



EXECUTIVE ORDER NO. 726

PROMOTING THE FAITHFUL EXECUTION OF THE LAWS WITHIN THE EXECUTIVE BRANCH OF STATE GOVERNMENT

WHEREAS the Alabama Constitution gives the Governor of Alabama not only the “supreme executive power of this state” but also the duty to “take care that the laws be faithfully executed,” Ala. Const. art. V, §§ 113, 120;

WHEREAS, historically, one important component of the “faithful” execution of the laws has been a duty of good faith on the part of executive-branch officials – that is, a duty of diligence, skill, conscientiousness, and carefulness in the performance of job duties;

WHEREAS another historical component of the “faithful” execution of the laws has been a prohibition *against* bad-faith exercise of these duties, and especially a prohibition against self-dealing and mismanagement of public funds;

WHEREAS a third historical component of the “faithful” execution of the laws has been the duty of executive-branch officials to act within the scope of their offices;

WHEREAS the Alabama Supreme Court has analogized the executive branch of state government to a “large fleet with many ships (departments, boards and agencies)” and likened the Governor to the “admiral” of that large fleet;

WHEREAS my administration prides itself on, and is grateful for, the working relationships it has developed across state government over the past five-plus years;

WHEREAS my administration desires, at the start of its second full term, to build upon these relationships by further unifying the executive branch of state government under the leadership of the Governor; and

WHEREAS, to promote the faithful execution of the laws, it is helpful and appropriate to reaffirm and build upon existing standards for the operation of state executive-branch agencies to ensure consistency across the executive branch of government and broader application of existing best practices;

NOW, THEREFORE, I, Kay Ivey, Governor of the State of Alabama, by virtue of the authority vested in me by the Constitution and laws of the State of Alabama do hereby promulgate this executive order, effective immediately:

1. **Constituent service.** State executive-branch agencies shall promptly respond to inquiries from constituents as follows.
 - a. **General policy.** It is the policy of the executive branch of state government to prioritize constituent service. Each state executive-branch agency shall respond to constituents in as timely a manner as possible while fulfilling the core functions of state government as prescribed by the Legislature.
 - b. **Requirements for regulatory agencies.** Regulatory agencies—that is, state executive-branch agencies that serve the public by regulating a business, trade, or profession through the issuance of licenses or similar formal grant of permission—shall annually report to the Office of the Governor their efforts to respond to constituents when they complain about a licensee or other entity regulated by the agency. These reports shall be filed at a time, and in a format, prescribed by the Office of the Governor.
2. **Financial affairs.** State executive-branch agencies shall scrupulously manage their financial affairs as follows.
 - a. **Fiscal Policies and Procedures Manual.** Each state executive-branch agency shall comply with the policies outlined in the current edition of the State of Alabama Fiscal Policy and Procedures Manual to the greatest extent practicable. The manual is available by contacting the State Comptroller’s Office within the Department of Finance (currently available at <https://comptroller.alabama.gov/fiscal-policy-procedures/>).
 - b. **Non-treasury bank accounts.** To promote the proper use of public funds, it is the policy of the executive branch of state government

to maintain all state executive-branch agency public funds in the State Treasury (and not in a so-called “checkbook” account) where they will be subject to oversight by the State Comptroller.

- i. **No new checkbook accounts.** Effective immediately, no state executive-branch agency shall establish a new non-treasury bank account without the express written approval of the Governor.
 - ii. **Transfer deadline.** Unless exempt pursuant to paragraph 2.b.iii, each state executive-branch agency that currently maintains public funds in a non-treasury bank account shall transfer those funds to an account within the State Treasury by October 1, 2023.
 - iii. **Exemptions.** The requirements of this subparagraph 2(b) do not apply to agency investment accounts, bond authorities, or funds which are statutorily required to be maintained outside the State Treasury. If an agency believes that any other public funds held in an existing non-treasury bank account should be exempt from the requirements of this paragraph, then the agency must submit to the Governor by July 1, 2023, a detailed, written justification explaining the legal and practical reasons for the proposed exemption and the policies in place to ensure the proper use of those funds. Exemption justifications will be considered on a case-by-case basis, and exemption requests will be granted only in writing signed by the Governor.
 - iv. **Assistance from State Comptroller.** The State Comptroller shall assist affected state agencies in connection with the provisions of this paragraph. This shall include establishing procedures to expeditiously disburse public funds when needed to support agency operations.
3. **Legal affairs.** Each executive-branch agency shall manage its legal affairs as follows.

- a. **Contracts and grant agreements.** A state executive-branch agency may contract for any services necessary to accomplish its statutory purpose pursuant to applicable state procurement law, provided that the following agreements shall be subject to the Governor's approval:
 - i. Contracts for professional or personal services, including legal services and administrative services, whether or not subject to review by the Contract Review Permanent Legislative Oversight Committee.
 - ii. Emergency procurements, sole-source procurements, and special procurements as determined by the State Chief Procurement Officer.
 - iii. Public works contracts.
 - iv. Contracts conveying an interest in real property owned by the State.
 - v. Grant agreements as determined by the Office of the Governor.
 - vi. Amendments to the foregoing agreements, including renewals, if the amendment effects a substantial change in the scope of the contract (for example, the cost to the State, the time for performance, or the scope of services).

- b. **Outside counsel hiring.** In considering whether to approve a state executive-branch agency's hiring of outside counsel, *cf.* Ala. Code §§ 41-4-125 & 41-15B-2, the Governor will generally withhold her approval for any attorney who has litigation pending against the State or its instrumentalities, officials, or employees if the lawsuit meets any of the following criteria:
 - i. It seeks to obtain property, including money, in a manner other than that approved by the Alabama Code or Alabama Administrative Code.

- ii. It collaterally attacks a final, unreviewable judgment in favor of the State of Alabama or any of its instrumentalities, officials, or employees (including duly obtained criminal convictions).
 - iii. It is part of a pattern of litigation that constitutes open and obvious defiance of state law.
 - iv. It seeks to undermine the State of Alabama's prerogatives, powers, rights, or authorities with respect to the federal government, other States, or the States' political subdivisions.
- c. **Nonlitigation counsel.** Contracts for nonlitigation legal services shall describe with reasonable particularity the scope of services the lawyer or law firm is engaged to perform.
- d. **Notice of litigation.** Each state executive-branch agency shall continue working with the Office of the Attorney General to obtain legal representation in litigation as provided by state law. In addition, each such agency shall notify the Office of the Governor of any litigation in which it or one of its employees, officers, board members, etc., is a named party if the case implicates an important public policy of the State of Alabama.
- e. **Settlement Agreements.** The following categories of state executive-branch agency settlement agreements—including prelitigation settlement agreements and agreements to enter a consent decree—shall be subject to the Governor's approval:
 - i. Settlement agreements that would have a significant effect on the interests of the executive branch of state government.
 - ii. Settlement agreements that would require the State to disburse public funds, including cases under the State's General Liability Trust Fund program.
 - iii. Settlement agreements—however labeled (including separation agreements, severance agreements,


employment termination agreements, and releases) – that contemplate the termination or other separation of an employee.

- iv. Settlement agreements that contemplate the transfer of an interest in real property.
4. **Ethics.** Any contract of a state-executive branch agency for administrative services that would allow an independent contractor to serve as head of the agency shall include provisions to require the contractor to comply with state ethics and nepotism laws to the greatest extent possible.
5. **Ongoing collaboration.** To promote a cohesive executive branch of state government, and to expand on current best practices, each state executive-branch agency (except those whose head is elected by a vote of the people) shall consult with the Office of the Governor before making an important decision that would significantly affect the operation of state government or the State’s public policy. Agencies whose head is elected by a vote of the people are strongly encouraged to consult with the Office of the Governor before making such decisions.
6. **Applicability.** For purposes of this order, “state executive-branch agency” means any agency, department, board, office, commission, or other entity within the executive branch of state government.
7. **Implementation.** This order shall be implemented to the maximum extent possible consistent with applicable law and subject to the availability of appropriations. Nothing in this order shall be construed as impairing or otherwise affecting the authority granted by law to an executive branch agency, or the head thereof, including the Governor of the State of Alabama, except to the extent expressly set forth in this order.
8. **No private right of action.** This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any private party against the State of Alabama, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

9. **Effect on prior related orders.** Any previously issued executive order is hereby rescinded to the extent it conflicts with this executive order.

DONE AND ORDERED this 17th day of January 2023.





KAY IVEY
Governor

ATTESTED



WES ALLEN
Secretary of State