cost of maintaining the records.
During a Board meeting on November 12, 2004, the Board reestablished the fees for lists of its licensees. We found no record that the amended fees were based upon the actual incremental cost of producing a copy, and the fees remain excessive. The Board's executive director stated part of the fees was to deter mass mailings to licensees.
Type Fee - Previous Fee
List of all licensees $ 75 - $100
List of all licensees on diskette $ 75 - $100
List of all licensees on labels $100 - $125"

- *Property/Fixed Assets*
  - Inadequate controls over property
  - Failure to maintain an accurate property listing
  - Failure to capture all information required by law

- Failure to receipt equipment to person with custody

"Good internal control procedures require assets belonging to the Commission be properly identified as such with permanent tags or markers. This practice facilitates the inventory of the assets and prevents theft or improper use of the equipment. Audit tests revealed much of the equipment owned by the Commission was not marked or tagged as property of the Commission."

"The property manager does not conduct a full and complete property inventory at least annually. Also, two leased copy machines with purchase agreements were not included in the Board's property inventory listing. These conditions unnecessarily increase the risk of loss or misuse of State-owned property or property in the custody of the State. The ***Code of Alabama 1975***, Section 36-16-8(1) states: "Except for books, the property manager shall make a full and complete inventory of all nonconsumable personal property and certain other items of personal property deemed important or sensitive enough by the Property Inventory Control Division to be included in the inventory of state property of the value of five hundred dollars ($500) or more owned by the state and used or acquired by the department or agency. The inventory shall show the complete description, manufacturer's serial number, cost price, date of purchase, location, and custodial agency, responsible officer, or employee, and the state property control marking. A copy of the inventory shall be submitted to the Property Inventory Control Division on October 1 and April 1 of each year." Attorney General's Opinion 97-00035 states property should be placed on inventory when the State holds title to the property and uses the property or when the State maintains use and control of the property, even though it may not have title to the property.

"The Commission did not have adequate accountability for its nonconsumable property items. We found the following discrepancies: Written receipts to record the transfer of custody of property from the agency's property manager to its user were not current. Of 24 receipts sampled, ten were for salvaged items but were not removed from the property inventory records. We also found three items entrusted to someone other than the property manager for which there was no receipt signed by the person responsible for the item. Property with an acquisition value of $500 or greater purchased by State agencies is recorded in a common database maintained by the State Auditor. Property with an acquisition cost of less than $500 is accounted for with agency records according to agency policy. Disposition of all property items is required by law to be disposed of in a formal manner utilizing the State's procedures for disposal. 118 items with a value of less than $500 were recorded in the agency's inventory records, but the location of these items was not known. Staff stated the location of these items was unknown for years, but no action was taken to remove them from inventory utilizing the State's disposal procedures."

- *Miscellaneous*
  - Failure to send annual reports to the governor and/or other officials
  - Insufficient controls over information technology
  - Failure to post board/commission vacancies
  - Staggered appointments
  - Destruction of records prematurely

"During the last examination period, the Board did not annually report the amount of the unobligated balance in its fund on April 1 of each year, as required by law.
The ***Code*** states, "Not later than April 5 of each year, the Board shall report the amount of the unobligated balance of the fund on April 1 of such year. The Board shall notify the public and the Department of Revenue if the registration fee imposed by Section 22-30D-6 will be abated or be payable on the following July 1." We recommended the Board should annually report on its Internet website not later than April 5 of each year its fund's unobligated balance on April 1 of that year. The report should also state whether registration fees will be collected. The report should also be made in writing to the Department of Revenue.
Current Status
The unobligated balance of the fund is reported on the Board's internet website after each Board meeting. However, the Board did not send a report to the Department of Revenue and the Board did not notify the public or the Department of Revenue whether the registration fee will be collected, as required by law."

"We reviewed the internal control policies and procedures affecting the Board's ability to provide reasonable assurance data, programs, systems, and related information will be protected from unauthorized use, disclosure, modification, damage, loss or other inappropriate access by persons or programs. We determined these controls were not adequate to provide such assurance. Lack of adequate controls over agency data increases the risk of unauthorized use, disclosure, modification, damage, loss or inappropriate access by persons or programs."

"The Board did not provide notices of vacancies on the Board to Secretary of State's Office as required by the ***Code of Alabama 1975***, Section 36-14-17 (d). Notices of seven (7) vacancies occurring due to expiration of terms and of two additional vacancies occurring due to resignation of the incumbents, were not communicated to the Secretary of State before the vacancies occurred. The Secretary of State maintains an Internet website, which includes information about incumbencies and vacancies of boards and commissions, which is updated through notifications from the boards and commissions. Lack of notification or untimely notification contributes to inaccuracy of information available to the public."

"In the last audit, we found recent appointments to replace three Board members did not meet the staggered-term requirements of the Board's enabling statutes. Three Board members were appointed in error to two-year terms rather than the statutorily required three-year terms. The length of these appointments defeats the staggered-term scheme created by statute. We also found the terms of all Board members were expired. Two members were original appointees whose terms expired in 2002 and who continued to serve, but were not reappointed. One member whose term expired in 2003 continued to serve, but was not reappointed. One member whose term expired in 2003 was no longer serving, thereby creating a vacancy. The appointed terms of three members expired in 2006 (statutorily expired in 2007) and the members continued to serve, but were not reappointed. We recommended the Board should

contact the Governor's Office and request appointments to terms that restore the staggering scheme provided by law."

"In 2007, the Board destroyed records prematurely. Disposition of the records of each State agency is done under authority of a records disposition authority approved by the State Records Commission, which prescribes the length of time various records must be retained. The Board's records disposition authority provides business information files are retained for 10 years after the closure of the business (page 3-3). The records disposition authority also states records documenting employee hours worked, leave earned, and leave taken should be retained for 3 years after the end of the fiscal year in which created (page 3-5). According to the Board's executive director, the Board thought it had completed the process to update its Records Disposition Authority to reduce the retention period for the records destroyed."

"In the last examination, we found the Board's administrative rule regarding transfer of surplus funds to the State's General Fund was in conflict with State law. Consequently, the rule was void. Opinion of the Attorney General 2006-147 states in reference, "The administrative rules and regulations, however, must be consistent with the constitutional or statutory authority by which they are promulgated, and a rule or regulation created out of harmony with the statute is null and void, Ex parte State Dep't of Human Resources, 548 So.2d 176, 178 (Ala. 1988)" The Board's administrative rule 798-X-3-.13(2) stated, "After the first three full fiscal years from the effective date of this act, if a surplus of funds exists which is greater than one year's operating expense, the funds shall be distributed to the general fund."
The ***Code of Alabama 1975***, Section 34-27B-6 states, "After the first three full fiscal years from May 17, 2004, and every three years thereafter, if a surplus of funds exists which is greater than two years' operating expense, the funds shall be distributed to the General Fund." After the prior finding, the Board amended its Administrative Rule 798-X-3-13 (2) to state, "After the first three full fiscal years from May 17, 2004, and every three years hereafter, if a surplus of funds exists which is greater than two year's operating expense, which is the prior two year's annual budgets, the funds shall be distributed to the general fund." The amended rule remains in conflict with the statute. Operating expenses are actual expenses. Budgets are anticipated expenses."

CONTACT LIST (This is not an all-inclusive listing.)

Contact	***Available Information***	***Contact Information***	***Notes***
Alabama Interactive	Renewing licenses on-line	http://www.egov.com/who-we-serve/partners/alabama	The State of Alabama maintains a contract in place for this vendor, but interested agencies will still need to sign a Memorandum of Understanding, as well as set up a fee schedule, etc.
State Web Site	State agency listings	www.alabama.gov	
State Operator	Telephone listings	(334) 242-8000	
Department of Archives & History, Governmental Records Division	Public records, records retention	www.archives.alabama.gov (334) 242-4452	Click on "For State and Local Officials"
Attorney General's Office	Legal counsel/representation, hearing officers, AG Opinions	www.ago.alabama.gov (334) 242-7300	
State Auditor's Office	State property	www.auditor.alabama.gov (334) 242-7028	
Finance Department	Fiscal Policy and Procedure	www.finance.alabama.gov (334) 242-7160	
Comptroller's Office	Fiscal Policy and Procedure	www.comptroller.alabama.gov (334) 242-7160	
Budget Office	Budget request and associated information	www.budget.alabama.gov (334) 242-7230	
Motor Pool Division	A State Motor Pool vehicle may now be reserved on-line	https://ofm.dot.state.al.us/	
Purchasing Division	Information and guidance regarding purchases	www.purchasing.alabama.gov (334) 242-7250	Lists are available for products and services and professional services
Risk Management Division	Insurance and bonding	www.riskmgt.alabama.gov (334) 223-6120	

Office of Lease Management	Office space – leases	http://finance.alabama.gov/pages/SpaceM.aspx (334) 242-2773	
Comprehensive Annual Financial Report (CAFR)	Statewide financial reporting	(334) 242-2193	See Comptrollers' website and click "CAFR instructions"
GHRS (Payroll)	Payroll issues	(334) 242-2200	See Comptroller's website and click "Monthly Reports"
Central Mail	Send and receive mail	(334) 242-2773	
Office of Information Technology	Information Technology and communication services, including phone, fax, internet, computers, computer systems, etc.	http://oit.alabama.gov/ (334) 242-3045	
Information Services Division Training	Computer classes	(334) 215-8256	
Printing & Publications	Printing and publishing services, pamphlets, brochures, books, presentation certificates, etc.	(334) 242-2808	See Finance's website and click on "Printing and Publications"
Travel forms	Online in-state travel form and instructions **Out-of-state forms and instructions**	http://comptroller.alabama.gov/online-forms/ https://oos.alabama.gov/	
Department of Conservation and Natural Resources (DCNR) – State Lands Division	To sell or lease state lands, to report inventory of state owned lands	http://lands.dcnr.alabama.gov/ (334) 242-3484	*Contact information page*
Alabama Department of Economic and Community Affairs (ADECA)	State recycling program	www.adeca.alabama.gov (334) 242-5332	
Ethics Commission	Filing statements of economic interests, notices of representation for fee, notices	**www.ethics.alabama.gov** (334) 242-2997	

	of contract, and reporting violations of the ethics law, and training		
Examiners of Public Accounts	Copies of issued reports, questions relative to audits, filing disclosure notices relative to contracts	www.examiners.alabama.gov (334) 242-9200	
Governor's Office		www.governor.alabama.gov (334) 242-7100	
Appointment Secretary	Notify Governor's Office of vacancies in board membership	(334) 242-2429	
Legislative Reference Service	Bill drafting, legislative reference information	http://lsa.alabama.gov/ (334) 242-7560	
Administrative Procedure Division	Administrative Rules and Regulations – all State agencies	www.alabamaadministrativecode.state.al.us (334) 242-7570	
Legislative Fiscal Office	State fiscal information, legislator's guide to Alabama taxes	http://lsa.alabama.gov/ (334) 242-7950	
Peace Officers Standards and Training Board	Verify status of law enforcement employees regarding minimum standards qualifications	http://www.apostc.state.al.us/ (334) 242-4045	
Personnel Department		www.personnel.alabama.gov (334) 242-3389	
Employee Records	File documents regarding employee personnel transactions (hiring, terminating, promotions, raises, etc.)	(334) 242-3279	
Training	Training on personnel issues	(334) 242-3494	
Secretary of State	To register oaths, copies of acts, copies of the *Code of Alabama*, verifying registration	www.sos.alabama.gov (334) 242-7200	Boards must supply a listing of board members and vacancies on the board to the Secretary of State by

	status of out-of-state vendors, etc.		December 4, 2006. Boards must also register with the Secretary of State to comply with Open Meetings Act requirements for public notification of board meetings.
State Treasurer's Office		www.treasury.alabama.gov (334) 242-7500	
Receipts/Deposits	To deposit money collected in the name of the state or its agencies	(334) 242-7520	
Collateralization/SAFE	Collateralization of agency funds held in banks in excess of the $100,000.00 FDIC Coverage	(334) 242-7506	
Unclaimed Property	To report outstanding payments		
State Employees Insurance Board (SEIB)	State Employees Health Insurance Plan	https://www.alseib.org/ (334) 833-5900 1-800-513-1384	
Retirement Systems of Alabama (RSA)	State Employees Retirement System	http://www.rsa-al.gov/ (334) 832-4140 1-800-214-2158	

Other Resources*

Auburn University Montgomery (AUM) Alabama Training Institute	Governmental Accountant and Auditor Training (GAAT) Certified Public Manager (CPM) Program	http://www.auburn.edu/outreach/opce/	
Council on Licensure, Enforcement, and Regulations (CLEAR)	Training on regulatory board issues and investigations	www.clearhq.org (859) 269-1601	
Center for Consumer Advocacy	Training for consumer members on consumer issues	www.cacenter.org (202) 462-1174	
Alabama Press	Information on public access	www.alabamapress.org	Select "Legal Issues"

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